

Rules

RULE

Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for School Administrators? American Sign Language I and II as a Foreign Language (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The standard for foreign language has not changed; only the addition of American Sign Language I and II has been added to the list of courses. Students who are deaf and wish to apply for the TOPS scholarship program have to request a waiver for the foreign language requirement. With the approval of ASL I and II as a foreign language, this waiver will not be required. In addition, students who successfully complete these courses would not need a waiver when applying to universities that have foreign language entrance requirements.

Title 28 EDUCATION

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

§901. School Approval Standards and Regulations

A. Bulletin 741

AUTHORITY NOTE: Promulgated 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 LR 28:269-271 (February 2002), LR 28:272-273 (February 2002), LR 28:991-993 (May 2002), LR 28:1187 (June 2002), LR 30:394 (March 2004).

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Foreign Languages

2.105.07. The foreign language course offerings shall be as follows.

Course Title	Unit(s)	Refer to Bulletin
French I, II, III, IV, V	1 each	1876
German I, II, III, IV, V	1 each	1876
Italian I, II, III, IV, V	1 each	1876
Latin I, II, III, IV, V	1 each	1876
Russian I, II, III, IV, V	1 each	1876
Spanish I, II, III, IV, V	1 each	1876
American Sign Language I, II		

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Weegie Peabody
Executive Director

0403#010

RULE

Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for School Administrators? Guidelines for Nonpublic and Home Schooling Students Transferring to the Public School Systems (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, Board of Elementary and Secondary Education has amended *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). At the September 2003 meeting of the State Board of Elementary and Secondary Education (SBESE), the board approved revisions to the "Guidelines for Nonpublic and Home Schooling Students Transferring to the Public School System: Participation in LEAP 21." These guidelines are contained in *Bulletin 741? The Louisiana Handbook for School Administrators*. The changes reflect the new achievement levels ("basic/approaching basic") for fourth grade students. This action was required to clarify the transfer policy as it relates to students transferring from nonpublic schools (both in-state and out-of-state and from home schooling programs).

Title 28 EDUCATION

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HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 1:483 (November 1975), amended LR 28:269-271 (February 2002), LR 28:272-273 (February 2002), LR 28:991-993 (May 2002), LR 28:1187 (June 2002), LR 30:394 (March 2004).

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Guidelines for Nonpublic and Home Schooling Students Transferring to the Public School Systems Participation in the LEAP 21

A student who is transferring from an in-state nonpublic school or a home schooling program or a Louisiana resident* who is transferring from an out-of-state school to enroll in the Louisiana public school system at grades 5 or 9 shall be required to take the 4th- or 8th-grade LEAP 21 English Language Arts and Mathematics tests. Fourth-grade students must score Basic or above on either the LEAP 21 English Language Arts test or the LEAP 21 Mathematics test and Approaching Basic or above on the other one. Eighth-grade students must score Approaching Basic or

above on both the English Language Arts and Mathematics tests. Beginning in spring 2006, the achievement level for 8th grade students will be raised to the Basic/Approaching Basic combination level. The following guidelines shall apply.

1. Students may take LEAP 21 during either a spring or a summer administration prior to enrollment. It is the responsibility of the parent(s) to contact the local school system, or Local Education Agency (LEA), District Test Coordinator to register for the test.

2. The nonpublic school and the parent(s) [or home schooling parent(s)] are responsible for providing to the LEA District Test Coordinator, at least 10 working days prior to the testing date, appropriate documentation required for requested standard testing accommodations.

3. Students with disabilities who have a current 1508 evaluation will participate in LEAP 21 testing. Promotion decisions for these students will adhere to the High Stakes Testing Policy.

4. LEAs may charge a fee for the testing of nonpublic and home schooling students. This fee shall be refunded upon the student's enrollment in that public school system the semester immediately following the testing.

5. Students who participate in a spring administration and fail to score at the required achievement level(s) are eligible to retake the LEAP 21 at the following summer administration.

6. LEAs shall offer LEAP 21 summer remediation to nonpublic/home schooling 4th- and 8th-grade students who fail to score at the required LEAP 21 achievement level(s), as well as to nonpublic/home schooling 4th- and 8th-grade students who did not test in the spring but wish to prepare for the summer administration. LEAs may charge a fee, not to exceed \$100 per student, for such remediation. The summer remediation fee shall be refunded upon the student's enrollment in that public school system the semester immediately following summer remediation.

7. Students who fail to score at the required achievement level(s) are not required to attend the summer remediation offered by the LEA to be eligible to take the summer retest. However, students must attend the LEA - offered summer remediation to be eligible for the appeal process or the policy override.

8. Only students who fail to score at the required achievement level(s) after participation in both the spring and summer administration of LEAP 21 and who attend the summer remediation offered by the LEA are eligible for the appeals process or the policy override, provided all criteria are met (see the High-Stakes Testing Policy).

9. Students who participate only in the spring administration or only in the summer administration and fail to score at the required achievement level(s) are not eligible for the appeals process or the policy override. These students *are* not eligible to take The Iowa Tests for placement purposes.

10. Students transferring into local school systems after the LEAP 21 summer retest but prior to February 15 are

required to take the state-selected form of The Iowa Tests for grade placement if the students have not taken LEAP 21.

11. Students taking The Iowa Tests are not eligible for a retest or for the appeals process. These students may be eligible for the policy override based upon a decision by the School Building Level Committee.

12. The High Stakes Testing Policy and the local Pupil Progression Plan shall govern grade placement of students transferring to the local school systems.

*A Louisiana resident transferring from any out-of-state school is defined as a student who lives in Louisiana but attends school in an adjacent state.

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Weegie Peabody
Executive Director

0403#011

RULE

Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for School Administrators? Pre-GED/Skills Option Program (LAC 28:1.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:1.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The revision is technical in nature to bring BESE policy into alignment with current accountability policy.

Title 28

EDUCATION

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

§901. School Approval Standards and Regulations

A. Bulletin 741

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HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 28:269-271 (February 2002), LR 28:272-273 (February 2002), LR 28:991-993 (May 2002), LR 28:1187 (June 2002), LR 30:395 (March 2004).

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Pre-GED/Skills Option Program

1.151.05. A school system shall implement the Pre-GED/Skills Option Program and shall obtain approval from the State Department of Education at least 60 days prior to the establishment of the program. (See High Stakes Testing Policy in Bulletin 1566.)

A program application describing the Pre-GED/Skills Option Program shall be submitted and shall address the following program requirements:

1. Students shall be 16 years of age or older and meet one or more of the following criteria:

*Shall have failed LEAP 21 English language arts and/or math 8th grade test for one or two years;

*Shall have failed English language arts, math, science and/or social studies portion of the GEE;

*Shall have participated in alternate assessment;

*Shall have earned not more than 5 Carnegie units by age 17, not more than 10 Carnegie units by age 18, or not more than 15 Carnegie units by age 19;

*Students with Limited English Proficiency shall be considered eligible for the Pre-GED/Skills Option Program.

2. Enrollment is voluntary and requires parent/guardian consent.

3. Counseling is a required component of the program.

4. The program shall have both a Pre-GED/academic component and a skills/job training component. Traditional Carnegie credit course work may be offered but is not required. Districts are encouraged to work with local postsecondary institutions, youth-serving entities, and/or businesses in developing the skills component.

5. BESE will require the Pre-GED/Skills Option Program to be on a separate site. Exceptions will be considered based on space availability, transportation or a unique issue.

6. Students who complete only the skills section will be given a Certificate of skills completion.

7. Students will count in the October 1st MFP count.

8. Students will be included in School Accountability. While enrolled, they shall be required to take the 9th grade Iowa Test or alternate assessment. All programs will be considered Option 1 for alternative education purposes, and the score for every alternative education student at a given alternative school shall be returned to ("sent back") and included in the home-based school's SPS. (See Standard 20.002.00 of Bulletin 741.)

Refer to the Guidelines and Application Packet provided by the Louisiana Department of Education for the requirements to establish a Pre-GED/Skills Option Program.

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Weegie Peabody
Executive Director

0403#012

RULE

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for
State Certification of School Personnel?
Alternate Certification Programs
(LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy revises the alternate program descriptions to include content-specific PRAXIS exams as an entry requirement for middle school grades 4-8 candidates. This aligns the alternate program requirements with the No Child Left Behind Act of 2001 specifying that middle school teachers must have passed a content specialty exam for each core academic content area in which the teacher teaches. This policy also specifies the grade levels for early childhood, elementary, middle, and secondary certification in Louisiana, as revised to align with the No Child Left Behind Act of 2001.

Title 28 EDUCATION

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

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:2505-2508 (December 2002), LR 29:117-119 (February 2003), LR 29:119-121 (February 2003), LR 29:121-123 (February 2003), LR 30:396 (March 2004).

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Louisiana Alternate Certification Programs

Practitioner Teacher Program? Alternative Path to Certification

State-approved private providers and Louisiana colleges or universities with an approved teacher education program may choose to offer a Practitioner Teacher Program. Practitioner Teacher Programs may offer certification in grades 1-5, grades 4-8, or grades 6-12 (regular or special education). The Practitioner Teacher Program is a streamlined certification path that combines intensive coursework and full-time teaching.

1. Admission to the Program. Program providers will work with district personnel to identify Practitioner Teacher Program candidates who will be employed by districts during the fall and spring. To be admitted, individuals should:

a. possess a baccalaureate degree from a regionally accredited university;

b. have a 2.50 GPA on undergraduate work.

Appropriate, successful work experience can be substituted for the required GPA, at the discretion of the program provider. However, in no case may the GPA be less than 2.20. (Note: State law requires that upon completion of the program, the teacher candidate has a 2.50 GPA for certification.);

c. pass the PRAXIS Pre-Professional Skills Test (e.g., reading, writing, and mathematics). (Individuals who already possess a graduate degree will be exempted from this requirement.);

d. pass the PRAXIS content specific examinations:

(1) candidates for grades 1-5 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty examination;

(2) candidates for grades 4-8 (regular and special education): pass the middle school PRAXIS examination(s) in the content area(s) in which they intend to teach;

(3) candidates for grades 6-12 (regular and special education): pass the PRAXIS content specialty examination(s) in the content area(s) in which they intend to teach. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area;

(4) candidates for all-level K-12 areas of art, dance, foreign language, health and physical education, and music: pass the content specialty examination. If no

examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area. Provider must develop a process to assure that candidates demonstrate necessary performance skills in the all-level certification area;

e. meet other non-course requirements established by the college or university.

2. Teaching Preparation (Summer)

9 credit hours
(or equivalent 135 contact hours)

All teachers will participate in field-based experiences in school settings while completing the summer courses (or equivalent contact hours).

GRADES 1-5, 4-8, and 6-12 practitioner teachers will successfully complete courses (or equivalent contact hours) pertaining to child or adolescent development or psychology, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies before starting their teaching internships.

MILD/MODERATE SPECIAL EDUCATION 1-12 practitioner teachers will successfully complete courses (or equivalent contact hours) that focus on special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods and materials for mild/moderate exceptional children, and vocational and transition services for students with disabilities.

ALL-LEVEL K-12 practitioner teachers will successfully complete courses (or equivalent contact hours) pertaining to child AND adolescent psychology, the diverse learner, classroom management and organization, assessment; instructional design, and instructional strategies across grade levels K-12 before starting their teaching internships.

3. Teaching Internship and First-Year Support

12 credit hours
(or equivalent 180 contact hours)

Practitioner teachers will assume full-time teaching positions in districts. During the school year, these individuals will participate in two seminars (one seminar during the fall and one seminar during the spring) that address immediate needs of the Practitioner Teacher Program teachers and will receive one-on-one supervision through an internship provided by the program providers. The practitioner teacher will also receive support from school-based mentor teachers provided by the Louisiana Teacher Assistance and Assessment Program (LaTAAP) and principals. NOTE: For all-level areas (art, dance, foreign language, health and physical education, and music), experiences should be provided across grades K-12.

4. Teaching Performance Review (End of First Year)

Program providers, principals, mentors, and practitioner teachers will form teams to review first-year teaching performance of practitioner teachers and determine the extent to which the practitioner teachers have demonstrated teaching proficiency. If practitioner teachers demonstrated proficiency, they will enter into the assessment portion of the Louisiana Teacher Assistance and Assessment Program during the next fall. (If a practitioner teacher who passed the assessment portion of the Louisiana Teacher Assistance and Assessment program prior to entering the Practitioner Teacher Program continues to demonstrate the Louisiana

Components of Effective Teaching at the "competent" level, the team may, by unanimous decision, exempt the teacher from completing the assessment part of the Louisiana Teacher Assistance and Assessment Program.)

If weaknesses are cited, teams will identify additional types of instruction needed to address the areas of need. Prescriptive plans that require from one to nine credit hours (or 15 to 135 equivalent contact hours) of instruction will be developed for practitioner teachers. In addition, teams will determine whether practitioner teachers should participate in the new teacher assessment during the fall or whether the practitioner teachers should receive additional mentor support and be assessed after the fall.

5. Prescriptive Plan Implementation (Second Year)

1-9 credit hours
(15 to 135 contact hours)

Practitioner teachers who demonstrate areas of need will complete prescriptive plans.

6. Louisiana Assessment Program (Second Year)

Practitioner teachers will be assessed during the fall or later, depending upon their teaching proficiencies.

7. PRAXIS Review (Second Year)

Program providers will offer review sessions to prepare practitioner teachers to pass remaining components of the PRAXIS.

8. Certification Requirements

(Requirements must be met within a three-year time period. A practitioner teacher's license will not be renewed if all course requirements are not met with these three years.)

Private providers and colleges or universities will submit signed statements to the Louisiana Department of Education that indicate that the student completing the Practitioner Teacher Program alternative certification path met the following requirements:

A. passed the PPST components of the PRAXIS (Note: This test was required for admission.);

B. completed the Teaching Preparation and Teaching Internship segments of the program with an overall 2.50 or higher GPA;

C. passed the Louisiana Teacher Assistance and Assessment Program;

D. completed prescriptive plans (if weaknesses were demonstrated);

E. passed the specialty examination (PRAXIS) for the area(s) of certification. (Note: This test was required for admission.);

(1) grades 1-5 (regular and special education): Elementary Education: Content Knowledge Examination #0014;

(2) grades 4-8 (regular and special education): Middle school PRAXIS content specialty examination in each area in which a candidate intends to teach;

(3) grades 6-12 (regular and special education): PRAXIS content specialty examination(s) in the content area(s) in which they intend to teach. (Note: This examination was required for admission. If no examination was adopted for Louisiana in the certification area, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area for admission to the program.);

(4) all-Level K-12 areas (art, dance, foreign language, health and physical education, and music): Content specialty

examination in area(s) in which candidate intends to teach. (Note: This examination was required for admission. If no examination was adopted for Louisiana in the certification area, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area for admission to the program.) Provider must develop a process to assure that candidates for all-level certification demonstrate necessary performance skills in the area of certification;

- F. passed the pedagogy examination (PRAXIS):
 - a. grades PK-3: Early Childhood Education (#0020);
 - b. grades 1-5: Principles of Learning and Teaching K-6;
 - c. grades 4-8: Principles of Learning and Teaching 5-9;
 - d. grades 6-12, all-level K-12 Certification: Principles of Learning and Teaching 7-12;
 - e. mild/moderate special education 1-12: special education examinations.
- 9. Ongoing Support (Second and Third Year)

Program providers will provide support services to practitioner teachers during their second and third years of teaching. Types of support may include on-line support, Internet resources, special seminars, etc.

- 10. Professional License (Practitioner License to Level 2)
Practitioner teachers will be issued a practitioner license when they enter the program. They will be issued a level 1 professional license once they have successfully completed all requirements of the program; after three years of teaching, they will be eligible for a level 2 license.

UNDERGRADUATE/GRADUATE COURSES AND GRADUATE PROGRAMS

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

Masters Degree Program Alternative Path to Certification

A Louisiana college or university with an approved teacher education program may choose to offer an alternative certification program that leads to a master's degree. The college or university may choose to offer the masters degree program as either a master of education or a master of arts in teaching. Masters Degree Programs may offer certification in grades PK-3, 1-5, 4-8, 6-12, all-level K-12 (art, dance, foreign language, health and physical education, and music), or mild-moderate special education.

ADMISSION TO THE PROGRAM

To be admitted, individuals should:

- 1. possess a baccalaureate degree from a regionally accredited university;
- 2. have a 2.50 GPA, or higher, on undergraduate work;
- 3. pass the Pre-Professional Skills Test (e.g. reading, writing, and mathematics) on the PRAXIS (individuals who already possess a graduate degree will be exempted from this requirement);
- 4. pass the PRAXIS content-specific subject area examination:

- a. candidates for PK-3 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty examination;
- b. candidates for grades 1-5 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty examination;

- c. candidates for grades 4-8 (regular and special education): pass middle school PRAXIS content specialty examination in each area in which a candidate intends to teach;

- d. candidates for grades 6-12 (regular and special education): pass the PRAXIS content specialty examination(s) in the content area(s) in which they intend to teach. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area;

- e. candidates for all-level K-12 areas of art, dance, foreign language, health and physical education, and music: pass the content specialty examination. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area. Provider must develop a process to assure that candidates demonstrate necessary performance skills in the all-level certification area.

5. Meet other non-course requirements established by the college or university.

PROGRAM REQUIREMENTS

- 1. Knowledge of Learner and the Learning Environment
15 credit hours

Grades PK-3, 1-5, 4-8, and 6-12: Child or adolescent development or psychology, the diverse learner, classroom management/organization, assessment, instructional design and instructional strategies.

Mild/Moderate Special Education 1-12: Special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods and materials for mild/moderate exceptional children, vocational and transition services for students with disabilities.

All-Level (grades K-12): Child and adolescent psychology, the diverse learner, classroom management/organization, assessment, instructional design and instructional strategies, across grade levels K-12.

- 2. Methodology and Teaching
12-15 credit hours
Methods courses and field experiences. NOTE: For all-level K-12 areas (art, dance, foreign language, health and physical education, and music), experiences should be provided across grades K-12.

- 3. Student Teaching or Internship
6-9 credit hours
NOTE: For all-level K-12 areas (art, dance, foreign language, health and physical education, and music), experiences should be provided across grades K-12.

TOTAL: 33-39 credit hours

CERTIFICATION REQUIREMENTS

Colleges or universities will submit signed statements to the Louisiana Department of Education which indicate that the student completing the Masters Degree Program alternative certification path met the following requirements:

- 1. Passed PPST components of the PRAXIS. (Note: This test was required for admission.)
- 2. Completed coursework (undergraduate and masters program) with an overall 2.50 or higher GPA.
- 3. Passed the specialty examination (PRAXIS) for the area of certification. (Note: This test was required for admission.)

a. Grades PK-3 (regular and special education): Elementary Education: Content Knowledge (#0014) specialty examination.

b. Grades 1-5 (regular and special education): Elementary Education: Content Knowledge (#0014) specialty examination.

c. Grades 4-8 (regular and special education): Middle school PRAXIS content specialty examination in each area in which a candidate intends to teach.

d. Grades 6-12 (regular and special education) and all-level K-12 Certification: Specialty content examination in areas to be certified. (Note: This examination was required for admission.) If no examination was adopted for Louisiana in the certification area, for admission purposes, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area.

4. Passed the pedagogy examination (PRAXIS):

a. grades PK-3: Early Childhood Education (#0020);

b. grades 1-5: Principles of Learning and Teaching K-6;

d. grades 4-8: Principles of Learning and Teaching 5-9;

e. grades 6-12, all-level K-12 Certification: Principles of Learning and Teaching 7-12;

f. mild/moderate special education 1-12: special education examinations.

Non-Masters/Certification-Only Program Alternative Path to Certification

This program is designed to serve those candidates who may not elect participation in or be eligible for certification under either the Practitioner Teacher Alternate Certification Program or the Master's Degree Alternate Certification Program. The program may also be accessible in some areas of the state in which the other alternate certification programs are not available. A college or university may offer this program only in those certification areas in which that institution has a state-approved teacher education program. Non-Master's/Certification-Only Programs may offer certification in PK-3, 1-5, 4-8, and 6-12, all-level K-12 (art, dance, foreign language, health and physical education, and music), or mild-moderate special education.

ADMISSION TO THE PROGRAM

To be admitted, individuals should:

1. possess a baccalaureate degree from a regionally accredited university;

2. have a 2.20 GPA, or higher, on undergraduate coursework. [An overall 2.50 GPA is required for certification; those candidates with a GPA lower than 2.50 may have to take additional courses in the program to achieve a 2.50 GPA];

3. pass the PRAXIS Pre-Professional Skills Test (PPST) (Individuals who already possess a graduate degree will be exempted from this requirement.); and

4. pass the PRAXIS content-specific subject area examination:

a. candidates for PK-3 (regular and special education): pass the elementary education: content knowledge (#0014) specialty examination;

b. candidates for grades 1-5 (regular and special education): pass the elementary education: content knowledge (#0014) specialty examination;

c. candidates for grades 4-8 (regular and special education): pass the middle school PRAXIS content specialty examination in each area in which a candidate intends to teach;

d. candidates for grades 6-12 (regular and special education): pass the PRAXIS content specialty examination(s) in the content area(s) in which they intend to teach. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area.

e. candidates for all-level K-12 areas of art, dance; foreign language, health and physical education, and music: pass the content specialty examination. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area. Provider must develop a process to assure that candidates demonstrate necessary performance skills in the all-level certification area.

PROGRAM REQUIREMENTS

This program will provide the same rigor as other certification routes provided by aligning with such empirically-based standards as National Council for the Accreditation of Teacher Education (NCATE), Interstate New Teacher Assessment and Support Consortium (INTASC), Louisiana Components of Effective Teaching (LCET), and the Louisiana Content Standards. This program will also emphasize collaboration between the university and the school districts in order to share and exchange strategies, techniques, and methodologies; and integrate field-based experiences into the curriculum.

PROGRAM STRUCTURE

1. Knowledge of Learner and the Learning Environment*

12 hours

GRADES PK-3, 1-5, 4-8, and 6-12: Child or adolescent development/psychology, the diverse learner, classroom management/organization/environment, assessment, instructional design, and reading/instructional strategies that are content- and level-appropriate.

MILD/MODERATE SPECIAL EDUCATION 1-12: Special needs of the special education mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods and materials for Special Education Mild/Moderate exceptional children, vocational and transition services for students with disabilities.

ALL-LEVEL K-12 AREAS: Child psychology and adolescent psychology; the diverse learner; classroom management/organization/environment; assessment; instructional design, and reading/instructional strategies across grade levels K-12.

*All courses for regular and special education will integrate effective teaching components, content standards, technology, reading, and portfolio development. Field-based experiences will be embedded in each course.

2. Methodology and Teaching 6 hours

Methods courses to include case studies and field experiences. NOTE: For all-level K-12 areas (art, dance, foreign language, health and physical education, and music), experiences should be provided across grades K-12.

3. Internship or Student Teaching 6 hours

Will include methodology seminars that are participant-oriented. NOTE: For all-level K-12 areas (art, dance, foreign language, health and physical education, and music), internship or student teaching experiences should be provided across grades K-12.

4. Prescriptive Plan 1-9 hours

The prescriptive plan can be pre-planned courses for individual programs or can be individualized courses for the candidate who demonstrates areas of need, not to exceed 9 semester hours.

TOTAL 24-33 hours

CERTIFICATION REQUIREMENTS

Colleges or universities will submit signed statements to the Louisiana Department of Education that indicate the student completing the Non-Master's/Certification-Only alternative certification path met the following requirements:

1. Passed the PPST components of the PRAXIS. (Note: This test was required for admission.) (Individuals who already possess a graduate degree will be exempted from this requirement).

2. Completed all coursework (including the certification program) with an overall 2.5 or higher GPA.

3. Passed the specialty examination (PRAXIS) for the area(s) of certification. (Note: This test was required for admission. If no examination was adopted for Louisiana in the certification area, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area for admission to the program.)

a. Grades PK-3: elementary education: content knowledge (#0014) specialty examination.

b. Grades 1-5: elementary education: content knowledge (#0014) specialty examination.

c. Grades 4-8: middle school content specialty examination in each area in which a candidate intends to teach.

d. Grades 6-12 and all-level K-12 certification: specialty content examination in areas to be certified.

4. Passed the pedagogy examination (PRAXIS):

a. grades PK-3: early childhood education (#0020);

b. grades 1-5: principles of learning and teaching k-6;

c. grades 4-8: principles of learning and teaching 5-9;

d. grades 6-12 and all-level k-12 certification: principles of learning and teaching 7-12;

e. mild/moderate special education 1-12: special education examinations.

DEADLINE DATES FOR LOUISIANA ALTERNATE PROGRAMS

No students should be accepted into an old post-baccalaureate alternate certification program in the areas of PK-3, 1-5, 4-8, 6-12, and mild/moderate special education after Spring Semester 2003. Candidates in these areas who are already in the old alternative certification programs would be allowed until August 31, 2006, to complete their programs.

No students should be accepted into an old post-baccalaureate alternate certification program in the all-level (K-12) areas of art, dance, foreign language, H&PE, and music after Spring Semester 2004. Candidates in these areas who are already in the old alternative certification programs would be allowed until August 31, 2007, to complete their programs.

Weegie Peabody
Executive Director

0403#015

RULE

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification of School Personnel? Middle School PRAXIS Exams (LAC 28:1.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:1.903.A. This policy establishes content-specific Praxis exams as the certification requirement for middle school grades 4-8. This aligns the middle school certification testing requirement with the No Child Left Behind Act of 2001, which specifies that middle school teachers must have passed a content specialty exam for each core academic content area in which the teacher teaches.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:2505-2508 (December 2002), LR 29:117-119 (February 2003), LR 29:119-121 (February 2003), LR 29:121-123 (February 2003), LR 30:400 (March 2004).

Middle School Certification Testing Policy

For Louisiana middle school certified teachers to have "highly qualified" status, the state's middle school Praxis content exam certification requirements must conform with the No Child Left Behind Act of 2001. The Act specifies that middle school teachers must have passed a content specialty exam for each core academic content area in which the teacher teaches.

The following exams are specified for use by teachers of grades 4-8 in seeking certification in a subject area.

Middle School Subject Area	Exam Number
Mathematics	0069
English/Language Arts	0049
Science	0439
School Social Studies	0089

Weegie Peabody
Executive Director

0403#013

RULE

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification of School Personnel? New Certification Structure (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy aligns Bulletin 746 certification policy with the No Child Left Behind Act of 2001 by specifying grade levels for early childhood (PK-3), elementary (1-5), middle school (4-8), and secondary (6-12) certification in Louisiana. Additionally, it revises the middle school structure to delete the generic certification option and to require middle school certification in each of the core academic subject areas in which the individual will teach. This action aligns the certification structure with the definition of middle school grades under the No Child Left Behind Act of 2001.

**Title 28
EDUCATION**

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

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

* * *

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:2505 (December 2002), LR 29:117 (February 2003), LR 29:119 (February 2003), LR 29:121 (February 2003), LR 30:401 (March 2004).

* * *

New Certification Structure

A. Recommended Changes

1. Have the universities recommend that teachers be issued Level 1 Teaching Certificates when they have met state certification requirements and hold the universities accountable for the success of the teachers that they recommend for certification. This would eliminate the need for the Louisiana Department of Education to count hours on transcripts and allow the department to become more involved in providing support to universities to improve the quality of teacher preparation programs. (Note: The Louisiana Department of Education would still continue to review transcripts and issue certificates to out-of-state teachers.)

2. Change the certification structure to allow teachers to develop more content knowledge in the grade levels in which they are expected to teach and provide them with more flexible hours to add special education and other grade levels to their certification areas. This would allow new teachers to be certified in one or two areas when completing a 124 credit hour undergraduate degree program.

See B "New Certification Areas and Courses" for the areas of certification that are more content specific.

See C "Additional Certifications" for requirements to add additional areas of certification.

3. Require all new teachers to receive mentoring during their first year of the Louisiana Teacher Assistance and Assessment Program and have them undergo the assessment during the second year.

4. Require all teachers to pass the teacher assessment and teach for a total of three years before being issued a Level 2 teaching certificate.

5. Require all new teachers to undergo a predetermined amount of professional development during a five year time period in order to have their teaching certificates renewed for 5 years. Have the Blue Ribbon Commission on Teacher Quality develop the details for the professional development system during 2000-2001.

B. New Certification Areas and Courses	
1. Common Elements of Basic Certification for All Grade Levels:	
a. General Education Coursework	Same general coursework areas and hours (e.g., 54 hours) for Grades 1-5 and 4-8.
b. Knowledge of the Learner and The Learning Environment	Same general coursework areas and hours (e.g., 15 hours) for all PK-12 teachers.
c. Teaching Methodology	Varying requirements based upon focus areas.
d. Student Teaching	Same requirements and hours (e.g., 9 hours) for all PK-12 teachers.
2. Differing Elements of Basic Certification:	
a. Focus Areas	Four new focus areas:
	(1) Preschool to Grade 3 (Focus: Greater Depth in Early Childhood, Reading/Language Arts, and Mathematics)
	(2) Grades 1-5 (Focus: Greater Depth in Reading/Language Arts and Mathematics)
	(3) Grades 4-8 (Focus: Greater Depth in Content—Two In-depth Teaching Areas)
	(4) Grades 6-12 (Focus: Greater Depth in Content—Primary Teaching Area and Secondary Teaching Area)
	<i>Primary Teaching Area:</i> Pre-service teachers must complete at least 31 credit hours in a specific content area (e.g., English, Mathematics, etc.).
	AND
	<i>Secondary Teaching Area:</i> Pre-service teachers must complete at least 19 credit hours in a second content area (e.g., Science, Social Studies, etc.).
b. Flexible University Hours	Flexible hours that may be used by the universities to create quality teacher preparation programs.
3. Additional Certifications:	
	Additional grade level certifications within the undergraduate teacher education program that would require approximately 12-15 credit hours. Universities could create programs that would allow teachers to obtain more than one type of certification within the 124 total hours by using the "flexible hours" to add additional grade level or special education certifications.

B. New Certification Areas And Courses (Cont'd)									
Areas		Grades Pk-3 Basic Certification (Focus: Greater Depth in Early Childhood, Reading/Language Arts, and Mathematics)		Grades 1-5 Basic Certification (Focus: Greater Depth in Reading/Language Arts and Mathematics)		Grades 4-8 Basic Certification (Focus: Greater Depth in Content-Two In-Depth Teaching Areas)		Grades 6-12 Basic Certification (Focus: Greater Depth in Content-Primary Teaching Area and Secondary Teaching Area)	
General Education Course Work	English	12 Hours		12 hours		12 hours		6 hours	
	Mathematics	9 Hours		12 hours		12 hours		6 hours	
	Sciences	9 Hours		15 hours		15 hours		9 hours	
	Social Studies	6 Hours		12 hours		12 hours		6 hours	
	Arts	3 Hours		3 hours		3 hours		3 hours	
Focus Areas		Young Child		Reading/Language Arts and Mathematics		Two In-depth Teaching Areas		Primary Teaching Area and Secondary Teaching Area	
		Nursery School and Kindergarten	12 hours	Reading/ Language Arts (Additional Content and Teaching Methodology)	12 hours	In-depth Teaching Area #1 English/ Social Studies/ Mathematics OR Science <i>General Education and Focus Area hours should equal 19 total hours.</i>	7 or more hours OR 4 or more hours	Primary Teaching Area	22 or more hours if in Science OR 25 or more hours if in English, Social Studies, or Math. OR 31 or more hours if in other areas
		Reading/Language Arts (Additional Content and Teaching Methodology)	12 hours						
		Mathematics (Additional Content and Teaching Methodology)	9 hours						
				Mathematics (Additional Content and Teaching Methodology)	9 hours	In-depth Teaching Area #2: English/ Social Studies/ Mathematics OR Science General Education and Focus Area hours should equal 19 total hours.	7 or more hours 4 or more hours	Secondary Teaching Area	13 or more hours if in English, Social Studies, or Math OR 10 or more hours if in Science OR 19 or more hours if in other areas
Knowledge of Learner and the Learning Environment (These hours may be integrated into other areas when developing new courses.)	Child/Adolescent Development/ Psychology, Educational Psychology, The Learner with Special Needs, Classroom Organization and Management, Multicultural Education (Note: All of these areas should address the needs of the regular and exceptional child.)	15 hours Emphasis Upon Early Childhood		15 hours Emphasis Upon Elementary School Student		15 hours Emphasis Upon Middle School Student		15 hours Emphasis Upon Middle and High School Student	

Methodology and Teaching	Reading			6 hours	3 hours
	Teaching Methodology	6 hours	6 hours	9 hours	6 hours
	Student Teaching**	9 hours	9 hours	9 hours	9 hours
Flexible Hours for the University's Use		22 hours***	19 hours	17-23 hours	17-26 hours
Total Hours****		124 hours	124 hours	124 hours	124 hours

* If students do not possess basic technology skills, they should be provided coursework or opportunities to develop those skills early in their program.

** Students must spend a minimum of 270 clock hours in student teaching with at least 180 of such hours spent in actual teaching. A substantial portion of the 180 hours of actual student teaching shall be on an all-day basis.

*** Three of the flexible hours must be in the humanities. This must occur to meet General Education Requirements for the Board of Regents.

*** In addition to the student teaching experience, students should be provided actual teaching experience (in addition to observations) in classroom settings during their sophomore, junior, and senior years within schools with varied socioeconomic and cultural characteristics. It is recommended that pre-service teachers be provided a minimum of 180 hours of direct teaching experience in field-based settings prior to student teaching.

Notes: Minimum credit hours have been listed. Programs may use the flexible hours to add more content hours to the various elements of the program.

The Board of Regents defines a "major" as being 25% of the total number of hours in a degree program; thus, 25% of 124 credit hours is 31 credit hours.

The Board of Regents defines a "minor" as being 15% of the total number of hours in a degree program; thus 15% of 124 credit hours is 19 credit hours.

No final grade below a "C" will be accepted by the State Department of Education in any coursework within the undergraduate program, with the exception of the general education requirements.

C. Additional Certifications Within the Undergraduate Preparation Program

It is recommended that universities consider using their flexible hours to provide pre-service teachers opportunities to select additional areas to add to their certification—either

special education or extended grade level certifications—when they obtain the baccalaureate degree. The additional hours would provide pre-service teachers with the necessary core knowledge to teach the additional content necessary for the new certification areas.

Basic Certifications	Add-On Certifications		Total Hours
	New Certifications	Additional Courses And Hours	
Grades PK - 3	Grades 1-5	Content Emphasis: Sciences 6 Hours Social Studies 6 Hours Mathematics 3 Hours	15 Hours
Grades 1-5	Grades PK - 3	Content Emphasis: Nursery School and Kindergarten 12 Hours	12 Hours
Grades 4-8	Grades 1-5	Reading and Math Emphasis (Additional Content and Teaching Methodology): Accumulate a total of Reading 12 Hours Mathematics 21 Hours	Up to 15 Hours
GRADES 1-5, GRADES 4-8, OR GRADES 6-12	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 (Note: This should not be required if students participate in student teaching that combines regular and special education teaching experiences.) 3 Hours * General knowledge of exceptional students and classroom organization should be addressed in the curriculum for all teachers under "Knowledge of Learner and the Learning Environment."	12 Hours (Additional 3 Hour Practicum if not Integrated Into Other Field-Based Experiences and Student Teaching)

Weegie Peabody
Executive Director

RULE

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification of School Personnel? Temporary Employment Permit Policy (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy aligns Bulletin 746 certification policy for Temporary Employment Permits with R.S. 17:7(6)(c-ii)(d-e) in limiting the maximum number of times the certificate may be issued to three years. It also aligns policy with other Louisiana temporary licensure categories as to number of years (3) a teacher can remain employed on a temporary basis.

Title 28

EDUCATION

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

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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* * *

Types of Teaching Authorizations and Certifications

Non-Standard Temporary Authorizations to Teach			
		Conditions	Requirements to Renew Temporary Authorization to Teach and/or Move to Another Certification Level
Temporary Authority to Teach (A teacher may hold a one-year Temporary Authorization to Teach for a maximum of three years while pursuing a specific certification area. He/she may not be issued another Temporary Certification at the end of the three years for the same certification unless the Louisiana Department of Education designates the certification area as one that requires extensive hours for completion.)	Districts may recommend that teachers be given one-year temporary authorizations to teach according to the stipulated conditions. Districts must provide a signed affidavit by the local superintendent that "there is no regularly certified, competent, and suitable person available for that position" and that the applicant is the best qualified person for the position.	a. Individual who graduates from teacher preparation program but does not pass PRAXIS	Teacher must prepare for the PRAXIS and take the necessary examinations at least twice a year.
		b. Individual who holds a minimum of a baccalaureate degree from a regionally-accredited institution and who applies for admission to a Practitioner Teacher Program or other alternate program but does not pass the PPST or the content specialty examination of the PRAXIS required for admission to the program.	Teacher must successfully complete a minimum of six credit hours per year in the subject area(s) that they are attempting to pass on the PRAXIS; candidate must reapply for admission to a Practitioner Teacher Program or other alternate program.
		c. Individual who holds a minimum of a baccalaureate degree from a regionally-accredited institution and who is hired after the start of the Practitioner Teacher Program	Teacher must apply for admission to a Practitioner Teacher Program or other alternate program and pass the appropriate PRAXIS examinations required for admission to the program.
Practitioner Teacher License One-year license that can be held a maximum of three years, renewable annually.	The District and the alternate certification program provider must identify the individual as a practitioner teacher (PL1), a non-master's alternate certification program teacher (PL2), or a master's alternate certification program teacher (PL3).	Teacher must be admitted to and enrolled in a State-approved Practitioner Teacher Program (PL1), Non-Master's Alternate Certification Program (PL2), or Master's Degree Alternate Certification Program (PL3), which necessitates meeting all program requirements including baccalaureate degree, stipulated GPA, and passing scores on the Praxis PPST and content area exams.	The alternate certification teacher (PL1, PL2, and PL3) must remain enrolled in the respective program and fulfill all coursework, teaching assignments, and prescribed activities as identified by the program provider. Program requirements must be completed within the three-year maximum that the license can be held. PL2 and PL3 teachers must demonstrate progress toward program requirements by successfully completing at least 9 semester hours each year to remain on the PL license.

<p>Out-of-Field Authorization to Teach</p> <p>(A teacher may hold a one-year Out-of-Field Authorization to Teach, renewable annually, for a maximum of three years.</p> <p>If the teacher is actively pursuing certification in the field and LDE designates the certification area as one requiring extensive hours for completion, two additional years of annual renewability may be granted.)</p>	<p>District submits application to LDE; renewable annually for maximum of three years.</p> <p>Superintendent of employing district must provide a signed statement that certifies that "there is no regularly certified, competent and suitable person available for the position" and that the applicant is the best - qualified person available for the position.</p>	<p>a. Individual holds a Louisiana teaching certificate, but is teaching outside of the certified area.</p>	<p>Teacher must obtain a prescription/outline of course work required for add-on certification in the area of the teaching assignment.</p> <p>Teacher must successfully complete a minimum of six credit hours per year of courses that lead toward certification in the area in which he/she is teaching; or the secondary-certified teacher who is teaching out-of-field may opt to take and pass the required PRAXIS content specialty examination for the specific 7-12 academic certification area, if the area has been declared as a primary or secondary teaching focus area. The district must support a teacher's efforts in this area.</p>
<p>Temporary Employment Permit</p>	<p>Under condition (a) the district submits application to LDE; renewable annually for a period not to exceed three total years.</p> <p>Under condition (b) the Individual submits application to LDE; renewable annually for a period not to exceed three total years.</p>	<p>a. Individual meets all certification requirements, with the exception of passing all portions of the NTE examination, but scores within 10 percent of the composite score required for passage of all exams. (Formerly classified as EP)</p> <p>b. Individual meets all certification requirements, with the exception of passing one of the components of the PRAXIS, but has an aggregate score equal to or above the total required on all tests. (Formerly classified as TEP)</p>	<p>Superintendent and President of the school board to which the individual has applied for employment must submit a signed affidavit to the LDE stipulating that there is no other applicant who has met all of the certification requirements available for employment for a specific teaching position. Such permit shall be in effect for not more than one year, but may be renewed annually, twice. One can remain on this temporary certificate for a period not to exceed three years. Such renewal of the permit shall be accomplished in the same manner as the granting of the original permit. The granting of such emergency teaching permit shall not waive the requirement that the person successfully complete the exam. While employed on an emergency teaching permit, employment period does not count toward tenure.</p> <p>Temporary Employment Permits are issued at the request of individuals. All application materials required for issuance of a regular certificate must be submitted to LDE with the application for a TEP. An individual can be re-issued a permit two times only if evidence is presented that the required test has been retaken within one year from the date the permit was last issued. One can remain on this temporary certificate for a period not to exceed three years.</p>

Standard Teaching Certifications

Out of State Certificate	Individual submits application to LDE; valid for three years, non-renewable.	a. A teacher certified in another state who meets all requirements for a Louisiana certificate, except for the PRAXIS examinations.	Teacher must take and pass the appropriate PRAXIS examinations -OR- Teacher provides evidence of at least four years of successful teaching experience in another state, completes one year of employment as a teacher in Louisiana public school systems, and secures recommendation of the local superintendent of the employing school system for continued employment.
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Professional Level Certificates

(effective for all new certificates issued after July 1, 2002)

Level 1 Professional Certificate (Three-year term)	Teachers must graduate from a State-approved teacher preparation program (traditional or alternative path), pass PRAXIS, and be recommended by a university to receive a Level 1 Professional Certificate. -OR- Teacher must complete a State-approved Practitioner Teacher Program, pass PRAXIS, and be recommended by the Practitioner Teacher Program provider to receive a Level 1 Professional Certificate. -OR- Teacher must meet the requirements of an out-of-state certified teacher.	A lapsed Level 1 certificate may be extended once for an additional three years, subject to the approval of the Division of Teacher Standards, Assessment, and Certification or upon the presentation of six semester hours of resident, extension, or correspondence credit directly related to the area of certification. However, if the holder of the Level 1 certificate has not been employed regularly as a teacher for at least one semester during a period of five years, his certificate can be reinstated for three years only upon the presentation of 150 hours of professional development.
Level 2 Professional Certificate	Teachers with a Level 1 Professional Certificate must pass the Louisiana Assistance and Assessment Program and teach for three years to receive a Level 2 Professional Certificate.	Teachers must complete 150 clock hours of professional development over a five-year time period in order to have a Level 2 Professional License renewed.
Level 3 Professional Certificate	Teachers with a Level 1 or Level 2 Certificate are eligible for a Level 3 Certificate if they complete a Masters Degree, teach for five years, and pass the Louisiana Assistance and Assessment Program.	Teachers must complete 150 clock hours of professional development over a five-year time period in order to have a Level 3 Professional License renewed.

Standard Teaching Certificates

(issued prior to July 1, 2002)

Type C Certificate	Type C certificates will not be issued after July 1, 2002.
Type B Certificate	Candidates currently holding Type A or Type B certificates will continue to hold these certificates, which are valid for life, provided the holder does not allow any period of five or more consecutive years of disuse to accrue and/or the certificate is not revoked by the State Board of Elementary and Secondary Education, acting in accordance with law.
Type A Certificate	

Process for Renewing Lapsed Professional Certificates

Type C, B, and A Certificates
Type B and Type A certificates will lapse for disuse if the holder thereof allows a period of five consecutive calendar years to pass in which he is not a regularly employed teacher for at least one semester (90 consecutive days). Reinstatement of a lapsed certificate shall be made only on evidence that the holder has earned six semester hours of resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. The six semester credit hours of extension must be earned during the five-year period immediately preceding reinstatement.

A lapsed Type C certificate may be renewed for an additional three years, subject to the approval of the Division of Teacher Standards, Assessment, and Certification or upon the presentation of six semester hours of credit directly related to the area(s) of certification. Such credit hours shall be resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. However, if the holder of a Type C certificate has not been employed regularly as a teacher for at least one semester during a period of five years, his certificate can be reinstated for three years only upon the presentation of the six semester hours of credit as described previously in the paragraph.

Level 2 and 3 Certificates
Level 2 and Level 3 professional certificates will lapse (a) for disuse if the holder thereof allows a period of five consecutive calendar years to pass in which he is not a regularly employed teacher for at least one semester [90 consecutive days], or (b) if the holder fails to complete the required number of professional development hours during his employ. Reinstatement of a lapsed certificate shall be made only on evidence that the holder has earned six semester hours of resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. The six semester credit hours of extension must be earned during the five-year period immediately preceding reinstatement.

Weegie Peabody
Executive Director

0403#016

RULE

Board of Elementary and Secondary Education

Bulletin 1566? Guidelines for Pupil Progression
High Stakes Testing Policy
(LAC 28:XXXIX.503, 505, 905, 911, 1301, and 1501)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the State Board of Elementary and Secondary Education has amended *Bulletin 1566? Guidelines for Pupil Progression*. The State Board of Elementary and Secondary Education at its June, August, and September 2003 meetings made revisions to the High Stakes Testing Policy, which is an addendum to *Bulletin 1566? Guidelines for Pupil Progression*, and to Bulletin 1566 itself. The Rule changes include:

1. A revision in the student retention policy as contained in the High Stakes Testing Policy. As a result of the policy change, a student who has been retained in the fourth grade may only be promoted to the fifth grade. A district may apply for a waiver from this part of the policy if their specific plan is presented to the Department of Education and it is approved by the State Superintendent of Education. However, students who have been retained in the fourth grade who are 12 years old on or before September 30th may be promoted according to the local Pupil Progression Plan.

2. The adoption of the transitional program (4.5) waiver policy and criteria for a school system desiring to request a waiver of the above policy and offer a program in which certain students may be promoted from the transitional program to the sixth grade the following year.

3. The elimination of the LAA-B testing program (formally out-of-level testing) for students with disabilities.

4. A revision of the High Stakes Testing Policy as it relates to the passing standards for fourth grade students. Beginning in the spring of 2004, fourth graders will have to score "basic" on either the English language arts or mathematics component of LEAP 21 and "approaching basic" on the other to move to the fifth grade. The achievement levels for eighth graders will remain the same until 2006, when they too will have to achieve a score of "basic" on either mathematics or English language arts and "approaching basic" on the other.

5. The appeals process as contained in the High Stakes Testing Policy was revised. At the fourth and eighth grade levels, school systems were mandated to review student eligibility and consider granting appeals. Prior to this revision, systems had the option of not considering an appeal on behalf of students who met certain criteria. The level at which a fourth grade student must score before an appeal can be considered was raised from 20 scaled score points from "approaching basic" to 20 scaled score points from "basic."

Title 28 EDUCATION

Part XXXIX. Bulletin 1566? Guidelines for Pupil Progression

Chapter 1. Purpose

§503. Regular Placement¹

A. - A.1.b.

ii.(a). No fourth grade student shall be promoted until he or she has scored at or above the "basic" achievement level on the English language arts or mathematics components of the LEAP for the 21st century (LEAP 21) and at the "approaching basic" achievement level on the other (hereafter referred to as the "basic/approaching basic" combination).

(b). No eighth grade student shall be promoted until he or she has scored at or above the "approaching basic" achievement level on the English language arts and mathematics component of the LEAP for the 21st century (LEAP 21). Exceptions to this policy include the following.

(i). Policy Override. A given student scores at the "unsatisfactory" level in English language arts or mathematics and scores at the "mastery" or "advanced" level in the other; and participates in the summer school and retest offered by the LEA. The decision to override is made in accordance with the local Pupil Progression Plan, which may include referral to the School Building Level Committee (SBLC).

(ii). Retention Limit (Fourth Grade). The decision to retain a student in the fourth grade more than once as a result of failure to score at or above the "basic/approaching basic" combination on the English language arts and mathematics components of LEAP 21 shall be made by the LEA in accordance with the local Pupil Progression Plan.

[a]. A student who has repeated the fourth grade and who is 12 years old on or before September 30th may be promoted according to the local pupil progression plan.

[b]. Any other student who has repeated the fourth grade may be promoted to only the fifth grade. A district may apply for a waiver from this part of the policy if their specific plan is presented to the Department of Education and it is approved by the State Superintendent of Education. (See Appendix)

[c]. Students retained in the fourth grade shall retake all four components of the LEAP 21.

[d]. For promotional purposes, a student must score at or above the "basic/approaching basic" combination on the English language arts and mathematics components of the LEAP 21 only one time.

(iii). Retention Limit (Eighth Grade). The decision to retain an eighth grade student more than once as a result of his/her failure to score at or above the "approaching basic" achievement level in English language arts and/or mathematics on LEAP 21 shall be made by the LEA in accordance with the local Pupil Progression Plan which shall include the following: An eighth grade student who has repeated the entire grade (Option 1) may be either retained again in the eighth grade; promoted to the ninth grade provided that the student has passed either the English language arts or mathematics component of LEAP 21, has attended at least one LEAP 21 summer remediation program and taken the summer retest, and will enroll in a remedial high school course (English or mathematics) in which an "unsatisfactory" achievement level was attained; or placed in a Pre-GED/Skills Program (Option 3). An eighth grade student attending class on a high school campus and earning some carnegie credit(s) (Option 2) may be either promoted

or retained in accordance with the local pupil progression plan, or placed in a Pre-GED/Skills Program (Option 3).

[a]. If promoted without passing the failed component (English language arts or mathematics) on LEAP 21, the student must pass a high school remedial course in English language arts or mathematics before enrolling in or earning carnegie credit for English or mathematics.

[b]. (Pre-GED/Skills Program (Option 3) shall be available to students who meet criteria as outlined in Bulletin 741? Louisiana Handbook for School Administrators, standard 1.151.05.

(iv). Students with disabilities eligible under the Individuals with Disabilities Education Act (IDEA) participating in LEAP 21 Alternate Assessment (LAA). Students with disabilities who participate in the LEAP 21 Alternate Assessment (LAA) shall have promotion decisions determined by the SBLC.

(v). Waiver for Limited English Proficient (LEP) Student. LEP Students shall participate in statewide assessment. The SBLC shall be granted the authority to waive the state's grade promotion policy for a LEP student. A LEP student who was granted a waiver at the fourth grade level is ineligible for a waiver at the eighth grade level.

(vi). Appeals Process. A school system, through its superintendent, must review student eligibility and consider granting an appeal on behalf of individual fourth and eighth grade students who have not scored at or above the required achievement levels on the English language arts and/or mathematics components of LEAP 21 after retesting provided that certain criteria are met. (Refer to Appendix B.)

(vii). - (viii). ...

iii. School systems shall design and implement additional instructional program options for these fourth and eighth grade students being retained

(a). The purpose of the additional instructional options is to move the students to grade level proficiency by providing focused instruction in the area(s) on which they failed to achieve the required level and by providing ongoing instruction using locally developed curricula based on state level content standards.

(b). Examples of instructional options may include alternative learning settings, individual tutoring, transitional classes or other instructional options appropriate to the student's needs.

(c). LEAs are encouraged to design and implement additional options for students in grades 3, 4, 7 and 8 determined to be at risk of failing to achieve the required level on LEAP 21.

iv. Summer remediation programs and end-of-summer retests must be offered by school systems at no cost to students who did not take the Spring LEAP 21 tests or who failed to achieve the required level on LEAP 21.

(a). All students with disabilities who participate in LEAP 21 testing should receive services along with regular education students in summer programs, with special supports provided as needed.

(b). Students with disabilities who participate in LEAP 21 Alternate Assessment (LAA) are not eligible to attend LEAP 21 summer remediation programs.

v. School Systems must develop and implement non-discriminatory criteria to determine placement of eighth grade students who have not scored "approaching basic" or above on the LEAP 21 into Options 1 or 2.

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

(b). Option 2 Students. Students in Option 2 will participate in a transitional program on the high school campus. Students in Option 2 will retake the eighth grade components of the LEAP 21 previously failed (English and/or mathematics) and all parts of the Iowa Tests at the ninth grade level. For promotional purposes, a student must score at or above the "approaching basic" achievement level on the English language arts and mathematics components of LEAP 21 only one time. In order to be considered for placement into Option 2, a student must:

(i). pass at the "approaching basic" or above achievement level either the English language arts or mathematics component of LEAP 21; and

(ii). participate in both the summer remediation program offered by the LEA and the summer testing.

(c). All Option 2 Students who scored at the "unsatisfactory" achievement level on English language arts or mathematics component of the Grade 8 LEAP 21:

(i). shall take a remediation course in the component (English language arts and/or mathematics) of the Grade 8 LEAP 21 in which an "unsatisfactory" achievement level was attained;

(ii). may earn a maximum of one carnegie unit of remedial elective credit toward graduation provided the student passes a specially designed remediation elective and scores at or above the "basic" achievement level on the component of the eighth grade LEAP 21 that is retaken. For these specially designed remediation courses, the LEA shall record a grade of fail or fail (p/f) on the students transcript;

(iii). may earn carnegie credit in other content areas;

vi. Exceptional students participating in LEAP 21 must be provided with significant accommodations as noted in the students IEP.

vii. The aforementioned policies will be in effect from spring 2004 through spring 2005. Beginning in spring 2006, the achievement level for eighth grade students will be raised to the "basic/approaching basic" combination level. The promotion policy will be reviewed in 2008.

viii. Other Requirements

(a). Each plan shall include the function of the school building level committee/student assistance team as it relates to student promotion. Refer to Appendix B for complete text of the High Stakes Testing Policy.

c. Other Requirements

i. Each plan shall include the function of the school building level committee/student assistance team as it relates to student promotion.

B. - D.1.a. ...

¹Schools can only make recommendations to parents regarding student enrollment in kindergarten, since kindergarten is not mandatory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November

2000), amended LR 26:1433 (July 2000), LR 26:1576 (August 2000), LR 27:188 (February 2001), LR 27:1006 (July 2001), LR 27:1682 (October 2001), LR 29:123 (February 2003), LR 30:407 (March 2004).

§505. Progression? Students Participating in LEAP 21 Alternate Assessment (LAA)

A. Students with disabilities who participate in the LEAP 21 alternate assessment (LAA) shall have promotion decisions determined by the School Building Level Committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 2000), amended LR 26:1433 (July 2000), LR 27:189 (February 2001), LR 29:123 (February 2003), LR 30:409 (March 2004).

§905. Definition and Purpose

A. - B.2. ...

3. Beginning in the summer of 2004, remediation in the form of summer school shall be provided to fourth grade students who score at the "approaching basic" or "unsatisfactory" level on LEAP 21st for the 21st Century (LEAP 21) English language arts or mathematics tests. Summer remediation shall consist of a minimum of 50 hours of instruction per subject.

4. Remediation in the form of summer school shall be provided to eighth grade students who score at the "unsatisfactory" level on LEAP for the 21st Century (LEAP 21) English language arts or mathematics tests. Summer remediation shall consist of a minimum of 50 hours of instruction per subject.

5. Remediation shall be provided to students who score at the "unsatisfactory" level on LEAP for the 21st Century (LEAP 21) science or social studies tests.

6. Remediation is recommended for students who score at the "approaching basic" level on LEAP for the 21st Century (LEAP 21) English language arts, mathematics, science, or social studies tests.

7. Beyond the goal of student achievement in grade appropriate skills, additional goals are to give students a sense of success, to prevent alienation from school, and to prevent their early departure from school (R.S. 17:395 B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 28:1189 (June 2002), LR 30:409 (March 2004).

§911. Criteria for State Approval

A. - C.3.a. ...

b. Beginning in the Summer of 2004, remediation in the form of summer school shall be provided to fourth grade students who score at the "approaching basic" or "unsatisfactory" level on LEAP for the 21st Century (LEAP 21) English language arts or mathematics tests. Summer Remediation shall consist of a minimum of 50 hours of instructions per subject.

c. Remediation in the form of summer school shall be provided to eighth grade students who score at the "unsatisfactory" level on LEAP for the 21st Century (LEAP 21) English language arts or mathematics tests. Summer Remediation shall consist of a minimum of 50 hours of instructions per subject.

d. Remediation shall be provided to students who score at the "unsatisfactory" level on IEAP for the 21st Century (LEAP 21) Science and Social Studies tests.

e. Remediation is recommended for eighth grade students who score at the "approaching basic" level on LEAP for the 21st Century (LEAP 21) English language arts, mathematics, science, or social studies tests.

C.3.f. - D.4. ...

§1301. LEAP for the 21st Century, High Stakes Testing Policy

A. Grade 4

1. A student may not be promoted to the fifth grade until he or she has scored at or above the "basic" achievement level on either the English language arts or mathematics component on the fourth grade Leap for the 21st Century (LEAP 21) and at the "approaching basic" achievement level on other (hereafter referred to as the "basic/approaching basic" combination). For promotional purposes, however, a student shall score at or above the "basic/approaching basic" combination on the English language arts and mathematics components of LEAP 21 only one time

2. A parent/student/school compact that outlines the responsibilities of each party will be required for students in grade 3 and grade 4 who have been determined to be at risk of failing to achieve the "basic/approaching basic" combination on the English language arts and mathematics components of the fourth grade LEAP 21, as well as for students who were retained in grade 4.

3. LEAs shall offer a minimum of 50 hours per subject of summer remediation and retest opportunities in English language arts and mathematics at no cost to students who did not take the spring LEAP 21 tests or who failed to achieve the "basic/approaching basic" combination on the spring tests.

a. A student who failed to achieve the "basic/approaching basic" combination is not required to attend the LEA-offered LEAP 21 summer remediation program in order to be eligible for the summer retest.

b. All students with disabilities who participate in LEAP 21 should receive services along with regular education students in summer remediation programs, with special supports provided as needed.

c. Students with disabilities who participate in LEAP Alternate Assessment (LAA) are not eligible to attend the LEAP 21 summer remediation programs.

d. LEAs shall offer remediation services to students who score at the "approaching basic" or "unsatisfactory" level on either the English language arts or mathematics components of the fourth grade LEAP 21.

4. In order to move students toward grade level performance, LEAs shall design and implement additional instructional program options for those fourth grade students being retained. The purpose of the additional instructional options is to move the students to grade level proficiency by providing focused instruction in the subject area(s) on which they failed to achieve the "basic/approaching basic" combination on LEAP 21, and ongoing instruction using locally-developed curricula based on state-level content standards for the core subject areas. Examples of instructional options may include alternative learning settings, individual tutoring, transitional classes, or other

instructional options appropriate to the students' needs. LEAs are also encouraged to design and implement additional instructional options for students in grades 3 and 4 who have been determined to be at risk of failing to achieve the "basic/approaching basic" combination on LEAP 21.

5. Retention Limit

a. The decision to retain a student in the fourth grade more than once as a result of his/her failure to achieve the "basic/approaching basic" combination on the English language arts and mathematics components of LEAP 21 shall be made by the LEA in accordance with the local pupil progression plan.

i. A student who has repeated the fourth grade and who is 12 years old on or before September 30th may be promoted according to the local pupil progression plan.

ii. Any other student who has repeated the fourth grade may be promoted to only the fifth grade. A district may apply for a waiver from this part of the policy if its specific plan is presented to the Department of Education and it is approved by the State Superintendent of Education.

iii. Students retained in the fourth grade shall retake all four components of LEAP 21.

6. For promotional purposes, however, a student shall score at or above the "basic/approaching basic" combination on the English language arts and mathematics components of LEAP 21 only one time.

6. Exceptions to the High Stakes Testing policy may include the following.

a. Policy Override

i. The local school system (LEA) may override the State policy for students scoring at the "unsatisfactory" level in English language arts or mathematics if the student scores at the mastery or "advanced" level in the other provided that:

(a). the decision is made in accordance with the local pupil progression plan, which may include a referral to the School Building Level Committee (SBLC);

(b). the student has participated in both the spring and summer administrations of LEAP 21 and has attended the summer remediation program offered by the LEA (The student shall participate in the summer retest only on the subject area(s) that he/she scored at the "unsatisfactory" achievement level during the spring test administration); and

(c). parental consent is granted.

b. Students with Disabilities Eligible under the Individuals with Disabilities Education Act (IDEA) participating in LEAP Alternate Assessments (LAA)

i. Students with disabilities who participate in the LEAP Alternate Assessment (LAA) shall have promotion decisions determined by the SBLC.

(a). A student with a disability must participate in both the summer remediation program offered by the LEA and the summer retesting to be considered for a waiver.

c. Waiver for Limited English Proficient (LEP) Students

i. LEP students shall participate in statewide assessment. The SBLC shall be granted the authority to waive the state's grade promotion policy for a LEP student. A LEP student who was granted a waiver at the fourth grade level is ineligible for a waiver at the eighth grade level.

d. Appeals Process

i. A school system, through its superintendent must review student eligibility and consider granting an appeal on behalf of individual students provided that all of the following criteria have been met.

(a). The student's highest score in English language arts and/or mathematics on either the spring or summer LEAP 21 must fall within 20 scaled score points of the cutoff score for "basic."

(b). The student shall have a 3.0 grade point average on a 4.0 scale in the subject(s) on which he/she scored "approaching basic" on LEAP 21.

(c). The student must have attended the LEAP 21 summer remediation program.

(d). The student must have taken the LEAP 21 retest given after the LEAP 21 summer remediation program has been concluded.

(e). The student must have met state-mandated attendance regulations during the regular school year and any locally mandated regulations during the summer remediation program.

(f). The principal and the School Building Level Committee (SBLC) must review student work samples and attest that the student exhibits the ability of performing at or above the "basic" achievement level in the subject for which the appeal is being considered.

e. Waiver for Extenuating Circumstances

i. A school system through its superintendent may grant a waiver on behalf of individual students who are unable to participate in LEAP 21 testing or unable to attend LEAP 21 summer remediation because of one or more of the following extenuating circumstances as verified through appropriate documentation:

(a). a physical illness or injury that is acute or catastrophic in nature;

(b). a chronic physical condition that is in an acute phase; or

(c). court ordered custody issues.

(i). Documentation

[a]. Physical Illness. Appropriate documentation must include verification that the student is under the medical care of a licensed physician for illness, injury, or a chronic physical condition that is acute or catastrophic in nature. Documentation must include a statement verifying that the illness, injury, or chronic physical condition exists to the extent that the student is unable to participate in testing and/or remediation.

[b]. Custody Issues. Certified copies of the court ordered custody agreements must be submitted to the LEA at least 10 school days prior to summer remediation or retesting.

ii. Student Eligibility/Retest Requirements

(a). Students who meet the criteria for extenuating circumstances under the physical illness, chronic physical condition, or court ordered custody category related to LEAP 21; and

(i). who are unable to participate in both the spring and the summer administration of LEAP 21, or who failed to achieve the "basic/approaching basic" combination on the spring administration of LEAP 21 mathematics and English language arts tests and are unable to participate in LEAP 21 summer retest, shall take the Iowa Tests for grade placement within 10 school days of returning

to school, which may include hospital/homebound instruction, in order to ensure the appropriate level of instruction; must score at or above the cutoff score on the selected form of The Iowa Tests for grade placement to be promoted to the fifth grade; and are not eligible for a retest. These students may be eligible for the policy override or appeals process in accordance with the local pupil progression plan.

iii. Students who meet the criteria for extenuating circumstances under the physical illness, chronic physical condition, or court ordered custody category related to LEAP 21; and

(a). who are unable to participate in the spring testing and/or summer remediation including the provision of remediation through hospital/homebound instruction;

(b). are required to take the LEAP 21 summer retest. These students may be eligible for the policy override, or appeals process in accordance with the local pupil progression plan.

f. State-Granted Exceptions

i. A local school superintendent, a parent or guardian, or the State Department of Education may initiate a request for a state-granted waiver from the State Superintendent of Education on behalf of individual students who are not eligible for promotion because of LEA error or other unique situations not covered under extenuating circumstances.

(a). The Department of Education will provide a report to the State Board of Elementary and Secondary Education detailing state-granted waivers.

(i). Documentation

[a]. LEA Error. The LEA superintendent or parent must provide the State Superintendent of Education with school and student level documentation detailing the error, how the error occurred, and how the error will be corrected so that it will not occur again in the future.

[b]. Other Unique Situations. Documentation must be provided to the State Superintendent of Education detailing the unique situation and justifying why a waiver should be granted.

ii. Testing/Promotion Decisions

(a). The Department of Education will communicate to the LEAs the means for establishing promotional decisions for those students who have received a state-granted waiver.

7. The promotion policies outlined above will be reviewed in 2008.

B. Grade Eight

1. A student may not be promoted to the ninth grade until he or she has scored at or above the "approaching basic" level on the English language arts and mathematics components of the eighth grade LEAP for the 21st Century (LEAP 21). For promotional purposes, however, a student shall score at or above the "approaching basic" level on the English language arts and mathematics components of LEAP 21 only one time.

2. A parent/student/school compact that outlines the responsibilities of each party will be required for students in grade 7 and grade 8 who have been determined to be at risk of scoring at the "unsatisfactory" level in English language

arts and/or mathematics on the eighth grade LEAP 21, as well as for students who were retained in grade 8.

3. LEAs shall offer a minimum of 50 hours per subject of summer remediation and retest opportunities in English language arts and mathematics at no cost to students who did not take the spring LEAP 21 tests or who score at the "unsatisfactory" level on the spring tests.

a. A student who scores at the "unsatisfactory" achievement level is not required to attend the LEA -offered LEAP 21 summer remediation program in order to be eligible for the summer retest.

b. All students with disabilities who participate in LEAP 21 testing should receive services along with regular education students in summer remediation programs, with special supports provided as needed.

c. Students with disabilities who participate in LEAP Alternate Assessment (LAA) are not eligible to attend the LEAP 21 summer remediation programs.

d. LEAs are encouraged to offer remediation services to students who score at the "approaching basic" level.

4. In order to move students toward grade level performance, LEAs shall design and implement additional instructional program options for those eighth grade students being retained. The purpose of the additional instructional options is to move the students to grade level proficiency by providing the following: focused instruction in the subject area(s) on which they scored at the "unsatisfactory" level on LEAP 21, and ongoing instruction using locally-developed curricula based on state-level content standards for the core subject areas. Examples of instructional options may include alternative learning settings, individual tutoring, transitional classes, or other instructional options appropriate to the students' needs. LEAs are also encouraged to design and implement additional instructional options for students in grades 7 and 8 who have been determined to be at risk of scoring at the "unsatisfactory" level on the LEAP 21.

a. School systems shall develop non-discriminatory criteria for the placement of those eighth grade students who score at the "unsatisfactory" achievement level on the English language arts and/or the mathematics component(s) of the LEAP 21 in either Option 1 or Option 2.

i. Students in Option 1 will repeat grade 8. Students in Option I will retake all four components of LEAP 21.

ii. Students in Option 2 will participate in a transitional program on the high school campus. Students in Option 2 will retake the eighth grade components of LEAP 21 previously failed (English or mathematics) and all parts of the Iowa Tests at the ninth grade level.

iii. For promotional purposes, a student must score at or above the "approaching basic" achievement level on the English language arts and mathematics components of the LEAP 21 only one time.

b. In order to be considered for placement into Option 2, a student must:

i. pass at the "approaching basic" or above achievement level either the English language arts or mathematics component of LEAP 21; and

ii. participate in both the summer remediation program offered by the LEA and the summer testing.

5. In accordance with the local Pupil Progression Plan, Option 1 students who scored at the "unsatisfactory" achievement level on English language arts and/or mathematics component(s) of the Grade 8 LEAP 21:

a. may earn carnegie units in accordance with the policy regarding high school credit for elementary students as found in *Bulletin 741? Louisiana Handbook for School Administration*;

b. may earn a maximum of one carnegie unit of remedial elective credit toward graduation provided the students pass a specially designed remediation elective and score at or above the "basic" achievement level on the components of the eighth grade LEAP 21 that is retaken. The LEAP 21 shall be in lieu of a required credit examination. For these specially designed remediation courses, the LEA shall record a grade of fail or fail (P/F) on the student's transcript;

6. All Option 2 students who scored at the "unsatisfactory" achievement level on English language arts or mathematics component of the Grade 8 LEAP 21:

a. shall take a remediation course in the component (English language arts or mathematics) of the Grade 8 LEAP 21 in which an "unsatisfactory" achievement level was attained;

b. may earn a maximum of one carnegie unit of remedial elective credit toward graduation provided the students pass a specially designed remediation elective and score at or above the "basic" achievement level on the component of the eighth grade LEAP 21 that is retaken. For these specially designed remediation courses, the LEA shall record a grade of fail or fail (p/f) on the student's transcript;

c. may earn carnegie credit in other content areas.

7. Retention Limit

a. The decision to retain an eighth grade student more than once as a result of his/her failure to score at or above the "approaching basic" achievement level in English language arts and/or mathematics on LEAP 21 shall be made by the LEA in accordance with the local pupil progression plan which shall include the following:

i. An eighth grade student who has repeated the entire grade (Option 1) may be either retained again in the eighth grade; promoted to the ninth grade provided that the student has passed either the English language arts or mathematics component of LEAP 21, has attended at least one LEAP 21 summer remediation program and taken the summer retest, and will enroll in a remedial high school course (English or mathematics) in which an "unsatisfactory" achievement level was attained; or placed in a Pre-GED/Skills Program (Option 3).

ii. An eighth grade student attending class on a high school campus and earning some carnegie credit(s) (Option 2) may be either promoted or retained in accordance with the local pupil progression plan, or placed in a Pre-GED/Skills Program (Option 3).

(a). If promoted without passing the failed component (English language arts or mathematics) on LEAP 21, the student must pass a high school remedial course in English language arts or mathematics before enrolling in or earning carnegie credit for English or mathematics.

b. Pre-GED/Skills Program (Option 3) shall be available to students who meet criteria as outlined in *Bulletin*

741? Louisiana Handbook for School Administrators, standard 1.151.05.

8. Exceptions to the high stakes testing policy may include:

a. Policy Override

i. The local school system (LEA) may override the state policy for students scoring at the "unsatisfactory" level in English language arts or mathematics if the student scores at the "mastery" or "advanced" level in the other provided that

ii. the decision is made in accordance with the local pupil progression plan, which may include a referral to the School Building Level Committee (SBLC);

iii. the student has participated in both the spring and summer administrations of the LEAP 21 and has attended the summer remediation program offered by the LEA (The student shall participate in the summer retest only on the subject that he/she scored at the "unsatisfactory" achievement level during the spring test administration); and

iv. parental consent is granted.

b. Students with disabilities eligible under the Individuals with Disabilities Education Act (IDEA) participating in LEAP Alternate Assessments (LAA)

i. Students with disabilities who participate in the LEAP Alternate Assessment (LAA) shall have promotion decisions determined by the SBLC.

c. Waiver for Limited English Proficient (LEP) Students

i. LEP students shall participate in statewide assessment. The SBLC shall be granted the authority to waive the state's grade promotion policy for an LEP student. An LEP student who was granted a waiver at the fourth grade level is ineligible for a waiver at the eighth grade level.

d. Appeals Process

i. A school system, through its superintendent, must review student eligibility and consider granting an appeal on behalf of individual students provided that all of the following criteria have been met.

(a). The student's highest score in English language arts and/or mathematics on either the spring or summer LEAP 21 must fall within 20 scaled score points of the cutoff score for "approaching basic."

(b). The student shall have a 3.0 grade point average on a 4.0 scale in the subject(s) on which he/she scored "unsatisfactory" on LEAP 21.

(c) The student must have attended the LEAP 21 summer remediation program.

(d). The student must have taken the LEAP 21 retest given after the LEAP 21 summer remediation program has been concluded.

(e). The student must have met state-mandated attendance regulations during the regular school year and any locally mandated regulations during the summer remediation program.

(f). The principal and the School Building Level Committee (SBLC) must review student work samples and attest that the student exhibits the ability of performing at or above the "approaching basic" achievement level in English language arts and/or mathematics.

e. Waiver for Extenuating Circumstances

i. A school system through its superintendent may grant a waiver on behalf of individual students who are unable to participate in LEAP 21 testing or unable to attend LEAP 21 summer remediation because of one or more of the following extenuating circumstances as verified through appropriate documentation:

(a). a physical illness or injury that is acute or catastrophic in nature;

(b). a chronic physical condition that is in an acute phase; or

(c). court ordered custody issues.

(i). Documentation

[a]. Physical Illness. Appropriate documentation must include verification that the student is under the medical care of a licensed physician for illness, injury, or a chronic physical condition that is acute or catastrophic in nature. Documentation must include a statement verifying that the illness, injury, or chronic physical condition exists to the extent that the student is unable to participate in testing and/or remediation.

[b]. Custody Issues. Certified copies of the court ordered custody agreements must be submitted to the LEA at least 10 school days prior to summer remediation or retesting.

ii. Student Eligibility/Retest Requirements

(a). Students who meet the criteria for extenuating circumstances under the physical illness, chronic physical condition, or court ordered custody category related to LEAP 21; and

(i). who are unable to participate in both the spring and the summer administration of LEAP 21; or

(ii). who score at the "unsatisfactory" achievement level on the spring administration of LEAP 21 mathematics and/or English language arts tests and are unable to participate in LEAP 21 summer retest shall take the Iowa Tests for grade placement within 10 school days of returning to school, which may include hospital/homebound instruction, in order to ensure the appropriate level of instruction; must score at or above the cutoff score on the selected form of the Iowa Tests for grade placement to be promoted to the ninth grade; and are not eligible for a retest. These students may be eligible for the policy override or appeals in accordance with the local pupil progression plan;

(iii). Students who meet the criteria for extenuating circumstances under the physical illness, chronic physical condition, or court ordered custody category related to LEAP 21; and

(iv). who are unable to participate in the spring testing and/or summer remediation including the provision of remediation through hospital/homebound instruction are required to take the LEAP 21 summer retest. These students may be eligible for the policy override or appeals process in accordance with the local pupil progression plan.

f. State-Granted Exceptions

i. A local school superintendent, a parent or guardian, or the State Department of Education may initiate a request for a state-granted waiver from the state Superintendent of Education on behalf of individual students who are not eligible for promotion because of LEA error or other unique situations not covered under extenuating circumstances.

(a). The Department of Education will provide a report to the State Board of Elementary and Secondary Education detailing state-granted waivers.

(i). Documentation

[a]. LEA Error. The LEA superintendent or parent must provide the State Superintendent of Education with school and student level documentation detailing the error, how the error occurred, and how the error will be corrected so that it will not occur again in the future.

[b]. Other Unique Situations. Documentation must be provided to the State Superintendent of Education detailing the unique situation and justifying why a waiver should be granted;

(ii). Testing/Promotion Decisions. The Department of Education will communicate to the LEAs the means for establishing promotional decisions for those students who have received a state-granted waiver.

9. The promotion policies outlined above are in effect from Spring 2004 through Spring 2005; beginning in spring 2006 at the achievement level will be raised to the "basic/approaching basic" combination level. The promotion policies outlined above will be reviewed in 2008.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:1008 (July 2001), amended LR 28:1189 (June 2002), LR 29:123 (February 2003), LR 30:409 (March 2004).

Chapter 15. Appendix C

§1501. Waiver Request

A. Implementation of a Fourth Grade Transitional Program with a Sixth Grade Promotion Option Pupil Progression Plan Amendment

1. Section I

a. Purpose of a Transitional Program:

i. The State Board of Elementary and Secondary Education (SBESE) requires that school systems develop and implement additional instructional options for those students repeating the fourth grade. A transitional program is one such option. The purpose of a fourth grade transitional program is to provide a class setting to students who have demonstrated the ability to benefit from a combination of intensive fourth grade remedial work and fifth grade regular coursework. Students in the transitional program may be able to progress to the sixth grade the following year.

2. Section II

a. Minimum criteria for placement into a fourth grade transitional program:

i. the student must score at the "approaching basic" or above achievement on level either the English language arts or mathematics component of LEAP 21;

ii. the student must have met all requirements for promotion from the fourth grade as outlined in the local pupil progression plan; and

iii. the student must participate in both the summer remediation program offered by the LEA and the summer retest.

3. Section III

a. Minimum criteria for promotion to the sixth grade from a fourth grade transitional program:

i. the student must meet the required combination achievement level ("basic/approaching basic") on the English language arts and mathematics components of LEAP 21;

ii. the student must have met all requirements for promotion from the fifth grade as outlined in the local Pupil Progression Plan;

iii. the student must obtain a composite score of 1200 on all four components of the fourth grade LEAP 21;

iv. in order to move students toward the required combination achievement level ("basic/approaching basic") on the English language arts and mathematics components of LEAP 21, the student must be provided remediation in the subject area(s) on which the student scored below "basic" on LEAP 21; and

v. in order for students to attain the required composite score (1200) on LEAP 21, focused instruction should be provided in the subject area(s) (Science and/or Social Studies) on which the student scored "unsatisfactory."

4. Section IV

a. Required Documentation

i. A school system requesting a waiver must submit data to the State Superintendent of Education that supports the effectiveness of their previously operated fourth grade transitional program. This data must include an analysis of sixth grade IOWA Tests scores that compare fourth grade students who repeated the entire grade, fourth grade students who repeated the grade in a transitional program (4.5 program), and fourth grade students who did not repeat any grades.

5. Section V

a. Assurances:

i. I assure that the fourth grade transitional program described in the amended 2003-2004 Pupil Progression Plan meets all of the requirements as outlined in Section III of this document.

ii. Based upon this submitted assurance, the _____ School System is requesting a waiver of the High Stakes Testing Policy to allow for the implementation of a fourth grade transitional program which meets the purpose as described in Section I with the option of promoting students to the sixth grade.

iii. Beginning with the 2004-2005 school year, school systems applying for this waiver must submit all required documentation as listed in Section IV and receive approval from the State Superintendent of Education prior to the implementation of a transitional (4.5) program that provides the option of promotion to the sixth grade. If approved, Sections I, II, and III must be included in the 2004-2005 Pupil Progression Plan.

iv. Signature of School System Superintendent: _____

v. Date: _____

6. Section VI

a. Approved/Denied: (circle one)

Cecil J. Picard
State Superintendent of Education

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:413 (March 2004).

Weegie Peabody
Executive Director

0403#017

RULE

Board of Elementary and Secondary Education

**Bulletin 1922? Compliance Monitoring Procedures
(LAC 28:XCI.Chapters 1-5)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted *Bulletin 1922? Compliance Monitoring Procedures*. Bulletin 1922 will be printed in codified format as LAC 28:XCI of the Louisiana Administrative Code. The Rule provides the procedures for monitoring all public and participating private schools and other educational agencies for compliance with *Bulletin 1706? The Regulations for Implementation of the Children with Exceptionalities Act*, R.S. 17:1941 et seq., Subpart A? Regulations for Students with Disabilities and Subpart B? Regulations for Gifted/Talented Students, and other applicable federal regulations, state statutes, and standards.

R.S. 17:1944(2) requires the Division of Special Populations to provide general supervision and monitoring and *Bulletin 1706? The Regulations for Implementation of the Children with Exceptionalities Act*, R.S. 17:1941 et seq., Subpart A? Regulations for Students with Disabilities and Subpart B? Regulations for Gifted/Talented Students require that procedures for monitoring be established at Subsections 302 and 372.

Title 28

EDUCATION

**Part XCI. Bulletin 1922? Compliance
Monitoring Procedures**

Chapter 1. Overview

§101. Monitoring

A. Monitoring is a process to ensure a free, appropriate, public education for all children with exceptionalities and to assess and ensure program effectiveness for all children with exceptionalities in public schools. Students with disabilities, ages 3-21, as well as students identified as gifted and talented are included in this process.

B. The monitoring system for Louisiana, through the analysis of various quantitative and qualitative data, will focus State resources on improving educational program outcomes for students with exceptionalities through a comprehensive, data-based process. Annually, the State Department of Education (SDE) will select a list of specific variables and performance indicators for comparative purposes for all local educational agencies providing services to children with exceptionalities.

C. The quantitative data will be used to determine specific performance profiles for school systems using data relative to a set of variables. Performance profiles will be issued annually. The quantitative data will be collected in relation to a set of variables selected by a statewide group of stakeholders from various agencies and entities. This group

will meet annually with the Division of Special Populations (DSP) to select only specific variables or "focus indicators" from all of the variables. The variables selected as "focus indicators" will be used to determine a system's performance status.

D. School systems will be placed in one of three performance categories within one of four population groups based on the total population of students attending public schools. Upon validation of quantitative data, school systems will be notified of their performance status. The performance categories are focus, exemplary, and continuous improvement.

1. School systems designated as *Focus* will receive an on-site compliance monitoring visit in order to review qualitative data specific to selected qualitative indicators that focus on the system's lowest performing indicator areas.

2. Systems designated as exemplary will receive recognition, and those systems which are exemplary on a statewide basis will also receive an on-site visit. The findings revealed in on-site visits that could be identified as best program practices will be available to other school systems.

3. The systems designated as continuous improvement will not be targeted to receive an on-site compliance visit. Through the LEA application process and self-review summaries, systems will, for that year, document and track improvement strategies. This documentation will include, not only the allocation of monies in the LEA grant application to target corrective action specific to noncompliance issues revealed in the system's self-review summaries, but also written documentation and tracking of other means of corrective action the school system has taken.

E. Annually, there will also be selected at random a group of systems which the DSP will visit for an on-site compliance review. The on-site review for the systems designated as random will include a review of a sampling of the qualitative indicators for all special education compliance areas. Eight will be chosen from the continuous improvement category.

F. Embodied in this process are proactive measures of self-evaluation, support, and technical assistance to ensure compliance with all regulatory requirements at the federal and state levels. Findings from data analysis, as well as findings from the on-site compliance visit, will be used to determine and allocate various resources for technical assistance and support to the school system by the SDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:414 (March 2004).

§103. Authority

A. The authority for monitoring is found in the following regulatory documents.

B. Individuals with Disabilities Education Act (IDEA), 20 USC, Chapter 33.

C. Federal Regulations for the Implementation of IDEA, 34 CFR Part 300, 301, and 303.

D. U.S. Education Department General Administrative Regulations (EDGAR).

E. Education of Children With Exceptionalities Act, R.S. 17:1941 et seq.

F. Regulations for Implementation of the Children with Exceptionalities Act, R.S.17:1941, et. seq., Bulletin 1706: Part A, Regulations for Students with Disabilities and Part B, Regulations for Gifted and Talented Students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:415 (March 2004).

§105. Local Educational Agencies (LEAs)

A. Local Educational Agencies (LEAs) to be monitored are:

1. city or parish school systems;
2. special school district;
3. state board of elementary and secondary special schools;
4. type 2 charter schools with special education programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:415 (March 2004).

§107. Corrective Action and Sanctions

A. The Division of Special Populations has the responsibility to monitor all public educational agencies with programs for exceptional children within the state for compliance with applicable state and federal laws, regulations, and standards.

B. The Division of Special Populations is authorized to take actions necessary to ensure compliance. Failure on the part of a participating agency to comply may result in the SDE recommending to its governing authority a withholding of funds for the said agency. The affected agency shall be granted an opportunity for a hearing before final actions are taken.

C. Each system monitored and found to have non-compliant findings will be required to develop a corrective action improvement plan in collaboration with the Division of Special Populations. The meeting will be arranged within 30 days of receipt of the report. Based on a one-year timeframe, the plan will address the activities the system will implement to correct the areas of non-compliance identified in the on-site visit. If the corrective action activities extend beyond a one-year timeframe for completion, a plan may be submitted with extended timelines. This plan must still contain annual activities and growth targets which will be submitted on an annual basis to the DSP.

D. The progress toward completing the activities in the plan will be tracked by the DSP to determine if the timelines are being met. Systems will submit evidence and data as requested by the DSP to show completion of activities and evidence of change in the system as a result of the corrective action improvement plan. The DSP will conduct a follow-up, on-site visit to determine if the system has made systemic changes to correct non-compliant issues addressed in the corrective action improvement plan.

E. A written report of the findings from the follow-up visit will be issued to the system by the DSP with 30 days after the on-site visit. When the corrective action follow-up report for a system indicates that the system has remaining non-compliant findings, and there is not sufficient documented evidence provided within the mandated timeframe, the system will receive a letter directing the

system to submit additional information within thirty business days to prove the deficiencies have been corrected and to inform the system of the possibility of sanctions if the issues are not corrected.

F. At the end of the 30 days in Subsection E above, if the system has not produced sufficient data to indicate that compliance has been met, the DSP shall initiate and implement a process which imposes further corrective action and sanctions on the system. The DSP will meet with the system to discuss the sanctions that will be issued.

G. Sanctions are implemented on a continuum. A larger number would reflect a more serious consequence.

1. The evidence submitted to and reviewed by the DSP to document that the non-compliant findings were:

a. addressed and corrected, with documentation to show evidence of change; or

b. addressed in a plan, which provides evidence for implementing effective corrective action, the system should submit evidence of change by a specified date.

2. The system shall contact the DSP to arrange for a meeting to redesign the Corrective Action Plan (CAP) to more effectively address the non-compliant findings from the previous school year's on-site visit. All CAPs must be written in a collaborative effort between the DSP and the school system. The system should identify and appoint a team to develop the corrective action improvement plan. It may be necessary to include general educators in the improvement planning process. The DSP staff responsible for compliance monitoring will determine from the findings, the additional DSP staff members that need to be in attendance. An approved CAP must include the signatures of the state and local superintendents.

3. The DSP will require that an intensive improvement plan for technical assistance be developed by the system to address non-compliant findings. The plan must be submitted to and approved by the local school board. The plan will be published in order to provide the public with information relative to the non-compliant finding, and the plan the system will use to correct the non-compliant findings. (Local newspapers and websites are methods that may be used for publishing the information.) Local funds will be used to implement the improvement plan.

4. The system will target IDEA Part B flow-through funds to address the identified non-compliant findings. The use of these Part B funds will be tracked by the system to show evidence to the DSP of the specific funds targeted for areas of non-compliance. The system will be required to provide clear and concise evidence of the use of the specific funds to target the deficiencies identified in the improvement plan. The DSP will monitor the expenditure of such funds on a consistent basis.

5. The DSP will require the appointment of a special master, monitor, or management team to oversee the corrective action improvement plan. The appointment is to be made by the state agency and funded at the local level.

6. IDEA Part B flow-through funds will be released on a conditional basis. The conditions will be written into the correction improvement plan with input by the DSP. The conditions will be implemented with the signature of the state superintendent and approval of the State Board of Elementary and Secondary Education (SBESE).

7. IDEA Part B flow-through monies, which could include the partial release of funds, will be withheld with the approval of the SBESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:415 (March 2004).

§109. Components of the Continuous Improvement Monitoring Process

A. The monitoring system will be implemented as a process that includes various components. This process will be comprehensive and continuous to include the use of various data sources. The monitoring system will be an ongoing process through the use of different components, rather than a cyclical process occurring on a scheduled basis.

B. The monitoring system will incorporate and utilize strategies and components as listed below:

1. analyze self-review summaries at the local level which are integrated to review the appraisal process as it relates to the development and implementation of programming, as well as review programming issues;

2. analyze data elements and databases that are current and captured by the DSP, which are directly related to student outcome;

3. analyze the LEA grant application to track and monitor the allocation and use of Part B funds to address priorities revealed through previous data sources in the monitoring process, as well as policy and procedural assurances;

4. review complaint management logs regarding specific complaints in individual systems;

5. analyze Extended School Year Program data;

6. analyze Annual School Report data;

7. analyze district and school accountability profiles;

8. analyze Louisiana's Automated System of Special Education Records (LANSER);

9. analyze FAPE tables and other mandated Federal data reporting (i.e., personnel tables, child count data);

10. review ongoing fiscal monitoring of the use of Part B funds through on-site visits and project completion reports;

11. review preschool on-site visits and data collection analysis and reporting;

12. analyze pupil progression assurances/reviews;

13. review the comprehensive system of personnel development/staff development plan, trainings conducted, and evaluations;

14. track corrective action on noncompliant issues and validate previous corrective action reviews, documentation, and on-site reviews;

15. analyze the provision of technical assistance to facilitate corrective action and to support the continuation of best program practices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:416 (March 2004).

§111. Purpose

A. The SDE has the responsibility to ensure that each participating agency in the state is in compliance with all applicable federal and state laws, regulations and standards required for the provision of a free and appropriate public

education for all exceptional children for whom each is legally responsible. To fulfill this responsibility, the SDE has established a purpose for conducting monitoring, as well as procedures and strategies that provide ongoing monitoring activities. The procedures provide continuous and comprehensive monitoring of all aspects of special education including the following:

1. child identification;
2. demographic and disproportionality issues;
3. screening, intervention, referral, and evaluation process;
4. program, services, and placement implementation for students with disabilities three through twenty-one years of age;
5. program, services, and placement implementation for gifted/talented students;
7. professional development; and
8. fiscal requirements relative to programmatic issues of local educational agencies.

B. In Louisiana, the purpose of compliance monitoring is threefold:

1. to ensure program effectiveness;
2. to enforce legal requirements and measure results of corrective action; and
3. to identify, promote, and support best program practices.

C. The information obtained as a result of the monitoring process will be utilized in the following ways:

1. to improve outcomes for all children with exceptionalities;
2. to direct initiatives statewide; and
3. to direct statewide personnel development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:416 (March 2004).

Chapter 3. Operational Procedures for Compliance Monitoring

§301. Focus Monitoring

A. All systems are placed in performance profile categories on an annual basis. The performance profile is based upon an analysis of quantitative data collected by the SDE.

B. Monitoring will focus on the variables selected annually as focus indicators. Systems will be profiled on the focus indicators in defined population groups. On-site visits will be determined based on performance profiles rather than on cyclical scheduled on-site visits. Systems designated as focus and statewide exemplary will be subject to on-site compliance visits.

C. A group of school systems will be selected at *Random* for on-site compliance visits. A sampling of the qualitative indicators from each area will be reviewed in these systems.

D. Systems not noted as focus, exemplary, or random will be classified as continuous improvement. These will not be subject to on-site visits. The identification of non-compliant issues and corrective action necessary to remedy these issues will be tracked by the DSP through the validation of the self-review process in these systems.

E. If critical issues of noncompliance are identified by means other than the performance profiles, an on-site compliance visit may be required by the SDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004).

§303. Timelines

A. Before the start of each monitoring cycle, each system will be issued a performance profile and a designation into which category the system fell. Within two weeks after the designations are made, a schedule of on-site visits will be issued to systems designated as focus, exemplary, and random.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004).

§305. On-Site Visits

A. On-site visits will be conducted by teams of qualified individuals with training and experience in the program areas that they will be monitoring.

B. Individuals selected to serve as team members will be initially required to receive a minimum of sixteen hours of professional development specific to conducting on-site monitoring, conducted by the DSP, with follow-up training on an annual basis. In addition, team leaders will be initially be required to receive 32 of professional development specific to leadership, investigative techniques for specific regulatory areas, and assimilating data for report writing conducted by the DSP, with follow-up training annually and throughout the year as determined by the state monitoring coordinator. Participants will receive a certificate that indicates their completion of the required annual professional development activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004).

§307. Regulatory Issues Reviewed On-Site

A. For Focus category systems, the regulatory issues and qualitative indicators reviewed will be specific to the variables targeted in the system's performance profile. These visits will focus on selected issues.

B. For random category systems, the on-site team will review a sampling of qualitative indicators from each of the variables on the performance profile.

C. For exemplary category systems, the on-site visit will be conducted for three purposes:

1. to validate the quantitative data using qualitative indicators specific to the regulatory issues for which the system has been found to be exemplary;
2. to issue commendations to the system; and
3. to collect data to be used in statewide dissemination efforts regarding effective program practices.

D. All qualitative indicators used in the on-site reviews will be appropriately addressed during the visits with personnel in the service setting, administrators, and parents.

E. The DSP will reserve the right to direct the team leader to review any and all regulatory issues that indicate non-compliance status in a school system.

F. Data for the following major regulatory issues will be analyzed, reviewed, and utilized in the self-review and on-site monitoring process:

1. child identification;
2. individual evaluation;

3. IEP development;
4. provision of a free, appropriate, public education;
5. participation in statewide assessment;
6. transition at different programming levels;
7. placement in the least restrictive environment;
8. professional development and personnel standards;
9. program comparability (ASR);
10. facility accessibility and comparability;
11. procedural safeguards;
12. extended school year programming;
13. discipline procedures; and
14. gifted and talented services and programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004).

§309. Activities Conducted Prior to the On-Site Visit

A. The on-site team leader must review and analyze the quantitative data collected by the DSP specific to the school system prior to the on-site visit and will include the following:

1. self-review data submitted by the school system;
2. performance profiles;
3. LEA Application for IDEA Part B funds;
4. complaint logs and due process hearings relative to the system;
5. files/logs indicative of technical assistance provided to the system by the DSP;
6. annual school report data;
7. information relative to the state's accountability system which is school-site specific;
8. school improvement plans;
9. data relative to statewide assessment for participation and performance;
10. data derived from the District Composite Reports;
11. information relative to certifications and professional development activities provided to personnel and parents; and
12. any other data the team leader determines is necessary to review as part of a comprehensive data review of the school system.

B. The team leader will contact the LEA supervisor/director of special education and any member of the DSP or SDE staff for clarification of any concerns regarding the data. Upon completion of the data analysis, the team leader will select the sites to be visited, the number and types of records to be reviewed, and the methods that will be used for validation of qualitative issues during on-site visits.

C. The team leader will provide the DSP with the names of the sites, the number of records to be reviewed, the methods that will be used for validation, and the number and types of team members needed for conducting the on-site visits. The DSP will select team members based on the needs expressed by the team leader. The LEA Supervisor/Director of Special Education will be notified not less than two days prior to the on-site visit on this information.

D. The team leader will meet with the selected team members to:

1. summarize, analyze, and review the school system's data;

2. review the specific qualitative indicators relative to the focus indicators that will be targeted in the on-site monitoring visit;

3. discuss any unique circumstances or issues regarding the on-site visit to the system;

4. answer any questions or concerns of the team members;

5. discuss, review, and instruct the team on the various methods to be used in validating the qualitative data during the on-site visits; and

6. make team member assignments for specific site visits and record reviews.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004).

§311. Activities Conducted During the On-Site Visit

A. The team leader and team members will meet briefly with the representatives of the LEA to discuss how the visit will be conducted and to discuss any logistical or travel issues of concern.

B. The parent team member will conduct a parent focus meeting and interview parents to collect data/information on their satisfaction of the services provided to their children and their involvement in their children's program.

C. Team members will visit sites, make observations, review records, and interview personnel. Student input will be collected through a student focus group or interviews. The team leader will be available to team members throughout the visit to provide additional information, if required, as well as to assist the team members with their tasks.

D. The team leader will meet with the director to review administrative issues. Additional data/information may be requested if further analysis is required for determining compliance status for specific regulatory issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004).

§313. Activities/Procedures at the Completion of the On-Site Visit

A. The team leader will meet with the team members to discuss, review, and analyze the team findings and to summarize their findings on DSP issued forms. The team leader will meet with representatives of the school system providing services for an exit interview.

B. The team leader will compile and mail a copy of a preliminary draft of a Summary of Findings to the DSP no later than 10 business days after the completion of the on-site visit. The team leader may request a meeting to discuss the findings with the DSP.

C. The DSP will review the draft, issue final approval of the report, and mail the Summary of Findings to the school system no later than 60 business days after the completion of the on-site monitoring visit.

D. Upon receipt of the report, the school system or agency will have 30 business days from the date of receipt of the report to review, accept, or reject the findings, and to arrange for a meeting with the DSP to develop a plan of corrective action to address deficiencies determined in the Summary.

E. If the school system does not accept the findings, there will be a period of 30 business days allowed for negotiations of the findings and the corrective action. Extensions for negotiations may be granted by the DSP, upon written request.

F. If negotiations fail and an agreement is not reached within the established timelines, the state director of special education shall, within five business days, notify the state superintendent of education.

G. The State Superintendent shall notify the State Board of Elementary and Secondary Education (SBESE) at its next meeting of a system's noncompliant status. All procedures and sanctions regarding non-compliance shall be followed according to federal and state regulations.

H. The school system in collaboration with the DSP, will be required to design corrective action which defines specific supports and resources that the system must have in order to implement the corrective action plan.

I. Timelines must be developed that are specific to the corrective action required and to the issue found to be in non-compliant status. The system must provide appropriate signatures required in the report and return the report to the DSP.

J. The DSP will allocate resources from the State level, both human and monetary, when determined necessary by the DSP and the system in question, on an annual basis to address the issues specific to implementing the corrective action required in school systems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004).

§315. Validation of Corrective Action

A. Upon receipt of the approved compliance document, the school system must begin to address the corrective action plan agreed upon by the school system and the DSP.

B. Corrective action timelines established in the report will be tracked to determine corrective action has been taken and to verify compliance by the DSP.

C. All corrective action must be completed in accordance with the timelines that relate to each specific non-compliant issue. Documentation must be submitted to the DSP within the required timelines.

D. The DSP will conduct an on-site visit in the year following the initial on-site visit, or sooner if deemed necessary by the DSP, to validate the documentation of the implementation of the corrective action.

E. The DSP will notify the school system or agency in writing when all corrective action has been accepted as completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:419 (March 2004).

§317. Self-Review Conducted at the Local Level

A. A locally conducted self-review will be an integral component of the entire monitoring process. The data collected in the self-review will be analyzed to help the LEA and the DSP identify areas of non-compliance, as well as levels of support and technical assistance needed at the local level. Corrective action timelines established in the report will be reviewed in order to determine the system's effort and commitment to making valid systematic findings and

developing corrective action that will result in the required evidence of change.

B. Local school systems will use set procedures for conducting self-reviews of compliance standards.

1. Systems will identify the sites to be included in the self-review. Systems should use the procedures identified in their LEA application to identify the number of sites.

2. The identified sites must provide a cross section of all exceptionalities served, as well as a sample of each service delivery model used in the system.

3. A minimum of five percent of the records of children with exceptionalities must be reviewed, along with the use of other methods and strategies for determining compliance status.

4. The local monitoring team and team leader will be designated at the local level.

5. The team must include personnel from the service setting such as general educators, parents, and administrators.

6. The team will be trained at the local level on procedures and strategies for conducting a self-review relative to special education regulatory compliance standards.

7. All self-review activities will be coordinated by the local school system or agency.

8. The school system or agency will be required to monitor the same regulatory issues for State and Federal regulations as monitored by the DSP.

9. As part of the self-review, the team will gather information from families of students receiving special education services regarding their satisfaction with their children's program and services, and their involvement in their children's program. This information may be gathered through focus meetings, interviews, or surveys.

10. The school system providing services will summarize the findings and compile a report to include:

- a. summary of non-compliant issues;
- b. a corrective action plan for correcting deficiencies and a timeline for completing a corrective action; and
- c. identified best practices.

11. The report of findings will be submitted as part of the annual LEA Application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:419 (March 2004).

Chapter 5. Fiscal Monitoring

§501. Introduction

A. There are three distinct types of fiscal monitoring performed by the State Department of Education, Division of Education Finance, pertaining to Special Education Programs:

1. on-site fiscal reviews of sub recipients;
2. verification of compliance applicable laws and regulations for non-supplanting, maintenance of effort, excess cost and other financial information during the award period; and
3. verification of the accuracy of the child count.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:419 (March 2004).

§503. On-Site Fiscal Reviews of Subrecipients

A. There are two main purposes that on-site fiscal reviews accomplish. The first purpose is to verify the completeness, accuracy, and validity of reimbursements of program funds received by sub-recipients (local educational agencies, state agencies, or universities.) The other purpose is to ensure that these reimbursements of program funds were made in accordance with applicable federal and state laws, regulations and guidelines.

B. Subrecipients are selected for on-site fiscal reviews on a cyclical basis. There are also requests by Division of Special Populations program staff to perform on-site reviews of sub-recipients. Subrecipients that terminate participation in Special Education programs, also have on-site reviews performed

C. Subrecipients will be contacted and the on-site reviews will be scheduled. A letter from the Audit Supervisor of the Federal Audit Section will confirm this contact. This letter will include the starting date and location of the fieldwork, the number of auditors that will perform the fieldwork, the scope of the review (fiscal years and projects to be reviewed), and the records that will be required for the fieldwork.

D. Fieldwork may last for varying lengths of time. The length of time the fieldwork could take will be determined by several factors. These factors include, but are not limited to, the number of fiscal years to be reviewed, the number of projects to be reviewed, the records available for review, the accounting system of the subrecipient, the auditor's access to these records, previous review findings and their resolution, and any current findings that are discovered.

E. The fieldwork will include, but not limited to, the examination and review of the grant award, including the budget and all expenditure categories on the reimbursement claims for which sub recipients received reimbursement. These categories are as follows:

1. salaries;
2. employee benefits;
3. purchased professional and technical services;
4. other purchased services;
5. supplies;
6. property;
7. other objects; and
8. other uses of funds.

F. At the end of the fieldwork, the auditors will meet with the subrecipient in an exit conference to discuss the review results including any findings.

G. A preliminary report will be prepared and sent to the subrecipient. The Federal Audit Section Audit Supervisor signs this preliminary report, which is then mailed to the subrecipient. The subrecipient has fifteen business days from the date of the preliminary report to respond to any findings. Subrecipient responses are examined to determine whether the findings should be adjusted and/or eliminated from the preliminary report. If no response is received, then the report is considered accepted by the subrecipient. After either of these two instances has occurred, a final report will be sent to the State Superintendent of Education for signature. Once signed, it will be returned to the Federal Audit Section and mailed to the subrecipient with a copy forwarded to the Division of Special Populations. The letter will instruct the

subrecipient to contact the Division of Special Populations for audit resolution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:420 (March 2004).

§505. Verification of Compliance Applicable Laws and Regulations for Non-Supplanting, Maintenance of Effort, Excess Cost and Other Financial Information During the Award Period.

A. Local education agencies (LEA) must annually prepare and submit Non-Supplanting, Maintenance of Effort and Excess Cost Verification forms to the Division of Education Finance by April 15 of each year. Approval of the LEA application and budget for Special Education program funds is contingent on the receipt and verification of the items and amounts reported on these forms. Verification of compliance by LEAs with Non-Supplanting, Maintenance of Effort and Excess Cost laws and regulations is performed. The amounts reported on these forms are also verified. This verification process uses the prior year Annual Financial Report (AFR) and current year budget along with the Excess Cost and Non-Supplanting forms submitted by the LEAs. Once compliance with applicable Non-Supplanting, Maintenance of Effort and Excess Cost laws and regulations has been determined, the forms are forwarded to the Division of Education Finance, Federal Budget Section.

B. Other special education program financial information is also verified as to accuracy and correctness by Division of Education Finance Federal Audit Section staff. These verifications may be conducted at the request of Division of Special Populations staff, sub recipients, and other governmental agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:420 (March 2004).

§507. Verification of the Accuracy of the Child Count

A. SBESE establishes the policy to seek to recover any funds made available under IDEA -Part B for services to any child who is determined to be classified erroneously as eligible to be counted.

B. Determination of eligible children shall be accomplished through the verification procedures of the SDE regarding the accuracy of the child count. In order to verify the accuracy of each count submitted, the SDE will conduct the following activities:

1. The current child count from each school system shall be compared with the previous count. In addition, the current child count incidence figures from each school system shall be compared with incidence figures from the previous state child count.

2. An on-site monitoring visit to verify the accuracy of the child count will be conducted in selected LEAs each year. If necessary, each system can be monitored for the previous years to verify the accuracy of the child count. During the monitoring of each LEA, the monitors will select at least ten names from the child count report. The LEA must provide the student's name, date of birth, evaluation report, IEP, class rosters, and any other information that may be necessary to verify the accuracy of the count.

3. Administrative on-site reviews are conducted in selected LEAs each year. Any multi-disciplinary evaluation reviewed and found not to be in compliance with State guidelines, to the extent that it cannot be determined that the student is a student with a disability, will result in the exclusion of that child from the child count.

4. If a child's IEP is monitored during the on-site review process and it is determined that the child is not receiving all the special education and related services specified on the IEP, the child will be excluded from the child count.

5. The LEA will be afforded an opportunity to present supportive or explanatory documentation to refute the DSP findings. If the evidence cannot justify the count, the count will be disallowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:420 (March 2004).

§509. Recovery of Funds for a Misclassified Child

A. If the LEA has received funds based on an erroneous count and the DSP has documented the extent of the error, the SDE will either reduce the grant award if the error occurred in the current budget and all of the funds have not been expended or request that the LEA return such funds. In the event the LEA refuses to comply, within ten business days these procedures will be followed.

1. The DSP will submit written documentation of the error in the count to the State Superintendent of Education.

2. Within 10 business days of this submission, the State Superintendent will request that the SBESE require the LEA to repay the funds.

3. The SBESE has the responsibility to offer an opportunity for a hearing to an LEA prior to a determination to withhold funds. (Refer to Section 955 of the Louisiana Administration Procedures Act.)

4. Funds recovered by the SDE and the SBESE will be handled within the guidelines set forth by OSEP, U.S. Department of Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:421 (March 2004).

Weegie Peabody
Executive Director

0403#018

RULE

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Penalty Determination Methodology
(LAC 33:I.705)(OS051)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Office of the Secretary regulations, LAC 33:I.705 (Log #OS051).

The Rule clarifies the portion of the regulations on penalty calculations that requires the department to take into account

any monetary benefits the violator may have realized through noncompliance. The Rule change was suggested by EPA as a result of a Water Program audit. The basis and rationale for this Rule are to incorporate the language suggested by EPA to clarify the regulations.

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

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 7. Penalties

§705. Penalty Determination Methodology

A. - F. ...

G. The department shall consider the monetary benefits realized through noncompliance. Any monetary benefits calculated may be added to the penalty subtotal. However, the amount calculated may not cause the penalty subtotal to exceed the maximum penalty amount allowed by law. A cash penalty should be collected unless it has been demonstrated and documented that the violator cannot pay the cash penalty.

H. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:658 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2400 (December 1999), LR 30:421 (March 2004).

James H. Brent, Ph.D.
Assistant Secretary

0403#078

RULE

Department of Health and Hospitals Board of Medical Examiners

Occupational Therapists and Occupational Therapy
Assistants? Licensure, Certification and Practice
(LAC 46:XLV.1903, 1907, 1917-1927, 1931,
1933, 1947-1951, 1955, 1975, 4903 and 4923)

The Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:3001-3014, R.S. 37:1270, R.S. 37:1281, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., has amended its Rules governing licensure, certification and practice of occupational therapists and occupational therapy assistants to reflect a change in the testing and certification entity for occupational therapists and occupational therapy assistants from the American Occupational Therapy Association (AOTA) to the National Board for Certification in Occupational Therapy, Inc. (NBCOT), and by limiting the use of NBCOT's certification marks "occupational therapist registered," "OTR," "certified occupational therapy assistant," and "COTA," to those authorized to use such designations by current NBCOT

certification and/or registration, LAC 46:XLV, Subpart 2, Chapter 19, Subchapters A, B, D, F and H (§§1903, 1907, 1917-1933, 1947-1951, 1955 and 1975), respectively, and Subpart 3, Chapter 49, Subchapters A (§4903) and B (§4923). The Rule amendments are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 19. Occupational Therapists and Occupational Therapy Assistants

Subchapter A. General Provisions

§1903. Definitions

A. As used in this Chapter the following terms shall have the meanings specified.

* * *

Department? the Louisiana Department of Health and Hospitals.

* * *

NBCOT? National Board for Certification in Occupational Therapy, Inc.

* * *

Occupational Therapist? a person who is licensed to practice occupational therapy, as defined in this Chapter, and whose license is in good standing.

Occupational Therapy Assistant? a person who is licensed to assist in the practice of occupational therapy under the supervision of, and in activity programs with the consultation of, an occupational therapist licensed under this Chapter.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004).

Subchapter B. Qualifications for License

§1907. Qualifications for License

A. - A.2. ...

3. have successfully completed the academic and supervised field work experience requirements to sit for the "Certification Examination for Occupational Therapist, Registered" or the "Certification Examination for Occupational Therapy Assistant" as administered for or by the NBCOT or such other certifying entity as may be approved by the board;

4. make written application to the board for review of proof of his current certification by the NBCOT on a form and in such a manner as prescribed by the board;

A.5. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004).

Subchapter D. Examination

§1917. Designation of Examination

A. For purposes of licensure, the board shall use the examination administered by or on behalf of the NBCOT or such other certifying entity as the board may subsequently approve.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004).

§1919. Eligibility for Examination

A. To be eligible for examination an applicant for licensure must make application to the NBCOT or its designated contract testing agency in accordance with procedures and requirements of NBCOT. Information on the examination process, including fee schedules and application deadlines, must be obtained by each applicant from the NBCOT. Application for licensure under §1913 does not constitute application for examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004).

§1921. Dates, Places of Examination

A. The dates on which and places where the NBCOT certification examination for occupational therapists and occupational therapy assistants are given are scheduled by the NBCOT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004).

§1923. Observance of Examination

A. The NBCOT examination may be observed by a representative appointed by the board. The representative is authorized and directed by the board to obtain positive photographic identification from all applicants for licensure appearing and properly registered for the examination and to observe that all applicants for licensure abide by the rules of conduct established by the NBCOT.

B. An applicant for licensure who appears for examination shall:

1. ...

2. fully and promptly comply with any and all rules, procedures, instructions, directions, or requests made or prescribed by the NBCOT or its contract testing agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004).

§1925. Subversion of Examination Process

A. ...

B. Conduct which subverts or undermines the integrity of the examination process shall be deemed to include:

1. refusing or failing to fully and promptly comply with any rules, procedures, instructions, directions, or requests made or prescribed by the NBCOT or its contract testing agency, or the board's representative;

2. - 10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:423 (March 2004).

§1927. Finding of Subversion

A. When, during the administration of examination the board's representative, has reasonable cause to believe that an applicant-examinee is engaging or attempting to engage, or has engaged or attempted to engage, in conduct which subverts or undermines the integrity of the examination process, the board's representative shall take such action as he deems necessary or appropriate to terminate such conduct and shall report such conduct in writing to the board and the NBCOT.

B. When the board, upon information provided by the board's representative, the NBCOT or its contract testing agency, an applicant-examinee or any other person, has probable cause to believe that an applicant has engaged or attempted to engage in conduct which subverts or undermines the integrity of the examination process, the board shall so advise the applicant in writing, setting forth the grounds for its finding of probable cause, specifying the sanctions which are mandated or permitted for such conduct by §1929 of this Subchapter and provide the applicant with an opportunity for hearing pursuant to the board's rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:423 (March 2004).

§1931. Passing Score

A. The board shall use the criteria for satisfactory performance on the exam adopted by the NBCOT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:423 (March 2004).

§1933. Reporting of Examination Score

A. Applicants for licensure shall request the NBCOT to notify the board of successful completion of the examination according to procedures for such notification established by NBCOT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health

and Hospitals, Board of Medical Examiners, LR 30:423 (March 2004).

Subchapter F. License Issuance, Termination, Renewal and Reinstatement

§1947. Renewal of License

A. Every license issued by the board under this Subchapter shall be renewed annually on or before its date of expiration by submitting to the board an application for renewal upon forms supplied by the board, together with the renewal fee prescribed in Chapter 1 of these rules and documentation of satisfaction of the continuing professional education requirements prescribed by Subchapter H of these rules.

B. - D. ...

E. Current registration or certification is not a prerequisite to renewal of a license to practice as an occupational therapist or occupational therapy assistant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1003 (September 1994), LR 24:1499 (August 1998), LR 30:423 (March 2004).

§1949. Reinstatement of License

A. ...

B. An application for reinstatement shall be made upon forms supplied by the board and accompanied by two letters of character recommendation, one from a reputable physician and one from a reputable occupational therapist of the former licensee's last professional location, together with the applicable late renewal and reinstatement fees prescribed in Chapter 1 of these rules.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1003 (September 1994), LR 30:423 (March 2004).

§1951. Titles of Licensees

A. Any person who is issued a license as an occupational therapist under the terms of this Chapter may use the words "occupational therapist," "licensed occupational therapist," or he may use the letters "OT" or "LOT," in connection with his name or place of business to denote his licensure. In addition, any person currently certified or registered by and in good standing with the NBCOT, may use the words "licensed occupational therapist registered" or "occupational therapist registered" or "LOTR" or "OTR."

B. Any person who is issued a license as an occupational therapy assistant under the terms of this Chapter may use the words "occupational therapy assistant," "licensed occupational therapy assistant," or he may use the letters "OTA" or "LOTA" in connection with his name or place of business to denote his licensure. In addition, any person currently certified as an assistant by and in good standing with the NBCOT, may use the designation "licensed certified occupational therapy assistant" or "LCOTA" or "certified occupational therapy assistant" or "COTA."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:423 (March 2004).

§1955. False Representation of Licensure Prohibited

A. No person who is not licensed under this Chapter as an occupational therapist or an occupational therapy assistant, or whose license has been suspended or revoked, shall use, in connection with his name or place of business, the words "occupational therapist," "licensed occupational therapist," "occupational therapy assistant," "licensed occupational therapy assistant," or the letters, "OT," "LOT," "OTA," "LOTA," or any other words, letters, abbreviations, or insignia indicating or implying that he is an occupational therapist or an occupational therapy assistant, or in any way, orally, in writing, in print, or by sign, directly or by implication, represent himself as an occupational therapist or an occupational therapy assistant.

B. No person who is not licensed under this Chapter as an occupational therapist or an occupational therapy assistant, or whose license has been suspended or revoked, who is not currently certified or registered by and in good standing with the NBCOT shall use, in connection with his name or place of business, the words "occupational therapist registered," "licensed occupational therapist registered," "certified occupational therapy assistant," or "licensed certified occupational therapy assistant" or the letters, "OTR," "LOTR," or "COTA," or "LCOTA" or any other words, letters, abbreviations, or insignia indicating or implying that he is an occupational therapist registered or a certified occupational therapy assistant, or in any way, orally, in writing, in print, or by sign, directly or by implication, represent himself as such.

C. Whoever violates the provisions of this section shall be fined not more than \$500 or be imprisoned for not more than six months, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:424 (March 2004).

Subchapter H. Continuing Professional Education

§1975. Failure to Satisfy Continuing Professional Education Requirements

A. - B.1.c. ...

2. the applicant has, within one year prior to making application for reinstatement, taken and successfully passed the recertification examination of the NBCOT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3012(B) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1005 (September 1994), amended LR 24:1499 (August 1998), LR 30:424 (March 2004).

Subpart 3. Practice

Chapter 49. Occupational Therapists and Occupational Therapy Assistants

Subchapter A. General Provisions

§4903. Definitions

A. As used in this Chapter, the following terms shall have the meanings specified.

* * *

Occupational Therapist? a person who is licensed to practice occupational therapy, as defined in this Chapter, and whose license is in good standing.

Occupational Therapy Assistant? a person who is licensed to assist in the practice of occupational therapy under the supervision of, and in activity programs with the consultation of, an occupational therapist licensed under this Chapter.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:424 (March 2004).

Subchapter B. Standards of Practice

§4923. False Representation of Licensure Prohibited

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repealed by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:424 (March 2004).

John B. Bobear, M.D.
Executive Director

0403#069

RULE

Department of Health and Hospitals Board of Medical Examiners

Office-Based Surgery (LAC 46:XLV.Chapter 73)

The Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by the Louisiana Medical Practice Act, R.S. 37:1261-1292, and the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., has adopted Rules governing office-based surgery by physicians, LAC 46:XLV, Subpart 3, Chapter 73, §§7301-7315. The Rules are set forth below.

Title 46

PROFESSIONAL AND OCCUPATION STANDARDS

Part XLV. Medical Professions

Subpart 3. Practice

Chapter 73. Office-Based Surgery

Subchapter A. General Provisions

§7301. Scope of Chapter

A. The rules of this Chapter govern the performance of office-based surgery by physicians in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:424 (March 2004).

§7303. Definitions

A. As used in this Chapter, unless the content clearly states otherwise, the following terms and phrases shall have the meanings specified.

Anesthesia Provider—an *anesthesiologist* or *certified registered nurse anesthetist* who possesses current certification or other evidence of completion of training in advanced cardiac life support training or pediatric advanced life support for pediatric patients.

Anesthesiologist—a *physician* licensed by the *board* to practice medicine in this state who has completed post-graduate residency training in anesthesiology and is engaged in the practice of such specialty.

Board? the Louisiana State Board of Medical Examiners.

Certified Registered Nurse Anesthetist ("CRNA")—an advanced practice registered nurse certified according to the requirements of a nationally recognized certifying body approved by the Louisiana State Board of Nursing ("Board of Nursing") who possesses a current license or permit duly authorized by the Board of Nursing to select and administer anesthetics or provide ancillary services to patients pursuant to R.S. 37:911 et seq., and who, pursuant to R.S. 37:911 et seq., administers anesthetics and ancillary services under the direction and supervision of a *physician* who is licensed to practice under the laws of the state of Louisiana.

Conscious Sedation—a drug-induced depression of consciousness during which patients retain the ability to independently maintain an airway, ventilatory and cardiovascular functions and respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation.

Deep Sedation, Monitored Sedation, General Anesthesia (referred to in this Chapter as "*anesthesia*" unless the context states otherwise)—a drug-induced loss of consciousness that results in the partial or complete loss of ability to independently maintain an airway, ventilatory, neuromuscular or cardiovascular function and during which patients are not arousable, even by painful stimulation.

Medical Practice Act or the Act? R.S. 37:1261-92 as may be amended from time to time.

Office-Based Surgery? any *surgery* or *surgical procedure* not exempted by these rules that is performed in an *office-based surgery setting* or *facility*.

Office-Based Surgery Setting or Facility? any clinical setting not exempted by these rules where surgery is performed.

Physician—a person lawfully entitled to engage in the practice of medicine in this state as evidenced by a current license or permit duly issued by the *board*.

Reasonable Proximity—a distance of not more than 30 miles or one which may be reached within 30 minutes for patients 13 years of age and older and a distance of not more than 15 miles or one which can be reached within 15 minutes for patients 12 years of age and under.

Regional Anesthesia/Blocks (referred to in this Chapter as ("*regional anesthesia*")—the administration of anesthetic agents that interrupt nerve impulses without loss of consciousness or ability to independently maintain an airway, ventilatory or cardiovascular function that includes but is not limited to the upper or lower extremities. For purposes of this Chapter regional anesthesia of or near the central nervous system by means of epidural or spinal shall be considered *general anesthesia*.

Surgery or Surgical Procedure? the excision or resection, partial or complete destruction, incision or other

structural alteration of human tissue by any means, including but not limited to lasers, pulsed light, radio frequency, or medical microwave devices, that is not exempted by these rules upon the body of a living human being for the purpose of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defects, prolonging life, relieving suffering or any elective procedure for aesthetic, reconstructive or cosmetic purposes. Surgery shall have the same meaning as "*operate*."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:424 (March 2004).

§7305. Exemptions

A. This Chapter shall not apply to the following surgical procedures or clinical settings:

1. exempt surgical procedures include those:

a. requiring no anesthesia, using only local, oral, topical or intra-muscular anesthesia, those using regional anesthesia as defined by this Chapter or those using conscious sedation either individually or in combination; and/or

b. performed by a physician oral and maxillofacial surgeon under the authority and within the scope of a license to practice dentistry issued by the Louisiana State Board of Dentistry;

2. excepted clinical settings include:

a. a hospital, including an outpatient facility of the hospital that is separated physically from the hospital, an ambulatory surgical center, abortion clinic or other medical facility that is licensed and regulated by the Louisiana Department of Health and Hospitals;

b. a facility maintained or operated by the state of Louisiana or a governmental entity of this state;

c. a clinic maintained or operated by the United States or by any of its departments, offices or agencies; and

d. an outpatient setting currently accredited by one of the following associations or its successor association:

i. the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;

ii. the American Association for the Accreditation of Ambulatory Surgery Facilities; or

iii. the Accreditation Association for Ambulatory Health Care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:425 (March 2004).

§7307. Prohibitions

A. On and after January 1, 2005, no physician shall perform office-based surgery except in compliance with the rules of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:425 (March 2004).

§7309. Prerequisite Conditions

A. A physician who performs office-based surgery shall adhere to and comply with the following rules.

1. Facility and Safety

a. The facility shall comply with all applicable federal, state and local laws, codes and regulations pertaining to fire prevention, building construction and occupancy, accommodations for the disabled, occupational safety and health, medical waste and hazardous waste, infection control and storage and administration of controlled substances.

b. All premises shall be kept neat and clean. Operating areas shall be sanitized and materials, instruments, accessories and equipment shall be sterilized.

c. Supplies of appropriate sterile linens, gloves and dressings shall be maintained in sufficient quantities for routine and emergency use. All surgical personnel shall wear suitable operative attire.

d. Supplies of appropriate drugs, medications and fluids shall be maintained in sufficient quantities for routine and emergency use.

2. Quality of Care

a. A physician performing office-based surgery shall:

i. possess current staff privileges to perform the same procedure at a hospital located within a reasonable proximity; or

ii.(a). have achieved board certification from a board recognized by the American Board of Medical Specialties in a specialty that encompasses the procedure performed in an office-based surgery setting; and

(b). possess current admitting privileges at a hospital located within a reasonable proximity;

b. a physician performing office-based surgery shall possess current certification or other evidence of completion of training in advanced cardiac life support training or pediatric advanced life support for pediatric patients;

c. a physician performing office-based surgery shall ensure that all individuals who provide patient care in the office-based surgery setting are duly qualified, trained and possess a current valid license or certificate to perform their assigned duties. An unlicensed individual otherwise properly trained in the performance of a given procedure or duty shall participate in a patient's care only under the on-site direction and supervision of a physician who retains responsibility to the patient for the individual's performance.

3. Patient and Procedure Selection

a. Any office-based surgical procedure shall be within the training and experience of the operating physician, the health care practitioners providing clinical care assistance and the capabilities of the facility.

b. The surgical procedure shall be of a duration and degree of complexity that shall permit the patient to recover and be discharged from the facility on the same day. Under no circumstances shall a patient be permitted to remain in an office-based surgery setting overnight.

4. Informed Consent

a. Informed consent for surgery and the planned anesthetic intervention shall be obtained from the patient or legal guardian in accordance with the requirements of law.

5. Patient Care

a. The anesthesia provider shall be physically present throughout the surgery.

b. The anesthesia provider or an individual possessing current certification or other evidence of completion of training in advanced cardiac life support

training or pediatric advanced life support for pediatric patients shall remain in the facility until all patients have been released from anesthesia care by a CRNA or a physician.

c. Discharge of a patient shall be properly documented in the medical record.

6. Monitoring and Equipment

a. There shall be sufficient space to accommodate all necessary equipment and personnel and to allow for expeditious access to the patient and all monitoring equipment.

b. All equipment shall be in proper working condition; monitoring equipment shall be available, maintained, tested and inspected according to the manufacturer's specifications.

c. A secondary power source appropriate for equipment in use in the event of a power failure shall be available. In the event of an electrical outage which disrupts the capability to continuously monitor all specified patient parameters, heart rate and breath sounds shall be monitored using a precordial stethoscope or similar device and blood pressure measurements shall be re-established using a non-electrical blood pressure measuring device until power is restored.

d. In an office where anesthesia services are to be provided to infants and children the required equipment, medication, including drug dosage calculations, and resuscitative capabilities shall be appropriately sized for a pediatric population.

e. All facilities shall have an auxiliary source of oxygen, suction, resuscitation equipment and medication for emergency use. A cardiopulmonary resuscitative cart shall be available and shall include, but not be limited to, an Ambu Bag, laryngoscope, emergency intubation equipment, airway management equipment, a defibrillator with pediatric paddles if pediatric patients are treated and a medication kit which shall include appropriate non-expired medication for the treatment of anaphylaxis, cardiac arrhythmia, cardiac arrest and malignant hyperthermia when triggering agents are used or if the patient is at risk for malignant hyperthermia. Resources for determining appropriate drug doses shall be readily available.

7. Emergencies and Transfers

a. Emergency instructions along with the names and telephone numbers to be called in the event of an emergency (i.e., emergency medical services ("EMS"), ambulance, hospital, 911, etc.) shall be posted at each telephone in the facility.

b. Agreements with local EMS or ambulance services shall be in place for the purpose of transferring a patient to a hospital in the event of an emergency.

c. Pre-existing arrangements shall be established for definitive care of patients at a hospital located within a reasonable proximity when extended or emergency services are needed to protect the health or well being of the patient.

8. Medical Records

a. A complete medical record shall be documented and maintained of the patient history, physical and other examinations and diagnostic evaluations, consultations, laboratory and diagnostic reports, informed consents, preoperative, inter-operative and postoperative anesthesia assessments, the course of anesthesia, including monitoring

modalities and drug administration, discharge and any follow-up care.

9. Policies and Procedures

a. Written policies and procedures for the orderly conduct of the facility shall be prepared for the following areas:

i. management of anesthesia including:

(a). patient selection criteria;

(b). drug overdose, cardiovascular and respiratory arrest, and other risks and complications from anesthesia;

(c). the procedures to be followed while a patient is recovering from anesthesia in the office; and

(d). release from anesthesia care and discharge criteria;

ii. infection control (surveillance, sanitation and asepsis, handling and disposal of waste and contaminants, sterilization, disinfection, laundry, etc.); and

iii. management of emergencies, including:

(a). the procedures to be followed in the event that a patient experiences a complication;

(b). the procedures to be followed if the patient requires transportation for emergency services including the identity and telephone numbers of the EMS or ambulance service if one is to be utilized, the hospital to which the patient is to be transported and the functions to be undertaken by health care personnel until a transfer of the patient is completed;

(c). fire and bomb threats.

b. All facility personnel providing patient care shall be familiar with, appropriately trained in and annually review the facility's written policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:425 (March 2004).

§7311. Administration of Anesthesia

A. Evaluation of the Patient. An anesthesia provider shall perform a pre-anesthesia evaluation, counsel the patient and prepare the patient for anesthesia.

B. Diagnostic Testing, Consultations. Appropriate pre-anesthesia diagnostic testing and consults shall be obtained as indicated by the pre-anesthesia evaluation.

C. Anesthesia Plan of Care. A patient-specific plan for anesthesia care shall be formulated based on the assessment of the patient, the surgery to be performed and the capacities of the facility.

D. Administration of Anesthesia. Anesthesia shall be administered by an anesthesia provider who shall not participate in the surgery.

E. Monitoring. Monitoring of the patient shall include continuous monitoring of ventilation, oxygenation and cardiovascular status. Monitors shall include, but not be limited to, pulse oximetry, electrocardiogram continuously, non-invasive blood pressure measured at appropriate intervals, an oxygen analyzer and an end-tidal carbon dioxide analyzer. A means to measure temperature shall be readily available and utilized for continuous monitoring when indicated. An audible signal alarm device capable of detecting disconnection of any component of the breathing system shall be utilized. The patient shall be monitored continuously throughout the duration of the procedure. Post-

operatively, the patient shall be evaluated by continuous monitoring and clinical observation until stable. Monitoring and observations shall be documented in the patient's medical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:427 (March 2004).

§7313. Reports to the Board

A. A physician performing office-based surgery shall notify the board in writing within 15 days of the occurrence or receipt of information that an office-based surgery resulted in:

1. an unanticipated and unplanned transport of the patient from the facility to a hospital emergency department;

2. an unplanned readmission to the office-based surgery setting within seventy-two hours of discharge from the facility;

3. an unscheduled hospital admission of the patient within 72 hours of discharge from the facility; or

4. the death of the patient within 30 days of surgery in an office-based facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:427 (March 2004).

§7315. Effect of Violation

A. Any violation or failure to comply with the provisions of this Chapter shall be deemed unprofessional conduct and conduct in contravention of the board's rules, in violation of R.S. 37:1285(A)(13) and (30), respectively, as well as violation of any other applicable provision of R.S. 37:1285(A), providing cause for the board to suspend, revoke, refuse to issue or impose probationary or other restrictions on any license held or applied for by a physician culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:427 (March 2004).

John B. Bobear, M.D.
Executive Director

0403#070

RULE

**Department of Health and Hospitals
Licensed Professional Vocational Rehabilitation
Counselors Board of Examiners**

Licensing and Advisory Opinions
(LAC 46:LXXXVI.703, 1800, and 1801)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Louisiana Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, pursuant to the authority vested in it by R.S. 37:3445, has amended the Professional and Occupational Standards pertaining to Vocational Rehabilitation Counselors in order to provide for the

requirements for licensing, and to add Chapter 18 to provide for advisory ethics opinions.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXXVI. Vocational Rehabilitation Counselors

Chapter 7. Requirements for Licensure and Renewal of License

§703. Requirements

A. - A.4. ...

5. has received a master's degree in vocational rehabilitation counseling or related field and two years of experience under the direct supervision of a licensed vocational rehabilitation counselor. An applicant may subtract one year of the required professional experience for successfully completing Ph.D. requirements in a rehabilitation counseling program acceptable to the board. In order to meet the requirements of licensure, one must have a degree in vocational rehabilitation counseling or an approved related degree as listed in Section A below:

Section A
Clinical or Counseling Psychology
Professional Guidance and Counseling
Rehabilitation Studies (O.T. and P.T. excluded)
Special Education (as determined by the board)

a. The board will consider as a feasible alternative to a vocational rehabilitation degree, a related degree as listed in Section A which includes 42 hours of qualifying courses from an accredited college or university which meet the academic and training content established by the board and listed in Section B below. Both Section A and Section B are at the discretion of the board.

Section B	Hours
Orientation of Vocational Rehabilitation	3
Statistics	3
Medical and/or Psycho-Social Terminology of Disabilities Relative to Vocational Performance	3
Psychological and Social Effects of Disabilities	3
Tests and Measurements	3
Occupational Information and/or Job Placement and Job Development	3
Analysis of the Individual	3
Theories of Personality	3
Theories and Techniques of Counseling	6
Demonstrations and Practice of Counseling	3
Field Work or Practicums	9-12
Psychiatric Disorders and/or Substance Abuse	3
Vocational Analysis or Assessment of Persons with Disabilities	3
Introduction to Psychology	3
Abnormal Psychology	3
Introduction to Sociology	3
Developmental Psychology (Adult or Adolescent)	3
Ethics of Counseling	3
	66

b. A candidate for licensure must have 42 of the 66 hours enumerated, completing each course with a "C" or better. Any substitutions of similar course work will be limited and at the discretion of the board. As of July 20, 1996, anyone possessing an unrelated degree, not specific in the above text, will not be accepted even if they pursue

additional course work. Should they obtain an additional degree in the related areas as specified in Section A above, this will be considered.

6. The board shall issue a license to each applicant who files an application upon a form designated by the board and in such a manner as the board prescribes, accompanied by such fee required by R.S. 37:3447 and who furnishes satisfactory evidence to the board that he has met the requirements of Paragraphs A.1-4 and has a bachelor's degree in vocational rehabilitation counseling or related field as defined in Paragraph 703.A.5 and five years of work experience working under the direct supervision of a licensed vocational rehabilitation counselor which period of supervision began prior to September 1, 2004. Except as provided in this Paragraph 703.A.6, after September 1, 2009 no license shall be issued to any applicant not meeting the requirements of Paragraphs 703.A.1-5.

B. - B.15.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3447.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 15:277 (April 1989), amended by the Department of Health and Hospitals, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 19:1570 (December 1993), LR 22:582 (July 1996), LR 30:428 (March 2004).

Chapter 18. Guidelines for Requesting Advisory Opinions From LLPVRC's Ethics Committee

§1800. General

A. Consistent with the intent of the Louisiana Licensed Professional Vocational Rehabilitation Counselors (LLPVRC) Code of Professional Ethics for Licensed Rehabilitation Counselors, the LLPVRC Ethics Committee recommends that licensed rehabilitation counselors who are considering seeking advisory opinions first consult with other rehabilitation counselors and colleagues who are knowledgeable about ethics in order to attempt to resolve questions that may easily be addressed by other knowledgeable parties. If these attempts do not result in resolution of the matter, individuals may request advisory opinions from the LLPVRC Ethics Committee.

B. The committee provides advisory opinions on selected situations having ethical implications. These advisory opinions are provided as a general educational service and are rendered in response to limited and unverified information provided to the committee. Therefore, it should not be construed as direct advice regarding the unique or specific ethical or legal action recommendations that should be followed regarding the issues raised. The considerations described by the committee's advisory opinion should be regarded only as general educational assistance and not as specific direction in any particular instance.

C. Requests should not be filed if there is reason to believe that a violation of the code has occurred. Those attempting to determine if alleged behavior violates the code may receive a response to a request for an advisory opinion that may later appear to contradict a ruling made if a complaint is actually filed. This possible incongruity might be due to the fact that advisory opinions do not allow for full disclosure of all available information in the matter.

D. Information presented in a request for an advisory opinion and the committee's response to that ruling may be presented for educational purposes to other parties in a sanitized format.

E. LLPVRC's Ethics Committee meets four times per year. Requests received will be scheduled for review at the next scheduled meeting of the committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3445.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 30:428 (March 2004).

§1801. Requesting an Advisory Opinion

A. Requests should be clear and concise and should include both the scenario and the requestor's opinion as to the Standard(s) in the LLPVRC Code of Professional Ethics for Licensed Rehabilitation Counselors that relate to the matter as well as the requestor's interpretation of how to apply the Standard(s) to the scenario. Further, if the requestor is a LRC, the request should advise as to the results of consultation with other rehabilitation counselors and colleagues.

B. Requests should be sent in writing to:

Louisiana Licensed Professional Vocational
Rehabilitation Counselors Board of Examiners
P.O. Box 41594
Baton Rouge, LA 70835-1594
Attn: Ethics Committee

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3445.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 30:429 (March 2004).

Carla Seyler
Chairperson

0403#020

RULE

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

Adult Denture Program
Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has promulgated the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the following reimbursement fees for certain designated procedures in the Adult Denture Program.

Procedure Code	Description	Fee
D0150	Comprehensive Oral Exam – Adult	\$20
D5110	Complete Denture, Maxillary	\$495
D5120	Complete Denture, Mandibular	\$495
D5130	Immediate Complete Denture, Maxillary	\$495
D5140	Immediate Complete Denture, Mandibular	\$495
D5211	Partial Denture, Resin Base, Maxillary	\$470
D5212	Partial Denture, Resin Base, Mandibular	\$470
D5510	Repair Complete Broken Denture Base	\$100
D5520	Repair Missing or Broken Teeth - Complete Denture, Per Tooth	\$52/\$26*
D5610	Repair Resin Denture Base, Partial Denture	\$100
D5630	Repair or Replace Broken Clasp, Partial Denture	\$95
D5640	Replace Broken Teeth, Partial Denture, Per Tooth	\$52/\$26*
D5650	Add Tooth to Existing Partial Denture	\$52/\$26*
D5660	Add Clasp to Existing Partial Denture	\$95
D5750	Reline Complete Maxillary Denture (Lab)	\$238
D5751	Reline Complete Mandibular Denture (Lab)	\$238
D5760	Reline Maxillary Partial Denture (Lab)	\$208
D5761	Reline Mandibular Partial Denture (Lab)	\$208

*The rate for each subsequent tooth in the same arc.

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

0403#061

RULE

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

Early and Periodic Screening, Diagnosis and Treatment Program? Personal Care and Extended and/or Multiple Daily Skilled Nursing Services
(LAC 50:XV.7501)

Editor's Note: LAC 50:XV.7501 was promulgated in the February 20, 2004 issue of the *Louisiana Register* on page 253 and is being repromulgated to correct typographical errors.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XV.Chapter 75 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis and Treatment

Chapter 75. Extended and/or Multiple Daily Skilled Nursing

§7501. Medically Fragile

A. A medically fragile individual is one who has a medically complex condition characterized by multiple, significant medical problems that require extended care. Medically fragile individuals require most or all of the following services/aids:

1. use of home monitoring equipment;
2. IV therapy;

3. ventilator or tracheotomy care;
4. feeding tube and nutritional support;
5. frequent respiratory care;
6. medication administration;
7. catheter care;
8. frequent positioning needs;
9. special accommodations such as specially equipped vehicles or medical devices in order to attend school.

B. Under the EPSDT Program, continuous nursing care by a registered nurse (RN) or a licensed practical nurse (LPN) may be provided to children up to age 21 who are considered "medically fragile." Children who meet the continuous care criteria, which must be prior authorized, may leave the home and have the nurse provide services in any setting other than a school or institutions such as a hospital, skilled nursing facility or intermediate care facility for the mentally retarded.

C. Medically fragile recipients meet the medical necessity criteria for extended and/or multiple daily skilled nursing services if the individual has received prior authorization for services in accordance with the certifying physician's orders that document and meet the following criteria:

1. the medical condition of the recipient meets the medical necessity requirement for skilled nursing services and the provision of these services in the home is the most appropriate level of medical care; and
2. failure to receive skilled nursing services in the home would place the recipient at risk of developing additional medical problems or could cause further debilitation; and
3. the recipient requires skilled nursing services on a regular basis and that these services cannot be obtained in an outpatient setting before or after normal school hours. Therefore, extended and/or multiple daily skilled nursing services may be provided to the recipient/student in the home before or after normal school hours.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:253 (February 2004), repromulgated LR 30:429 (March 2004).

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

0403#060

RULE

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

Home Health Services? Medical Necessity Criteria (LAC 50:XIX.Chapters 1-5)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XIX, Chapters 1-5 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50 PUBLIC HEALTH? MEDICAL ASSISTANCE Part XIX. Other Services Subpart 1. Home Health Chapter 1. General Provisions

§101. Definitions

A. The following words and terms, when used in this Subpart 1, shall have the following meanings, unless the context clearly indicates otherwise:

Home Health Aide Services? direct care services to assist in the treatment of the patient's illness or injury provided under the supervision of a registered nurse and in compliance with the standards of nursing practice governing delegation, including assistance with the activities of daily living such as mobility, transferring, walking, grooming, bathing, dressing or undressing, eating, or toileting.

Home Health Services? patient care services provided in the patient's home under the order of a physician that are necessary for the diagnosis and treatment of the patient's illness or injury, including one or more of the following services:

- a. skilled nursing;
- b. physical therapy;
- c. speech-language therapy;
- d. occupational therapy;
- e. home health aide services; or
- f. medical supplies, equipment and appliances

suitable for use in the home.

Note: Medical supplies, equipment and appliances for home health are reimbursed through the Durable Medical Equipment Program and must be prior authorized.

Occupational Therapy Services? medically prescribed treatment to improve or restore a function which has been impaired by illness or injury or, when the function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning.

Physical Therapy Services? rehabilitative services necessary for the treatment of the patient's illness or injury or, restoration and maintenance of function affected by the patient's illness or injury. These services are provided with the expectation, based on the physician's assessment of the patient's rehabilitative potential, that:

- a. the patient's condition will improve materially within a reasonable and generally predictable period of time; or
- b. the services are necessary for the establishment of a safe and effective maintenance program.

Skilled Nursing Services? nursing services provided on a part-time or intermittent basis by a registered nurse or licensed practical nurse that are necessary for the diagnosis and treatment of a patient's illness or injury. These services shall be consistent with:

- a. established Medicaid policy;
- b. the nature and severity of the recipient's illness or injury;
- c. the particular medical needs of the patient; and
- d. the accepted standards of medical and nursing practice.

Speech-Language Therapy Services? those services necessary for the diagnosis and treatment of speech and language disorders that result in communication disabilities,

and for the diagnosis and treatment of swallowing disorders (dysphagia), regardless of a communication disability.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:430 (March 2004).

§103. Requirements for Home Health Services

A. Home health services shall be based on an expectation that the care and services are medically reasonable and appropriate for the treatment of an illness or injury, and that the services can be performed adequately by the agency in the recipient's place of residence. A written plan of care for services shall be evaluated and signed by the physician every 60 days. This plan of care shall be maintained in the recipient's medical records by the home health agency.

B. Medicaid recipients who are linked to a CommunityCare primary care physician (PCP) must have a referral from the PCP for home health services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:431 (March 2004).

§105. Provider Responsibilities

A. Home health agencies must comply with the following requirements as condition for participation in the Medicaid Program.

1. The home health agency must provide to the bureau, upon request, the supporting documentation verifying that the recipient meets the medical necessity criteria for services.

2. Home health services shall be terminated when the goals outlined in the plan of care have been achieved, regardless of the number of days or visits that have been approved.

3. The home health agency must ensure that the family is instructed on a home maintenance exercise program which has been established by the treating physical therapist.

4. The home health agency shall discharge a patient once it has been determined that the patient or his/her legally responsible caregiver is noncompliant with the treatment regimen, keeping medical appointments and/or assisting with medication compliance and med-pack setups.

5. The home health agency must report complaints and suspected cases of abuse or neglect of a home health recipient to the appropriate authorities if the agency has knowledge that a minor child, a non-consenting adult or a mentally incompetent adult has been abused or is not receiving proper medical care due to neglect or lack of cooperation on the part of the legal guardians or caretakers. This includes knowledge that a recipient is routinely taken out of the home by a legal guardian or caretaker against medical advice or when it is obviously medically contraindicated.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:431 (March 2004).

Chapter 3. Medical Necessity

§301. General Provisions

A. Medical necessity for home health services is determined by the recipient's illness and/or injury and functional limitations. All home health services shall be medically reasonable and appropriate. To be considered medically reasonable and appropriate, the care must be necessary to prevent further deterioration of a recipient's condition regardless of whether the illness or injury is acute, chronic or terminal. The services must be reasonably determined to:

1. diagnose, cure, correct or ameliorate defects, physical and mental illnesses, and diagnosed conditions of the effects of such conditions; or

2. prevent the worsening of conditions, or the effects of conditions, that:

a. endanger life or cause pain;

b. result in illness or infirmity; or

c. have caused, or threatened to cause, a physical or mental dysfunction, impairment, disability, or developmental delay; or

3. effectively reduce the level of direct medical supervision required or reduce the level of medical care or services received in an inpatient or residential care setting; or

4. restore or improve physical or mental functionality, including developmental functioning, lost or delayed as the result of an illness, injury, or other diagnosed condition or the effects of the illness, injury or condition; or

5. provide assistance in gaining access to needed medical, social, educational and other services required to diagnose, treat, or support a diagnosed condition or the effects of the condition, in order that the recipient might attain or retain:

a. independence;

b. self-care;

c. dignity;

d. self-determination;

e. personal safety; and

f. integration into all natural family, community, and facility environments and activities.

B. Home health skilled nursing and aide services are considered medically reasonable and appropriate when the recipient's medical condition and medical records accurately justify the medical necessity for services to be provided in the recipient's home rather than in a physician's office, clinic, or other outpatient setting according to guidelines as stated in this Subpart.

C. Home health services are appropriate when a recipient's illness, injury, or disability causes significant medical hardship and would interfere with the effectiveness of the treatment if he/she had to go to a physician's office, clinic, or other outpatient setting for the needed service. Any statement on the plan of care regarding this medical hardship must be supported by the totality of the recipient's medical records.

D. The following circumstances are not considerations when determining medical necessity for home health services:

- a. inconvenience to the recipient or the recipient's family;
- b. lack of personal transportation; or
- c. failure or lack of cooperation by a recipient or a recipient's legal guardians or caretakers to obtain the required medical services in an outpatient setting.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:431 (March 2004).

§303. Provisions for Infants and Toddlers

A. For the purpose of this Subpart 1, *Infants or Toddlers* are defined as young children, up to age 3, who have not learned to ambulate without assistance.

B. Home health services are considered to be medically necessary for an infant or toddler when the primary care physician has advised against removing the infant or toddler from the home because it would:

- 1. place the infant or toddler at serious risk of infection;
- 2. greatly delay or hamper the recovery process;
- 3. cause significant further debilitation of an existing medical condition or physical infirmity;
- 4. seriously threaten to cause or aggravate a handicap or a physical deformity or malfunction;
- 5. cause great suffering or pain;
- 6. seriously endanger the well being of the infant or toddler; or
- 7. otherwise be considered medically contraindicated.

C. The following circumstances are not considered when determining the medical necessity of home health services for infants and toddlers:

- 1. the provision of services in the home is solely a matter of convenience;
- 2. a lack of personal transportation; or
- 3. failure or lack of cooperation by the child's legal guardian(s) to obtain the required medical services in an outpatient setting.

NOTE: The fact that an infant or toddler cannot ambulate or travel without assistance from another is not a factor in determining medical necessity for services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:432 (March 2004).

Chapter 5. Service Limitations

§501. Home Health Visits

A. Home health services are limited to 50 skilled nursing and/or aide visits per year, one service per day for recipients who are 21 years of age and older.

B. The service limitation of 50 skilled nursing and/or aide visits per year, one service per day is not applicable for recipients who are from birth up to the age of 21. However, home health services provided to recipients up to the age of 21 are subject to post-payment review in order to determine if the recipient's condition warrants high utilization.

C. The service limitation of 50 home health visits per year is not applicable for rehabilitation services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:432 (March 2004).

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

0403#063

RULE

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

Minimum Licensing Standards
End Stage Renal Disease Treatment Facilities? Licensing
(LAC 48:I.Chapter 84)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:I.Chapter 84 under the Medical Assistance Program as authorized by R.S. 36:254 and 40:2117.4. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the Rule governing the licensing of end stage renal disease treatment facilities/programs.

Title 48

PUBLIC HEALTH? GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 84. End Stage Renal Disease Treatment Facilities

Subchapter A. General Provisions

§8407. Survey

A. All surveys, except the initial licensing survey, shall be unannounced. This survey may be conducted with other agency personnel and/or personnel from other local, state or federal agencies. A survey of all aspects of the facility's operation is required prior to issuing a license.

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2193 (October 2002), amended LR 30:432 (March 2004).

§8409. Adverse Actions

A. DHH reserves the right to suspend, deny (initial or renewal), or revoke any license at the discretion of the secretary or his/her designee.

B. - D.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2194 (October 2002), amended LR 30:432 (March 2004).

Subchapter B. Facility Operations

§8429. Physical Plant Requirements

A. - F.4. ...

5. In facilities initially licensed after March 20, 2004, at least one window shall be provided in every treatment area.

F.6. - J.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2196 (October 2002), amended LR 30:432 (March 2004).

Subchapter C. Personnel

§8439. General Provisions

A. - B.2. ...

3. The facility must have formal written agreements with outside professionals or other entities retained to provide contract services. Written agreements shall express the responsibilities between the two parties, be signed by both parties and shall either be time-limited or remain in effect until either party terminates the agreement in writing.

C. - C.5.d.xiv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2197 (October 2002), amended LR 30:433 (March 2004).

§8443. Personnel Qualifications and Responsibilities

A. - C.1.c. ...

d. Repealed.

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

F. Social Worker

1. Qualifications. Currently licensed by the Louisiana State Board of Social Work Examiners as a Licensed Clinical Social Worker or certified by the board as either a graduate social worker (GSW) or provisional graduate social worker (provisional GSW).

F.2. - H.1. ...

2. At a minimum, each patient receiving dialysis in the facility shall be seen by a physician, physician's assistant, or advanced practice nurse at least once every 30 days; home patients shall be seen at least every three months. There shall be evidence of monthly assessment for new and recurrent problems and review of dialysis adequacy.

H.3. - H.4.c. ...

I. Patient Care Technician (PCT) or Dialysis Technician

1. Qualifications include basic general education (high school or equivalent) and dialysis training as specified in §8441.C.

2. Responsibilities include:

a. performing patient care duties only under the direct and on-site supervision of qualified registered nurses;

b. performing only those patient care duties that are approved by facility management and included in the policy and procedure manual; and

c. performing only those patient care duties for which they have been trained and are documented as competent to perform.

J. Reuse Technician

1. Qualifications. Basic general education (high school or equivalent), facility orientation program, and completion of education and training to include the following:

a. health and safety training, including universal precautions;

b. principles of reprocessing, including dangers to the patient;

c. procedures of reprocessing, including pre-cleaning, processing, storage, transporting, and delivery;

d. maintenance and safe use of equipment, supplies, and machines;

e. general principles of hemodialysis and in-depth information on dialyzer processing; and

f. competency certification on a biannual basis by a designated facility employee.

2. Responsibilities. The reuse technician is responsible for the transport, cleaning, processing, and storage of dialyzers to limit the possibility of cross contamination, and to avoid improper care of multiple use dialyzers.

3. Any technician or professional staff who performs reprocessing shall have documented training in the procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2198 (October 2002), amended LR 30:433 (March 2004).

Subchapter D. Patient Care

§8457. Treatment Services

A. - A.2. ...

B. In addition, the following services may be provided by a facility:

1. home training? home visits, teaching, and professional guidance to teach patients to provide self-dialysis;

2. home support? provision of professional support to assist the patient who is performing self-dialysis.

C. Dialyzer Reprocessing. Reuse shall meet the requirements of 42 CFR. §405.2150. Additionally, the facility shall:

1. develop, implement, and enforce procedures that eliminate or reduce the risk of patient care errors including, but not limited to, a patient receiving another patient's dialyzer, or a dialyzer that has failed performance checks;

2. develop procedures to communicate with staff and to respond immediately to market warnings, alerts, and recalls;

3. develop and utilize education programs that meet the needs of the patient and/or family members to make informed reuse decisions; and

4. be responsible for all facets of reprocessing, even if the facility participates in a centralized reprocessing program.

D. Water treatment shall be in accordance with the *American National Standard, Hemodialysis Systems* published by the Association for the Advancement of Medical Instrumentation (AAMI Standards) and adopted by reference 42 CFR. §405.2140.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2201 (October 2002), amended LR 30:433 (March 2004).

§8459. Treatment Requirements

A. - A.2.b. ...

c. written contracts with those patients who have a history of problems at other facilities, such as disruptive, threatening and abusive behavior to staff or other patients; and

A.2.d. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2201 (October 2002), amended LR 30:434 (March 2004).

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

0403#062

RULE

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

**Pregnant Women Extended Services? Dental Services
(LAC 50:XV.16101-16107)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XV.16101-16107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing the coverage of the dental services for pregnant women.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 13. Pregnant Women Extended Services

Chapter 161. Dental Services

§16101. Recipient Qualifications

A. In order to qualify for the dental services indicated below, a Medicaid eligible pregnant woman must be 21 years of age or older and certified for Medicaid as categorically eligible.

B. Pregnant women who are certified for Medicaid as Qualified Medicare Beneficiaries do not qualify for coverage of dental services unless these services are covered by Medicare.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:434 (March 2004).

§16103. Provider Responsibilities

A. The medical professional providing pregnancy care must complete the Referral for Pregnancy-Related Dental Services Form (BHSF Form 9M), including the expected date of delivery. The dental provider must obtain an original completed and signed BHSF 9M prior to the delivery of dental services. This form shall be kept on file at the treating dentist's office.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:434 (March 2004).

§16105. Covered Services

A. The following dental services are covered for Medicaid eligible pregnant women 21 years of age or older.

Description
Comprehensive Periodontal Evaluation – New or Established Patient
Intraoral - Periapical First Film
Intraoral - Periapical Each Additional Film
*Intraoral - Occlusal Film
Bitewings, Two Films
*Panoramic Film
Prophylaxis – Adult
* Amalgam, One Surface, Primary or Permanent
*Amalgam, Two Surfaces, Primary or Permanent
*Amalgam, Three Surfaces, Primary or Permanent
*Amalgam, Four or More Surfaces, Permanent
*Resin-based Composite, One Surface, Anterior
*Resin-based Composite, Two Surfaces, Anterior
*Resin-based Composite, Three Surfaces, Anterior
*Resin-based Composite, Four or More Surfaces or Involving Incisal Angle, Anterior
*Resin-based Composite Crown, Anterior
*Prefabricated Stainless Steel Crown, Permanent Tooth
*Prefabricated Resin Crown
*Pin Retention, Per Tooth, In Addition to Restoration
*Periodontal Scaling and Root Planing - Four or More Contiguous Teeth or Bounded Teeth Spaces Per Quadrant
*Full Mouth Debridement to Enable Comprehensive Evaluation and Diagnosis
Extraction, Erupted Tooth or Exposed Root (Elevation and/or Forceps Removal)
*Surgical Removal of Erupted Tooth Requiring Elevation of Mucoperiosteal Flap and Removal of Bone and/or Section of Tooth
*Removal of Impacted Tooth, Soft Tissue
*Removal of Impacted Tooth, Partially Bony

* Prior Authorization Required

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:434 (March 2004).

§16107. Reimbursement

A. Reimbursement for these services is a flat fee based on the fee schedule established by the bureau for the Early and Periodic Screening, Diagnosis and Treatment Program minus the amount which any third party coverage would pay.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:434 (March 2004).

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

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

0403#064

RULE

Office of the Governor Commission on Law Enforcement and Administration of Criminal Justice

POST Approved Shotgun Course (LAC 22:III.4725)

In accordance with the provision of R.S. 40:2401 et seq., the Peace Officer Standards and Training Act, and R.S. 49:950 et seq., the Administrative Procedure Act, the Commission on Law Enforcement and Administration of Criminal Justice has amended rules and regulations relative to the training of peace officers. The Peace Officers Standards and Training Council approved the Shotgun Course at its meeting on September 9, 2003.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part III. Commission on Law Enforcement and Administration of Criminal Justice

Subpart 4. Peace Officers

Chapter 47. Standards and Training

§4725. POST Approved Shotgun Course

A. Slug Phase. If rifled slugs are issued, the firearms instructor shall include the slug phase in the Basic Shotgun Course. Option one will always be used where a 50-yard shooting position is available.

1. Option One (50 yards)
a. The officer, using the assembly load method, will load two rifled slugs and take aim.
b. On command, the officer will fire one round from the shoulder in the standing position and one round in the kneeling position, from cover, with or without support. Time Limit: 15 seconds.

2. Option Two (25 yards)
a. The officer, using the assembly load method, will load two rifled slugs and take aim.
b. On command, the officer will fire one round from the shoulder in the standing position and one round from the kneeling position, from cover, with or without support. Time limit: 7 seconds.

3. Target: B-27 or P.O.S.T. qualification (P-1)
4. Scored: B-27: Hit inside eight ring scores five points; hit inside seven ring scores four points, hit inside black scores three points.

5. Scored: P.O.S.T. (P-1): Hit inside scoring ring scores five points, hit in the green scores four points.

B. Buckshot Phase. Recommend use of 9pellet "OO." Buckshot (may also be fired with any buckshot).

1. 25 Yards (five rounds buckshot)
a. On command, using the assembly load method, the officer will load two rounds of buckshot and come to "Ready Gun Position." Officer will have three additional rounds of buckshot on his/her person.

b. On command, officer will fire two rounds from the shoulder (standing), then using the combat load method, load and fire three rounds from the shoulder (kneeling). Total time: 35 seconds.

2. 15 Yards (five rounds buckshot)
a. Officer will start with five rounds of buckshot on their person and empty shotgun.
b. On command, the officer, using the combat load method, load five rounds of buckshot and fire two rounds from the shoulder (standing). Total time: 25 seconds.
c. Officer will then cover target.
d. On command, fire one round from the shoulder (standing). Total time: 2 seconds.
e. On command, fire one round from the shoulder (standing). Total time: 2 seconds.
f. On command, fire one round from the shoulder (standing). Total time: 2 seconds.
3. Target: B-27 or P.O.S.T. qualification (P-1).
4. Scoring: One point for hit on black of B-27 target or one point for hit on green of P-1 target.

5. Total score should equal 75 percent with or without the Slug Phase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 30:435 (March 2004).

Michael A. Ranatza
Executive Director

0403#049

RULE

Office of the Governor Division of Administration Office of Group Benefits

MCO Plan of Benefits? Lifetime Maximum Benefits (LAC 32:IX.701)

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2) vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate Rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the MCO plan document relative to lifetime maximum benefits to implement a one million dollar per person lifetime maximum for all benefits except pharmacy benefits. This action is necessary in order to maintain the financial integrity of the plan for the plan year beginning July 1, 2004, and in subsequent years.

Accordingly, OGB has adopted the following Rule to become effective July 1, 2004.

Title 32

EMPLOYEE BENEFITS

Part IX. Managed Care Option (MCO) Plan of Benefits Chapter 7. Schedule of Benefits MCO

§701. Comprehensive Medical Benefits

A. ...

1. Lifetime Maximum Benefits

a. Lifetime maximum for all benefits except pharmacy benefits (outpatient prescription drug benefits) per person	\$ 1,000,000
b. Lifetime maximum for all pharmacy benefits (outpatient prescription drug benefits) per person	\$ 250,000

A.2. - D.3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:901 (June 2003), amended LR 30:435 (March 20004).

A. Kip Wall
Chief Executive Officer

0403#019

RULE

**Office of the Governor
Used Motor Vehicle and Parts Commission**

Licensing Used Motor Vehicle Dealers
(LAC 46:V.2901, 2905, 4401 and 4403)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapters 4A and 4B, the Office of the Governor, Used Motor Vehicle and Parts Commission, has amended rules and regulations governing dealers to be licensed in accordance with R.S. 32:773, garage liability insurance policy in accordance with R.S. 32:774:I(1) and educational seminars in accordance with R.S. 32:774(B)(3)(b)(i)(ii)(iii)(iv).

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part V. Automotive Industry

Subpart 2. Used Motor Vehicle and Parts Commission

Chapter 29. Used Motor Vehicle Dealer

§2901. Dealers to be Licensed

A. ...

B. Dealers in new and used motor homes, new and used semi-trailers, new and used motorcycles, new and used all-terrain vehicles, new and used recreational trailers, new and used boat trailers, and new and used travel trailers, new and used boats, new and used boat motors, daily rentals not of current year or immediate prior year models that have been titled previously to an alternate purchaser, manufacturers and distributors and other types subject to certificate of title law and Title 32 and/or Vehicle Registration Tax Number under Title 47. All new and unused vehicle dealers and other dealers licensed by the Louisiana Used Motor Vehicle and Parts Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:773(B).

HISTORICAL NOTE: Promulgated by Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 24:1682 (September 1998), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission LR 30:436 (March 2004).

§2905. Qualifications and Eligibility for Licensure

A. The commission, in determining, the qualifications and eligibility of an applicant for a dealer's license, will base its determinations upon the following factors.

1 ...

2. All dealers are required to keep in force a garage liability insurance policy on all vehicles offered for sale or used in any other capacity in demonstrating or utilizing the streets and roadways in accordance with the financial responsibility laws of the state. For those dealers who, in addition to selling vehicles, conduct the business of daily vehicle rentals, a separate renter's policy must be in effect.

A.3. - D. ...

E. Dealers in new and used motor homes, new and used boats, new and used boat motors, new and used motorcycles, new and used all-terrain vehicles, new and used semi-trailers, new and used recreational trailers, new and used boat trailers, and new and used travel trailers, likewise must meet the above qualifications to be eligible and all these types license numbers will be prefixed by NM, followed by a four digit number then current year of license (NM-0000-98). Semi-trailers are described in the title law as every single vehicle without motive of power designed for carrying property and passengers and so designed in conjunction and used with a motor vehicle that some part of its own weight and that its own load rests or is carried by another vehicle and having one or more load carrying axles. This includes, of course, recreational trailers, boat trailers and travel trailers, but excludes mobile homes. One license shall be due for new and used operators at the same location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR11:1062 (November 1985), amended by Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), LR 15:375 (May 1989), LR 24:1682 (September 1998), LR 25:245 (February 1999), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 30:436 (March 2004).

Chapter 44. Educational Seminar

§4401. Required Attendance

A. On or after January 1, 2005, every applicant for a used motor vehicle dealer's license must attend a four-hour educational seminar approved and conducted by the Used Motor Vehicle and Parts Commission.

1. - 3. ...

4. Any dealers who are found guilty of violations of commission laws and/or rules and regulations will be required to attend.

5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:774B.(3)(b)(i)-(iv).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 23:2351 (November 2002), amended LR 30:436 (March 2004).

§4403. Certification

A. Upon applying for a 2005 used motor vehicle dealer's license, the applicant must attach a copy of the certificate of completion which documents that the dealership's general manager, office manager, title clerk, or other responsible representative of the dealership has attended the four-hour educational seminar. If the applicant has not completed the

educational seminar, he must provide evidence that he has registered to attend such seminar within 60 days after issuance of the license.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:774.B (3)(b)(i).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 23:2351 (November 2002), amended LR 30:436 (March 2004).

John M. Torrance
Executive Director

0403#036

RULE

Department of Natural Resources Office of Conservation

Statewide Order No. 29-L-3? Termination of Units (LAC 43:XIX.3101, 3103, and 3105)

Editor's Note: LAC 43:XIX.3101, 3103, and 3105 were promulgated in the February 20, 2003 issue of the *Louisiana Register* on pages 255-257 and are being repromulgated to correct typographical errors.

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, R.S. 4.C, the Louisiana Office of Conservation has amended an existing Rule, Statewide Order No. 29-L-2 (LAC 43:XIX.3101, 3103, and 3105). The Rule concerns the terminations of oil and gas unit(s) for a pool established by the commissioner of conservation. The amended Rule will allow the termination of any unit or units for a pool provided each of the items listed below apply as of the date the application is filed with the commissioner.

1. A period of five years has elapsed without any production from the unit or units.
2. There is no well located on the unit which is capable of producing from the pool for which the unit or units is established.
3. A period of a year and 90 days has elapsed without any drilling, reworking, recompletion, plugging back, or deepening operations having been conducted on a well located on the unit in an attempt to obtain or restore production from the pool for which the unit or units were established.
4. There is no unexpired drilling permit for the drilling of a new well on the unit to a depth which would penetrate the pool for which the unit or units were established.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation? General Operations

Subpart 13. Statewide Order No. 29-L-3

Chapter 31. Termination of Units

§3101. Scope

A. This order establishes rules and regulations for termination of any unit established by the commissioner of conservation pursuant to the authority of Title 30 of the Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with RS. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 15:741 (September 1989), repromulgated LR 19:776 (June 1993), amended LR 21:1083 (October 1995), LR 30:255 (February 2004), repromulgated LR 30:437 (March 2004).

§3103. Definitions

A. Unless the context otherwise requires, the words defined in this Section shall have the following meaning when found in this order.

District Manager? the manager of any one of the districts of the state of Louisiana under the Office of Conservation, and refers specifically to the manager within whose district the *pool* for which any *unit(s)* are sought to be terminated are located.

Interested Party? any person, as person is defined in Title 30 of the Revised Statutes of 1950, who owns an interest in any *unit(s)* sought to be terminated.

Pool? an underground reservoir containing a common accumulation of crude petroleum or natural gas or both. Each zone of a general structure which is completely separated from any other zone in the structure is covered by the term *pool*.

Unit? any *unit(s)*, whether one or more, established for a particular *pool*, by order of the commissioner of conservation pursuant to authority of Subsection B of Section 9 or Subsection B or C of Section 5 of Title 30 of the Revised Statutes of 1950.

Well? all *wells* drilled within the confines of any *unit(s)* sought to be terminated.

AUTHORITY NOTE: Promulgated in accordance with RS.30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 15:741 (September 1989), repromulgated LR 19:776 (June 1993), amended LR 21:1083 (October 1995), LR 30:255 (February 2004), repromulgated LR 30:437 (March 2004).

§3105. Order

A. Termination of All Existing Units for a Pool

1. On and after the effective date hereof, a supplemental order terminating all existing units established by the commissioner for a pool may be issued after written application and upon proper showing in the manner provided herein, and in the absence of protest without the necessity of a public hearing, when with respect to the pool for which the unit was established, a period of one year and 90 days has elapsed without:

- a. production from the pool; and
- b. the existence of a well proven capable of producing from the pool; and
- c. drilling, reworking, recompletion, deepening or plugging back operations having been conducted on a well to secure or restore production from the pool.

2. Each application for unit termination shall be filed with the commissioner with a copy to the district manager and each interested party. Interested parties need not be furnished information described in §3105.A.2.b, d and e. The application shall include the following:

- a. a plat showing all existing units established for the pool, with each well located thereon, together with order number(s) and effective date of the order(s) of the commissioner establishing said units. Each well shall be

identified on such plat by operator of record, serial number and well name and number or by reference to an appropriate attachment;

b. a signed statement indicating the status of each well. Should there exist a well which has not been plugged and abandoned in accordance with LAC 43:XIX.137, sufficient geological, engineering, or other data with detailed explanation thereof to clearly demonstrate that said well is not capable of producing from the pool;

c. a signed statement indicating that with respect to the pool for which the unit was established, to the best of applicant's knowledge, a period of one year and 90 days has elapsed without:

i. production from the pool; and
ii. the existence of a well proven capable of producing from the pool; and

iii. drilling, reworking, recompletion, deepening or plugging back operations having been conducted on a well to secure or restore production from the pool;

d. a list of all interested parties identified by the applicant after reasonable search to whom a copy of the application has been sent;

e. an application fee as established by LAC 43:XIX.201 et seq.

3. Notice of the filing of the application of unit termination shall be published in the official journal of the state of Louisiana giving notice that unless a written protest is filed with the commissioner within the 30-day period from the date of publication of notice, the commissioner may issue a supplemental order for such unit termination. In the event written objection is filed within said 30-day period, the applicant may apply for a public hearing for consideration of the application.

4. In the event that production from the pool is subsequently reestablished from an existing well which was deemed not capable of producing from the pool as of the effective date of unit termination, the operator of record of such well shall immediately apply to the commissioner for a public hearing, after 30-day legal notice, to consider evidence concerning whether the previously existing unit on which the well is located should be reestablished for such well.

B. Termination of Any Existing Unit for a Pool

1. On and after the effective date hereof, a supplemental order terminating any existing unit(s) established by the commissioner for a pool may be issued after written application and upon proper showing in the manner provided herein, and in the absence of protest without the necessity of a public hearing, when with respect to the unit(s) to be terminated, each of the following apply as of the date the application for unit termination is filed with the commissioner:

a. a period of five years has elapsed without any production from the unit(s); and

b. there is no well located on the unit(s) which is capable of producing from the pool for which the unit(s) was established; and

c. a period of one year and 90 days has elapsed without any drilling, reworking, recompletion, deepening or plugging back operations having been conducted on a well located on the unit(s) to be terminated in an attempt to

secure or restore production from the pool for which the unit(s) was established.

2. Each application for unit termination shall be filed with the commissioner with a copy to the district manager and each interested party. Interested parties need not be furnished information described in §3105.B.2.b, d and e. The application shall include the following:

a. a plat showing the existing unit(s) to be terminated, with each well located thereon, together with order number and effective date of the order of the commissioner establishing said unit(s). Each well shall be identified on such plat by operator of record, serial number and well name and number or by reference to an appropriate attachment;

b. a signed statement indicating the status of each well. Should there exist a well which has not been plugged and abandoned in accordance with LAC 43:XIX.137, sufficient geological, engineering, or other data with detailed explanation thereof to clearly demonstrate that said well located on the unit(s) is not capable of producing from the pool for which the unit(s) was created;

c. a signed statement indicating that with respect to the unit(s) to be terminated, to the best of applicant's knowledge, each of the following apply as of the date the application for unit termination is filed with the commissioner:

i. a period of five years has elapsed without any production from the unit(s); and

ii. there is no well located on the unit(s) to be terminated which is capable of producing from the pool for which the unit(s) was established; and

iii. a period of one year and 90 days has elapsed without any drilling, reworking, recompletion, deepening or plugging back operations having been conducted on a well located on the unit(s) in an attempt to secure or restore production from the pool for which the unit(s) was established; and

iv. there is no unexpired drilling permit for the drilling of a new well on the unit(s) to be terminated to a depth which would penetrate the pool for which the unit(s) was established;

d. a list of all interested parties identified by the applicant after reasonable search to whom a copy of the application has been sent;

e. an application fee as established by LAC 43:XIX.201 et seq.

3. Notice of the filing of the application of unit termination shall be published in the official journal of the state of Louisiana giving notice that unless a written protest is filed with the commissioner within the 30-day period from the date of publication of notice, the commissioner may issue a supplemental order for such unit termination. In the event written objection is filed within said 30-day period, the applicant may apply for a public hearing for consideration of the application.

C. The effective date of any supplemental order issued hereunder can not be prior to the expiration of the legal advertisement period, reference §3105.A.3 and §3105.B.3 hereof. Consequently, any activity described in §3105.A.1 and §3105.B.1 hereof, occurring between the date of the signed statement, reference §3105.A.2.c and §3105.B.2.c

hereof and the expiration of the legal advertisement period, shall result in application denial.

D. Any supplemental order issued hereunder approving the application terminating any unit(s) created for the pool shall be filed for record as provided in Section 11.1 of Title 30 of the Revised Statutes of 1950.

E. This order supersedes Statewide Order Number 29-L-2 and shall be effective on and after February 20, 2004.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 15:741 (September 1989), amended LR 19:776 (June 1993), repromulgated LR 19:1030 (August 1993), amended LR 21:1083 (October 1995), LR 30:255 (February 2004), repromulgated LR 30:437 (March 2004).

James H. Welsh
Commissioner

0403#071

RULE

Department of Public Safety and Corrections Gaming Control Board

Video Draw Poker (LAC 42:XI.Chapter 24)

Editor's Note: This Rule is being repromulgated for renumbering. The original Rule may be viewed in the February 20, 2004 edition of the *Louisiana Register* on pages 266-270.

The Louisiana Gaming Control Board has amended LAC 42:XI.2403, 2405, 2407, 2409, 2411, 2413, 2417, 2419, and 2421 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42 LOUISIANA GAMING Part XI. Video Poker

Chapter 24. Video Draw Poker

§2403. Definitions

A. The provisions of the Louisiana Video Draw Poker Devices Control Law relating to the definitions of words, terms, and phrases are hereby incorporated by reference and made a part hereof, and shall apply and govern the interpretation of these regulations, except as otherwise specifically declared or as is clearly apparent from the context of the regulations herein. The following words, terms, and phrases shall have the ascribed meaning indicated below.

* * *

Applicant? the person who has completed an application to the division for a license or permit to participate in the video gaming industry in Louisiana.

Application? the process by which a person requests a license or permit, or the renewal of a license or permit, for participation in the video gaming industry in Louisiana.

* * *

Permittee? for purposes of these Rules, shall have the same meaning as *video draw poker employee* as provided in R.S. 27:301.

* * *

Warehouse? a secure and limited access structure or room, approved by the division, utilized for the storage of video gaming devices and/or their components.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:266 (February 2004), repromulgated LR 30:439 (March 2004).

§2405. Application and License

A. Initial and Renewal Applications

1. All applications for a license shall be submitted on forms provided by the division and mailed to an address provided by the division.

2. An application is not complete nor is it considered filed with the division unless it is submitted with the appropriate fee, is signed by the applicant, and contains all information required by the division.

3. All new applications or renewals shall be submitted to the division via delivery by the United States Postal Service certified or registered mail, return receipt requested or a private or commercial interstate carrier.

4. All applicants for a license shall comply with the disclosure provisions of R.S. 27:306.B. In addition, all applicants shall be required to disclose any violation of an administrative regulation from any jurisdiction.

5. All licensed establishment applications submitted to the division shall be for an existing and operating business.

6. All applications, except for a manufacturer's application, shall include an accurate sketch of the interior of the facility, and the proposed location of all video gaming devices to be located therein. In addition, the sketch shall include all grounds and parking areas.

7. All applications shall include the name of the owner(s) of the premises on which the establishment is located.

8. All renewal applications, shall be submitted in completed form, including a Louisiana State Tax Clearance Certificate. Out-of-state manufacturers shall not be required to submit a Louisiana State Tax Clearance Certificate.

9. All applicants shall provide all additional information requested by the division. If applicants fail to provide all additional information requested by the division, the application shall be considered incomplete.

10. All applications are to contain a properly notarized oath wherein the applicant states that:

a. the information contained therein is true and correct;

b. the applicant has read the act and these rules, and any other informational materials supplied by the division that pertain to video gaming; and

c. the applicant agrees to comply with these rules and the act.

11. All applications shall contain a telephone number and permanent mailing address for receipt of correspondence and service of documents by the division.

12. Incomplete applications, including failure to pay fees may result in a delay or denial of a license.

13. The applicant shall notify the division in writing of all changes of address, phone numbers, personnel, and other required information in the application within 10 business days of the effective date of the change.

14. An application shall be denied if an applicant has been convicted in any jurisdiction for any of the following offenses within the 10 years prior to the date of the application, and at least 10 years has not elapsed between the date of application and the successful completion of any service of a sentence, deferred adjudication, or period of probation or parole for any of the following:

- a. any offense punishable by imprisonment for more than one year;
- b. theft or any crime involving false statements or declaration; or
- c. gambling as defined by the laws or ordinances of any municipality, parish (county), or state, the United States, or any similar offense in any other jurisdiction.

15. Any false statement, including improperly notarized documents, contained in any report, disclosure, application, permit form, or any other document required by this Section shall be a violation of these rules and the act.

B. Requirements for Licensing

1.a. No person shall be granted a license, and no license shall be renewed unless the applicant demonstrates to the division that he is suitable for licensing, and thereafter continues to maintain suitability, as provided in the act.

b. All applicants for a license and licensees shall be current in filing all applicable tax returns and in the payment of all taxes, interest and penalties owed to all appropriate local taxing authorities, the state of Louisiana and the Internal Revenue Service, excluding contested amounts pursuant to applicable statutes, and excluding items for which the Department of Revenue and Taxation and the Internal Revenue Service have accepted a payment schedule of back taxes.

2. Once a gaming license has been issued by the division, the license shall be conspicuously displayed by the licensee in his place of business so that it can be easily seen and read by the public.

3.a. Beginning with licenses renewed or issued after August 15, 1999, licenses to operate video draw poker devices shall expire as follows.

- i. Licenses with a last digit of 1 or 2 in the license number shall expire on June 30, 2005.
- ii. Licenses with a last digit of 3 or 4 in the license number shall expire on June 30, 2001.
- iii. Licenses with a last digit of 5 or 6 in the license number shall expire on June 30, 2002.
- iv. Licenses with a last digit of 7 or 8 in the license number shall expire on June 30, 2003.
- v. Licenses with a last digit of 9 or 0 in the license number shall expire on June 30, 2004.

b. Beginning on July 1, 2004, all licenses shall have a term of five years from the date of issuance.

c. If a licensee fails to file a complete renewal application on or before forty five days prior to the license expiration date, the division may assess a civil penalty of \$250 for the first violation, \$500 for the second violation and \$1000 for the third violation.

4.a. The appropriate annual fee shall be paid by all licensees regardless of the expiration date of the license on or before July 1 of each year.

b. Proof of current tax filings and payments, including tax clearance certificates from the state and all appropriate local taxing authorities shall be submitted to the

division along with the annual fee as provided in Subparagraph B.4.a. no later than July 1 of each year.

5. All nonrefundable fees required for application/renewal and any administrative fines or penalties shall be made payable to the Department of Public Safety and Corrections and remitted to an address provided by the division.

6. Upon discovery, hidden ownership, whether by counter letter or other device or agreement, whether oral or written, shall constitute grounds for immediate suspension, revocation or denial of a license or application. Therefore, if there is more than one owner, applicants and licensees shall disclose full ownership of a company so that the aggregate of percentages of individual ownership total 100 percent, regardless of the percentage of individual ownership.

7. All licensees shall attend all hearings, meetings, seminars and training sessions required by the division. The division shall not be responsible for any costs incurred by the licensees.

8. All licensees shall maintain compliance with all applicable federal gambling law requirements, including any registration required by the provisions of Chapter 24 of Title 15 of the United States Code (§1171 et seq.), which govern the transportation of gambling devices.

9.a. All licensees shall continue to operate the business described in the application during the term of the license. In the event either the business or the video draw poker devices at the location are not in operation for a period of 30 consecutive calendar days during which the business would normally operate, the licensee and device owner shall immediately notify the division of such fact and the licensee shall immediately surrender its license to the board or division.

b. If surrendered in accordance with §2405.B.9.a, no gaming activities may be conducted at the premises unless and until the license is returned to the licensee.

c. The license may be returned to the licensee when business operations are resumed for the unexpired term of the license provided that the license has not been revoked and is not under suspension and further provided that no more than 180 days has elapsed from the date the license was surrendered.

d. Licenses surrendered in accordance with §2405.B.9.a shall not be subject to renewal unless the license has been returned to the licensee.

e. Failure to surrender the license as provided in §2405.B.9.a shall constitute grounds for revocation or suspension of the license.

C. Parish or Municipal Licenses

1. Prior to obtaining a video gaming license, all applicable parish and/or municipal occupational and alcohol beverage control licenses required for a facility to operate within said parish or municipality shall be current and valid.

2. All fees required to secure the aforementioned licenses shall be paid prior to the division issuing a license for video gaming.

D. Change of Ownership of Licensed Establishment

1. If a change in ownership of a licensed establishment occurs, the division shall be notified, in writing within five days, of the act of sale or transfer.

2. When a licensed establishment which requires an alcoholic beverage license as a condition of the receipt of a

video gaming license is sold or transferred, the devices shall be allowed to continue to operate under the old license if:

a. the new owner applies for a state Class "A" general retail or restaurant alcohol permit within 15 days of the act of sale or transfer; and

b. upon issuance of a state Class "A" general retail or restaurant alcohol permit, the new owner applies for a video gaming license within 15 days of said issuance.

3. The devices shall only be allowed to continue in operation under the old license until:

a. the issuance of a video draw poker license in the name of the new owner;

b. a determination by the division that the new applicant is unsuitable;

c. denial of the new license application; or

d. the passage of 180 days from submission of the application to the division.

4. The new owner shall provide, at the time of application to the division, a certified copy of the act of sale or transfer, a copy of all appropriate documentation which indicates the date the licensed establishment began the Alcohol and Tobacco Control Commission application process, and a copy of the permit issued by the Alcohol and Tobacco Control Commission.

5. If any of the documents required by this Section are not submitted with the new owner's application, the division may immediately disable the devices.

6. If the 180-day period has elapsed prior to the issuance of a new video gaming license, the devices shall be disabled and the device owner shall immediately make arrangements to remove and transfer the devices from the formerly licensed establishment.

7. Upon the issuance of a license to a new owner or the passage of 180 days, whichever occurs first, the license issued to the prior owner shall expire and be surrendered to the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:85 (January 1999), LR 27:205 (February 2001), LR 30:267 (February 2004), repromulgated LR 30:439 (March 2004).

§2407. Operation of Video Draw Poker Devices

A. Responsibilities of Licensees

1. The licensee or a designated representative of the licensed establishment shall be required to be physically present and available within the licensed establishment at all times during all hours of operation; shall ensure that the devices are not tampered with, abused, or altered in any way; and shall prevent the play of video draw poker devices by persons under the age of 21 and prevent access to the gaming area by persons under the age of 18. The penalty for violation of this subsection shall be \$250 for the first offense, \$500 for the second offense, and \$1,000 for the third offense. The penalty for fourth and subsequent offenses shall be administrative action, including, but not limited to, suspension or revocation.

2. Licensees and employees of a licensee shall not loan money, extend credit, or provide any financial assistance to patrons for use in video gaming activities.

3. Licensees and employees of a licensee shall not permit any person who appears to be intoxicated to participate in the play of the video devices.

4. All licensees shall supervise all employees to ensure compliance with the laws and regulations relating to the operation of video gaming devices.

5. All licensees or an employee of a licensee shall, upon demand of the player, pay all monies owed as shown on a valid ticket voucher.

6. All licensees shall be responsible for the proper placement and installment of devices within a licensed establishment as prescribed by these rules.

7. Licensees shall advise the division of any device malfunction that has not been rectified by the device owner, within 24 hours after the device owner or service entity has been notified, or before the end of the next business day.

8. Licensees shall not advertise or participate in any promotion or scheme which is contingent upon the play of a video gaming device and which results in an enhanced payoff other than that set by the internal mechanism of the video gaming device as established by the act.

9. All keys to all devices shall be secured and available upon request by the division.

10. All licensees shall provide a separate voice grade telephone line which shall provide exclusive, continuous capabilities, for the division, to access licensed devices. Any device that loses telephone line service for any reason within the control of the licensee, shall constitute a violation of these rules. Such violations shall include, but not be limited to:

a. the loss of service due to delinquent or nonpayment of telephone service;

b. the internal disruption of service resulting from tampering with the communications link;

c. the internal disruption of service generated by a request to the phone company to disconnect service; or

d. any other method of interference with normal telephone service.

11. Licensees shall not allow a device to be played unless connected to the required telephone line service and the division's central computer system.

12. All licensees shall post signs on the premises of a licensed establishment which admits mixed patronage that restricts the play of video draw poker devices by persons under the age of 21 and restricts the access to areas where gaming is conducted by persons under the age of 18.

a. The signs shall be placed at the entrances to device areas with lettering at least 3 inches in height stating that there are gaming devices inside, no one under 18 allowed in gaming area, and no one under the age of 21 allowed to play gaming devices.

13. All licensees shall maintain a readily accessible and current copy of the rules and regulations contained in this Chapter at their licensed establishments.

14. All licensees shall post one or more signs at points of entry to the gaming area to inform customers of the toll-free telephone number available to provide information and referral services regarding compulsive or problem gambling. The toll-free numbers shall be provided by the division. The penalty for violation of this subsection shall be \$250 per day for the first offense, \$500 per day for the second offense and \$1000 per day for the third offense. The penalty for fourth

and subsequent offenses shall be \$1000 per day or administrative action including but not limited to suspension or revocation.

B. Video Draw Poker Employees and Permits

1. The division shall issue a video draw poker employee permit to persons determined to be suitable pursuant to the provisions of the Act and Rules adopted by the Louisiana Gaming Control Board pursuant to the Administrative Procedure Act.

2. All video draw poker employees shall possess a valid video draw poker employee permit in addition to a valid state issued driver's license, identification card or United States military identification card. The penalty for violation of this subsection shall be \$25 for the first offense, \$50 for the second offense, and \$75 for the third offense. The penalty for fourth and subsequent offenses shall be administrative action, including, but not limited to, suspension or revocation of the permit.

3. All video draw poker employee applications must be submitted on forms prescribed by the Louisiana Gaming Control Board.

a. All applications shall be submitted to the division via delivery by the United States Postal Service certified or registered mail, return receipt requested, or a commercial interstate carrier.

b. All applications shall contain a telephone number and permanent address for receipt of correspondence and service of documents by the division.

c. All video draw poker employees shall submit a renewal application to the division at least sixty days prior to expiration of their permit to avoid a lapse in their ability to work as video draw poker employees.

4. All applicants shall provide all additional information requested by the division. If applicants fail to provide all additional information requested by the division, the application shall be denied.

5. All video draw poker employees or applicants shall notify the division in writing of all changes of address, phone numbers, and other required information in the application within 10 calendar days of the effective date of the change.

6. No person shall be granted a permit and no permit will be renewed unless the applicant demonstrates to the division that he is suitable for permitting and thereafter continues to maintain suitability, as provided in the Act.

7. All applicants and video draw poker employees shall attend all hearings, meetings, seminars, and training sessions required by the division. The division shall not be responsible for any cost incurred by the applicants and/or video draw poker employees.

8. Permittees employed as a designated representative shall have the ability to locate all records and documents of the licensed establishment and possess the knowledge of all day to day operations of the licensed establishment.

9. All video draw poker employees shall have knowledge of these Rules and the provisions of the act.

C. Payment of Prizes

1. An employee shall be available during all hours of operation to redeem valid ticket vouchers. All valid ticket vouchers shall be paid when presented. In addition:

a. ticket vouchers shall be redeemed for cash only;

b. ticket vouchers shall be redeemed only at licensed establishments where the ticket voucher was printed;

c. ticket vouchers shall be redeemed during the normal operating hours of the licensed establishment unless otherwise authorized by the division;

d. neither the division nor the state of Louisiana is responsible for any device malfunction that causes prizes to be wrongfully awarded or denied to any player;

e. the phrase "ANY MALFUNCTION VOIDS ALL PLAYS AND PAYS" shall be conspicuously displayed on the face of all licensed devices; and

f. failure to make timely payments as required shall be grounds for the suspension or revocation of the license, or assessment of a civil penalty.

2. The payment for prizes awarded by a video gaming device may be withheld if the ticket voucher printed by that device is:

a. mutilated, altered, unreadable, or tampered with in any manner;

b. falsified or counterfeited in any way;

c. created by a device malfunction;

d. not fully legible; or

e. presented for payment at the licensed establishment by a person not authorized to operate the devices.

D. Advertising

1. Except for a uniform logo which has been adopted by the division, no other advertising of video gaming activities shall be displayed anywhere on the exterior of any licensed establishment. In addition:

a. duplication of the uniform logo shall be identical to the design and colors of the approved uniform logo;

b. the size of the uniform logo shall not exceed 6 feet in height and 6 feet in width; and

c. the uniform logo may be displayed alone or in conjunction with advertisement by the licensed establishment of other activities that do not pertain to video gaming.

2. For purposes of advertising prohibitions, a licensed establishment which is a qualified truck stop facility shall include the entire area which comprises the qualified truck stop facility.

3. The logo format may be obtained for duplication by all licensed establishments from their respective device owners.

4. The division shall enforce the prohibition of all other video gaming advertising on a licensed premises that is not permitted by these rules or the act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:85 (January 1999), LR 27:205 (February 2001), LR 30:267 (February 2004), repromulgated LR 30:441 (March 2004).

§2409. Revenues

A. License Fees

1. Upon application, a nonrefundable annual fee as listed below shall be paid by each applicant:

- a. manufacturer, as provided in R.S. 27:311.A(1)
 - b. distributor, as provided in R.S. 27:311.A(2)
 - c. service entity, as provided in R.S. 27:311.A(3);
 - d. device owner, as provided in R.S. 27:311.A(4);
- and
- e. licensed establishment, as provided in R.S. 27:311.A(6).

2. All appropriate license fees shall accompany the initial/renewal application.

3. All licensees shall pay their license fee(s) for the year in a single payment.

4. All license fees shall be paid by personal, company, certified, or cashier's check, money order, or electronic funds transfer. If a personal or company check is returned, the applicant's license shall not be issued.

B. Device Operation Fees

1. A nonrefundable annual device operation fee shall be paid by the device owner for each video gaming device placed at a licensed establishment.

2. The division shall prorate the device operation fee that is required for each enabled video gaming device on a quarterly basis in accordance with the following schedule of dates of enrollment. For devices enrolled:

- a. July 1 through September 30, the whole operation fee is due;
- b. October 1 through December 31, three quarters of the operation fee is due;
- c. January 1 through March 31, one half of the operation fee is due;
- d. April 1 through June 30, one quarter of the operation fee is due.

3. The annual device operation fee may be paid in quarterly installments as prescribed by the Act.

4. If the device operation fee is to be paid in quarterly installments, after payment of the initial enrollment fee, subsequent payments are to be made by electronic funds transfer and are due on the first sweep of each quarter.

5. Any payments received after the tenth day of the beginning of each quarter shall constitute a violation of this Section and be subject to an interest penalty of 0.000575 per day (21 percent per annum).

6. The annual device operation fees are as follows:

- a. a restaurant, bar, tavern, cocktail lounge, club, motel, or hotel, as provided in R.S. 27:311.A(5)(a);
- b. a Louisiana State Racing Commission licensed pari-mutuel wagering facility, as provided in R.S. 27:311.A(5)(b)(i);
- c. a Louisiana State Racing Commission licensed offtrack wagering facility, as provided in R.S. 27:311.A(5)(b)(ii);
- d. a qualified truck stop facility, as provided in R.S. 27:311.A(5)(c).

C. Franchise Payments

1. All device owners shall remit to the division a franchise payment as provided for by the act. Franchise payments shall be calculated based upon the net device revenue, as verified by the electronic (soft) meters of the device. Revenues received from franchise payments shall be electronically transferred to the designated bank of the state treasurer.

2. All device owners shall establish and maintain a single bank account exclusively for the electronic funds

transfer (sweep) of franchise payments to the designated bank of the state treasurer.

a. The payments shall be transferred electronically into the designated bank of the state treasurer semi-monthly or as otherwise prescribed by the division. Licensees shall authorize the division to initiate these transfers.

b. The funds shall be electronically transferred (swept) no later than the tenth day after the fifteenth and last day of every month. Any account found with insufficient funds shall constitute a violation of this Section.

c. Electronic funds transfers shall be calculated based upon device polling from the first through the fifteenth, and the sixteenth through the last day of every month.

d. Any delinquent monies not forwarded to the bank designated by the state treasurer by electronic funds transfers at the time of the transfer shall be subject to an interest penalty of 0.000575 per day (21 percent per annum). The interest penalty shall be in addition to any other penalties imposed by the division.

3. A device owner who has a nonsufficient fund return within the past three years shall be required to maintain a minimum balance at all times in the video gaming sweep account, or the account shall at all times be secured by a line of credit or bond issued by a bank or security company acceptable to the state treasurer. For purposes of this rule the term "bond" shall include cash, cash equivalent instruments or such other instruments as the division determines provide immediate liquidity.

a. The minimum balance and the security shall be equivalent to at least 15 percent of the previous month's net device revenues of all video gaming devices of the device owner.

b. No withdrawals at any time from the device owner's video gaming account, including electronic funds transfers, shall cause the account balance to be less than the minimum balance requirement prescribed above.

4. All licensed device owners shall be liable for that portion of net device revenues from such times as the funds are received into the device until said funds are deposited into the designated bank of the state treasurer.

D. Supplemental Purses for Horsemen

1. Forms provided by the division shall be used to record amounts earned for purse supplements and shall be filed with the division, the Horsemen's Benevolent and Protective Association, and the Louisiana State Racing Commission by the twentieth day of every month.

2. The division may at all times oversee any and all operations pertaining to video gaming and may review and/or audit any account or fund used for receipt and/or disbursement of any of the aforementioned income.

E. Authority to Audit Records

1. If there is a discrepancy between the electronic (soft) and mechanical (hard) meter accounting devices, an audit may be performed.

2. In the event of an audit, all records requested by the division shall be made readily available. These records shall include, but not be limited to:

- a. audit tapes;
- b. collection reports;
- c. bank statements;
- d. canceled checks;

- e. deposit slips;
- f. lease agreements;
- g. access log books; and
- h. any other records of gaming activity that are necessary for the completion of the audit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:268 (February 2004), repromulgated LR 30:442 (March 2004).

§2411. Regulatory, Communication, and Reporting Responsibilities

A. General Provisions

1. For purposes of this Section quarters of the year are defined as follows:

- a. first quarter shall be July 1-September 30;
- b. second quarter shall be October 1-December 31;
- c. third quarter shall be January 1-March 31; and
- d. fourth quarter shall be April 1-June 30.

2. For purposes of this Section, business days are defined as Monday through Friday, not including state or federal holidays.

3. Semi-annual reports, if required, shall be postmarked no later than the last business day of July for the reporting period of January through June and no later than the last business day of January for the reporting period of July through December.

4. Quarterly reports, if required, shall be postmarked no later than the fifteenth day of the first month following the end of the quarter for which they are required.

5. Monthly reports, if required, shall be postmarked no later than the tenth day of the first month following the end of the month for which they are required.

6. Any semi-annual, quarterly, or monthly report that is requested by the division which is either postmarked later than the date required by these regulations, or inaccurate or incomplete shall constitute a violation of these rules.

7. All licensees shall retain all records for a period of three years, except that licensed manufacturers shall maintain all records for a period of five years.

8. Any licensee who seeks to surrender his license and cease participation in video gaming shall surrender his license to the division, and if requested, shall also provide copies to the division of all of the licensee's records pertaining to video gaming activities.

9. All licensees shall maintain all required records, submit all required reports, and keep the division currently informed, in writing, of any changes which could affect the status of any records, reports, or gaming devices.

10. All licensees shall keep and maintain the following records:

- a. all video gaming bank account documents and other related financial documents; and
- b. all business documents of the licensee including, but not limited to records of:
 - i. employee salary payments and hours worked;
 - ii. all federal, state, and local taxes paid;
 - iii. all contracts and/or subcontracts that exist with the licensed business; and

iv. if applicable, certified technician training records of employees.

11. Except as otherwise provided in these regulations and the act, all licensees, upon divesting or selling a licensed entity, shall surrender their video gaming license to the division within 10 business days of the effective date of the change of ownership.

12. All licensed manufacturers and distributors shall maintain a current record of devices received, devices sold, and devices in inventory, and if requested, must provide this information to the division.

13. All licensed manufacturers and distributors shall develop and provide to all licensed device owners and licensed service entities, a division approved program to train and certify technicians. In addition, all licensed manufacturers and distributors shall award certification to authorized service personnel, and maintain all training records and certificate awards, which shall be provided to the division upon request.

14. All licensed manufacturers and distributors shall provide the division with a current list of authorized service entities and other personnel that they have certified. The list, which shall be updated and provided quarterly in a format specified by the division, shall include, but not be limited to, the following information:

- a. name and address of service entity and all of its certified technicians;
- b. Social Security Number and date of birth of all technicians;
- c. date of certification of all technicians; and
- d. level(s) of certification of all technicians.

B. Licensed Manufacturers

1. If requested by the division, all licensed manufacturers shall provide a semi-annual report, signed by the licensee or an authorized representative of the licensee, on authorized forms provided by the division.

2. The semi-annual report shall include, but not be limited to the following information:

- a. gross machine sales for that period;
- b. specific delivery location of all devices and identity of person(s) purchasing and receiving devices;
- c. names and addresses of carriers used in transporting devices;
- d. names and addresses of licensees to whom the devices were sold;
- e. number of devices sold to each licensee;
- f. make, model, and serial number of all devices; and
- g. the sale price of each device.

3. All licensed manufacturers shall request authorization for any device modifications and updates from the division. Any device operating in, or shipped to or within, Louisiana that is modified without prior written approval from the division, shall be considered an illegal gambling device as provided in the act.

4. All licensed manufacturers shall sell or lease video gaming devices only to licensed video gaming distributors.

C. Licensed Distributors

1. If requested by the division, all licensed distributors shall provide a quarterly report, signed by the licensee or an authorized representative of the licensee, on authorized forms provided by the division.

2. The quarterly report shall include, but not be limited to, the following information:

- a. gross device sales for the quarter;
- b. make, model, and serial number of all devices sold or leased;
- c. name and address of all licensees that the devices were sold or leased to;
- d. number of devices sold or leased to each licensee;
- e. delivery address of each device sold or leased; and
- f. if requested, copies of invoices, credit memos, and/or documents substantiating any transactions and/or sales.

3. In addition, if requested by the division, all licensed distributors shall provide a quarterly inventory report, signed by the licensee or an authorized representative of the licensee, on authorized forms provided by the division.

4. The inventory report shall include, but not be limited to, the following information:

- a. total number of devices in inventory; and
- b. make, model, and serial number of all devices in inventory.

5. A licensed distributor shall only purchase or lease video gaming devices from, or sell or lease video gaming devices to, a licensed manufacturer, licensed device owner, or another licensed distributor.

D. Licensed Device Owners

1. If requested by the division, a licensed device owner shall provide a monthly report, signed by the licensee or an authorized representative of the licensee, on authorized forms provided by the division.

2. The monthly report shall include, but not be limited to, the following information:

- a. gross and net device revenue;
- b. make, model and serial number of all devices;
- c. physical location of each device;
- d. number of devices at each licensed establishment;
- e. mechanical (hard) and electronic (soft) meter readings for each device on the last day of the month of the reporting period; and
- f. actual cash collected from each device.

3. All licensed device owners shall maintain all audit tapes for a period of three years.

4. Except as otherwise provided in this Section, all licensed device owners shall only purchase or lease video gaming devices from, or sell or lease video gaming devices to, licensed distributors, or other licensed device owners.

5. All licensed device owners are prohibited from possessing RAM clear chips.

6. If a device is to be removed for service and/or repair for a period of less than 72 hours, the device owner shall notify the division technical staff prior to such removal for the service and/or repair.

7. Any time a device located in a licensed establishment is disabled from the central computer for a period in excess of 72 hours, the device owner shall transfer the device to its warehouse or to a licensed service entity, and notify the division using the appropriate transfer report form within five business days.

E. Licensed Establishments

1. If requested by the division, licensed establishments shall file a quarterly report, signed by the licensee or an authorized representative, on authorized forms provided by the division.

2. The quarterly report shall include, but not be limited to, the following information:

- a. device owners who have devices on licensed premises;
- b. number of devices each device owner has on the premises; and
- c. make, model, and serial number of all devices on the premises.

3. All licensed establishments that are qualified truck stop facilities shall provide to the division all necessary diesel and gasoline fuel sales data consisting of beginning and ending pump meter readings and summaries of all diesel and gasoline fuel sales, in gallons. Such information shall be given to the division on a monthly basis, on a form supplied by the division.

4. All licensed establishments that are qualified truck stop facilities shall maintain records that would enable the division to verify daily fuel sales on a pump-by-pump basis. Failure to maintain such records shall be considered grounds for suspension or revocation of the licensed establishment's video gaming license.

5. The division shall evaluate each monthly report to establish the average monthly fuel sales for the quarter in question. This shall determine the number of electronic video draw poker devices that can be legally operated at the truck stop facility during the next quarterly period. The division shall disable or enable devices in accordance with the Act.

6. For purposes of this Section, only nonbulk transfers of fuel to over-the-road motor vehicles, sold at prices not less than the delivered fuel cost, shall be used to compute average monthly fuel sale totals. Sales to marine vessels shall not be used to compute these fuel totals.

F. Licensed Service Entities

1. All licensed service entities shall be required to maintain the following records:

- a. invoices, of all services and/or repairs to devices, which shall contain, but not be limited to:
 - i. date device was received;
 - ii. date device was serviced;
 - iii. date device was returned;
 - iv. service entity name and license number;
 - v. device owner name and license number;
 - vi. manufacturer, make, and model number of the device;
 - vii. device serial number;
 - viii. description of service and/or repair performed on the device;
 - ix. name of certified technician performing service and/or repair on the device; and
 - x. electronic (soft) and mechanical (hard) meter readings before and after service and/or repair of the device;
- b. a list of all certified technicians, including a list of the types of devices that each is certified to service and/or repair, and who certified the technician.

2. All licensed service entities shall have a certified technician or technicians who are employed by the licensed service entity, adequate facilities approved by the division to

repair, service, and maintain video gaming devices, and the ability to make service calls at licensed establishments.

3. A service entity may contract with a device owner to maintain, repair, and service video gaming devices.

4. All licensed service entities are prohibited from possessing RAM clear chips.

G Required Forms

1. The division shall have the authority to require, design, prescribe, and amend all forms.

2. The division shall have the authority to require submission of any additional forms, reports, or records that it deems necessary.

3. If applicable, all licensees shall provide the division with all required device-related reports, to include, but not be limited to, the following:

a. APPLICATION FOR VIDEO POKER DEVICE PERMIT, which shall be submitted for any enrollment, device renewal, device transfer, decal replacement, or withdrawal within five business days of any enrollment, device renewal, device transfer, decal replacement, or withdrawal;

b. GAMING DEVICE OWNERSHIP TRANSFER NOTIFICATION, which shall be submitted for any change of ownership of any device within five business days of the change of ownership;

c. VIDEO GAMING DEVICE SHIPMENT NOTIFICATION, which shall be submitted for any shipment of any device at least three business days prior to the date of shipment of any device; and

d. VIDEO GAMING DEVICE SERVICE/REPAIR FORM, which shall be submitted when any service or repair is done to a device that may alter any meter reading of the device within five business days of the service or repair.

H. Contracts

1. Misrepresentation of contracts concerning activities regulated by the act is prohibited and shall be grounds for denial, suspension, or revocation of a license, as well as possible criminal charges as provided in the act.

2. All applicants and licensees shall submit copies of all written contracts pertaining to the operation of video gaming devices and summaries of all oral contracts pertaining to the operation of video gaming devices to which they are party or intend to become party within 10 business days of signing or making such contracts.

3. If requested, every person who is party to any video gaming contract with an applicant for a video gaming license, or a licensee of the division, shall provide the division with any and all information requested by the division that is necessary for a determination of suitability.

4. No licensee shall enter into or continue any contract with any person, natural or juridical, whom the division determines to be unsuitable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), LR 30:444 (March 2004).

§2413. Devices

A. Device Specifications

1. All devices shall include all of the specifications and features as provided in R.S. 27:302. In addition, all

devices shall include the following specifications and features:

a. - c. ...

d. accept only United States coins and/or currency.

e. - h. ...

i. permanent serial numbers not to exceed nine alpha and/or numeric characters. The serial number plate shall be located in the upper (front) right side panel of the device, unless otherwise approved by the division, and shall contain the following information:

1.i.i. - 4. ...

5. Devices shipped to and transported through Louisiana shall at all times remain in the demonstration mode. In addition, no device operating in demonstration mode shall accept coin or currency.

A.6. - C.2. ...

D. Enrollment Procedures

1. - 2. ...

3. Validation decals shall be issued by the division for devices and shall be promptly affixed by a division representative to an enrolled device. The validation decal shall be affixed to the upper (front) right side of the device, or as otherwise approved by the division.

E. - G.3. ...

H. Devices Permanently Removed from Service

1. - 3. ...

4. For purposes of this Section, devices permanently removed from service shall mean devices:

a. that are sold back or otherwise returned, and shipped to the distributor or manufacturer;

b. that are damaged beyond repair due to theft, vandalism, or natural disasters; or

c. that are completely dismantled for parts or destroyed and properly discarded as waste.

H.5. - J.2. ...

K. Warehouses

1. Devices stored in a warehouse shall be stored in a manner which easily displays the device serial number plate and/or the state issued permit sticker.

2. Device owners who wish to share warehouse space must execute a written lease agreement outlining the conditions and method of the space sharing. A copy of the lease agreement, along with a diagram indicating the method of device separation, must be sent to the division within five calendar days from the date of execution.

a. The shared warehouse must be partitioned in such a manner as to visually distinguish each device owner's video gaming devices.

b. Device owners shall not commingle their video gaming devices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq. and R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), amended by the Department of Public Safety, Gaming Control Board, LR 25:85 (January 1999), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:271 (February 2004), repromulgated LR 30:269 (February 2004), repromulgated LR 30:446 (March 2004).

§2417. Code of Conduct of Licensees and Permittees

A. - A.3. ...

B. Unsuitable Conduct

1. - 3. ...

4. Any person required to be found suitable or approved in connection with the granting of any license or permit shall have a continuing duty to notify the division of his/her/its arrest, summons, citation or charge for any criminal offense or violation including D.W.I.; however, minor traffic violations need not be included. All licenses and permittees shall have a continuing duty to notify the division of any fact, event, occurrence, matter or action that may affect the conduct of gaming or the business and financial arrangements incidental thereto or the ability to conduct the activities for which the licensee or permittee is licensed or permitted. Such notification shall be made within ten calendar days of the arrest, summons, citation, charge, fact, event, occurrence, matter or action.

5. ...

C. Additional Causes for Disciplinary Action

1. Further instances of conduct by a licensee or permittee where the division or board may sanction a licensee or permittee shall include but not be limited to when:

a. - i. ...

j. unavailability of the licensees or permittees, their designated representatives, or any agents of the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq., R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 27:59 (January 2001), LR 30:270 (February 2004), repromulgated LR 30:447 (March 2004).

§2419. Investigations

A. - A.4. ...

B. Inspections

1. - 1.d. ...

2. Inspection of Records

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

b. The division may require a licensee to submit any and all video gaming records or documents that are necessary for the facilitation and/or completion of an investigation pertaining to a violation of these Rules or the act.

3. - 3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:270 (February 2004), repromulgated LR 30:447 (March 2004).

§2421. Miscellaneous

A. Required Meetings

1. The division may summon a licensee or permittee to appear for a consultation, explanation, discussion, clarification, training session, or other meeting considered by the division to be of potential benefit, or otherwise aid in the effective regulation of the video gaming industry.

A.2. - G.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:270 (February 2004), repromulgated LR 30:447 (March 2004).

Hillary J. Crain
Chairman

0403#088

RULE

**Department of Public Safety and Corrections
Office of State Police**

Federal? Motor Carrier Safety and Hazardous Materials
(LAC 33:V.10303)

The Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, hereby amends LAC 33:V.10303 pertaining to Motor Carrier Safety and Hazardous Material requirements to restate the revision date of the previously adopted parts of 49 CFR as authorized by R.S. 32:1501 et seq.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Wastes and Hazardous Materials

**Subpart 2. Department of Public Safety and
Corrections? Hazardous Materials**

**Chapter 103. Motor Carrier Safety and Hazardous
Materials**

**§10303. Federal? Motor Carrier Safety and Hazardous
Materials**

A. The following federal motor carrier safety regulations and hazardous materials regulations promulgated by the United States Department of Transportation, revised as of October 1, 2003 and contained in the following parts of 49 CFR as now in effect or as hereafter amended, are made a part of this Chapter.

Hazardous Material Regulations	
Part 171	General Information, Regulations, and Definitions
Part 172	Hazardous Materials Table, Special Provisions, and Hazardous Materials Communications, Emergency Response Information, and Training Requirements
Part 173	Shippers? General Requirements for Shipments and Packagings
Part 177	Carriage by Public Highways
Part 178	Specifications for Packagings
Part 180	Continuing Qualification and Maintenance of Packagings
Motor Carrier Safety Regulations	
Part 382	Controlled Substances and Alcohol Use and Testing
Part 383	Commercial Driver's License Standards; Requirements and Penalties
Part 385	Safety Fitness Procedures
Part 390	Federal Motor Carrier Safety Regulations; General
Part 391	Qualifications of Drivers
Part 392	Driving of Commercial Motor Vehicles
Part 393	Parts and Accessories Necessary for Safe Operation
Part 395	Hours of Service of Drivers
Part 396	Inspection, Repair, and Maintenance
Part 397	Transportation of Hazardous Materials; Driving and Parking Rules

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:31 (January 1988), amended LR 17:1115 (November 1991), LR 19:351 (March 1993), LR 10:58 (January 1994), LR 24:956 (May 1998), LR 24:2321 (December 1998), LR 30:447 (March 2004).

Chris A. Keaton
Undersecretary

0403#022

RULE

Department of Revenue Policy Services Division

Corporation Franchise Tax (LAC 61:I.301-313 and 317)

Under the authority of R.S. 47:601-617 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, repromulgates LAC 61:I.301-313 and repeals LAC 61:I.317.

Louisiana Administrative Code 61:I.301-313 has been repromulgated to reaffirm the Secretary of Revenue's rulemaking authority with respect to the Louisiana Corporation Franchise Tax. In *Collector of Revenue v. Mossler Acceptance Co.*, 139 So. 2d 263 (La. App. 1st Cir. 1962), the First Circuit held that regulations defining the terms used in the corporation franchise tax statutes went beyond the secretary's authority in R.S. 47:1511 to promulgate rules regarding "the proper administration and enforcement" of the tax statutes. Since the Mossler decision, R.S. 47:1511 was amended removing the language that the First Circuit determined was a limitation on the secretary's rulemaking authority. Although no taxpayer has relied on Mossler to refute the secretary's rulemaking authority, repromulgation of Sections 301-313 reaffirms the secretary's authority.

Louisiana Administrative Code 61:I.317, which pertains to corporation franchise tax refunds and credits, has been repealed because it is obsolete and in conflict with R.S. 47:617, which was amended to provide that interest on overpayments will be paid at the rate established pursuant to Civil Code Article 2924(B)(3).

Title 61

REVENUE AND TAXATION

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

Chapter 3. Corporation Franchise Tax

§301. Imposition of Tax

A. Except as specifically exempted by R.S. 47:608, R.S. 47:601 imposes a corporation franchise tax, in addition to all other taxes levied by any other statute, on all corporations, joint stock companies or associations, or other business organizations organized under the laws of the state of Louisiana which have privileges, powers, rights, or immunities not possessed by individuals or partnerships, all of which are hereinafter designated as domestic corporations, for the right granted by the laws of this state to exist as such an organization and on both domestic and

foreign corporations for the enjoyment under the protection of the laws of this state of the powers, rights, privileges, and immunities derived by reason of the corporate form of existence and operation. Liability for the tax is created whenever any such organization qualifies to do business in this state, exercises its charter or continues its charter within this state, owns or uses any part of its capital, plant, or any other property in this state, through the buying, selling, or procuring of services in this state, or actually does business in this state through exercising or enjoying each and every act, power, right, privilege, or immunity as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations.

B. With respect to foreign corporations, R.S. 12:306 generally grants such organizations authority to transact business in this state subject to and limited by any restrictions recited in the certificate of authorization, and in addition thereto provides that they shall enjoy the same, but no greater, rights and privileges as a business or nonprofit corporation organized under the laws of the state of Louisiana to transact the business which such corporation is authorized to contract, and are subject to the same duties, restrictions, penalties, and liabilities (including the payment of taxes) as are imposed on a business or nonprofit corporation organized under the laws of this state. In view of the grant of such rights, privileges, immunities, and the imposition of the same duties, restrictions, penalties, and liabilities on foreign corporations as are imposed on domestic corporations, the exercise of any right, privilege, or the enjoyment of any immunity within this state by a foreign corporation which might be exercised or enjoyed by a domestic business or nonprofit corporation organized under the laws of this state renders the foreign corporation liable for the same taxes, penalties, and interest, where applicable, which would be imposed on a domestic corporation.

C. Thus, both domestic and foreign corporations which enjoy or exercise within this state any of the powers, privileges, or immunities granted to business corporations organized under the provisions of R.S. 12:41 are subject to and liable for the payment of the franchise tax imposed by this Section. R.S. 12:41 recites those privileges to be as follows:

1. the power to perform any acts which are necessary or proper to accomplish its purposes as expressed or implied in the articles of incorporation, or which may be incidental thereto and which are not repugnant to law;
2. without limiting the grant of power contained in §301.C.1, every corporation shall have the authority to:
 - a. have a corporate seal which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced; but failure to affix a seal shall not affect the validity of any instrument;
 - b. have perpetual existence, unless a limited period of duration is stated in its articles of incorporation;
 - c. sue and be sued in its corporate name;
 - d. in any legal manner to acquire, hold, use, and alienate or encumber property of any kind, including its own shares, subject to special provisions and limitations prescribed by law or the articles;
 - e. in any legal manner to acquire, hold, vote, and use, alienate and encumber, and to deal in and with, shares,

memberships, or other interests in, or obligations of, other businesses, nonprofit or foreign corporations, associations, partnerships, joint ventures, individuals, or governmental entities;

f. make contracts and guarantees, including guarantees of the obligations of other businesses, nonprofit or foreign corporations, associations, partnerships, joint ventures, individuals, or governmental entities, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by hypothecation of any kind of property;

g. lend money for its corporate purposes and invest and reinvest its funds, and take and hold property or rights of any kind as security for loans or investments;

h. conduct business and exercise its powers in this state and elsewhere as may be permitted by law;

i. elect or appoint officers and agents, define their duties, and fix their compensation; pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive and benefit plans for any or all of its directors, officers, and employees; and establish stock bonus plans, stock option plans, and plans for the offer and sale of any or all of its unissued shares, or of shares purchased or to be purchased, to the employees of the corporation, or to employees of subsidiary corporations, or to trustees on their behalf; such plans:

i. may include the establishment of a special fund or funds for the purchase of such shares, in which such employees, during the period of their employment, or any other period of time, may be privileged to share on such terms as are imposed with respect thereto; and

ii. may provide for the payment of the price of such shares in installments;

j. make and alter bylaws, not inconsistent with the laws of this state or with the articles, for the administration and regulation of the affairs of the corporation;

k. provide indemnity and insurance pursuant to R.S. 12:83;

l. make donations for the public welfare, or for charitable, scientific, educational, or civic purposes; and

m. in time of war or other national emergency, do any lawful business in aid thereof, at the request or direction of any apparently authorized governmental authority.

D. Thus, the mere ownership of property within this state, or an interest in property within this state, including but not limited to mineral interests and oil payments dependent upon production within Louisiana, whether owned directly or by or through a partnership or joint venture or otherwise, renders the corporation subject to franchise tax in Louisiana since a portion of its capital is employed in this state.

E. The tax imposed by this Section shall be at the rate prescribed in R.S. 47:601 for each \$1,000, or a major fraction thereof, on the amount of its capital stock, determined as provided in R.S. 47:604, its surplus and undivided profits, determined as provided in R.S. 47:605, and its borrowed capital, determined as provided in R.S. 47:603 on the amount of such capital stock, surplus, and undivided profits, and borrowed capital as is employed in the exercise of its rights, powers, and immunities within this

state determined in compliance with the provisions of R.S. 47:606 and R.S. 47:607.

F. The accrual, payment, and reporting of franchise taxes imposed by this Section are set forth in R.S. 47:609.

G. In the case of any domestic or foreign corporation subject to the tax herein imposed, the tax shall not be less than the minimum tax provided in R.S. 47:601.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:601.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:448 (March 2004).

§302. Determination of Taxable Capital

A. Taxable Capital. Every corporation subject to the tax imposed by R.S. 47:601 must determine the total of its capital stock, as defined in R.S. 47:604, its surplus and undivided profits, as defined in R.S. 47:605, and its borrowed capital, as defined in R.S. 47:603, which total amount shall be used as the basis for determining the extent to which its franchise and the rights, powers, and immunities granted by Louisiana are exercised within this state. Determination of the taxable amount thereof shall be made in accordance with the provisions of R.S. 47:606 and R.S. 47:607, and the rules and regulations issued thereunder by the Secretary of Revenue and Taxation.

B. Holding Corporation Deduction. Any corporation which owns at least 80 percent of the capital stock of a banking corporation organized under the laws of the United States or of the state of Louisiana may deduct from its total taxable base, determined as provided in §302.A and before the allocation of taxable base to Louisiana as provided in R.S. 47:606 and R.S. 47:607, the amount by which its investment in and advances to such banking corporation exceeds the excess of total assets of the holding corporation over total taxable capital of the holding corporation, determined as provided in §302.A.

C. Public Utility Holding Corporation Deductions. Any corporation registered under the Public Utility Holding Company Act of 1935 that owns at least 80 percent of the voting power of all classes of the stock in another corporation (not including nonvoting stock which is limited and preferred as to dividends) may, after having determined its Louisiana taxable capital as provided in R.S. 47:602(A), R.S. 47:606, and R.S. 47:607, deduct therefrom the amount of investment in and advances to such corporation which was allocated to Louisiana under the provisions of R.S. 47:606(B). The only reduction for investment in and advances to subsidiaries allowed by this Subsection is with respect to those subsidiaries in which the registered public utility holding company owns at least 80 percent of all classes of stock described herein; the reduction is not allowable with respect to other subsidiaries in which the holding company owns less than 80 percent of the stock of the subsidiary, notwithstanding the fact that such investments in and advances to the subsidiary may have been attributed to Louisiana under the provisions of R.S. 47:606(B). In no case shall a reduction be allowed with respect to revenues from the subsidiary. Any repeal of the Public Utility Holding Company Act of 1935 shall not affect

the entitlement to deductions under this Subsection of corporations registered under the provisions of the Public Utility Holding Company Act of 1935 prior to its repeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:602.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:08 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:449 (March 2004).

§303. Borrowed Capital

A. General

1. As used in this Chapter, borrowed capital means all indebtedness of a corporation, subject to the provisions of this Chapter, maturing more than one year from the date incurred, or which is not paid within one year from the date incurred regardless of maturity date.

2. All indebtedness of a corporation is construed to be capital employed by the corporation in the conduct of its business or pursuit of the purpose for which it was organized, and in the absence of a specific exclusion, qualification, or limitation contained in the statute, must be included in the total taxable base. No amount of indebtedness of a corporation may be excluded from borrowed capital except in those cases in which the corporation can demonstrate conclusively that a specific statutory provision permits exclusion of the indebtedness from borrowed capital.

3. In the case of amounts owed by a corporation to a creditor who does not meet the definition of an *affiliated corporation* contained in R.S. 47:603, all indebtedness of a corporation which has a maturity date of more than one year from the date on which the debt was incurred and all indebtedness which has not been paid within one year from the date the indebtedness was incurred, regardless of the maturity or due date of the indebtedness, shall be included in borrowed capital. Determination of the one-year controlling factor is with respect to the original date that the indebtedness was incurred and is not to be determined by any date the debt is renewed or refinanced. The entire amount of long-term debt not having a maturity date of less than one year, which was not paid within the one-year period, constitutes borrowed capital, even though it may constitute the current liability for payment on the long-term debt.

4. The fact that indebtedness which had a maturity date of more than one year from the date it was incurred, was actually liquidated within one year does not remove the indebtedness from the definition of borrowed capital.

5. For purposes of determining whether indebtedness has a maturity date in excess of one year from the date incurred or whether the indebtedness was paid within one year from the date incurred, the following shall apply: With respect to any indebtedness which was extended, renewed, or refinanced, the date the indebtedness was originally incurred shall be the date the extended, renewed, or refinanced indebtedness was incurred. All debt extended, renewed, or refinanced shall be included in borrowed capital if the extended maturity date is more than one year from, or if the debt has not been paid within one year from, that date. In instances of debts which are extended, renewed, or refinanced by initiating indebtedness with a creditor different from the original creditor, the indebtedness shall be

construed to be new indebtedness and the one-year controlling factor will be measured from the date that the new debt is incurred.

6. For purposes of determining whether indebtedness has a maturity date in excess of one year from the date incurred or whether the indebtedness was paid within one year from the date incurred, with respect to the amount due on a mortgage on real estate purchased subject to the mortgage, the date the indebtedness was originally incurred shall be the date the property subject to the mortgage was acquired by the corporation.

7. In the case of amounts owed by a corporation to a creditor who meets the definition of an *affiliated corporation* contained in R.S. 47:603, the age or maturity date of the indebtedness is immaterial. An affiliated corporation is defined to be any corporation which through (a) stock ownership, (b) directorate control, or (c) any other means, substantially influences policy of some other corporation or is influenced through the same channels by some other corporation. It is not necessary that control exist between the corporations but only that policy be influenced substantially. Any indebtedness between such corporations constitutes borrowed capital to the extent it represents capital substantially used to finance or carry on the business of the debtor corporation, regardless of the age of the indebtedness. For this purpose, all funds, materials, products, or services furnished to a corporation for which indebtedness is incurred, except as provided in this Section with respect to normal trading accounts and offsetting indebtedness, are construed to be used by the corporation to finance or carry on the business of the corporation; in the absence of a conclusive showing by the taxpayer to the contrary, all such indebtedness shall be included in borrowed capital.

a. To illustrate this principle, assume:

- i. Corporation A? Parent of B, C, D, and E;
- ii. Corporation B? Nonoperating, funds flow conduit, owning no stock in C, D, or E;
- iii. Corporation C? Other Corporation;
- iv. Corporation D? Other Corporation;
- v. Corporation E? Other Corporation;
- vi. any funds furnished by the parent A to either B, C, D, or E constitute either a contribution to capital or an advance which must be included in the taxable base of the receiving corporation;
- vii. any funds supplied by D or E to C, whether or not channeled through A or B, would constitute borrowed capital to C, and the indebtedness must be included in the taxable base. In the absence of a formal declaration of a dividend from D or E to A, the funds constitute an advance to A by D or E and borrowed capital to A. In all such financing arrangements, the multiple transfers of funds are held to constitute capital substantially used to carry on each taxpayer's business.

8. The amount that normal trading-account indebtedness bears to capitalization of a debtor determines to what extent said indebtedness constitutes borrowed capital substantially used to finance or carry on the business of the debtor. Due consideration should also be given to the debtor's ability to have incurred a similar amount of

indebtedness, equally payable as to terms and periods of time.

9. In the case of equally demandable and payable indebtedness of the same type between two corporations, wherein each is indebted to the other, only the excess of the amount due by any such corporation over the amount of its receivable from the other corporation shall be deemed to be borrowed capital.

10. With respect to any amount due from which debt discount was paid upon inception of the debt, that portion of the unamortized debt discount applicable to the indebtedness which would otherwise constitute borrowed capital shall be eliminated in calculating the amount of the indebtedness to be included in taxable base.

B. Exclusions from Borrowed Capital

1. Federal, State and Local Taxes. R.S. 47:603 provides that an amount equivalent to certain indebtedness shall not be included in borrowed capital. With respect to accruals of federal, state, and local taxes, the only amounts which may be excluded are the tax accruals determined to be due to the taxing authority or taxes due and not delinquent for more than 30 days. In the case of reserves for taxes, only so much of the reserve as represents the additional liability due at the taxpayer's year-end for taxes incurred during the accrual period may be excluded. Any amount of the reserve balance in excess of the amount additionally due for the accrual period shall be included in the taxable base, since the excess does not constitute a reserve for a definitely fixed liability. This additional amount due is determined by subtracting the taxpayer's tax deposits during the year from the total liability for the period. All reserves for anticipated future liabilities due to accounting and tax timing differences shall be included in the taxable base. Any taxes which are due and are delinquent more than 30 days must be included in borrowed capital. For purposes of determining whether taxes are delinquent, extensions of time granted by the taxing authority for the filing of the tax return or for payment of the tax shall be considered as establishing the date from which delinquency is measured.

2. Voluntary Deposits

a. The liability of a taxpayer to a depositor created as the result of advances, credits, or sums of money having been voluntarily left on deposit shall not constitute borrowed capital if:

i. said moneys have been voluntarily left on deposit to facilitate the transaction of business between the parties; and

ii. said moneys have been segregated by the taxpayer and are not otherwise used in the conduct of its business.

b. Neither the relationship of the depositor to the taxpayer nor the length of time the deposits remain for the intended purpose has an effect on the amount of such liability which shall be excluded from borrowed capital.

3. Deposits with Trustees

a. The principal amount of cash or securities deposited with a trustee or other custodian or segregated into a separate or special account may be excluded from the indebtedness which would otherwise constitute borrowed

capital if such segregation is fixed by a prior written commitment or court order for the payment of principal or interest on funded indebtedness or other fixed obligations. In the absence of a prior written commitment or court order fixing segregation of the funds or securities, no reduction of borrowed capital shall be made with respect to such deposits or segregated amounts.

b. Whenever a liability for the payment of dividends theretofore lawfully and formally authorized would constitute borrowed capital as defined in this Section, an amount equivalent to the amount of cash or securities deposited with a trustee or other custodian or segregated into a separate or special account for payment of the dividend liability may be excluded from borrowed capital.

4. Receiverships, Bankruptcies and Reorganizations. In the case of a corporation having indebtedness which could have been paid from cash and temporary investments on hand which were not currently needed for working capital and in which case the corporation has secured approval or allowance by the court of the petition for receivership, bankruptcy, or reorganization under the bankruptcy law, after such allowance or approval by the court of the taxpayer's petition, the taxpayer may then reduce the amount which would otherwise constitute borrowed capital by the amount of cash or temporary investment which it could have paid on the indebtedness prior to such approval, to the extent that they are permitted to make such payments under the terms of the receivership, bankruptcy, or reorganization proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:603.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:450 (March 2004).

§304. Capital Stock

A. For the purpose of determining the amount of capital stock upon which the tax imposed by R.S. 47:601 is based, such stock shall in every instance have such value as is reflected on the books of the corporation, subject to whatever increases to the recorded book values may be found necessary by the Secretary of Revenue and Taxation to reflect the true value of the stock. In no case shall the value upon which the tax is based be less than is shown on the books of the corporation.

B. In any case in which capital stock of a corporation has been issued in exchange for assets, the capital stock shall have a value equal to the fair market value of the assets received in exchange for the stock, plus any intangibles received in the exchange, except as provided in the following Subsection.

C. In any such case in which capital stock of a corporation is transferred to one or more persons in exchange for assets, and the only consideration for the exchange was stock or securities of the corporation, and immediately after the exchange such person or persons owned at least 80 percent of the total voting power of all voting stock and at least 80 percent of the total number of shares of all of the stock of the corporation, the value of the stock exchanged for the assets so acquired shall be the same as the basis of the assets received in the hands of the transferor of the assets, plus any intangibles received in the

exchange. The only other exception to the rule that capital stock exchanged for assets shall have such value as equals the fair market value of the assets received and any intangibles received is in the case of stock issued in exchange for assets in a reorganization, which transaction was fully exempt from the tax imposed by the Louisiana income tax law, in which case the value of the stock shall have a value equal to the basis of the assets received in the hands of the transferor of the assets, plus any intangibles received.

D. In any case in which an exchange of stock of a corporation for assets resulted in a transaction taxable in part or in full under the Louisiana income tax law, the value of the stock so exchanged shall be equal to the fair market value of all of the assets received in the exchange, including the value of any intangibles received.

E. Capital stock, valued as set forth heretofore, shall include all issued and outstanding stock, including treasury stock, fractional shares, full shares, and any certificates or options convertible into shares.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:604.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:451 (March 2004).

§305. Surplus and Undivided Profits

A. Determination of Value? Assets

1. For the purpose of determining the tax imposed by R.S. 47:601, there are statutory limitations on both the maximum and minimum amounts which shall be included in the taxable base with respect to surplus and undivided profits. The minimum amount which shall be included in the taxable base shall be no less than the amount reflected on the books of the taxpayer. Irrespective of the reason for any book entry which increases the franchise tax base, such as, but not limited to, entries to record asset appreciation, entries to reflect equity accounting for investments in affiliates or subsidiaries, and amounts credited to surplus to record accrual of anticipated future tax refunds created by accounting timing differences, the amount reflected on the books must be included in the tax base.

2. Entries to the books of any corporation to record the decrease in value of any investment through the use of equity accounting will be allowed as a reduction in taxable surplus and its related asset account for property factor purposes. This is only in those cases in which all investments are recorded under the principles of equity accounting, and such reductions in the value of any particular investment below cost thereof to the taxpayer will not be allowed. The exception is in those instances in which the taxpayer can show that such reduction is in the nature of a bona fide valuation adjustment based on the fair value of the investment. In no case will a reduction below zero value be recognized. Corresponding adjustments shall in all instances be made to the value of assets for property factor purposes.

3. In any instance in which an asset is required to be included in the property factor under the provisions of R. S. 47:606 and the regulations issued thereunder, the acquisition of which resulted in the establishment of a contra account, such as, but not limited to, an account to record unrealized

gain from an installment sale, all such contra accounts shall be included in the taxable base, except to the extent such contra accounts constitute a reserve permitted to be excluded under the provisions of R.S. 47:605(A) and the regulations issued under §305.A. See §306.A for required adjustments to assets with respect to any contra account or reserve which is not included in the taxable base.

4. The minimum value under the statute is subject to examination and revision by the Secretary of Revenue and Taxation. The recorded book value of surplus and undivided profits may be increased, but not in excess of cost, as the result of such examination to the extent found necessary by the secretary to reflect the true value of surplus and undivided profits. The secretary is prohibited from making revisions which would reflect any value below the amount reflected on the books of the taxpayer. A taxpayer may, in his own discretion, reflect values in excess of cost; that option is not extended to the secretary in any examination of recorded cost.

5. In determining cost to which the revisions limitation applies, the fair market value of any asset received in an exchange of properties shall be deemed to constitute the cost of the asset to the taxpayer under the generally recognized concept that no prudent person will exchange an article of value for one of lesser value. In application of that concept, the Secretary of Revenue and Taxation shall, except as provided in the following Paragraphs, construe cost of any asset to be fair market value of the asset received in exchange therefor.

6. Exception to the rules stated above will be made only in those instances in which the exchange resulted in a fully tax-free exchange under provisions of the Louisiana income tax law, in which case cost shall be construed to be the income tax basis of the properties received for purposes of calculating depreciation and the determination of gain or loss on any subsequent disposition of the assets. Limitation of the valuation of the cost of any asset to the income tax basis will be considered only in the case of fully tax-free exchanges and will not be considered if the transaction was taxable to any extent under the provisions of the Louisiana income tax law contained in R.S. 47:131, 132, 133, 134, 135, 136, and 138.

B. Determination of Value? Reserves

1. There must be included in the franchise taxable base determined in the manner heretofore described, all reserves other than those for:

- a. definitely fixed liabilities;
- b. reasonable depreciation (or amortization), but only to the extent recorded on the books of the taxpayer, except as noted in the following Paragraphs with respect to taxpayers subject to regulations of governmental agencies controlling the books of such taxpayers;
- c. bad debts; and
- d. other established valuation reserves.

2. No deduction from surplus and undivided profits shall be made with respect to any reserve for contingencies of any nature, without regard to whether the reserve is partially or fully funded. Reserves for future liability for income taxes shall not be excluded from the tax base. Deferred federal income tax accounts may be netted in

determining the amount of reserve to be included in the taxable base. Reserves for fixed liabilities shall be included in the taxable base to the extent that they constitute borrowed capital under the provisions of R.S. 47:603 and the regulations issued thereunder.

3. In addition to the four classifications of reserves which may be excluded from the taxable base, any amount of surplus which has been set aside and segregated pursuant to a court order so as not to be available for distribution to stockholders or for investment in properties which would produce income which would be distributable to stockholders may also be excluded from the taxable base.

C. Adjustment by regulated companies for depreciation sustained but not recorded. When, because of regulations of a governmental agency controlling the books of a taxpayer, the taxpayer is unable to record on its books the full amount of depreciation sustained, the taxpayer may apply to the collector of revenue for permission to add to its reserve for depreciation and deduct from its surplus the amount of depreciation sustained but not recorded, and if the collector finds that the amount proposed to be so added represents a reasonable allowance for actual depreciation, he shall grant such permission.

1. Permission to add to depreciation reserves and reduce surplus must be requested in advance and shall be granted only in those instances in which a governmental agency requires that the books of the corporation reflect a depreciation method under which the total accumulated depreciation reflected on the books is less than would be reflected if the straight-line method of depreciation had been applied from the date of acquisition of the asset. The period over which depreciation shall be computed shall be the expected useful life of the asset.

2. The amount of adjustment shall be the amount of accumulated depreciation which would be reflected on the books if the straight-line method had been applied from the date of acquisition of the asset, less the amount of accumulated depreciation actually reflected on the books.

3. Permission granted by the secretary shall be automatically revoked upon a material change in the facts and circumstances presented by the taxpayer.

4. Permission granted by the secretary shall be for a period of six years, at which time the taxpayer must reapply for permission to continue making the adjustment.

D. For purposes of this Chapter, reserves include all accounts appearing on the books of a corporation that represent amounts payable or potentially payable to others. However, the term reserves shall not include accounts included in capital stock as used in R.S. 47:604 and shall not include accounts that represent indebtedness, regardless of maturity date, as indebtedness is used in R.S. 47:603.

E. For purposes of this Chapter, the term assets shall mean all of a corporation's property and rights of every kind. The definition of the term assets for corporation franchise tax purposes may differ from the definition of assets for general accounting purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:605.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), LR 28:1995 (September 2002), LR

29:1520 (August 2003), repromulgated by the Department of Revenue, Policy Services Division, LR 30:452 (March 2004).

§306. Allocation of Taxable Capital

A. General Allocation Formula. Every corporation subject to the tax imposed by this Chapter must determine the extent to which its entire franchise taxable base is employed in the exercise of its franchise within this state. The extent of such use of total taxable base in the state is determined by multiplying the total of all issued and outstanding capital stock, surplus and undivided profits, and borrowed capital by the ratio obtained through the arithmetical average of the ratio of net sales made to customers in the regular course of business and other revenues attributable to Louisiana to total net sales made to customers in the regular course of business and total other revenues, and the ratio that the value of all of the taxpayer's property and assets situated or used by the taxpayer in Louisiana bears to all of the taxpayer's property and assets wherever situated or used.

1. Net Sales and Other Revenue. Net sales to be combined with other revenue in determining both the numerator and denominator of the revenue factor for purposes of calculating the portion of the taxpayer's total capital stock, surplus and undivided profits, and borrowed capital to be allocated to Louisiana are only those sales made to customers in the regular course of the taxpayer's business. In transactions in which raw materials, products, or merchandise are transferred to another party at one location in exchange for raw materials, products, or merchandise at another location in agreements requiring the subsequent replacement with similar property on a routine, continuing, or repeated basis, all such transactions shall be carefully analyzed in order to determine whether they constitute sales made to customers which should be included in the sales factor or whether they constitute exchanges which are not sales and should be excluded from the sales factor. Sales of scrap materials and by-products are construed to meet the requirements for inclusion in the sales factor. Sales made other than to customers, such as, but not limited to, sales of stocks, bonds, and other evidence of investment on the open market, regardless of the frequency or volume of those sales, shall not be included in the revenue factor. Similarly, revenues and/or gains on the sale of property other than stock in trade shall not be included in the revenue factor since they generally do not meet the specific requirements that only sales made to customers in the regular course of business of the taxpayer should be included. Whenever a transaction is determined to be a sale which is not to be included as a sale to customers in the regular course of business, the amount does not constitute other revenue so as to qualify for inclusion in either the numerator or the denominator of the allocation ratio.

a. Sales made to customers in the regular course of business attributable to Louisiana are those sales where the goods, merchandise, or property are received in Louisiana by the purchaser. Where goods are delivered into Louisiana by public carrier, or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. The transportation in

question is the initial transportation relating to the sale by the taxpayer.

i. Transportation by Taxpayer or by Public Carrier. Where the goods are delivered by the taxpayer-vendor in his own equipment, it is presumed that such transportation relates to the sale. Where the goods are delivered by a common or contract carrier, whether shipped F.O.B. shipping point and whether the carrier be a pipeline, trucking line, railroad, airline, or some other type of carrier, the place where the goods are ultimately received by the purchaser after the transportation incident to the sale has ended is deemed to be the place where the goods are received by the purchaser. The attribution of sales to each state is based upon actual delivery rather than technical or constructive delivery.

ii. Transportation by Purchaser

(a). Where the transportation involved is transportation by the purchaser, it is recognized that it is more difficult to determine whether or not the transportation is related to the sale by the taxpayer. To be related to the initial sale, the transportation should be commenced immediately. However, before a lapse of time is conclusive, consideration must be given to the nature and character of the goods purchased, the availability of transportation, and other pertinent economic and natural circumstances occurring at the time.

(b). The intent of the parties to the sale must also be considered. The intent and purpose of the purchaser may be determined directly, or by an evaluation of the nature and scope of his operation, customs of the trade, customary activities of the purchaser, and all pertinent actions and words of the purchaser at the time of the sale.

(c). In order for the transportation by the purchaser to be related to the initial sale by the taxpayer to the purchaser, such transportation must be generally the same in nature and scope as that performed by the vendor or by a carrier. There is no difference between a case where a taxpayer in Houston ships F.O.B. Houston to a purchaser in Baton Rouge, by common carrier, and a case where all facts are the same except that the purchaser goes to Houston in his own vehicle and returns with the goods to Baton Rouge.

iii. Sales to a Pipeline Company. The sale of natural resources to a pipeline company is attributable to the state in which the goods are placed in the pipeline. Such purchasers are engaged in the business of moving or transporting their own property through their own lines. Thus, all transportation of the natural resources after introduction into the line is related to the use or sale by the pipeline, and is not related to the sale by the taxpayer.

iv. Transportation of Natural Resources by a Public Carrier Pipeline

(a). Generally, transportation by public carrier pipelines is accorded the same treatment as transportation by any other type of public carrier, that is, actual delivery to the purchaser controls, rather than technical or constructive delivery. However, because of the nature and character of the property, the type of carrier, and the customs of the trade, the natural resources in the pipeline carrier may become intermixed with other natural resources in the pipeline and lose their particular identity. Where delivery is made to a

purchaser in more than one state, or to different purchasers in different states, peculiar problems of attribution arise. In all cases possible, attribution will be made in accordance with the rules applicable to all public carrier transportation, that is, where it can be shown that a taxpayer in one state sold a quantity of crude oil to a purchaser in another state, and the oil was transported to the purchaser by pipeline carrier, the sale will be attributed to the state where the crude oil is received by the purchaser, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline. Custom of the trade indicates the purchaser buys a quantity of oil of certain quality, but not any specific oil.

(b). In situations involving several deliveries in several different states to one or more purchasers, the general rules should be applied. To illustrate, consider the incident where three different taxpayers, A, B, and C, all in Texas, each sells to X Refinery, in Louisiana, 10,000 barrels of crude oil, shipped F.O.B. Texas by public carrier pipeline.

(i). If X Refinery receives all 30,000 barrels in Louisiana, each taxpayer must attribute his total sale to Louisiana.

(ii). If X Refinery receives 10,000 barrels in Louisiana, 10,000 barrels in Mississippi, and 10,000 barrels in Alabama, it cannot be said by any taxpayer that all of his sale was received either in Louisiana or in one of the other states. Since each taxpayer contributed one-third of the mass of commingled crude oil, it follows that one-third of each taxpayer's sale was received in Louisiana, and must be attributed to Louisiana accordingly.

(iii). To further illustrate, consider the incident of the three different taxpayers, A, B, and C, in Texas, selling to three different purchasers, X Refinery in Louisiana, Y Refinery in Mississippi, and Z Refinery in Alabama. The same rules governing the problems set forth above are applicable.

(iv). If A sells to X Refinery, in Louisiana, and delivery is by public carrier pipeline, the oil is received in Louisiana and the entire sale is attributed to Louisiana, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline with oil sold by B and C to Y Refinery and Z Refinery.

(v). If A sells to X, B to Y, and C to Z, with X, Y, and Z receiving a portion of their purchases in Louisiana, in Mississippi, and in Alabama, that portion received by X, Y, and Z in Louisiana must be attributed to Louisiana by A, B, and C.

v. Storage of Property after Purchase

(a). In determining the place of receipt by the purchaser after the initial transportation has ended, peculiar problems may be created by the storage of the property purchased immediately upon purchase and at a place other than the place of intended use. The primary problem created by such storage is in determining whether or not the transportation after storage is of a temporary nature.

(b). In cases where the storage is permanent or semipermanent, delivery to the place of storage concludes the initial transportation, and the sale is attributed to the place of storage. However, where the storage is of a temporary nature, such as that necessitated by lack of transportation or by change from one means of

transportation to another, or by natural conditions, the place of such storage is of no significance.

b. Revenue from Air Transportation. All revenues derived from the transportation of cargo or passengers by air shall be attributed within and without this state based on the point at which the cargo shipment or passenger journey originates. Other revenues received by a corporation engaged primarily in the business of transportation of passengers and cargo shall be attributed within and without this state in accordance with the processes and formulas provided elsewhere in the regulations issued under this Section for the particular type of revenue received.

c. Revenue from Transportation for Others through Pipelines

i. Revenues derived from the transportation of crude petroleum, natural gas, petroleum products, or other commodities for others through pipelines shall be attributed to this state on the basis of the ratio of the number of units of transportation performed in Louisiana to the total of such units of transportation. In the case of transportation performed entirely within this state, total revenues from the transportation shall be attributed to Louisiana.

ii. In the case of transportation performed partly within and partly without Louisiana, revenue from such transportation shall be attributed to this state in the following manner.

(a). Crude Petroleum and Liquid Petroleum Products. Revenues from the transportation of crude petroleum and liquid petroleum products shall be attributed to this state upon the ratio which the number of barrels of such liquid transported times the number of miles transported within Louisiana bears to the total number of such barrels transported times the total number of miles transported both within and without Louisiana.

(b). Natural Gas. Revenues from the transportation of natural gas shall be attributed to this state upon the ratio which the number of thousand cubic feet of natural gas transported within this state times the number of miles transported within Louisiana bears to the total number of thousand cubic feet of such gas transported times the total number of miles such gas transported both within and without Louisiana.

(c). Other Commodities

(i). Revenues from the transportation of other commodities shall be attributed to this state upon the ratio which the number of tons of such commodities transported within Louisiana times the number of miles transported within Louisiana bears to the total number of tons of such commodities transported times the total number of miles transported both within and without Louisiana.

(ii). In any case in which the prescribed ratio for the particular commodity does not represent the basis upon which the transportation charges are calculated, the ratio used as the basis for attributing revenues to this state shall be the unit of measurement upon which the charges are based times the number of miles which the commodity is transported within this state to the total of such units times the total number of miles the commodity is transported both within and without Louisiana. Whenever the information is not readily available with which to calculate the required units of transportation, the Secretary

of Revenue and Taxation may require the use of any method deemed reasonable.

(iii). Other revenues received by a corporation engaged primarily in the business of transporting commodities for others through pipelines shall be attributed within and without this state in accordance with the processes and formulas provided elsewhere in the regulations issued under this Section for the particular kind or type of revenue received.

d. Revenue Derived from Transportation Other Than by Aircraft or Pipeline. Revenue attributable to Louisiana from transportation other than by aircraft or pipeline shall include all such revenues derived from such transportation entirely within Louisiana and shall also include a pro rata portion of revenue from transportation performed partly within and partly without Louisiana, such pro rata portion to be based on the number of units of transportation service performed in Louisiana to the total of such units. The revenue to be attributed will be calculated separately for each of the various types of transportation service. A unit of transportation service for each of the various types shall consist of the following:

i. in the case of the transportation of passengers, the transportation of one passenger a distance of one mile;

ii. in the case of transportation of liquid commodities, the transportation of one barrel of the commodity a distance of one mile;

iii. in the case of transportation of property other than liquids, the transportation of one ton of property a distance of one mile;

iv. in the case of the transportation of a liquid commodity or other property when barrels or tons are not the common basis for the transportation charges, the quantity used as the basis for calculating total transportation charges for a distance of one mile shall be used. In the determination of miles within Louisiana, one-half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

v. In the case where another method would more accurately reflect revenue from transportation attributable to the service performed in Louisiana, or when the information is not readily available with which to calculate the required units of transportation, the Secretary of Revenue and Taxation may require the use of any alternate method deemed reasonable.

vi. Other revenues received by a corporation engaged primarily in the business of transportation other than by aircraft or pipeline shall be attributed to Louisiana in accordance with the processes and formulas provided elsewhere in the regulations issued under this Section for the particular type of revenue received.

e. Revenue from Services Other Than from Transportation

i. Revenue derived from services other than from transportation shall be attributed to the state in which the services are rendered. In the case of services in which property is not a material revenue-producing factor, the services shall be presumed to have been performed in the state in which the personnel engaged in rendering the services are located. In the case of services in which

personnel and property are material revenue-producing factors, such revenue shall be attributed within and without this state on the basis of the arithmetical average of the following two ratios:

(a). the ratio that salaries and wages paid to personnel performing such services within Louisiana bear to total salaries and wages for personnel performing such services both within and without Louisiana; and

(b). the ratio that the value of property used in Louisiana in performing the services (whether owned by the taxpayer or not) bears to the total value of all property used in performing the services both within and without Louisiana.

ii. In any case in which it can be shown that charges for services constitute a pure recovery of the cost of performing the services and do not include a reasonable rate of profit, amounts received in reimbursement of such costs shall not be construed to be revenues received and shall be omitted from both the numerator and denominator of the attribution ratio.

f. Rents and Royalties from Immovable or Corporeal Movable Property

i. Rents and royalties from immovable or corporeal movable property shall be attributed to the state where the property is located at the time the revenue is derived, which is construed to be the place at which the property is used resulting in the rental payment. Rents, royalties, and other income from mineral leases, royalty interests, oil payments, and other mineral interests shall be allocated to the state in which the property subject to such interest is located.

ii. In the case of movable property which is used in more than one state or when the lessor has no knowledge of where the property is located at all times, application of the general rule for attributing the revenue from rental of the property may be sufficiently difficult so as to require use of a formula or formulas to determine the place of use for which the rents were paid. The specific formula to be used must be determined by reference to the basis on which rents are charged, the basis of which is usually set forth in the rental agreement. In those cases in which time of possession in the hands of the lessee is the only consideration in calculating rental charges, time used by the lessee in each state will be used as the basis for attributing the revenue to each state. Where miles traveled is the basis for the rental charge, revenue shall be attributed on that basis; where ton miles or traffic density in combination with miles traveled is the basis for the rental charges, revenue will be attributed to each state on that basis. In the case of drilling equipment where rentals are based on the number of feet drilled, income will be attributed to each state based on the ratio of the number of feet drilled within that state to the total number of feet drilled in all states by the rented equipment during the taxable period covered by the rental agreement.

g. Interest on Customers' Notes and Accounts

i. Interest on customers' notes and accounts can generally be associated directly with the specific credit instrument or account upon which the interest is paid and shall be attributed to the state at which the goods were

received by the purchaser or services rendered. For purposes of this Section, interest is construed to include all charges made for the extension of credit, such as finance charges and carrying charges.

ii. When the records of the taxpayer are not sufficiently detailed so as to enable direct attribution of the revenue, interest, as defined herein, shall be attributed to each state on the basis of a formula or formulas which give due consideration to credit sales in the various states, outstanding customer accounts and notes receivable, and variances in the rates of interest charged or permitted to be charged in each of the states where the taxpayer makes credit sales.

h. Other Interest and Dividends

i. Interest, other than on customers' notes and accounts, and dividends shall be attributed to the state in which the securities producing such revenue have their situs, which shall be at the business situs of such securities if they have been so used in connection with the taxpayer's business as to acquire a business situs, or, in the absence of such a business situs, shall be at the commercial domicile of the taxpayer.

ii. Used in connection with the taxpayer's business is construed to mean use of a continuing nature in the regular course of business and does not include the mere holding of the instrument at a location or the use of the property as security for credit. Business situs must be established on the basis of facts, indicating precisely the use to which the securities have been put and the manner in which the taxpayer conducts its business.

iii. Commercial Domicile is in that state where management decisions are implemented which is presumed to be the state where the taxpayer conducts its principal business and thereby benefits from public facilities and protection provided by that state. Commercial domicile cannot be assigned to a state where the taxpayer has no substantial operation or facility, other than the location of one or more management level employees. The location of board of directors' meetings is not presumed to create commercial domicile at the location.

iv. Interest and dividends from a parent or subsidiary corporation shall be attributed as provided in R.S. 47:606(B) and the regulations issued thereunder.

i. Royalties or Similar Revenue from the Use of Patents, Trademarks, Secret Processes, and Other Similar Intangible Rights

i. Royalties or similar revenue received for the use of patents, trademarks, secret processes, and other similar intangible rights shall be attributed to the state or states in which such rights are used by the licensee from whom the income is received.

ii. In those cases where the rights are used by the licensee in more than one state, royalties and similar revenue will be attributed to the states on the basis of a ratio which gives due consideration to the proportion of use of the right by the licensee within each of the states. When the royalty is based on a measurable unit of production, sales, or other measurable unit, the attribution ratio shall be based on such units within each state to the total of such units for which the

royalties were received. When the royalty or similar revenue is not based on measurable units, the attribution ratio will be based on the relative amounts of income produced by the licensee in each state or on such other ratio as will clearly reflect the proportion of use of the rights by the licensee in each state.

j. Revenue from a Parent or Subsidiary Corporation. Revenue from a parent or subsidiary corporation shall be allocated as provided in R.S. 47:606(B) and the regulations issued thereunder.

k. All Other Revenues

i. All revenues which are not specifically described in §306.A.1.a-j shall be attributed within and without Louisiana on the basis of such ratio or ratios as may be reasonably applicable to the type of revenue and business involved.

ii. In the case of revenue from construction, repairs, and similar services, generally, all of the work will be performed at a specific geographical location and the total revenue, including all billings by the taxpayer without regard to the method of reporting gain for purpose of the income tax statutes, shall be attributed to the place where the work is performed. In the case of contracts wherein a material part or parts of the work may have been performed in another state, such as the design, engineering, manufacture, fabrication, or preassembly of component parts, total revenue from the specific elements will be attributed to the place at which that segment of the work was performed on the basis of segregated charges contained in the performance contract. In the absence of segregated charges in the contract, revenues shall be allocated on the basis of a formula or formulas which give due consideration to such factors as direct cost, time devoted to the separate elements, and relative profitability of the specific function. Such ratios may be based on estimates of costs compiled during calculation of bid amounts for purposes of securing the contract in the absence of sufficient contract segregation of the charges between functions or sufficient records necessary to determine direct cost.

iii. For purposes of this Chapter, revenues from partnerships shall be attributed within and without Louisiana based on the percentage of the partnership's capital employed in Louisiana, determined by the arithmetical average of the following two ratios:

(a). The ratio that the partnership's net sales and other revenue in Louisiana bear to the partnership's total net sales and other revenue everywhere as described in R.S. 47:606(A)(1) and subparts thereunder; and

(b). The ratio that the partnership's Louisiana property bears to the partnership's total property everywhere as described in R.S. 47:606(A)(2) and subparts thereunder.

iv. For the purposes of this Chapter, the term partnership includes a syndicate, group, pool, joint venture, or other unincorporated organizations through or by means of which any business, financial operation, or venture is carried on.

2. Property and Assets. For the purpose of calculating the ratio of the value of property situated or used by a corporation in Louisiana to the value of all property

wherever situated, both tangible and intangible property must be considered. The minimum value to be included in both the numerator and denominator is the value recorded on the books of the taxpayer. Both the cost recorded on the books of the corporation and the reserves applicable thereto are subject to examination and revision by the Secretary of Revenue and Taxation when such revision is found to be necessary in order to reflect properly the extent to which capital of the corporation is employed in the exercise of its charter; in no event, however, shall the revision by the secretary to any asset value or applicable reserve result in a net valuation which exceeds actual cost of the asset to the taxpayer. Specific rules as contained in the governing statute prescribe the state to which any asset will be allocated. Those rules are as follows:

a. Cash on Hand. Cash on hand shall be allocated to the state in which the cash is physically located.

b. Cash in Banks and Temporary Investments. Cash in banks and temporary cash investments shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, cash in banks and temporary cash investments shall be allocated to the state in which the commercial domicile of the taxpayer is located.

c. Trade Accounts and Trade Notes Receivable. Trade accounts and trade notes receivable are construed to mean only those accounts and notes receivable resulting from the sale of merchandise or the performance of services for customers in the regular course of business of the taxpayer. Such accounts and notes shall be allocated to the location at which the merchandise was delivered or at which the services were performed resulting in the receivable. In the absence of sufficient recorded detail upon which to base the allocation of specific accounts and notes receivable to the various states, such accounts and notes may, by agreement between the Secretary of Revenue and Taxation and the corporation, be allocated to the separate states based upon the ratio of credit sales within any particular state to the total of all credit sales.

d. Investments In and Advances To a Parent or Subsidiary. Investments in and advances to a parent or subsidiary corporation shall be allocated as provided in R.S. 47:606(B) and the regulations issued thereunder.

e. Notes and Accounts Other Than Temporary Cash Investments, Trade Notes and Accounts, and Advances To a Parent or Subsidiary. Notes and accounts receivable other than temporary cash investments, trade notes and accounts, and advances to a parent or subsidiary, shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, notes and accounts receivable other than temporary cash investments, trade notes and accounts, and advances to a parent or subsidiary shall be allocated to the state in which the commercial domicile of the taxpayer is located. See §306.A.1.h relative to business situs and commercial domicile.

f. Stocks and Bonds Other Than Temporary Cash Investments and Investments In or Advances to a Parent or Subsidiary Corporation. Stocks and bonds other than temporary cash investments and investments in or advances to a parent of subsidiary corporation shall be allocated to the

state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, stocks and bonds other than temporary cash investments and advances to a parent or subsidiary corporation shall be allocated to the state in which the commercial domicile of the corporation is located. See §306.A.1.h relative to business situs and commercial domicile.

g. Immovable and Corporeal Movable Property. Immovable property and corporeal movable property which is used entirely within a particular state shall be allocated to the state in which the property is located. Movable property which is not limited in use to any particular state shall be allocated among the states in which used on the basis of a ratio which gives due consideration to the extent of use in each of the states. For the purpose of determining the amount to be included in the numerator of the property ratio with respect to corporeal movable property used both within and without Louisiana, the following rules shall apply:

i. the value of diesel locomotives shall be allocated to Louisiana on the basis of the ratio of diesel locomotive miles traveled in Louisiana to total diesel locomotive miles;

ii. the value of other locomotives shall be allocated to Louisiana on the basis of the ratio of other locomotive miles traveled in Louisiana to total other locomotive miles;

iii. the value of freight train cars shall be allocated to Louisiana on the basis of the ratio of freight car miles traveled in Louisiana to total freight car miles;

iv. the value of railroad passenger cars shall be allocated to Louisiana on the basis of the ratio of passenger car miles traveled in Louisiana to total passenger car miles;

v. the value of passenger buses shall be allocated to Louisiana on the basis of the ratio of passenger bus miles traveled in Louisiana to total passenger bus miles;

vi. the value of diesel trucks shall be allocated to Louisiana on the basis of the ratio of diesel truck miles traveled in Louisiana to total diesel truck miles;

vii. the value of other trucks shall be allocated to Louisiana on the basis of the ratio of other truck miles traveled in Louisiana to total other truck miles;

viii. the value of trailers shall be allocated to Louisiana on the basis of the ratio of trailer miles traveled in Louisiana to total trailer miles;

ix. the value of towboats shall be allocated to Louisiana on the basis of the ratio of towboat miles traveled in Louisiana to total towboat miles. In the determination of Louisiana towboat miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles;

x. the value of tugs shall be allocated to Louisiana on the basis of the ratio of tug miles traveled in Louisiana to total tug miles. In the determination of Louisiana tug miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles;

xi. the value of barges shall be allocated to Louisiana on the basis of the ratio of barge miles traveled in Louisiana to total barge miles. In the determination of Louisiana barge miles, one-half of the mileage of navigable

streams bordering on both Louisiana and another state shall be considered Louisiana miles;

xii. the value of work and miscellaneous equipment shall be allocated to Louisiana in the following manner:

(a). in the case of a railroad, on the basis of the ratio of track miles in Louisiana to total track miles;

(b). in the case of truck and bus transportation, on the basis of the ratio of route miles operated in Louisiana to total route miles; and

(c). in the case of inland waterway transportation, on the basis of the ratio of bank miles in Louisiana to total bank miles. In the determination of bank mileage of navigable streams bordering on both Louisiana and another state, one-half of such mileage shall be considered Louisiana miles.

xiii. the value of other floating equipment shall be allocated to Louisiana on the basis of the ratio of operating equipment miles within Louisiana to total operating equipment miles for the particular equipment to be allocated. In the determination of Louisiana operating equipment miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles;

xiv. the value of flight equipment shall be allocated to Louisiana on the basis of the ratio of ton miles flown within Louisiana to total ton miles. For the purpose of determining Louisiana ton miles, a passenger and his luggage shall be assigned a weight factor of two hundred pounds;

xv. the value of inventories of merchandise in transit shall be allocated to the state in which their delivery destination is located in the absence of conclusive evidence to the contrary;

xvi. all other corporeal movable property shall be allocated to Louisiana on the basis of such ratio or ratios as will reasonably reflect the extent of their use within this state. In any case where the information necessary to determine the prescribed ratio is not readily available from the taxpayer's records, the Secretary of Revenue and Taxation may require the allocation of the value of the property on the basis of any method deemed reasonable.

h. All Other Assets. All other assets shall be allocated within or without Louisiana on such basis as may be reasonably applicable to the particular asset and the type of business involved. Investments in or advances to a partnership shall be attributed within and without Louisiana based on the percentage of the partnership's capital employed in Louisiana, determined by the arithmetical average of the following two ratios:

i. the ratio that the partnership's net sales and other revenue in Louisiana bear to the partnership's total net sales and other revenue everywhere as described in R.S. 47:606(A)(1) and subparts thereunder; and

ii. the ratio that the partnership's Louisiana property bears to the partnership's total property everywhere as described in R.S. 47:606(A)(2) and subparts thereunder. See §306.A.1.k.iv for the definition of a partnership.

B. Allocation of Intercompany Items

1. Without regard to the legal or commercial domicile of a corporation subject to the tax imposed by this Chapter, and without regard to the business situs of investments in or advances to a subsidiary or parent corporation by a corporation subject to the tax imposed by this Chapter, all such investments in, advances to, and revenue from such parent or subsidiary shall be allocated to Louisiana on the basis of the percentage of capital employed in Louisiana by the parent or subsidiary corporation for franchise tax purposes. The corporation franchise tax ratio of the parent or subsidiary shall be the measure of the extent to which the investment in, advances to, and revenues from the parent or subsidiary are attributable to Louisiana for purposes of determining the revenue and property ratios to be used in allocating the total taxable base of any corporation subject to the tax imposed by this Chapter to Louisiana.

2. A subsidiary corporation is any corporation the majority of the capital stock of which is actually, wholly, or substantially owned by another corporation and whose management, business policies, and operations are, howsoever, actually, wholly, or substantially controlled by another corporation. Such latter corporation shall be termed the parent corporation.

3. In general, the ownership, either directly or indirectly, of more than 50 percent of the voting stock of any corporation constitutes control of that corporation's management, business policies, and operations for purposes of application of this Subsection, whether such control is documented by formal directives from the owner of such stock or not.

4. Other criteria which will be construed to constitute control of the management, business policies, and operations of a corporation are:

a. the filing of a consolidated income tax return in which operations of the corporation are included with operations of the corporation owning more than 50 percent of its stock for purposes of determining its federal income tax liability, foreign tax credits, investment credits, other credits against its tax, and the minimum tax on preferential items of income; or

b. the requirement or policy that the purchase of a majority of the merchandise, equipment, supplies, or services required for operations be made from the corporation owning more than 50 percent of its stock, its designee, or from another corporation in which the owning corporation owns more than 50 percent of the stock; or

c. the requirement or policy that a majority of sales of merchandise, products, or service be made to the corporation owning more than 50 percent of its stock, its designee, or to another corporation in which the owning corporation owns more than 50 percent of the stock; or

d. the participation in a retirement, profit-sharing, or stock option plan administered by or participating in the profits or purchase of stock of the corporation owning more than 50 percent of its stock; or

e. the filing of reports with the Securities and Exchange Commission or other regulatory bodies in which its operations, assets, liabilities, and other financial information are reflected as a part of similar information of the corporation owning more than 50 percent of its stock; or

f. the presence on its Board of Directors of a majority of members who are directors, officers, or

employees of the corporation owning more than 50 percent of its stock.

5. In the case of a corporation which owns more than 50 percent of a corporation, the burden of proving that control of the management, business policies, and operations of the latter does not exist shall rest with the taxpayer.

6. For purposes of this Subsection, accounts receivable which may be considered to be advances resulting from normal trading between the companies in the regular course of business and the sales of merchandise, products, or services in such transactions shall not be included in advances to or revenue from a parent or subsidiary under this provision, but shall be allocated and attributed as provided in R.S. 47:606(A) and the regulations issued thereunder.

C. Minimum Allocation; Assessed Value of Real and Personal Property. The minimum amount of issued and outstanding capital stock, surplus and undivided profits, and borrowed capital upon which the tax imposed by this Chapter is calculated shall be the total assessed value of all real and personal property of a corporation in this state. Total assessed value is construed to be the value, after any and all exemptions, upon which the ad valorem tax is based. The assessed value to be used as the basis for the minimum tax calculation is the value upon which the ad valorem tax was calculated for the calendar year preceding the year in which the corporation franchise tax is due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:606.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:453 (March 2004).

§308. Exemptions

A. General

1. Corporations organized for the purposes described in §308.B.1-15 of this Section are fully exempt from the payment of Louisiana Corporation Franchise Tax. Only those corporations which meet the prescribed standards of organization, ownership, control, sources of income, and disposition of funds are exempt from the tax, whether or not they may enjoy exemption from any other tax, federal, state, or local, or whether or not they may be specifically exempted from all taxes under the laws of the state in which they were organized, chartered, or domiciled.

2. A corporation is not exempt from the corporation franchise tax merely because it is a nonprofit organization. In each case, an organization other than those described in §308.B.1.a.ii and iii as limited by §308.B.1.c.i and ii, must file a verified application for exemption with the Secretary of Revenue and Taxation which shall include an affidavit showing, in addition to such other information as the secretary may deem necessary from any particular applicant, the following:

- a. character of the organization;
- b. purpose for which organized;
- c. its actual activities;
- d. ownership of stock in the corporation;
- e. the source of its income;
- f. the disposition of its income;

g. whether or not any of its income is credited to surplus, and if so, the intended future use of the retained amounts;

h. whether any of its income may inure to the benefit of any shareholder or individual;

i. a copy of the charter or articles of incorporation;

j. bylaws of the organization;

k. the latest statement of the assets, liabilities, receipts, and disbursements;

l. any other facts relating to its operations which affect its right to exemption from the tax; and

m. a copy of the ruling or determination letter issued by the federal Internal Revenue Service.

3. The required application for exemption may be filed by an organization before it has started operations or at any time it can describe its operations in sufficient detail to permit a conclusion that it will be clearly exempt under the particular requirements of the Section for which the exemption is sought.

4. Once the secretary has issued a ruling or determination letter that an organization, except those described in §308.B.1.a.ii and iii, as limited by §308.B.1.c.i and ii, meets the exemption requirements, there is no mandatory provision that it make a return or any further showing that it meets the specified requirements unless it changes the character of its organization or operations. The secretary reserves the right to review any exemption granted, and may require the filing of whatever information deemed necessary to permit proper evaluation of the exempt status.

5. No exemption will be granted to a corporation, other than those described in §308.B.1.a.ii and iii, as limited by §308.B.1.c.i and ii, organized and operated for the purpose of carrying on a trade or business for profit, even though its entire income may be contributed or distributed to another organization or organizations which are themselves exempt from the tax.

6. An application for exemption filed by a corporation under either the Louisiana income tax law or the Louisiana corporation franchise tax law may be accepted by the secretary as fulfilling the application requirements under both laws. Taxpayers are cautioned, however, that approval of exemption under either law does not grant exemption under the other law in the absence of a statement contained in the ruling to that effect.

7. A corporation is either entirely exempt from the corporation franchise tax law or it is wholly taxable. There is no statutory provision under which partial exemption may be granted.

B. Exempt Corporations

1. Labor, Agricultural or Horticultural Organizations

a. Labor, agricultural, or horticultural organizations which are exempt under this provision are those corporations which have:

i. no net income inuring to the benefit of any stockholder or member and are educational or instructive in character, and have as their objects the betterment of conditions of those engaged in such pursuits, or improvements of the grade of their respective occupations; or

ii. at least 75 percent of the beneficial ownership held by or for the benefit of members, or the spouses of members of a family, and at least 80 percent of total gross

income is from the production, harvesting, and preparation for market of products produced by the corporation; or

iii. at least 80 percent of total gross income of the corporation derived from the production, harvesting, and preparation for market of products produced by the corporation, but only if total gross income of such corporation did not exceed \$500,000 for the previous year.

b. For purposes of this Subsection, agricultural includes the art or science of cultivating land, harvesting crops or aquatic resources, excluding minerals, or raising livestock, poultry, fish, and crawfish. Thus, the following types of organizations (but not limited thereto) which meet the requirements of §308.B.1.a.i, will be deemed to be exempt from the tax:

i. an organization engaged in the promotion of artificial insemination of livestock;

ii. a nonprofit organization of growers and producers formed principally to negotiate with processors for the price to be paid to members for their produce;

iii. a nonprofit organization of persons engaged in raising fish (or crawfish) as a cash crop on farms that were formed to encourage better and more economical methods of fish farming and to promote the interest of its members; or

iv. parish fairs and like organizations formed to encourage the development of better agricultural and horticultural products through a system of awards, and whose income is used exclusively to meet the necessary expenses of upkeep and operations.

c. corporations engaged in growing agricultural or horticultural products for profit are not exempt from the tax, except as provided in §308.B.1.a.ii and iii, subject to the following limitations:

i. any corporation engaged in the production, harvesting, and preparation for market of raw agricultural products or horticultural products produced by it and that has at least 80 percent of its gross income from such pursuits is exempt from corporation franchise tax, but only if 75 percent or more of the beneficial ownership in such corporation is held by or for the benefit of a single family. For purposes of this Paragraph, a single family shall consist of brothers, sisters, spouses, ancestors, and lineal descendants, including those legally adopted;

ii. any corporation engaged in the production, harvesting, and preparation for market of raw agricultural or horticultural products produced by such corporation is exempt from corporation franchise tax, but only if:

(a). at least 80 percent of its income is from such activity; and

(b). total gross income of the corporation for the previous year did not exceed \$500,000.

2. Mutual Savings Banks, National Banking Corporations and Banking Corporations Organized under the Laws of Louisiana, and Building and Loan Associations

a. Mutual savings banks, national banking corporations, and building and loan associations are exempt from the tax imposed by this Chapter regardless of where organized.

b. Banking corporations organized under the laws of the state of Louisiana which are required by other laws of this state to pay a tax for their shareholders, or whose

shareholders are required to pay a tax on their shares of stock, are exempt.

c. Banking corporations, other than those described in §308.B.2.a and b above, organized under the laws of a state other than the state of Louisiana are not exempt from the tax.

3. Fraternal Beneficiary Societies, Orders or Associations Operating Under the Lodge System. Fraternal beneficiary societies, orders, or associations are exempt from tax only if operated under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system. Operating under the lodge system means carrying on its activities under a form of organization that comprises local branches, chartered by a parent organization, and largely self-governing, called lodges, chapters, or the like. In order to be exempt, it is necessary that the organization have an established system for the payment of life, sick, accident, or other benefits to its members or their dependents.

4. Cemetery Companies

a. Cemetery companies are exempt from the corporation franchise tax if:

i. they are owned and operated exclusively for the benefit of their lot owners who hold such lots for bona fide burial purposes and not for the purpose of resale, or they are not operated for profit;

ii. they are not permitted by their charter to engage in any business not necessarily incident to burial purposes; and

iii. no part of their net earnings inures to the benefit of any private shareholder or individual.

b. For purposes of this Paragraph, a nonprofit corporation engaged in the operation of a crematory, which otherwise meets the exemption qualifications set forth herein, will be deemed to be an exempt cemetery company.

c. Such companies may issue preferred stock entitling the holders to dividends at a fixed rate not exceeding 8 percent per annum on the value of the consideration for which the stock was issued, but only if the articles of incorporation require that the preferred stock shall be retired at par as soon as sufficient funds available therefor are realized from sales, and that all funds not required for the payment of dividends or for retirement of the preferred stock shall be used for the care and improvement of the cemetery property.

5. Community Chests, Funds or Foundations

a. Organizational and Operational Tests

i. In order to be exempt as an organization described in R.S. 47:608(5), an organization must be both organized and operated exclusively for one or more of the purposes specified in such Section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

ii. The term *exempt purpose or purposes* as used in this Section means any purpose or purposes specified in R.S. 47:608(5), as defined and elaborated in Subparagraph d of this Section (see §308.B.5.d).

b. Organizational Test

i. In General

(a). An organization is organized exclusively for one or more exempt purposes only if its articles of

organization (referred to in this Section as *its articles*) as defined in §308.B.5.b.ii:

(i). limit the purposes of such organization to one or more exempt purposes; and

(ii). do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(b). In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in R.S. 47:608(5). Therefore, an organization which, by the terms of its articles, is formed for literary and scientific purposes, within the meaning of R.S. 47:608(5) shall, if it otherwise meets the requirements in this Paragraph, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely to receive contributions and pay them over to organizations which are described in R.S. 47:608(5) and exempt from taxation under R.S. 47:608(5) are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set forth the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for charitable purposes, such articles ordinarily shall be sufficient for purposes of the organizational test (see §308.B.5.b.v) for rules relating to construction of terms.

(c). An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in R.S. 47:608(5). Thus, an organization that is empowered by its articles to engage in a manufacturing business, or to engage in the operation of a social club does not meet the organizational test regardless of the fact that its articles may state that such organization is created for charitable purposes within the meaning of R.S. 47:608(5).

(d). In no case shall an organization be considered to be organized exclusively for one or more exempt purposes if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in R.S. 47:608(5). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

(e). An organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and as a part of its application for exemption.

ii. Articles of Organization. For purposes of this Section, the term *articles of organization* or *articles* includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

iii. Authorization of Legislative or Political Activities

(a). An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it:

(i). to devote more than an insubstantial part of its activities attempting to influence legislation by propaganda;

(ii). to directly or indirectly participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office; or

(iii). to have objectives and to engage in activities which characterize it as an action organization as defined in §308.B.5.c.iii;

(b). The terms used in §308.B.5.b.iii.(a).(i)-(iii) shall have the meanings provided in §308.B.5.c.

iv. Distribution of Assets on Dissolution. An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the federal government, or to a state or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as the court decides will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles of incorporation or the law of the state in which it was created provided that its assets would, upon dissolution, be distributed to its members or shareholders.

v. Construction of Terms. The law of the state in which an organization is created shall be controlling in interpreting the terms of its articles. However, any organization which contends that such terms have, under state law, a different meaning from their generally accepted meaning must establish such special meaning by clear and convincing reference to relevant court decisions, opinions of the state attorney general, or other evidence of applicable state law.

vi. Applicability of the Organization Test. A determination by the secretary that an organization as described in R.S. 47:608(5) and exempt under R.S. 47:608(5) will not be granted the exemption unless such organization meets the organizational test prescribed by this Subparagraph. If an organization has been determined by the secretary to be exempt as an organization described in R.S. 47:608(5) and such determination has not been revoked, the fact that such organization does not meet the organizational test prescribed by this Subparagraph shall not be basis for revoking such determination. Accordingly, an organization which has been determined to be exempt, and which does not seek a new determination of exemption, is not required to amend its articles of organization to conform to the rules of this Subparagraph.

c. Operational Test

i. Primary Activities. An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which

accomplish one or more of such exempt purposes specified in R.S. 47:608(5). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

ii. Distribution of Earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

iii. Action Organizations

(a). An organization is not operated exclusively for one or more exempt purposes if it is an *action* organization as defined in §308.B.5.c.iii.(b), (c), or (d).

(b). An organization is an action organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization:

(i). contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(ii). advocates the adoption or rejection of legislation. The term *legislation*, as used in this Clause, includes action by the Congress, by any state legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

(c). An organization is an action organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term *candidate for public office* means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, state, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

(d). An organization is an action organization if it has the following two characteristics:

(i). its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and

(ii). it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

(e). An action organization, described in §308.B.5.c.iii.(b) or (d), though it cannot qualify under R.S. 47:608(5), may nevertheless qualify as a social welfare organization under R.S. 47:608(7) if it meets the requirements set out in R.S. 47:608(7).

d. Exempt Purposes

i. In General

(a). An organization may be exempt as an organization described in R.S. 47:608(5) if it is organized and operated exclusively for one or more of the following purposes:

- (i). religious;
- (ii). charitable;
- (iii). scientific;
- (iv). literary;
- (v). educational; or
- (vi). prevention of cruelty to children or animals.

(b). An organization is not organized or operated exclusively for one or more of the purposes specified in §308.B.5.d.i.(a) unless it serves a public rather than a private interest. Thus, to meet the requirement of this Subclause, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interest such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

(c). Since each of the purposes specified in §308.B.5.d.i.(a) is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes.

(d). If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is educational, an exemption will not be denied if, in fact, it is charitable.

ii. Charitable Defined

(a). The term *charitable* as used in R.S. 47:608(5) in its generally accepted legal sense is not to be construed as limited by the separate enumeration in R.S. 47:608(5) of other tax-exempt purposes which may fall within the broad outlines of charity as developed by judicial decisions. Such term includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or work; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes; or

- (i). to lessen neighborhood tension;
- (ii). to eliminate prejudice and discrimination;
- (iii). to defend human and civil rights secured by law; or
- (iv). to combat community deterioration and juvenile delinquency.

(b). The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes.

(c). The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinions on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization

from qualifying under R.S. 47:608(5) so long as it is not an action organization of any one of the types described in §308.B.5.c.iii.

iii. Educational Defined

(a). In General. The term *educational*, as used in R.S. 47:608(5), relates to:

(i). the instruction or training of the individual for the purpose of improving or developing his capabilities; or

(ii). the instruction of the public on subjects useful to the individual and beneficial to the community.

(b). An organization may be educational even though it advocates a particular position or viewpoint, so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

(c). Examples of Educational Organizations. The following are examples of organizations which, if they otherwise meet the requirements of this Subsection, are educational.

(i). Example. An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

(ii). Example. An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

(iii). Example. An organization which presents a course of instruction by means of correspondence or through the use of television or radio.

(iv). Example. Museums, zoos, planetariums, symphony orchestras, and other similar organizations.

iv. Scientific Defined

(a). Since an organization may meet the requirements of R.S. 47:608(5) only if it serves a public rather than a private interest, a scientific organization must be organized and operated in the public interest (§308.B.5.d.i.[b]). Therefore, the term *scientific*, as used in R.S. 47:608(5) includes the carrying on of scientific research in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with scientific, and the nature of particular research depends upon the purpose which it serves. For research to be scientific within the meaning of R.S. 47:608(5), it must be carried on in furtherance of a scientific purpose. The determination as to whether research is scientific does not depend on such research being classified as fundamental or basic, as contrasted with applied or practical.

(b). Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products, or the designing or construction of equipment, buildings, etc.

(c). Scientific research will be regarded as carried on in the public interest:

(i). if the results of such research (including any patents, copyrights, processes, or formulas resulting from such research) are made available to the public on a nondiscriminatory basis;

(ii). if such research is performed for the United States, or any of its agencies or instrumentalities, or for a state or political Subdivision thereof; or

(iii). if such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest:

[a]. scientific research carried on for the purpose of aiding in the scientific education of college or university students;

[b]. scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public;

[c]. scientific research carried on for the purpose of discovering a cure for a disease; or

[d]. scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area. Scientific research described in §308.B.5.d.iv.(c) will be regarded as carried on in the public interest even though such research is performed pursuant to a contract or agreement under which the sponsor or sponsors of the research have the right to obtain ownership or control of any patents, copyrights, processes, or formulas resulting from such research.

(d). An organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and, consequently, will not qualify under R.S. 47:608(5) as a scientific organization, if:

(i). such organization will perform research only for persons who are (directly or indirectly) its creators and who are not described in R.S. 47:608(5); or

(ii). such organization retains (directly or indirectly) the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formulas resulting from its research and does not make such patents, copyrights, processes, or formulas available to the public. For purposes of this Subclause, a patent, copyright, process, or formula shall be considered as made available to the public if such patent, copyright, process, or formula is made available to the public on a nondiscriminatory basis. In addition, although one person is granted the exclusive right to the use of a patent, copyright, process, or formula, it shall be considered as made available to the public if the granting of such exclusive right is the only practicable manner in which the patent, copyright, process, or formula can be used to benefit the public. In such a case, however, the research from which the patent, copyright, process, or formula resulted will be regarded as carried on in the public interest (within the meaning of §308.B.5.d.iv.c.iii) if it is carried on for a person described in §308.B.5.d.iv.c.ii or if it is scientific research described in §308.B.5.d.iv.c.iii.

(e). The fact that any organization (including a college, university, or hospital) carries on research which is

not in furtherance of an exempt purpose described in R.S. 47:608(5) will not preclude such organization from meeting the requirements of R.S. 47:608(5) so long as the organization meets the organizational test and is not operated for the primary purpose of carrying on such research (see §308.B.5.e relating to organizations carrying on a trade or business).

e. Organizations Carrying on Trade or Business. In general, an organization may meet the requirements of R.S. 47:608(5) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under R.S. 47:608(5), even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

6. Business Leagues, Chambers of Commerce, Real Estate Boards, and Boards of Trade. A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self sustaining, is not a business league. An association engaged in furnishing information to prospective investors to enable them to make sound investments is not a business league since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock or commodity exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of R.S. 47:608(6) and is not exempt from the tax.

7. Civic Leagues and Local Associations of Employees

a. Civic leagues or organizations may be exempt, provided they are not organized or operated for profit, and are operated exclusively for the promotion of social welfare. An organization is operated exclusively for social welfare only if it is primarily engaged in promoting in some manner the common good and general welfare of people in the community. An organization embraced within this provision is one which is operated primarily for the purpose of bringing about civic betterment and social improvements. A social welfare organization will qualify for exemption as a charitable organization if it falls within the definition of

charitable set forth in §308.B.5.d.ii and is not an action organization as set forth in §308.B.5.c.iii.

b. The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office, nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit. See R.S. 47:608(6) and the regulations issued thereunder, relating to business leagues and similar organizations. A social welfare organization may qualify under this Section even though it is an action organization described in §308.B if it otherwise qualifies under this Section.

c. Local associations of employees described in R.S. 47:608(7) are expressly entitled to exemption. As conditions to exemption, it is required that:

i. membership of such an association be limited to the employees of a designated person or persons in a particular municipality;

ii. the net earnings of the association be devoted exclusively to charitable, educational, or recreational purposes;

iii. its activities are confined to a particular community, place, or district. If the activities are limited only by the borders of a state, it cannot be considered to be local in character; and

iv. no substantial part of the activities of the association is carrying on propaganda or otherwise attempting to influence legislation.

8. Social Clubs

a. The exemption provided by R.S. 47:608(8) applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, but does not apply to any club if any part of its net earnings inures to the benefit of any private shareholder. In general, the exemption extends to social and recreational clubs which are supported solely by membership fees, dues, and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

b. A club which engages in business, such as making its social and recreational facilities available to the general public or by selling real estate or other products, is not organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, and is not exempt. Solicitation by advertisement or otherwise for public patronage to its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes. However, an incidental sale of property will not deprive a club of its exemption.

9. Local Benevolent Life Insurance Associations, Mutual Ditch or Irrigation Companies, Mutual Cooperative or Telephone Companies, and Like Organizations

a. In order to be exempt under the provision of R.S. 47:608(9), an organization of the type specified must receive at least 85 percent of its income from amounts collected from members for the sole purpose of meeting losses and

expenses. If an organization issues policies for stipulated cash premiums, or if it requires advance deposits to cover the cost of insurance and maintains investments from which more than 15 percent of its income is derived, it is not entitled to an exemption. Although it may make advance assessments for the sole purpose of meeting future losses and expenses, an organization may be entitled to the exemption provided that the balance of such assessments remaining on hand at the end of the year is retained to meet losses and expenses or is returned to members.

b. The phrase *of a purely local character* applies only to benevolent life insurance associations and organizations exempt on the ground that they are organizations similar to a benevolent life insurance association, and not to the other organizations specified in R.S. 47:608(9). An organization of a purely local character is one whose business activities are confined to a particular community, place, or district, irrespective of political subdivisions. If the activities of an organization are limited only by the borders of a state, it cannot be considered to be purely local in character.

10. Insurance Corporations. Insurance companies which pay or which are required to pay a premium tax under the provisions of Title 22 of the Louisiana Revised Statutes of 1950 are exempt from the corporation franchise tax.

11. Farmers' and Fruit Growers' Cooperatives

a. Farmers' cooperative marketing associations engaged in the marketing of farm products for farmers, fruit growers, livestock growers, dairymen, etc. and turning back to the producers the proceeds of the sales of their products, less the necessary operating expenses, on the basis of either the quantity or the value of the products furnished by them, are exempt from the corporation franchise tax. Nonmember patrons must be treated the same as members insofar as the distribution of patronage dividends is concerned. Thus, if products are marketed for nonmember producers, the proceeds of the sales, less necessary operating expenses, must be returned to the patron from the sale of whose goods such proceeds result, whether or not such patrons are members of the association. In order to establish compliance with the statutory requirement that the proceeds of sales, less necessary operating expenses, be turned back to all producers on the basis of either the quantity or the value of the products furnished by them, it is necessary for such an association to keep permanent records of the business done with both members and nonmembers. While patronage dividends must be paid to all producers on the same basis, the requirement is complied with if an association, instead of paying patronage dividends to nonmembers in cash, keeps permanent records from which the proportionate share of the patronage dividends due to nonmember producers can be determined, and such shares are made applicable toward the purchase price of a share of stock or of a membership in the association.

b. An association which has capital stock will not for such reason be denied exemption:

i. if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation on the value of the consideration for which the stock was issued; and

ii. if substantially all of such stock (with the exception noted below) is owned by producers who market

their products or purchase their supplies and equipment through the association. Any ownership of stock by others than such actual producers must be satisfactorily explained in the association's application for exemption. The association will be required to show that the ownership of its capital stock has been restricted as far as possible to such actual producers. If by statutory requirement all officers of an association must be shareholders, the ownership of a share of stock by a nonproducer to qualify him as an officer will not destroy the association's exemption. Likewise, if a shareholder for any reason ceases to be a producer and the association, because of a constitutional restriction or prohibition or other reason beyond the control of the association, is unable to purchase or retire the stock of such nonproducer, the fact that under such circumstances a small amount of the outstanding capital stock is owned by shareholders who are no longer producers will not destroy the exemption. The restriction placed on the ownership of capital stock of an exempt cooperative association shall not apply to nonvoting preferred stock, provided the owners of such stock are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends.

c. The accumulation and maintenance of a reserve required by state statute, or the accumulation and maintenance of a reasonable reserve or surplus for any necessary purpose, such as to provide for the erection of buildings and facilities required in business or for the purchase and installation of machinery and equipment or to retire indebtedness incurred for such purposes, will not destroy the exemption. An association will not be denied exemption because it markets the products of nonmembers, provided the value of the products marketed for nonmembers does not exceed the value of the products marketed for members. Anyone who shares in the profits of a farmers' cooperative marketing association and is entitled to participate in the management of the association must be regarded as a member of such association.

d. Cooperative associations engaged in the purchasing of supplies and equipment for farmers, fruit growers, livestock growers, dairymen, etc., and turning over such supplies and equipment to them at actual cost, plus the necessary operating expenses, are exempt. The term *supplies and equipment* includes groceries and all other goods and merchandise used by farmers in the operation and maintenance of a farm or farmer's household. The provisions relating to a reserve or surplus and to capital stock shall apply to associations coming under this Paragraph. An association which purchases supplies and equipment for nonmembers will not for such reason be denied exemption, provided the value of the purchases for nonmembers does not exceed the value of the purchases made for members, and provided the value of the purchases made for nonmembers who are not producers does not exceed 15 percent of the value of all its purchases.

e. In order to be exempt under R.S. 47:608(11), an association must establish that it has no income for its own account other than that reflected in a reserve or surplus authorized therein. An association engaged both in marketing farm products and in purchasing supplies and equipment is exempt only if it meets the prescribed requirements for each of its functions.

f. To be exempt, an association must not only be organized but actually operated in the manner of and for the purposes specified in R.S. 47:608(11).

g. Cooperative organizations engaged in activities dissimilar from those of farmers, fruitgrowers, and the like, are not exempt.

12. Corporations Organized to Finance Crop Operations. A corporation organized by a farmers' cooperative marketing or purchasing association, or the members thereof, for the purpose of financing the ordinary crop operations of such members or other producers is exempt, provided the marketing or purchasing association is exempt under the provisions of R. S. 47:608(11) and the financing corporation is operated in conjunction with the marketing or purchasing association. The provisions of R.S. 47:608(11) relating to a reserve or surplus and to capital stock also apply to corporations coming under this Paragraph.

13. Corporations Organized for the Exclusive Purpose of Holding Title to Property

a. Corporations organized for the exclusive purpose of holding title to property are exempt from the corporation franchise tax, but only if:

i. the entire amount of income from the property, less expenses, is turned over to organizations which are organized and operated exclusively for:

- (a). religious purposes;
- (b). charitable purposes;
- (c). scientific purposes;
- (d). literary purposes; or
- (e). educational purposes; and

ii. no part of the net earnings inures to the benefit of any private shareholder or any organization organized and operated for a purpose other than those enumerated under §308.B.13.a.i.(a), whether or not the benefiting organization is exempt under other provisions of R.S. 47:608.

b. Corporations whose articles of incorporation or by-laws permit activities other than the holding of title to property, collecting the income therefrom, paying the necessary expenses of operating the property, and turning over the entire amount of its income, after expenses, to the specified types of organizations are not exempt.

14. Voluntary Employees' Beneficiary Associations

a. In general, the exemption provided by R.S. 47:608(14) applies if all of the following requirements are met:

i. the organization is an association of employees;

ii. membership of the employees in the association is voluntary;

iii. the organization is operated only for the purpose of providing for the payment of life, sick, accident, or other benefits to its members or their dependents;

iv. no part of the net earnings of the organization inures, other than by payment of the benefits described in §308.B.14.a.iii, to the benefit of any private shareholder or individual; and

v. at least 85 percent of the income of the organization consists of amounts collected from members for the sole purpose of such payments of benefits and meeting expenses.

b. Explanation of requirements necessary to constitute an organization described in R.S. 47:608(14) [LAC 61.I.308.B.14.b.ii]. For purposes of §308.B.14.b:

i. Association of Employees

(a). In general, an organization described in R.S. 47:608(14) must be composed of individuals who are entitled to participate in the association by reason of their status as employees who are members of a common working unit. The members of a common working unit include, for example, the employees of a single employer, one industry, or the members of one labor union. Although membership in such an association need not be offered to all the employees of a common working unit, membership must be offered to all of the employees of one or more classes of the common working unit and such class or classes must be selected on the basis of criteria which do not limit membership to shareholders, highly compensated employees, or other like individuals. The criteria for defining a class may be restricted by conditions reasonably related to employment, such as a limitation based on a reasonable minimum period of service, a limitation based on a maximum compensation, or a requirement that a member be employed on a full-time basis. The criteria for defining a class may also be restricted by conditions relating to the type and amount of benefits offered, such as a requirement that members need a reasonable minimum health standard in order to be eligible for life, sick, or accident benefits, or a requirement which excludes, or has the effect of excluding, employees who are members of another organization offering similar benefits to the extent such employees are eligible for such benefits. Whether a group of employees constitutes an acceptable class is a question to be determined with regard to all the facts and circumstances, taking into account the guidelines set forth in this Clause. Furthermore, exemption will not be barred merely because the membership of the association includes some individuals who are not employees (within the meaning of §308.B.14.b.i.b) or who are not members of the common working unit, provided that these individuals constitute no more than 10 percent of the total membership of the association.

(b). Meaning of *Employee*

(i). The term *employee* has reference to the legal and bona fide relationship of employer and employee.

(ii). The term *employee* also includes:

[a]. an individual who would otherwise qualify for membership under §308.B.14.b.i.(b)(i), but for the fact that he is retired or on leave of absence;

[b]. an individual who would otherwise qualify under §308.B.14.b.i.(b)(i), but subsequent to the time he qualifies for membership he becomes temporarily unemployed. The term *temporary unemployment* means involuntary or seasonal unemployment, which can reasonably be expected to be of limited duration. An individual will still qualify as an employee under §308.B.14.b.i.(b)(i), during a period of temporary unemployment, he performs services as an independent contractor or for another employer; or

[c]. an individual who qualifies as an employee under the state or federal unemployment compensation law covering his employment, whether or not such an individual could qualify as an employee under the

usual common law rules applicable in determining the employer-employee relationship.

ii. Explanation of Voluntary Association. An association is not a voluntary association if the employer unilaterally imposes membership in the association on the employee as a condition of his employment and the employee incurs a detriment (for example, in the form of deductions from his pay) because of his membership in the association. An employer will not be deemed to have unilaterally imposed membership on the employee if such employer requires membership as the result of a collective bargaining agreement which validly requires membership in the association.

iii. Life, Sick, Accident, or Other Benefits

(a). In general, a voluntary employee's beneficiary association must provide solely (and not merely primarily) for the payment of life, sick, accident, or other benefits to its members or their dependents. Such benefits may take the form of cash or non-cash benefits.

(i). Life Benefits. The term *life benefits* includes life insurance benefits, or similar benefits payable on the death of the member, made available to members for current protection only. Thus, term life insurance is an acceptable benefit. However, life insurance protection made available under an endowment insurance plan or a plan providing cash surrender values to the member is not included. Life benefits may be payable to any designated beneficiary of a member.

(ii). Sick and Accident Benefits. A sick and accident benefit is, in general, an amount furnished in the event of illness or personal injury to or on behalf of members or their dependents. For example, a sick and accident benefit includes an amount provided under a plan to reimburse a member for amounts he expends because of illness or injury, or for premiums which he pays to a medical benefit program such as Medicare. Sick and accident benefits may also be furnished in noncash form, such as benefits in the nature of clinical care, services by visiting nurses, and transportation furnished for medical care.

(iii). Other Benefits. The term *other benefits* includes only benefits furnished to members or their dependents which are similar to life, sick and accident benefits. A benefit is similar to a life, sick or accident benefit if it is intended to safeguard or improve the health of the employee or to protect against a contingency which interrupts earning power. Thus, paying vacation benefits, subsidizing recreational activities such as athletic leagues, and providing vacation facilities are considered other benefits since such benefits protect against physical or mental fatigue and accidents or illness which may result therefrom. Severance payments or supplemental unemployment compensation benefits paid because of a reduction in force or temporary layoff are other benefits since they protect the employee in the event of interruption of earning power. However, severance payments at a time of mandatory or voluntary retirement and benefits of the type provided by pension, annuity, profit-sharing, or stock bonus plans are not other benefits since their purpose is not to protect in the event of an interruption of earning power. Furthermore, the term *other benefits* does not include the furnishing of automobile or fire insurance or the furnishing of scholarships to the members' dependents.

iv. Inurement to the Benefit of Any Private Shareholder or Individual. No part of the net earnings of the organization may inure to the benefit of any private shareholder or individual other than through the payment of benefits described in §308.B.14.b.iii. The disposition of property to, or the performance of services for, any person for less than its cost (including the indirect costs) to the association, other than for the purpose of providing such a benefit, will constitute inurement. Further, the payment to any member of disproportionate benefits will not be considered a benefit within the meaning of §308.B.14.b.iii even though the benefit is of the type described in §308.B.14.b.iii. For example, the payment to highly compensated personnel of benefits which are disproportionate in relation to benefits received by other members of the association will constitute inurement. However, the payment to similarly situated employees of benefits which differ in kind or amount will not constitute inurement if such benefits are paid pursuant to objective and reasonable standards. For example, two employees who are similarly situated while employed receive unemployment benefits which differ in kind and amount. These unemployment benefits will not constitute inurement if the reason for the larger payment to the one employee is to provide training for that employee to qualify for reemployment and the other employee has already received such training. Furthermore, the rebate of excess insurance premiums based on experience to the payor of the premium, or a distribution to member-employees upon the dissolution of the association, will not constitute inurement. However, the return of contributions to an employer upon the dissolution of the association will constitute inurement.

v. Meaning of the term *income*. The requirement of R.S. 47:608(14) that 85 percent of the income of a voluntary employees' beneficiary association consist of amounts collected from members and amounts contributed by the employer for the sole purpose of making payment of the benefits described in §308.B.14.b.iii (including meeting the expenses of the association) assures that not more than a limited amount (15 percent) of an association's income is from sources such as investments, selling goods, and performing services, which are foreign to what must be the principal source of the association's income, i.e., the employees. Therefore, the term *income* as used in R.S. 47:608(14) means the gross receipts of the organization for the taxable year, including income from tax-exempt investments (but exclusive of gifts and donations) and computed without regard to losses and expenses paid or incurred for the taxable year. The term *income* does not include the return to the association of an amount previously expended. Thus, for example, rebates of insurance premiums paid in excess of actual insurance costs do not constitute income for this purpose. In order to be an amount collected from a member, it must be collected as a payment, such as dues, qualifying the member to receive an allowable benefit, or as a payment for an allowable benefit actually received. For example, if the association furnishes medical care in a hospital operated by it for its members, an amount received from the member as payment of a portion of the hospital costs is an amount collected from such a member. However, an amount paid by an employee as interest on a loan made by the association is not an amount collected from a member

since the interest is not an amount collected as payment for an allowable benefit received. For the same reason, gross receipts collected by the association as a result of employee purchases of work clothing from an association-owned store, or employee purchases of food from an association-owned vending machine, are not amounts collected from members. Amounts collected from members or amounts contributed to the association by the employer of the members are not considered gifts or donations.

vi. Record-Keeping Requirements

(a). In addition to such other records which may be required, every organization described in R.S. 47:608(14) must maintain records indicating the amount of benefits paid by such organization to each member. If the organization is financed, in whole or in part, by amounts collected from members, the organization must maintain records indicating the amount of each member's contribution.

(b). A supplemental unemployment compensation benefit plan may also qualify for exemption under the provisions of R.S. 47:608(14).

15. Teachers' Retirement Fund Associations. Teachers' retirement fund associations are exempt from the corporation franchise tax only if:

a. they are of a purely local character whose activities are confined to a particular community, place, or district, irrespective of political subdivisions, but if the activities are limited only by the borders of a state, it cannot be considered to be purely local in character;

b. its income consists solely of amounts received from public taxation, assessments upon the teaching salaries of members, and income from investments; and

c. no part of its net earnings inures (other than through the payment of retirement benefits) to the benefit of any private shareholder or individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:608.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February, 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:459 (March 2004).

§309. Due Date, Payment, and Reporting of Tax

A. The corporation franchise tax becomes due on the first day of each calendar or fiscal year in which a corporation is subject to the tax, and is based on its entire issued and outstanding capital stock, surplus, and undivided profits, and borrowed capital determined as of the close of the previous calendar or fiscal year. There is no proration of the tax for a portion of the year in the case of dissolution of a domestic corporation, withdrawal from the state by a foreign corporation, or where a corporation otherwise ceases to be subject to the tax. The tax is payable to the secretary of Revenue on or before the fifteenth day of the third month following the month in which the tax becomes due; in the case of a calendar year taxpayer, the tax becomes due on January 1 and is payable to the secretary on or before April 15. If the day on which the tax is payable falls on a Saturday, Sunday, or legal holiday the tax is payable on the next business day. For purposes of this Section, fiscal or calendar year shall be determined by reference to the annual accounting period regularly used by the corporation in keeping its books.

B. Payment of the tax shall be accompanied by a full, accurate, and complete report prepared on forms furnished by the secretary of Revenue, which shall be signed by a duly authorized official of the corporation.

C. Whenever the secretary has granted permission to a corporation to change its accounting period under the provisions of R.S. 47:613, the tax to be paid for the period from the end of the last period for which the tax had already become due until the end of the new accounting period shall be determined by multiplying the ratio that the number of such months bears to 12, times the tax computed for an annual period based on the previous period's closing. All subsequent returns shall be prepared on the basis of the new accounting period.

D. In the case of a mere change in the name or change in the state of incorporation, the tax shall be determined and paid as if the change had not occurred.

E. For provisions relating to newly taxable corporations, see R.S. 47:611.

F. For provisions relating to requests for extensions of time within which to file the report required by this Chapter, see R.S. 47:612.

G. In the case of mergers which have an effective time and date of 12 midnight of the last day of the merged corporation's accounting period which coincides with the last day of the surviving corporation's accounting period, the surviving corporation shall include the assets of the merged corporation with its assets in computing the ratios of property and assets for the purpose of determining the amount of tax due for the year following the date of the merger.

H. If the surviving corporation was not previously subject to the tax, it shall pay the minimum tax for the accounting period within which such merger date occurs as required of newly taxable corporations under the provisions of R.S. 47:611.

AUTHORITY NOTE: Promulgated in accordance with 47:609 and R.S.47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), amended by the Department of Revenue, Policy Services Division, LR 28:97 (January 2002), LR 30:468 (March 2004).

§311. Newly Taxable Corporations

A. Every corporation shall pay only the minimum tax in the first accounting period or fraction thereof in which it becomes subject to the tax. It is immaterial whether the corporation became liable for the tax on the first day or the last day of the accounting period regularly used by the taxpayer in keeping its books; the minimum tax is due for that accounting period. The tax accrues immediately upon the corporation's becoming subject thereto.

B. The tax for all accounting periods subsequent to the period in which the corporation became subject to the tax accrues on the first day of the period and is based on the previous period's closing.

C. In all instances, the tax is payable on or before the fifteenth day of the fourth month following the month in which the tax accrues.

AUTHORITY NOTE: Promulgated in accordance with 47:611.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes

Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:469 (March 2004).

§312. Extension of Time for Filing Return and Paying the Tax

A. When such application for an extension of time within which to file the report required by this Chapter has been filed, the Secretary of Revenue and Taxation may grant such extension for a period not to exceed six months from the due date of the report prescribed by R.S. 47:609 and R.S. 47:611. In any case in which the taxpayer has filed a request for an automatic extension of time within which to file its federal income tax return with the U.S. Internal Revenue Service, a copy of the automatic extension request attached to the report required by this Chapter will be accepted by the secretary as an application filed under this Section, and an extension equal to that granted by the federal government will be granted by Louisiana.

B. The granting of an extension of time within which to file the report required by this Chapter does not automatically grant an extension of time within which the tax shall be paid, and the secretary may require payment of the estimated amount of tax due as a condition to granting the report filing extension.

C. Whenever an extension has been granted with respect to payment of the tax, interest accrues thereon for the period from the payment date prescribed by R.S. 47:609 to the date on which the tax is paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:612.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:469 (March 2004).

§313. Fiscal Year; Accounting Period

A. *Fiscal year* means an accounting period of 12 months ending on the last day of any month other than December. In the case of a taxpayer that, in keeping its books, regularly uses a 52- to 53-week period permitted under R.S. 47:91(F), the Secretary of Revenue and Taxation may permit the use of such accounting period for purposes of this Chapter, provided that in any case in which the effective date or the applicability of any provisions of this Chapter is expressed in terms of taxable years beginning or ending with reference to a specified date which is the first or last day of a month, such 52- or 53-week accounting period shall be treated:

1. as beginning with the first day of the calendar month beginning nearest to the first day of such taxable period; or

2. as ending with the last day of the calendar month ending nearest to the last day of such taxable period, as the case may be.

B. However, no fiscal year will be recognized unless, before its close, it was definitely established as an accounting period and the books of the taxpayer were kept accordingly.

C. Once an accounting period has been established, no change from that period shall be made without the approval of the Secretary of Revenue and Taxation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:613.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes

Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:469 (March 2004).

§317. Refunds and Credits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:601-617 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repealed by the Department of Revenue, Policy Services Division, LR 30:470 (March 2004).

Cynthia Bridges
Secretary

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**Department of Revenue
Policy Services Division**

Corporation Income Tax (LAC 61:I.1115-1189)

Under the authority of R.S. 47:287.2-287.785 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, repromulgates LAC 61:I.1115-1189.

Louisiana Administrative Code 61:I.1115-1189 are repromulgated to reaffirm the Secretary of Revenue's rulemaking authority. In *Collector of Revenue v. Mossler Acceptance Co.*, 139 So.2d 263 (La. App. 1st Cir. 1962), the First Circuit held that regulations defining the terms used in the tax statutes went beyond the secretary's authority in R.S. 47:1511 to promulgate rules regarding "the proper administration and enforcement" of the tax statutes. Since the Mossler decision, R.S. 47:1511 was amended removing the language that the First Circuit determined was a limitation on the secretary's rulemaking authority. Although no taxpayer has relied on Mossler to refute the secretary's rulemaking authority, repromulgation of Sections 1115-1189 reaffirms the secretary's authority.

Title 61

REVENUE AND TAXATION

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

Chapter 11. Income: Corporation Income Tax

§1115. Modifications to Deductions from Gross Income Allowed by Federal Law

A. Dividends Received by a Corporation. R.S. 47:287.73(C)(1) allows a deduction for dividends received by one corporation from another to the extent that the income from which the dividends are paid has been earned from Louisiana sources and has borne Louisiana income tax. The amount of the income from which the dividends are paid that has borne Louisiana income tax shall be determined by relating the Louisiana net taxable income to the total book net income of the declaring corporation, less adjustments.

B. Example. During the calendar year 1986, ABC Inc., a Louisiana corporation, derived a total Louisiana net taxable income of \$10,000 and \$10,000 of net income from Texas. The depreciation expense deducted on the tax return exceeds depreciation expense deducted on the books by \$10,000. The depletion expense deducted on the tax return exceeds depletion expense deducted on the books by \$10,000 which is a noncompensating difference. The total net income determined from the books of the corporation is \$60,000. The book income includes \$20,000 of interest on U.S. obligations that is not included in taxable income. On January 7, 1987, the corporation paid a dividend of \$30,000. The allowable deduction to recipient corporations is computed as follows.

Items	Per Books	Per Louisiana Income Tax Return
Net Income	\$60,000	\$10,000
Less: Excess of tax depreciation over book depreciation	\$10,000	
Adjusted Net Income	\$50,000	\$10,000
Ratio		20%
Dividend Paid		\$30,000
Allowable Deduction		\$6,000

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.73.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:95 (February 1988), repromulgated by the Policy Services Division, LR 30:470 (March 2004).

§1122. Taxes Not Deductible

A. General. R.S. 47:287.83 provides that federal income tax levied on net income upon which no Louisiana income tax has been incurred, or upon which, for any reason whatsoever, no Louisiana income tax will be paid, is not deductible.

B. Federal Alternative Minimum Tax

1. Federal alternative minimum tax attributable to tax preferred items such as, but not limited to, accelerated depreciation, depletion, and intangible drilling and development cost, is not deductible. The nondeductible portion of federal alternative minimum tax after credits is the excess of the total federal alternative minimum tax after credits over the deductible portion of federal alternative minimum tax attributed to Louisiana net income.

2. Federal alternative minimum tax on federal alternative minimum taxable net income from sources other than tax preferred items is deductible to the extent the alternative minimum taxable net income is taxed by Louisiana. The deductible portion of federal alternative minimum tax attributable to Louisiana apportionable and allocable net income, which is taxed at alternative minimum taxable income rates, is the result obtained by multiplying the federal alternative minimum tax after credits by a fraction, the numerator of which is Louisiana apportionable and allocable net income which is taxed at alternative minimum taxable net income rates and the denominator of which is the excess of federal alternative minimum taxable income over regular federal taxable income. The determination of the amount of deductible and nondeductible

federal alternative minimum tax is illustrated by the following example.

C. Example. The ABC Corporation earns 100 percent of its net income in Louisiana. The ABC Corporation is on a fiscal year beginning July 1, 1987 and ending June 30, 1988. ABC's regular federal taxable income for fiscal year ending June 30, 1988, was \$200,000 and regular federal income tax was \$56,250. Book net income before federal income tax was \$450,000. Of the total difference between book and tax net income, \$150,000 was due to the tax preferred item, excess tax depreciation expense over book depreciation expense, and \$100,000 was due to interest income earned on municipal bonds exempt from regular federal income tax, but not from Louisiana income tax. Louisiana apportionable and allocable net income before the federal income tax deduction is \$300,000.

Computation of Alternative Minimum Taxable Income

1. Regular federal taxable income	200,000
2. Income from tax preferred items (excess tax depreciation over book depreciation expense)	150,000
3. Book income adjustment (interest on municipal bonds issued by a state or its political subdivisions other than Louisiana: 100,000 multiplied by 50%)	
4. Alternative minimum taxable income (AMTI, the sum of lines 1, 2 and 3)	400,000

Computation of Alternative Minimum Tax

5. Alternative minimum taxable income (ATMI from line 4)	\$ 400,000
6. Less exemption	\$ -0-
7. AMTI after exemption	\$ 400,000
8. Federal alternative minimum tax rate	\$ 20%
9. Tentative alternative minimum tax rate (line 7 multiplied by line 8)	\$ 80,000
10. Less credits	\$ -0-
11. Less regular federal income tax (after credits)	\$ 56,250
12. Alternative minimum tax (AMT line 9 minus line 11)	\$ 23,750

Computation of Alternative Minimum Tax Attributable to Louisiana Net Income Which is Taxed at AMTI Rates

13. Louisiana allocable and apportionable net income	\$ 300,000
14. Less:	
a. Louisiana net income which is taxed at federal ordinary and alternative capital gain tax rates	\$200,000
b. Louisiana net income which is not taxed by federal (interest on municipal bonds \$100,000 multiplied by 50%)	\$ 50,000
15. Louisiana net income which is taxed at AMTI rates (line 13 minus line 14)	\$ 50,000
16. Excess of AMTI over regular federal taxable income (\$400,000 minus \$200,000)	\$ 200,000
17. Ratio (Louisiana net income which is taxed at AMTI rates over the excess of AMTI over regular federal taxable income, line 15 divided by line 16)	\$ 25%
18. AMT (from line 12)	\$ 23,750
19. AMT deductible (the amount attributable to Louisiana net income which is taxed at AMTI rates, line 18 multiplied by line 17)	\$ 5,938
20. AMT not deductible (line 18 minus line 19)	\$ 17,812

D. Net Operating Loss Carryback. Federal income tax deducted from Louisiana net income in taxable periods to which a net operating loss is carried back shall be computed to determine the amount of federal income tax attributable to net income which is taxed by the federal but which is not taxed by Louisiana as a result of a net operating loss carryback. Federal income tax attributable to net income which is not taxed by Louisiana as a result of a net operating loss carryback is the excess of allowable federal income tax deducted from Louisiana net income before the net operating loss carryback over the allowable deduction after the net operating loss carryback. The federal income tax attributable to net income which is not taxed by Louisiana shall be treated as a reduction to the net operating loss deduction. If the amount of the federal income tax attributable to the net income which is not taxed by Louisiana exceeds the Louisiana net operating loss deduction, such excess shall be treated as income in the year of the transaction that gave rise to the excess. These principles are illustrated in the following examples.

E. Examples

Example 1

The ABC Corporation does not include its net income in a consolidated federal income return as provided by Section 1501 of the *Internal Revenue Code*. ABC files state and federal income tax returns on a calendar year basis. ABC Corporation's net income and other financial information used to file state and federal income tax returns for the four-year period ending December 31, 1987, include the following.

Taxable Periods	1984	1985	1986	1987
Federal net income or (loss)	\$ 2,000,000	\$ 4,000,000	\$ 5,000,000	\$ 600,000
Louisiana net income or (loss)	1,200,000	1,800,000	3,000,000	(1,000,000)
Federal income tax	800,000	1,600,000	2,000,000	240,000
Federal income tax deducted from Louisiana net income	467,280	706,240	1,171,200	-0-
State income tax deducted from federal net income but not Louisiana net income	57,500	86,000	144,000	-0-
Income tax apportionment ratio	55%	40%	50%	50%
Louisiana taxable income	732,720	1,093,760	1,828,800	-0-

ABC Corporation elects to carry their 1987 Louisiana net operating loss back to 1984 pursuant to R.S. 47:287.86. Federal income tax attributable to net income which is not taxed by Louisiana as a result of the net operating loss carryback is computed as follows.

1. Louisiana net income, 1984		\$ 1,200,000
2. Less: State income tax deduction allowed by the federal but not Louisiana	\$57,500	
Multiplied by the income tax apportionment ratio	55%	
Balance	\$31,625	
Louisiana net operating loss, 1987	\$1,000,000	
Adjustment		\$ 1,031,625
3. Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2)		\$ 168,375
4. Federal net income, 1984		\$ 2,000,000
5. Ratio (line 3 divided by line 4)		8.4188%
6. Federal income tax, 1984		\$ 800,000
7. Allowable federal income tax deduction after the Louisiana net operating loss carryback (line 6 multiplied by line 5)		\$ 67,350
8. Federal income tax deducted from Louisiana net income before the net operating loss carryback		\$ 467,280
9. Federal income tax attributable to net income which is not taxed by Louisiana (line 8 minus line 7)		\$ 399,930
10. Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana		\$ 1,000,000
11. Federal income tax attributable to net income which is not taxed by Louisiana (from line 9)		\$ 399,930
12. Louisiana net operating loss after deduction for federal income tax attributable to net income which is not taxed by Louisiana (line 10 minus line 11)		\$ 600,070

Example 2

Assume the same facts in Example 1 except that the ABC Corporation sustained a \$2,000,000 federal net operating loss in 1987 and elects to carry the federal loss back to 1984. Federal income tax after the net operating loss carryback is zero.

1. Louisiana net income, 1984		\$ 1,200,000
2. Less: State income tax deduction allowed by the federal but not Louisiana	\$57,500	
Multiplied by the income tax apportionment ratio	55%	
Balance	\$31,625	
Louisiana net operating loss, 1987	\$1,000,000	
Adjustment		\$ 1,031,625
3. Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2)		\$ 168,375
4. Federal net income, 1984		\$ 2,000,000
5. Federal net operating loss carryback from 1987		\$ (2,000,000)
6. Federal net income after federal net operating loss carryback from 1987 (line 4 minus line 5)		-0-
7. Ratio (line 3 divided by line 6)		-0-
8. Federal income tax after the federal net operating loss carryback		-0-
9. Allowable federal income tax deduction after the netoperating loss carryback (line 8 multiplied by line 7)		-0-
10. Federal income tax deducted from Louisiana net income before the net operating loss carryback		\$ 467,280
11. Federal income tax attributable to net income which is not taxed by Louisiana (line 10 minus line 9)		\$ 467,280
12. Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana		\$ 1,000,000
13. Federal income tax attributable to net income which is not taxed by Louisiana (from line 11)		\$ 467,280
14. Louisiana net operating loss after deduction for federal income tax attributable to net income which is not taxed by Louisiana (line 12 minus line 13)		\$ 532,720

Example 3

Assume the same facts in Examples 1 and 2 except that the Louisiana and federal net operating losses in 1987 are \$350,000 and \$1,800,000 respectively. Federal income tax after the net operating loss carryback is \$80,000.

1. Louisiana net income, 1984		\$ 1,200,000
2. Less: State income tax deduction allowed by the federal but not Louisiana	\$57,500	
Multiplied by the income tax apportionment ratio	55%	
Balance	\$31,625	
Louisiana net operating loss, 1987	\$350,000	
Adjustment		\$ 381,625
3. Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2)		\$ 818,375
4. Federal net income, 1984		\$ 2,000,000
5. Federal net operating loss carryback from 1987		\$ (1,800,000)
6. Federal net income after federal net operating loss carryback from 1987 (line 4 minus line 5)		\$ 200,000
7. Ratio (line 3 divided by line 6)		100%
8. Federal income tax after the federal net operating loss carryback		\$ 80,000
9. Allowable federal income tax deduction after the netoperating loss carryback (line 8 times line 7)		\$ 80,000

10. Federal income tax deducted from Louisiana net income before the net operating loss carryback		\$ 467,280
11. Federal income tax attributable to net income which is not taxed by Louisiana, 1984 (line 10 minus line 9)		\$ 387,280
12. Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana		\$ 350,000
13. Federal income tax attributable to net income which is not taxed by Louisiana (from line 11)		\$ 387,280
14. Louisiana net operating loss after deduction for the amount of federal income tax attributable to net income which is not taxed by Louisiana (line 12 minus line 13)		-0-
15. Additional Louisiana taxable income for 1987 due to excess of federal income tax attributable to net income which is not taxed by Louisiana over the Louisiana net operating loss (line 13 minus line 12)		\$ 37,280

F. Definitions. For the purposes of this Section, alternative minimum tax, regular federal income tax, alternative tax on capital gains, and regular tax on ordinary net income are defined as provided in §1123.F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.83.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:96 (February 1988), repromulgated by the Policy Services Division, LR 30:470 (March 2004).

§1123. Federal Income Tax Deduction

A. General. R.S. 47:287.85(C) permits corporations to claim as a deduction in computing net income that portion of the federal income tax levied with respect to the Louisiana net income, which is applicable to the year for which the Louisiana return is filed, regardless of the method of accounting utilized (cash, accrual, etc.). For determination of the deductible amount of federal alternative minimum tax attributable to Louisiana net income, refer to §1122. When a corporation includes its net income in a consolidated federal income tax return, total federal income tax for the purpose of this Section shall be the amount determined pursuant to §1123.E.

B. Computations. The deductible portion of the federal income tax, the tax attributable to Louisiana income, is the sum of the amounts determined in §1123.B.1 and 2.

1. The deductible portion of federal income tax attributable to Louisiana apportionable and allocable net income which is taxed at alternative capital gain rates is the result obtained by multiplying the federal income tax which is calculated at alternative capital gain rates by a fraction, the numerator of which is Louisiana apportionable and allocable net income which is taxed at alternative capital gain rates and the denominator of which is federal net income which is taxed at alternative capital gain rates.

2. The deductible portion of federal income tax attributable to Louisiana apportionable and allocable net income, less adjustment for the net operating loss deduction if applicable, which is taxed at ordinary rates, is the result obtained by multiplying the federal income tax which is calculated at ordinary rates by a fraction, the numerator of which is Louisiana apportionable and allocable net income, less adjustment for the net operating loss deduction if applicable, which is taxed at ordinary rates and the denominator of which is federal net income which is taxed at ordinary rates.

C. Numerator. The numerator to be used in §1123.B shall be determined as set forth in §1123.C.1 and 2.

1. The numerator in the case of Louisiana net income which is taxed by federal at alternative capital gain rates is the sum of:

a. the amount of net apportionable and net allocable income, subject to tax at alternative capital gain rates for

federal income tax purposes, apportioned and allocated to Louisiana;

b. any compensating item of income attributable to Louisiana and which is taxed by federal at alternative capital gain rates but which is not taxed by Louisiana; and

c. any compensating loss item of income, of a character which would be allowable by federal in arriving at income which is taxed at alternative capital gain rates, attributed to and allowed by Louisiana but not allowed by federal, reduced by the sum of:

d. any compensating item of income, of a character which would be subject to tax by federal at alternative capital gain rates, attributed to and taxed by Louisiana but which is not taxed by federal;

e. any compensating loss item of income attributable to Louisiana and allowed by federal in arriving at income which is taxed at alternative capital gain rates but not allowed by Louisiana; and

f. any excess of the sum of:

i. any noncompensating loss item of income attributable to Louisiana and allowed by federal in arriving at income which is taxed at alternative capital gain rates, but not allowed by Louisiana; and

ii. any noncompensating item of income, of a character which would be subject to tax by federal at alternative capital gain rates, attributed to and taxed by Louisiana but which is not taxed by federal; over

iii. any noncompensating loss item of income, of a character which would be allowable in arriving at income which is taxed at alternative capital gain rates by federal, attributed to and allowed by Louisiana but not allowed by federal.

2. The numerator in the case of Louisiana net income which is taxed by federal at ordinary rates is the sum of:

a. the amount of net apportionable and net allocable income, less adjustment for the net operating loss deduction if applicable, subject to tax at ordinary rates for federal income tax purposes, apportioned and allocated to Louisiana;

b. any compensating item of gross income attributable to Louisiana and taxed by federal at ordinary rates but which is not taxed by Louisiana; and

c. any compensating item of deduction, of a character which would be allowable by federal in arriving at income which is taxed at ordinary rates, attributed to and allowed by Louisiana but not allowed by federal, and not attributable to any item of gross income taxable by Louisiana but not by federal; reduced by the sum of:

d. any compensating item of gross income, which would be subject to tax by federal at ordinary rates, attributed to and taxed by Louisiana but which is not taxed by federal;

e. any compensating item of deduction attributable to Louisiana and allowed by federal in arriving at income which is taxed at ordinary rates but not allowed by Louisiana;

f. any excess of the sum of:

i. any noncompensating item of deduction attributable to Louisiana and allowed by federal in arriving at income which is taxed at ordinary rates, but not allowed by Louisiana, and not attributable to any item of gross income taxable by federal but not by Louisiana; and

ii. any noncompensating item of gross income, of a character which would be subject to tax at ordinary rates, attributed to and taxed by Louisiana but which is not taxed by federal; over

iii. any noncompensating item of deduction, which would be allowable by federal in arriving at income which is taxed at ordinary rates, attributed to and allowed by Louisiana but not allowed by federal, and not attributable to

any item of gross income taxable by Louisiana but which is not by federal.

D. Example. The following example illustrates these principles. Facts: The income reported and deductions claimed by ABC, Inc., a Delaware corporation having its commercial domicile in Louisiana and having several places of business outside this state, are reflected below. The difference between the federal depreciation deduction and the depreciation deducted in arriving at total net income is a compensating item. One-half of the total royalty income, depletion, and other expenses related thereto are attributable to a Louisiana oil property. There are \$15,000 in expenses attributable to the royalty income in addition to the depletion deduction. The portion of net income from royalties allocable to Louisiana is \$25,000. Of the total profit from the sale of capital assets, \$25,000 is allocable to Louisiana.

Items	----- RETURNS -----	
	Federal	Louisiana
Income		
Gross profit from sales	\$ 1,400,000	\$ 1,400,000
Royalties	100,000	100,000
Interest—Bond, State of Mississippi	-0-	5,000
Interest—Bond, U.S. Government	5,000	-0-
Long-term gain from sale of capital assets	100,000	100,000
Total Income	<u>\$ 1,605,000</u>	<u>\$ 1,605,000</u>
Deductions		
Louisiana income tax	10,000	-0-
Officers' compensation	50,000	50,000
Repairs	10,000	10,000
Interest	15,000	15,000
Bad debts	5,000	5,000
Depletion	27,500	35,000
Depreciation	25,000	35,000
Contributions	5,000	5,000
Other deductions	350,000	350,000
Total deductions	<u>\$ 497,500</u>	<u>\$ 505,000</u>
Net Income	<u>\$ 1,107,500</u>	<u>\$ 1,100,000</u>
Federal income tax—		
Ordinary income	\$518,400	
Capital gains	25,000	
Total	<u>\$543,400</u>	

1. The taxpayer files on the apportionment basis and the following computation discloses the net allocable and net apportionable income derived from Louisiana sources.

Total net income		\$ 1,100,000
Deduct allocable income		
Profit from sale of capital assets	\$ 100,000	
Interest—Bonds, State of Mississippi	5,000	
Net royalty income	<u>50,000</u>	<u>\$ 155,000</u>
Net income for apportionment		<u>\$ 945,000</u>
Net income apportioned to Louisiana (20% of \$945,000)		<u>\$ 189,000</u>
Add Louisiana allocable income		
Interest	\$ 5,000	
Profit from sale of capital assets	25,000	
Royalty income	<u>25,000</u>	<u>55,000</u>
Total Louisiana apportionable and allocable income		<u>\$ 244,000</u>

2. Computations

	Ordinary Rates	Alternative Capital Gains Rates
Net income apportioned and allocated to Louisiana	\$ 219,000	\$ 25,000
Add: Compensating items of income attributable to Louisiana and taxed by federal but which is not taxed by Louisiana	-0-	-0-
Compensating items of deduction attributed to Louisiana and allowed by Louisiana but not allowed by federal depreciation (20% of \$10,000)	2,000	-0-
Total:	\$ <u>221,000</u>	\$ <u>25,000</u>
Deduct: Compensating items of income attributed to and taxed by Louisiana but not taxed by federal	-0-	
Compensating items of deduction attributable to Louisiana and allowed by federal but not allowed by Louisiana	-0-	-0-
TOTAL:	\$ <u>221,000</u>	\$ <u>25,000</u>
Excess of the sum of noncompensating items of deduction attributable to Louisiana and allowed by federal but not allowed by Louisiana		
Louisiana income tax (20% of \$10,000)*	\$ 2,000	
Noncompensating items of gross income attributed to and taxed by Louisiana but which is not taxed by federal		
Bond interest—State of Mississippi	<u>5,000</u>	
Total	\$ <u>7,000</u>	
Over		
Noncompensating items of deduction attributed to and allowed by Louisiana but not allowed by federal depletion on oil royalties	\$ <u>3,750</u>	
Excess	\$ <u>3,250</u>	-0-
Louisiana net income which is taxed by federal	\$ 217,750	\$ 25,000
Federal net income	\$ 1,007,500	\$ 100,000
	0	
Ratio	21.61%	25.00%
Federal income tax liability	\$ 518,400	\$ 25,000
Deductible federal income tax		
21.61% of \$518,400	\$ <u>112,026</u>	
25% of \$25,000		\$ 6,250
		<u>112,026</u>
Grand Total		\$ <u><u>118,276</u></u>

* Where the separate method of reporting is used, the entire amount of Louisiana income tax deducted in the federal return is attributed to Louisiana under this item.

E. Consolidated Returns. When a corporation includes its net income in a consolidated federal income tax return, the portion of the consolidated federal income tax after credits attributable to such corporation shall consist of the sum of the amounts determined in §1123.E.1, 2, and 3:

1. the consolidated regular tax on ordinary net income multiplied by the percentage determined by a fraction, the numerator of which is regular tax on ordinary net income of each member of the consolidated group computed on a separate return basis and the denominator of which is regular tax of all members of the group so computed; plus

2. the consolidated alternative tax on net capital gains multiplied by the percentage determined by a fraction, the numerator of which is alternative tax on net capital gains of each member of the consolidated group computed on a separate return basis and the denominator of which is alternative tax on net capital gains of all members of the group so computed; plus

3. the consolidated alternative minimum tax multiplied by the percentage determined by a fraction, the numerator of which is alternative minimum tax of each member of the consolidated group computed on a separate return basis and the denominator of which is alternative minimum tax of all members of the group so computed.

F. Definitions

Alternative Minimum Tax? the excess of the federal tentative minimum tax after credits for the tax year, over the federal regular tax after credits for the taxable year.

Alternative Tax on Capital Gains? the net tax liability imposed by Section 1201(a)(2) of the *Internal Revenue Code* on net capital gains, less credits.

Compensating Item? any difference in any deduction or item of income for a particular year arising solely by reason of the fact that the item is accounted for in different periods for federal and Louisiana income tax purposes. However, if a larger federal income tax deduction would be allowable were an item treated as a *compensating item* than would be allowable were the item treated as a *noncompensating item*, the item is a *compensating item* only to the extent that it is equal to the result obtained by multiplying the difference in the item by a fraction determined as follows:

a. in the case of a deduction:

i. the numerator shall be the excess, if any, of the amount of the item allowed by federal over the amount allowed by Louisiana in each prior year in which the federal allowance exceeded the Louisiana allowance and which has been taken into consideration fully in determining the allowable federal income tax deduction for Louisiana income tax purposes for such prior years, plus the excess, if any, of the amount of the item to be allowed by federal over the amount to be allowed by Louisiana in each future year in which the federal allowance will exceed the Louisiana allowance and which reasonably can be expected to be taken into consideration in determining the allowable federal income tax deduction for Louisiana income tax purposes in such future years;

ii. the denominator shall be the total of all excesses of the amount of the item allowed by federal over the amount of the item allowed by Louisiana in each prior year and of all excesses of the amount of the item to be allowed by federal over the amount to be allowed by Louisiana in each future year;

b. in the case of an item of income:

i. the numerator shall be the excess, if any, of the amount of the item taxed by Louisiana over the amount taxed by federal in each prior year in which the amount taxed by Louisiana exceeded the amount taxed by federal and which has been fully taken into consideration in determining the allowable federal income tax deduction for Louisiana income tax purposes for such prior years, plus the excess, if any, of the amount of the item to be taxed by Louisiana over the amount to be taxed by federal in each future year in which the amount to be taxed by Louisiana will exceed the amount to be taxed by federal and which can reasonably be expected to be fully taken into consideration in determining the allowable federal income tax deduction in such future years for Louisiana income tax purposes;

ii. the denominator shall be the total of all excesses of the amount of the item taxed by Louisiana over the amount taxed by federal in each prior year and of all excesses of the amount of the item to be taxable by Louisiana over the amount to be taxable by federal in each future year.

Income Taxed? income included in taxable income, regardless of whether tax has been paid thereon.

Item of Deduction? each individual deduction rather than each category of deduction, and includes loss items of gross income. For example, the amount of depreciation on a particular property, as distinguished from the amount of depreciation on all properties of the taxpayer, would be an *item of deduction*. Similarly, the term *item of income* means each amount of income rather than each category of income. The amount of a Louisiana item of income or deduction is the amount apportioned or allocated to Louisiana. Thus, where a taxpayer has a 10 percent apportionment ratio and has an *item of deduction* of \$10,000 allowed by Louisiana in arriving at apportionable net income but not allowed by federal, the amount of the Louisiana item is 10 percent of \$10,000 or \$1,000.

Noncompensating Item? any item of difference between federal and Louisiana income or deductions for a particular year other than a *compensating item*.

Regular Federal Income Tax? the sum of the tax defined in *regular tax on ordinary net income* and *alternative tax on capital gains*.

Regular Tax on Ordinary Net Income? the federal net tax liability imposed on net income after net income is reduced by the amount of net capital gain subject to alternative tax rates, less credits.

Taken into Consideration Fully in Determining the Allowable Federal Income Tax Deduction for Louisiana Income Tax Purposes for Prior Years? as used in this Section means fully used in reducing the amount of the federal income tax deduction for such prior years. The purpose of this provision is to allow an adjustment for an item which will increase the federal income tax deduction only to the extent that adjustments applicable to the item in prior years were used to decrease the federal income tax deduction.

Similarly, the term *to be fully taken into consideration in determining the allowable federal income tax deduction in ... future years for Louisiana income tax purposes* means to be used fully in reducing the amount of the federal income tax deduction for such future years.

G Special Rules

1. The computations prescribed in §1123.B are subject to the rules provided in R.S. 47:287.442. That is, the computations cannot have the effect of attributing refunds of federal income tax which arose on account of conditions or transactions occurring after the close of the taxable year, to any year other than that in which arose the transactions or conditions giving rise to the refund. Accordingly, appropriate changes shall be made when necessary to attribute the refund to the proper year.

2. Notwithstanding the definition provided in §1123.F *Noncompensating Item* and *Compensating Item*, deductions which are declared as allowable in the computation of Louisiana net income pursuant to R.S. 47:287.73(C)4 shall be treated as a compensating item of deduction for the purpose of computing the amount of federal income tax deduction under §1123.C.

3. The federal income tax deduction determined under §1123 must take into account R.S. 47:287.83 which provides in part that no federal income tax deduction shall be allowed on net income upon which no Louisiana income tax has been incurred, or upon which, for any reason whatsoever, no Louisiana income tax will be paid.

4. If the tax of any member computed on a separate return basis under §1123.E.1, 2, and 3 is less than zero, then for the purposes of §1123.E, such member's separate return tax shall be zero.

5. The secretary may adjust the consolidated federal income tax allocation formula prescribed in §1123.E when in his opinion such action is necessary to obtain a reasonable allocation and to clearly reflect Louisiana taxable income.

6. The sum of the net consolidated federal income tax attributed to all members of the consolidated group for the taxable period cannot exceed the amount of consolidated federal income tax paid to the U.S. government for the taxable period.

7. When the alternative tax rate on net capital gains is the same as the regular tax rate on ordinary net income reduced by net capital gains, consolidated regular tax on ordinary net income and alternative tax on capital gains, after credits, may be combined and then attributed to each member of the consolidated group.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.85.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:98 (February 1988), repromulgated by the Policy Services Division, LR 30:473 (March 2004).

§1128. Segregation of Items of Gross Income

A. For the purpose of applying rules for determining the amount of income earned within or derived from sources in Louisiana, all items of gross income must be divided into two general classes-allocable income and apportionable income. The various types of income constituting allocable income are set forth in R.S. 47:287.92(B), and the specific basis for allocating each of these types of income is prescribed in R.S. 47:287.93. Any income which does not

fall within any of the types of allocable income as listed in the statute must be treated as apportionable income. When Louisiana net apportionable income is derived primarily from the business of making loans, refer to R.S. 47:287.95(E) and §1134.E for the determination of the Louisiana apportionment percent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.92.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:101 (February 1988), repromulgated by the Policy Services Division, LR 30:476 (March 2004).

§1130. Computation of Net Allocable Income from Louisiana Sources

A. R.S. 47:287.93 provides that items of gross allocable income or loss shall be allocated directly to the states within which such items of income are earned or derived.

1. Reserved.
2. Reserved.

3. Profits from sales or exchanges of property not made in the regular course of business requires that both profits and losses from such transactions be included in income allocated directly to the state in which the property had its situs at the time of the transaction. Whether a sale or exchange is a sale not made in the regular course of business is a factual determination required to be made with respect to each property sold which will take into consideration such factors as the frequency of sales of similar properties and the relationship of the particular sale to other business transacted by the taxpayer.

4. Dividends, profits from the sale or exchange of capital assets consisting of incorporeal property or rights, and interest, other than interest on customers' notes and accounts and interest on securities having their situs in Louisiana received from a controlled corporation by its parent, shall be allocated to the state in which the securities or credits have their situs. If the securities or credits have been so employed as to acquire a business situs, the place of business situs controls. In the absence of a business situs the place of commercial domicile controls in the case of a corporation. (For special rules governing the situs of stock canceled in corporate liquidations see R.S. 47:287.747.) These rules are subject to the exception that dividends upon stock having a situs in Louisiana received by a corporation from another corporation which is controlled by the former, through ownership of 50 percent or more of the voting stock of the latter, shall be allocated to the state or states in which is earned the income from which the dividends are paid, such allocation to be made in proportion to the respective amounts of such income earned in each state.

5. Royalties or similar revenue received for the use of patents, trademarks, copyrights, secret processes and other similar intangible rights shall be allocated to the state or states in which such rights are used. The use referred to is that of the licensee rather than that of the licensor.

Example: X Company, Inc., a Delaware corporation with its commercial domicile in California, owns certain patents relating to the refining of crude oil, which at all times were kept in its safe in California. During 1987, the X Company, Inc. entered into an agreement with the Y Corporation whereby that company was given the right to use the patents at its refineries in consideration for the payment of a royalty based upon units of production. The Y Corporation used the patents exclusively at its Louisiana refinery and paid the X

Company, Inc. the amount of \$100,000 for such use. The entire royalty income of \$100,000 is allocable to Louisiana.

6. Income from construction, repair or other similar services is allocable. The phrase *other similar services* means any work which has as its purpose the improvement of immovable property belonging to a person other than the taxpayer where a substantial portion of such work is performed at the location of such property. For the purpose of this Section, mineral properties, whether under lease or not, constitute immovable properties. It is not necessary that the services rendered actually result in the improvement of the immovable property. Thus, the drilling of a well on a mineral lease is considered to have as its purpose the improvement of such property notwithstanding the fact that the well may have been dry. Examples of other similar services are:

- a. landscaping services;
- b. the painting of houses;
- c. the removal of stumps from farm land;
- d. the demolition of buildings.

7. Interest on securities and credits having a situs in Louisiana which is received by a corporation from another corporation controlled by the former through the ownership of 50 percent or more of the voting stock of the latter shall be allocated to the state or states in which the real and tangible personal property of the controlled corporation is located. The allocation shall be made on the basis of the ratio of the value of such property located in Louisiana to the value of such property within and without the state, determined as provided below. Whether the securities and credits have a situs in Louisiana shall be determined in accordance with the rules provided in §1130.A.4. For the purpose of this Section, real and tangible personal property includes all such property of the controlled corporation regardless of whether the property is idle or productive and regardless of the nature of the income which it produces.

a. Value of Property to be Used. For purposes of this Section, the value of property is cost to the taxpayer, less a reasonable reserve for depreciation, depletion, and obsolescence. The reserves reflected on the books of the taxpayer shall be deemed reasonable, subject to the right of the secretary to adjust the reserves when in his opinion such action is necessary to reflect the fair value of the property.

b. Average Values. For the purpose of this Section, the value of Louisiana real and tangible property and real and tangible property within and without the state shall be the average of such property at the beginning and close of the year, determined on a comparable basis.

B. From the total gross allocable income from all sources and from the gross allocable income allocated to Louisiana there shall be deducted all expenses, losses, and other deductions, except federal income taxes, allowable under the Louisiana income tax law which are directly attributable to such income plus a ratable portion of the allowable deductions, except federal income taxes, which are not directly attributable to any item or class of gross income.

1. Direct and indirect expenses attributed to allocable income from foreign sources for federal purposes are deductible in arriving at total net allocable income. Expenses sourced pursuant to federal law and regulations to allocable income from foreign sources are presumed to be attributed to such income.

2. The approach set forth in these regulations for the allocation and apportionment of interest expense is based upon the concept of the fungibility of money and requires that interest expense ordinarily be allocated to all the taxpayer's income-producing activities and properties, regardless of the specific purpose for which the borrowing was incurred; it does not directly require allocation of interest deductions to income. That is, these regulations assume that:

- a. money is fungible in that all the taxpayer's activities and properties need funds;
- b. the taxpayer's management has substantial flexibility in the source and use of its funds;
- c. the creditors of the taxpayer look to its general credit for repayment and thereby subject the money loaned to the risk of all the taxpayer's activities; and
- d. the use of money for one purpose frees funds for other purposes. Accordingly, the reasoning continues, it is appropriate to associate part of the cost of money borrowed for a specific purpose to other purposes as well.

3. Interest expense which is applicable to investments which produce or which are held for the production of allocable income within and without Louisiana, shall be an item of deduction in determining net allocable income or loss. For the purpose of this Subsection, investments which produce or which are held for the production of allocable income include but are not limited to investments in and advances or loans to affiliated corporations whether or not such investments, advances, or loans produce any income. The amount of interest which is applicable to such investments shall be determined by multiplying the total amount of interest expense by a ratio, the numerator of which is the average value of investments which produce or which are held for the production of allocable income, and the denominator of which is the average value of all assets of the taxpayer. Although interest on U.S. government bonds and notes is not taxable and hence is not included in allocable income, the adjustment for the amount of interest expense applicable to investments producing such income is computed in the same manner as in the case of investments producing allocable income. Thus for convenience of computation such investments are grouped with investments producing or held for the production of allocable income. Whenever interest expense applicable to U.S. government bonds and notes which are held as temporary cash investments determined as provided above, exceeds the amount of income derived from such investments, the interest expense which is attributable to such investments shall be limited to the amount so derived. The amount of interest expense applicable to U.S. government bonds and notes which are held as temporary cash investments,

determined without reference to the income therefrom, is that portion of the interest expense applicable to investments which produce or which are held for the production of allocable income, which the ratio of the average value of U.S. government bonds and notes held as temporary cash investments bears to the average value of all investments which produce or which are held for the production of allocable income.

4. Interest expense which is applicable to investments which produce or which are held for the production of Louisiana allocable income shall be an item of deduction in determining net allocable income or loss from Louisiana. Except when Louisiana apportionable income is determined on the separate accounting method, the amount of interest which is applicable to such investments shall be determined by multiplying the amount of interest expense allocated to total allocable investments, determined without reference to the income limitation in the case of investments in U.S. government bonds and notes held as temporary cash investments, by a ratio, the numerator of which is the average value of investments which produce or which are held for the production of Louisiana allocable income and the denominator of which is the average value of investments which produce or which are held for the production of allocable income within and without Louisiana. When Louisiana net apportionable income is determined on the separate accounting method, refer to §1132.C.1 for rules pertaining to the determination of the amount of interest expense applicable to Louisiana allocable income.

5. Value to be Used. For purposes of this Section, value means cost to the taxpayer, less a reasonable reserve for depreciation, depletion, and obsolescence. The reserves reflected on the books of the taxpayer shall be considered reasonable, subject to the right of the secretary to adjust the reserves when in his opinion such action is necessary to reflect the fair value of the property.

6. Average Value. For purposes of this Section, *average value* means the average of the value of the property at the beginning and at the close of the year.

7. Example: The XYZ Corporation has incurred interest expense in the amount of \$150,000 during the year 1986. During 1986 it derived total allocable income and Louisiana allocable income as follows:

	Louisiana	Total
*Interest on U.S. Treasury notes	\$ -0-	\$ 15,000
Dividends	-0-	5,000
Net rent income	10,000	10,000
Total	\$ 10,000	\$ 30,000

*Treated as allocable income only for convenience in computing the applicable expense.

Its assets, liabilities, and net worth as of January 1, 1986, and December 31, 1986, were as follows.

	12-31-86		1-1-86	
Cash		\$ 100,000		\$ 150,000
Accounts receivable		780,000		800,000
Inventories		600,000		1,000,000
Stocks		100,000		100,000
U.S. Treasury Notes		420,000		650,000
Real estate (rental property)	100,000		100,000	
Less depreciation reserve	<u>20,000</u>		<u>25,000</u>	
Net		80,000		75,000
Real estate	5,000,000		5,125,000	
Less depreciation reserve	<u>1,080,000</u>		<u>1,300,000</u>	
Net		3,920,000		3,825,000
Total Assets		<u>\$ 6,000,000</u>		<u>\$ 6,600,000</u>
Liabilities:				
Accounts payable	\$ 400,000		\$ 1,000,000	
Bonds	<u>3,000,000</u>		<u>3,000,000</u>	
Total Liabilities		\$ 3,400,000		\$ 4,000,000
Net Worth:				
Capital stock	\$ 2,000,000		\$ 2,000,000	
Earned surplus	<u>600,000</u>		<u>600,000</u>	
Net worth		\$ 2,600,000		\$ 2,600,000
Total Liabilities and Net Worth		<u>\$ 6,000,000</u>		<u>\$ 6,600,000</u>

The amount of interest which is applicable to the investments which produce or are held for the production of allocable income within and without Louisiana is \$16,963.50, determined as follows.

	Allocable Investments		Total Assets	
	1-1-86	12-31-86	1-1-86	12-31-86
U.S. Treasury Notes	\$ 420,000	\$ 650,000	\$ 420,000	\$ 650,000
Rental property (net)	\$ 80,000	75,000	80,000	75,000
Stock	100,000	100,000	100,000	100,000
Other assets	<u>0</u>	<u>0</u>	<u>5,400,000</u>	<u>5,775,000</u>
Totals	\$ 600,000	\$ 825,000	\$ 6,000,000	\$ 6,600,000
1-1-86 totals		<u>600,000</u>		<u>6,000,000</u>
Totals		\$ <u>1,425,000</u>		\$ <u>12,600,000</u>
Average		\$ <u>712,500</u>		\$ <u>6,300,000</u>
Ratio				.11309
Interest expense allocated to total allocable assets (.11309 x \$150,000)				<u>\$ 16,963.50</u>

The amount of interest expense which is applicable to the investments which produce or are held for the production of Louisiana allocable income is \$1,845.12, determined as follows.

Louisiana allocable assets (rental property):	
January 1, 1986	\$ 80,000
December 31, 1986	<u>75,000</u>
Total	\$ <u>155,000</u>
Average	\$ <u>77,500</u>
Total allocable assets - average	712,500
Ratio	10.877
Interest expense allocated to total allocable assets	\$ 16,963.50
Interest expense allocated to Louisiana allocable assets (.10877 x \$16,963.50)	\$ 1,845.12

8. Overhead expense attributable to items of gross allocable income derived from sources within and without Louisiana, except gross allocable income from rent of immovable or corporeal movable property or from construction, repair or other similar services, may be determined by any reasonable method which clearly reflects net allocable income from such items of income.

9. Overhead expense attributable to total gross allocable income derived from rent of immovable or corporeal movable property or from construction, repair, or other similar services shall be deducted from such income

for the purposes of determining net allocable income or loss from such items of income. The amount of overhead expense attributable to such income shall be determined by multiplying total overhead expense by the arithmetical average of two ratios, as follows.

a. The ratio of the amount of total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total gross income derived from all sources.

b. The ratio of the amount of direct cost incurred in the production of total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total direct cost incurred in the production of gross income from all sources.

10. Overhead expense attributable to Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services shall be deducted from such income for the purposes of determining Louisiana net allocable income or loss from such items of income. The amount of overhead expense attributable to such income shall be determined by multiplying overhead expense attributed to total gross allocable income derived from rent of immovable

or corporeal movable property and from construction, repair, or other similar services by the arithmetical average of two ratios, as follows.

a. The ratio of the amount of Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total gross allocable income from such sources.

b. The ratio of the amount of direct cost incurred in the production of Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total direct cost incurred in the production of such income.

11. Special Rules

a. When a corporation has a Louisiana commercial domicile and directly owns 50 percent or more of the voting stock of another corporation, the stock shall be included in Louisiana allocable assets in calculating the amount of interest expense attributable to investments which produce or which are held for the production of Louisiana allocable income, except stock owned in a corporation exempt from Louisiana corporation income tax. The stock shall be attributed to Louisiana allocable assets on the basis of the respective amounts of income earned within Louisiana to the income earned everywhere of the controlled corporation.

b. When a corporation has a Louisiana commercial domicile and advances interest bearing funds to a corporation of which it directly owns 50 percent or more of the voting stock, the receivable shall be included in Louisiana allocable assets in calculating the amount of interest expense attributable to investments which produce or which are held for the production of Louisiana allocable income. The receivable shall be attributed to Louisiana allocable assets on the same basis as the income from which the receivable is attributed to Louisiana. For the purpose of this Subparagraph, real and tangible personal property includes all such property of the controlled corporation whether or not the property is idle or productive and regardless of the type of income which it produces.

c. Accounts or notes receivable resulting from advances on non-interest bearing funds from one corporation to another corporation are deemed to be assets producing or held for the production of allocable income for the purpose of determining the amount of interest expense applicable to investments which produce or which are held for the production of allocable income from sources within and without Louisiana.

d. When a corporation has a Louisiana commercial domicile, accounts or notes receivable resulting from advances of non-interest bearing funds from one corporation to another corporation shall not be included in the numerator of the interest expense allocation formula for the purpose of §1130.B.4, except when the secretary, in order to clearly reflect Louisiana apportionable and allocable net income, imputes interest income on such receivables.

e. For the purpose of §1130.B.11.a and b, direct ownership of 50 percent or more of the voting stock of a corporation constitutes control of that corporation.

f. The secretary is authorized to adjust the allocation of interest expense and/or overhead expense applicable to investments which produce or which are held

for the production of allocable income within and without Louisiana if he determines that such adjustment is necessary in order to clearly reflect apportionable and allocable net income.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.93.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:101 (February 1988), repromulgated by the Policy Services Division, LR 30:477 (March 2004).

§1132. Computation of Net Apportionable Income from Louisiana Sources

A. General

1. From the total gross apportionable income there shall be deducted all expenses, losses and other deductions except federal income taxes, allowable under this Chapter, which are directly attributable to such income, and there also shall be deducted a ratable portion of allowable deductions, except federal income taxes, which are not directly attributable to any item or class of gross income. Direct and indirect expenses attributed to total allocable income derived from foreign sources, for federal purposes, are not deductible in arriving at total net apportionable income. Expenses sourced pursuant to federal law and regulations to allocable income from foreign sources are presumed to be attributed to such income.

2. R.S. 47:287.94 provides two methods for computing the amount of net apportionable income from Louisiana sources, viz., the apportionment method and the separate accounting method. The apportionment method must be used unless it produces a manifestly unfair result and the conditions prescribed by R.S. 47:287.94 are met. Where the apportionment method is utilized, the apportionment percentage must be applied to the total apportionable net income without exception. For rules pertaining to the determination of the apportionment percentage refer to §1134.

B. Separate Accounting Method; Permission Obtained from Secretary. Any taxpayer desiring to use the separate accounting method in determining the portion of the total net apportionable income derived from Louisiana sources must first obtain permission from the secretary to use that method. A written request for such permission should be submitted to the secretary not more than 30 days after the close of the taxable year for which the first use of the separate accounting method is to be made if the permission is granted. The secretary will grant such permission if the taxpayer demonstrates to his satisfaction that the apportionment method as applied to the business operations of the taxpayer would produce a manifestly unfair result, that the separate accounting method produces a fair and equitable determination of the amount of net income taxable by Louisiana, and that the other conditions of R.S. 47:287.94 are met. The application of the taxpayer must be accompanied by the following information:

1. a complete description of the nature of the business operations of the taxpayer in Louisiana;

2. a complete description of the nature of the business operations of the taxpayer in other states;

3. a comprehensive statement as to the sources of goods or commodities sold by the taxpayer in Louisiana;

4. a comprehensive statement as to the disposition of goods or commodities produced by the taxpayer in Louisiana;

5. a computation for the preceding taxable year showing the Louisiana net apportionable income on the apportionment basis and on the separate accounting basis;

6. a statement of the particular circumstances in the taxpayer's business operations and the particular factors or elements in the apportionment formula which give rise to the difference between the amounts of Louisiana net apportionable income as computed under the two methods;

7. a statement as to whether the circumstances, factors, and elements mentioned in §1132.B.6 are relatively permanent so that the two methods would reasonably be expected to yield similar differences in results each year, or whether in the ordinary course of the taxpayer's business those circumstances have changed from time-to-time and may be expected to do so in the future; and

8. any other information which the taxpayer may consider pertinent.

C. Separate Accounting of Apportionable Income

1. When the separate accounting method is used, the net apportionable income taxable in Louisiana shall be determined by deducting from the gross apportionable income from sources in Louisiana all costs and expenses directly attributable to such income and a ratable part of overhead expenses and other expenses which are attributable in part to the Louisiana gross apportionable income.

2. When Louisiana net apportionable income is determined on the separate accounting method, interest expense applicable to Louisiana gross apportionable and allocable income shall be deducted from such gross income for the purposes of determining Louisiana net apportionable and allocable income or loss. The amount of interest expense applicable to Louisiana gross apportionable and allocable income shall be determined by multiplying total interest expense by a ratio, the numerator of which is the average value of assets in Louisiana and the denominator of which is the average value of all assets of the taxpayer.

3. For the purposes of this Paragraph, *value to be used* and *average value* mean the same as defined in §1130.B.6 and 7. Special rules as provided in §1130.B.11 also apply to this Section.

4. When Louisiana net apportionable income is determined on the separate accounting method, overhead expense shall be deducted from Louisiana gross apportionable income for the purposes of determining Louisiana net apportionable income or loss. The amount of such overhead expense shall be determined by multiplying total overhead expense attributable to gross apportionable income by a ratio, the numerator of which is the amount of direct cost incurred in the production of Louisiana gross apportionable income determined on a separate accounting method and the denominator of which is total direct cost incurred in the production of gross apportionable income from all sources. For the purpose of this Paragraph, the secretary is authorized to adjust the amount of overhead expense allocated to Louisiana gross apportionable income if he determines that such action is necessary in order to clearly reflect Louisiana apportionable net income. For rules pertaining to the determination of the amount of overhead

expense attributable to gross allocable income refer to §1130.B.8, 9 and 10.

5. Income from Natural Resources. If the separate accounting method is used by a taxpayer whose business includes the production of natural resources, such as oil, gas, other liquid hydrocarbons, or sulphur, (a) which are sold by the taxpayer prior to refining or processing, or (b) which are transported by the taxpayer into or from the state of Louisiana for refining or processing prior to sale and at the time of production or transfer into or from this state have an ascertainable market value, the Louisiana net apportionable income of such taxpayer shall be computed as set forth below.

a. The gross apportionable income of the taxpayer from sources in Louisiana shall be determined by dividing the activities of the taxpayer into three classes:

i. the production of natural resources;

ii. the marketing of refined or manufactured products; and

iii. all other activities.

b. The Louisiana gross apportionable income from the production of natural resources shall include:

i. sales of natural resources produced in Louisiana and sold in this state;

ii. the market value, at the time of transfer, of all natural resources produced in this state and transferred by the taxpayer to another state for sale, refining, or processing, provided that if the natural resources are sold by means of an "arm's length" transaction prior to refining or processing, the market value prescribed herein shall not exceed the selling price; and

iii. the market value, at the time of transfer, of all natural resources produced by the taxpayer in Louisiana and transferred to a refinery or processing plant of the taxpayer located in Louisiana.

c. The Louisiana gross apportionable income from the marketing of refined or manufactured products shall be the amount of gross sales of such products in this state. From such gross sales there shall be deducted, in lieu of the usual deduction for cost of goods sold, the market value of the products sold as of the time of transfer into this state. In determining the market value, the customary prices for the quantities transferred shall be applied.

d. The Louisiana gross apportionable income from all activities in this state other than the production of natural resources and the marketing of refined or manufactured products shall include all sales and other apportionable revenues derived in this state from such other activities.

e. The net income of the taxpayer from each of the three classes of income set forth in §1132.C.5.b, c, and d shall be determined by deducting from each such class of gross income all allowable deductions directly attributable to the production of such income and a ratable part of all allowable deductions which are attributable in part to the production of such class of income.

6. For the purpose of this Section, a natural resource shall be deemed to be sold in Louisiana if it is located in this state at the time title thereto passes to the purchaser.

7. In the absence of specific proof of the value of natural resources at the time of transfer from or into this state, the value of the natural resources at the time of production, to be determined in accordance with the methods

prescribed for the determination of "gross income from the property" for purposes of percentage depletion under R.S. 47:287.745(B), shall be deemed to be the market value at the time of transfer.

D. Change from Separate Accounting to Apportionment Method. A taxpayer who has obtained permission to use the separate accounting method, or who has been required by the secretary to use that method, shall continue to use that method for succeeding taxable years until a change occurs in the nature of the taxpayer's operations which would warrant a change in accounting method. When such a change occurs, the taxpayer shall report the facts to the secretary not later than 30 days after the close of the taxable year in which the change occurred. If the secretary finds, on the basis of the facts reported by the taxpayer or otherwise obtained by the secretary, that the apportionment method should be used, the taxpayer will be notified to use that method for the year in which the change in operations occurred. The apportionment method shall then be used until a change is made pursuant to R.S. 47:287.94.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.94.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:104 (February 1988), repromulgated by the Policy Services Division, LR 30:480 (March 2004).

§1134. Determination of Louisiana Apportionment Percent

A. General. R.S. 47:287.95 provides for an apportionment percent which is to be applied to the taxpayer's total net apportionable income in determining the Louisiana net apportionable income. Specific formulas are prescribed for air, pipeline, and other transportation businesses, certain service enterprises, and loan businesses. A general formula is prescribed for manufacturing, merchandising and any other business for which a formula is not specifically prescribed. The statute contemplates that only one specific formula be used in determining the apportionment percent, that being the formula prescribed for the taxpayer's primary business. As a general rule, where a taxpayer is engaged in more than one business, the taxpayer's primary business shall be that which is the primary source of the taxpayer's net apportionable income. When the numerator and denominator is zero in any one or more factors in the apportionment formula, such factor shall be dropped from the apportionment formula and the arithmetical average determined from the total remaining factors.

B. Property Factor

1. The value of immovable and corporeal movable property owned by the taxpayer and used in the production of net apportionable income is a factor in each formula except those provided for loan businesses and certain service businesses. Where only a part of the property is used in the production of apportionable income, only the value of that portion so used shall be included in the property factor. However, where the entire property is used in the production of both allocable and apportionable income, such as a railroad track owned by the taxpayer and used jointly with another, the value of the entire property shall be included in the property factor. Idle property and property under construction, during such construction and prior to being

placed in service, shall not be included in the property factor. Property held as reserve or standby facilities, or property held as a reserve source of materials shall be considered used. For example, a taxpayer who purchases a lignite deposit which is held as a reserve source of fuel, should include the value of such deposits in the property factor. Non-productive mineral leases are considered to be held for such use and should be included in the property factor. Aircraft owned by a taxpayer whose net apportionable income is derived primarily from air transportation should not be included in the property factor. The value of inventories of merchandise in transit shall be allocated to the state in which their delivery destination is located in the absence of conclusive evidence to the contrary.

2. Value of Property to be Used. For purposes of this Section, the value of property is cost to the taxpayer, less a reasonable reserve for depreciation, depletion and obsolescence. Such reserves, reflected on the books of the taxpayer, shall be used in determining value, subject to the right of the secretary to adjust the reserves when in his opinion such action is necessary to reflect the fair value of the property.

3. Proration of Rolling Stock and Other Mobile Equipment. The average value of rolling stock and other mobile equipment owned by the taxpayer shall be prorated within and without Louisiana as set forth below.

a. The value of diesel locomotives shall be allocated to Louisiana on the basis of the ratio of diesel locomotive miles in Louisiana to total diesel locomotive miles.

b. The value of other locomotives shall be allocated to Louisiana on the basis of the ratio of other locomotive miles in Louisiana to total other locomotive miles.

c. The value of freight train cars shall be allocated to Louisiana on the basis of the ratio of freight car miles in Louisiana to total freight car miles.

d. The value of passenger cars shall be allocated to Louisiana on the basis of the ratio of passenger car miles in Louisiana to total passenger car miles.

e. The value of passenger buses shall be allocated to Louisiana on the basis of the ratio of bus miles in Louisiana to total bus miles.

f. The value of diesel trucks shall be allocated to Louisiana on the basis of the ratio of diesel truck miles in Louisiana to total diesel truck miles.

g. The value of other trucks shall be allocated to Louisiana on the basis of the ratio of other truck miles in Louisiana to total other truck miles.

h. The value of trailers shall be allocated to Louisiana on the basis of the ratio of trailer miles in Louisiana to total trailer miles.

i. The value of towboats shall be allocated to Louisiana on the basis of the ratio of towboat miles in Louisiana to total towboat miles. In the determination of Louisiana towboat miles, one half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

j. The value of tugs shall be allocated to Louisiana on the basis of the ratio of tug miles in Louisiana to total tug miles. In the determination of Louisiana tug miles, one half of the mileage of all navigable streams bordering on both

Louisiana and another state shall be considered Louisiana miles.

k. The value of barges shall be allocated to Louisiana on the basis of the ratio of barge miles in Louisiana to total barge miles. In the determination of Louisiana barge miles, one half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

l. The value of work and miscellaneous equipment shall be allocated to Louisiana on the basis of the ratio of track miles in Louisiana to total track miles in the case of a railroad, on the basis of the ratio of bank miles operated in Louisiana to total bank miles operated in the case of inland waterway transportation and on the basis of the ratio of route miles operated in Louisiana to total route miles operated in the case of truck and bus transportation. In the determination of bank miles, one half of the bank mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana bank miles.

m. The value of other floating equipment shall be allocated to Louisiana on the basis of the ratio of operating equipment miles within Louisiana to the total operating equipment miles, for the particular equipment to be allocated. In the determination of Louisiana operating equipment miles, one half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana bank miles.

4. Insufficient Records. In any case where the information necessary to determine the ratios listed above is not readily available from the taxpayer's records, the secretary, in his discretion, may permit or require the allocation of such equipment on any method deemed reasonable by him.

C. Wage Factor. Salaries, wages and other compensation for personal services as used in R.S. 47:287.95 includes only compensation paid to employees or to a deferred plan for the benefit of employees of the taxpayer for services rendered in connection with the production of net apportionable income. It does not include fees and commissions paid to independent contractors.

D. Revenue Factor. Revenue is a factor in each formula except that provided for loan businesses. This factor is generally composed of sales, charges for service, and other gross apportionable income.

1. Revenue from Transportation other than Air Travel. Gross apportionable income attributable to Louisiana from transportation other than air includes all such revenue derived entirely from sources within Louisiana plus a portion of revenue from transportation performed partly within and partly without Louisiana, based upon the ratio of the number of units of transportation service performed in Louisiana to the total of such units. A unit of transportation shall consist of the following:

a. in the case of the transportation of passengers, the transportation of one passenger a distance of one mile;

b. in the case of the transportation of liquid commodities, including petroleum or related products, the transportation of one barrel of the commodities a distance of one mile;

c. in the case of the transportation of property other than liquids, the transportation of one ton of the property a distance of one mile;

d. in the case of the transportation of natural gas, the transportation of one MCF a distance of one mile (see however, §1134.D.2);

e. transportation revenue should be segregated on the basis of the four classes enumerated above and the gross apportionable income attributable to Louisiana shall be determined by application of the respective ratios to each segregated amount. In any case where another method would more clearly reflect the gross apportionable income attributable to Louisiana, or where the above information is not readily available from the taxpayer's records, the secretary, in his discretion, may permit or require the use of any method deemed reasonable by him.

2. Sales Made in the Regular Course of Business

a. The sales attributable to Louisiana under R.S. 47:287.95 are those sales made in the regular course of business where the goods, merchandise or property are received in Louisiana by the purchaser. Similarly, where the goods, merchandise or property are received in some other state, the sale is attributable to that state. Sales made in the regular course of business include all sales of goods, merchandise or product of the business or businesses of the taxpayer. They do not include the sale of property acquired for use in the production of income. Where a taxpayer under a contract performs essentially a management or supervision function and receives therefor a reimbursement of his costs plus a stipulated amount, the amounts received as reimbursed costs are not sales although the contract so designates them. The stipulated amount constitutes other gross apportionable income and shall be attributed to the state where the contract was performed. Where goods are delivered into Louisiana by a public carrier, or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. The transportation in question is the initial transportation relating to the sale by the taxpayer, and not the transportation relating to a sale or subsequent use by the purchaser.

b. Where the goods are delivered by the taxpayer-vendor in his own equipment, it is presumed that such transportation relates to the sale. Where the goods are delivered by a common or contract carrier, whether shipped F.O.B. shipping point, and whether the carrier be a pipeline, trucking line, railroad, airline or some other type of carrier, the place where the goods are ultimately received by the purchaser after the transportation by the carrier has ended is deemed to be the place where the goods are received by the purchaser. Actual delivery rather than technical or constructive delivery controls.

c. Where the transportation involved is transportation by the purchaser, in determining whether or not the transportation relates to the sale by taxpayer, consideration must be given to the following principles.

i. To be related to the initial sale, the transportation should be commenced immediately. However, before a lapse of time is conclusive, consideration must be given to the nature and character of the goods purchased, the availability of transportation, and other pertinent circumstances.

ii. The intent of the parties to the sale must also be considered. The intent and purpose of the purchaser may be determined directly, or by an evaluation of the nature and scope of his operation, customs of the trade, customary activities of the purchaser, and all pertinent actions and words of the purchaser at the time of the sale.

iii. In order for the transportation by the purchaser to be related to the initial sale by the taxpayer to the purchaser, such transportation must be generally the same in nature and scope as that performed by the vendor or by the carrier. There is no difference between a case where a taxpayer in Houston ships F.O.B., Houston, to a purchaser in Baton Rouge, by common carrier, and a case where all facts are the same except that the purchaser goes to Houston in his own vehicle and returns with the goods to Baton Rouge.

d. The sales of natural resources to a pipeline company are attributable to the state in which the goods are placed in the pipeline. Such purchasers are engaged in the business of moving or transporting their own property through their own lines. Thus, all transportation of the natural resources after introduction into the line is related to the use or sale by the pipeline, and is not related to the sale by the taxpayer.

e. Generally, transportation by public carrier pipelines is accorded the same treatment as transportation by any other type of public carrier. Actual delivery to the purchaser controls, rather than technical or constructive delivery. However, because of the nature and character of the property, the type of carrier, and customs of the trade, the natural resources in the pipeline carrier may become intermixed with other natural resources in the pipeline and lose their particular identity. Where delivery is made to a purchaser in more than one state, or to different purchasers in different states, peculiar problems of attribution arise. In solving such problems consideration must be given to the following principles.

i. Where it can be shown that a taxpayer in one state sold a quantity of crude oil to a purchaser in another state, and the oil was transported to the purchaser by pipeline carrier, the sale will be attributed to the state where the crude oil is received by the purchaser, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline. Custom of the trade indicates the purchaser buys a quantity of oil of certain quality rather than any specific oil.

ii. In situations involving several deliveries in several different states to one or more purchasers, the general rules should be applied with logic and common sense.

f. Examples

i. Three different taxpayers, A, B, C, all in Texas, each sells to X Refinery, in Louisiana, 10,000 barrels of crude oil, shipped F.O.B., Texas, by public carrier pipeline.

(a) If X Refinery received all 30,000 barrels in Louisiana, each taxpayer must attribute his total sale to Louisiana.

(b) If X Refinery receives 10,000 barrels in Louisiana, 10,000 barrels in Mississippi, and 10,000 barrels in Alabama, it cannot be said by any taxpayer that all his sale was received either in Louisiana or in one of the other states. Since each taxpayer contributed one-third of the mass of commingled crude oil, it follows that one-third of each

taxpayer's sale was received in Louisiana, and accordingly must be attributed to Louisiana.

ii. Three different taxpayers, A, B, and C, in Texas, sell to three different purchasers, X Refinery in Louisiana, Y Refinery in Mississippi, and Z Refinery in Alabama. If A sells to X Refinery in Louisiana and delivery is by public carrier pipeline, the oil is received in Louisiana and the entire sale is attributed to Louisiana, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline with oil sold by B and C to Y Refinery and Z Refinery.

g. In determining the place of receipt by the purchaser after the initial transportation has ended, peculiar problems may be created by the storage of the property purchased immediately upon purchase at a place other than the place of intended use. The primary problem created by such storage is in determining whether or not the transportation after storage relates to the sale by the taxpayer. Generally, the rules and principles set forth above will control where the storage is of temporary nature, such as that necessitated by lack of transportation, by change from one means of transportation to another, or by natural conditions. In cases where the storage is permanent or semi-permanent, delivery to the place of storage concludes the initial transportation, and the sale is attributed to the place of storage.

E. Loans factor. Loans made by the taxpayer as provided in R.S. 47:287.95(E) is the arithmetical average of the loan balances outstanding at the beginning and end of the taxable period. This factor is to be used only by taxpayers whose income is derived primarily from the business of making loans. If the average at the beginning and end of the year does not fairly represent the average of loans outstanding during the year, the average may be obtained by dividing the sum of the monthly balances by 12.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.95.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:105 (February 1988), repromulgated by the Policy Services Division, LR 30:482 (March 2004).

§1137. Exceptions to Taxable Year of Inclusion; Taxable Year Deductions Taken

A. Improperly Reported Item of Income. R.S. 47:287.442(A) does not relieve a taxpayer of the responsibility of filing a true and correct return and immediately correcting any errors which are discovered after the return is filed. If an error is discovered, it is the obligation of the taxpayer to file promptly an amended return reflecting the correct tax liability. The purpose of R.S. 47:287.442(A), so far as it deals with improperly reported items of income, is to preclude a taxpayer's being required to pay again on an item of income which has borne tax in full previously, even though for a period in which it was not properly reportable. An item of income will be deemed to have previously borne tax in full if the item, when multiplied by the lowest tax rate applicable to the taxpayer, results in a tax not less than the amount of tax actually paid on the return. If the item has not previously borne tax in full, R.S. 47:287.442(A) is not applicable to that portion of the item which has not previously borne tax. That portion, which shall be the difference between the item of income and the

taxable balance of net income, shall be reported as income during the year it was properly reportable.

B. Example: The ABC Corporation, by mistake, reported on its 1982 income tax return an item of accrued interest in the amount of \$5,000 which was properly reportable in 1983. It paid the Louisiana income tax shown to be due on the return. The company never discovered its error. In 1987, the secretary discovers the error. The return for 1982 shows the following.

Accrued interest	\$ 5,000
Income from operations	20,000
Total income	\$ 25,000
Less total authorized deductions	\$ 21,000
Taxable income	\$ 4,000
Tax per return	\$ 160
Computation to determine if item has borne tax in full:	
Amount improperly reported	\$ 5,000
Tax at lowest rate of taxpayer	\$ 200
Tax paid	160
Amount of tax unpaid	\$ 40
Computation of portion of item to be reported in 1983:	
Improperly reported item	\$ 5,000
Taxable balance of net income in 1982	4,000
Portion of item to be reported	\$ 1,000

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.442.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), repromulgated by the Policy Services Division, LR 30:484 (March 2004).

§1140. Exemption from Tax on Corporations

A. An organization claiming exemption under R.S. 47:287.501 must submit a copy of the Internal Revenue Service ruling establishing its exempt status. Once an organization establishes with the department its right to an exemption, it need not file any further reports until such time its right to an exemption changes. An organization that has furnished information to the department establishing its right to exemption under the prior law need not submit additional information until such time its exempt status with the Internal Revenue Service changes. A corporation is either entirely exempt or it is wholly taxable. A partial exemption is not permitted.

B. Mutual savings banks, national banking corporations, building and loan associations, and savings and loan associations are exempt from the tax imposed by this Chapter regardless of where organized.

C. Banking corporations organized under the laws of the state of Louisiana which are required by other laws of this state to pay a tax for their shareholders, or whose shareholders are required to pay a tax on their shares of stock, are exempt. Banking corporations, other than those described above, organized under the laws of a state other than the state of Louisiana are not exempt from the corporation income tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.501.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), repromulgated by the Policy Services Division, LR 30:485 (March 2004).

§1147. Notice of Regulation, Requiring Records, Statements and Special Returns

A. Every corporation subject to the provisions of Part II.A of Chapter 1 shall, for the purpose of enabling the secretary to determine the correct amount of income subject to tax, keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income and the deductions, credits, and other information required to be shown in any return. Such books or records required by this Section shall be available at all times for inspection by the secretary, and shall be retained so long as the contents thereof may be material in the administration of the income tax law. The secretary may at any time require the taxpayer to submit statements of net worth as of the beginning and end of the taxable year.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:287.601.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), repromulgated by the Policy Services Division, LR 30:485 (March 2004).

§1148. Corporation Returns

A. General Rules. Every corporation deriving income from Louisiana sources shall file a return on forms secured from the secretary, unless expressly exempt from the tax. The first return and the last return of a corporation are returns for a full year and not for a fractional part of a year. A corporation does not go out of existence by virtue of being managed by a receiver or trustee who continues to operate it.

B. Liquidation. Upon liquidation or dissolution of a corporation there shall be attached to the final return a statement showing:

1. an outline of the plan under which the corporation was dissolved;
2. the date the dissolution was formally commenced;
3. the date the dissolution was completed;
4. the name and address of each shareholder at dissolution and the number and par value of the shares of stock held by each;
5. a description of assets conveyed to each shareholder, creditor, or other person, showing book value, fair market value, and location, as well as the name and address of each such person;
6. the consideration paid by each person for the assets received; and
7. whether the plan is intended to qualify under one of the sections of the Internal Revenue Code relating to nonrecognition in whole or in part of gain by a shareholder, and, if so, the section involved.

C. Receivers. Receivers, trustees in dissolution, trustees in bankruptcy, and assignees, operating the property or business of corporations, must file returns for such corporations. If a receiver has full custody of and control over the business or property of a corporation, he shall be deemed to be operating such business or property within the meaning of R.S. 47:287.612 whether he is engaged in carrying on the business for which the corporation was organized or only in marshaling, selling, and disposing of its assets for purposes of liquidation. However, a receiver in charge of only part of the property of a corporation, as, for example, a receiver in mortgage foreclosure proceedings

involving merely a small portion of its property, need not file a return.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.612.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), repromulgated by the Policy Services Division, LR 30:485 (March 2004).

§1168. Notice of Fiduciary Relationship

A. Notice. As soon as the secretary receives notice that a person is acting in a fiduciary capacity, such fiduciary must, except as otherwise specifically provided, assume the powers, rights, duties, and privileges of the taxpayer with respect to the income tax imposed by Part II.A. of Chapter 1. If the person is acting as a fiduciary for a transferee or other person subject to the liability specified in R.S. 47:287.682, such fiduciary is required to assume the powers, rights, duties, and privileges of the transferee or other person under that section. The amount of the tax or liability is ordinarily not collectible from the personal estate of the fiduciary, but is collectible from the estate of the taxpayer or from the estate of the transferee or other person subject to the liability specified in R.S. 47:287.682. [See however R.S. 47:1673]. The "notice to the secretary" provided for in R.S. 47:287.683 shall be a written notice signed by the fiduciary and filed with the secretary. The notice must state the name and address of the person for whom the fiduciary is acting, and the nature of the liability of such person; that is, whether it is a liability for tax, and if so, the year or years involved, or a liability at law or in equity of a transferee of property of a taxpayer, or a liability of a fiduciary in respect of the payment of any tax from the estate of the taxpayer. Any such written notice which has previously been filed with the secretary shall be considered as sufficient notice. Unless there is already on file with the secretary satisfactory evidence of the authority of the fiduciary to act for such person in a fiduciary capacity, such evidence must be filed with and made a part of the notice. If the fiduciary capacity exists by order of court, a certified copy of the order may be regarded as such satisfactory evidence. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the secretary written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. The notice of termination should state the name and address of the person, if any, who has been substituted as fiduciary.

B. Effect of Failure to Give Notice. If the notice of the fiduciary capacity described in Subsection A above is not filed with the secretary before the sending of notice of assessment by registered mail to the last known address of the taxpayer, or the last known address of the transferee or other person subject to liability, no notice of the deficiency will be sent to the fiduciary. In such a case the sending of the notice to the last known address of the taxpayer, transferee, or other person, as the case may be, will be a sufficient compliance with the requirements of the income tax law, even though such taxpayer, transferee, or other person is deceased, or is under a legal disability, or in the case of a corporation, has terminated its existence. Under such circumstances if no petition is filed with the Board of Tax Appeals within 60 days after the mailing of the notice to the

taxpayer, transferee, or other person, the assessment becomes final upon the expiration of such 60-day period and demand for payment will be made.

C. Definition. The term *fiduciary* means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

D. Limitation. This regulation shall not be taken to abridge in any way the powers and duties of fiduciaries provided for in other sections of the income tax law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.683.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:109 (February 1988), repromulgated by the Policy Services Division, LR 30:486 (March 2004).

§1189. Situs of Stock Canceled or Redeemed in Liquidation

A. General Rule. R.S. 47:287.747 provides that the situs of stock canceled or redeemed in the liquidation of a corporation, whether domestic or foreign, shall be in Louisiana in the same ratio that property located in Louisiana, and received by a shareholder, bears to the total property received in the liquidation. *Property* as used in R.S. 47:287.747 means all the assets of the liquidating corporation without regard to liabilities. For the purpose of determining the situs of the stock canceled or redeemed in liquidation, the fair market value of the property distributed in liquidation shall be used. The location of the property of the corporation shall be determined in accordance with the provisions of R.S. 47:287.93.

B. Example: X, shareholder, owns 10 percent of the shares of ABC, Inc., a foreign corporation. The basis of X's shares is \$1,000. On July 1, 1986, ABC Inc., liquidates and exchanges the following property for its outstanding stock, which it cancels.

	Total Assets (Fair Market Value)	Louisiana Assets (Fair Market Value)
Cash	\$ 10,000	\$ 2,000
Accounts receivable	50,000	8,000
Buildings	60,000	30,000
Land	60,000	10,000
Stocks	20,000	0
	\$ 200,000	\$ 50,000

Since one-fourth of the assets distributed in liquidation are located in Louisiana, one-fourth of X's stock has its situs in Louisiana.

Gain is computed as follows.

Fair market value of property received	\$ 20,000
Basis of property received	1,000
Gain	\$ 19,000
Louisiana taxable gain (1/4 of \$19,000)	\$ 4,750

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.747.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:109 (February 1988), repromulgated by the Policy Services Division, LR 30:486 (March 2004).

Cynthia Bridges
Secretary

0403#035

RULE

**Department of Revenue
Tax Commission**

Ad Valorem Taxation

(LAC 61.V.303, 309, 703, 907, 1103, 1503, 2503, 2703, 2705, 2707, 2711, 2713, 2717, 3101, 3105, and 3501)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, the Tax Commission has adopted, and/or amended sections of the Louisiana Tax Commission Real/Personal Property rules and regulations for use in the 2004 (2005 Orleans Parish) tax year.

This Rule is necessary in order for ad valorem tax assessment tables to be disseminated to property owners and local tax assessors no later than the statutory valuation date of record of January 1, 2004. Cost indexes required to finalize these assessment tables are not available to this office until late October 2003. The effective date of this Emergency Rule is January 1, 2004.

Title 61

REVENUE AND TAXATION

Part V. Ad Valorem Taxation

Chapter 3. Real and Personal Property

§303. Real Property

A. - B. ...

1. Improvements shall be added to the rolls based upon the condition of things existing on January 1 of each year (except Orleans Parish). New improvements for Orleans Parish shall be added to the next year's tax roll, based upon the condition of things existing on August 1 of each year. Value of the improvements will be indexed to the date of the last reappraisal.

B.2. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 7:44 (February 1981), amended by the Department of Revenue and Taxation, Tax Commission, LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:764 (December 1987), LR 16:1063 (December 1990), LR 17:611 (June 1991), LR 21:186 (February 1995), amended by the Department of Revenue, Tax Commission, LR 25:312 (February 1999), LR 26:506 (March 2000), LR 29:367 (March 2003), LR 30:487 (March 2004).

§309. Tax Commission Miscellaneous Forms

A. - C. ...

D. TC Forms C01, C02, C03, C04A and C04B, should be used to electronically process change order requests submitted by tax assessor's offices.

1. All change order forms TC-21, Alpha 4 (Electronic), and/or LTC web site format shall be submitted in accordance with the provisions of Title 47, Sections 1835, 1966, 1990 and 1991. The assessor shall provide each affected taxpayer with a copy of any change order that has been issued.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1712, R.S. 47:1835, R.S. 47:1837, R.S. 47:1966, R.S. 47:1990, R.S. 47:1991 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 21:186 (February

1995), amended LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 24:479 (March 1998), LR 27: 424 (March 2001), LR 28:517 (March 2003), LR 30:487 (March 2004).

Chapter 7. Watercraft

§703. Tables? Watercraft

A. Floating Equipment? Motor Vessels

Cost Index (Average)		Average Economic Life 12 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2003	.995	1	94	.94
2002	1.012	2	87	.88
2001	1.018	3	80	.81
2000	1.027	4	73	.75
1999	1.045	5	66	.69
1998	1.048	6	58	.61
1997	1.057	7	50	.53
1996	1.074	8	43	.46
1995	1.091	9	36	.39
1994	1.130	10	29	.33
1993	1.162	11	24	.28
1992	1.184	12	22	.26
1991	1.199	13	20	.24

B. Floating Equipment? Barges (Non-Motorized)

Cost Index Average		Average Economic Life 20 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2003	.995	1	97	.97
2002	1.012	2	93	.94
2001	1.018	3	90	.92
2000	1.027	4	86	.88
1999	1.045	5	82	.86
1998	1.048	6	78	.82
1997	1.057	7	74	.78
1996	1.074	8	70	.75
1995	1.091	9	65	.71
1994	1.130	10	60	.68
1993	1.162	11	55	.64
1992	1.184	12	50	.59
1991	1.199	13	45	.54
1990	1.223	14	40	.49
1989	1.256	15	35	.44
1988	1.323	16	31	.41
1987	1.379	17	27	.37
1986	1.399	18	24	.34
1985	1.413	19	22	.31
1984	1.434	20	21	.30
1983	1.473	21	20	.29

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:924 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:204 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:479 (March 1998), LR 25:312 (February 1999), LR 26:506 (March 2000), LR 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003), LR 30:487 (March 2004).

Chapter 9. Oil and Gas Properties

§907. Tables—Oil and Gas

A. ...

1. Oil, Gas and Associated Wells; Region 1 North Louisiana

Producing Depths	Cost – New By depth, per foot		15% of Cost - New by depth, per foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0 – 1,249 ft.	13.61	38.78	2.04	5.82
1,250 – 2,499 ft.	13.54	22.68	2.03	3.40
2,500 – 3,749 ft.	16.46	20.35	2.47	3.05
3,750 – 4,999 ft.	20.09	25.06	3.01	3.76
5,000 – 7,499 ft.	25.20	25.01	3.78	3.75
7,500 – 9,999 ft.	35.74	35.38	5.36	5.31
10,000 – 12,499 ft.	47.55	44.67	7.13	6.70
12,500 – Deeper ft.	N/A	77.26	N/A	14.59

2. Oil, Gas and Associated Wells; Region 2 South Louisiana

Producing Depths	Cost – New by depth, per foot		15% of Cost – New by depth, per foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0 – 1,249 ft.	66.58	92.73	9.99	13.91
1,250 – 2,499 ft.	66.22	124.84	9.93	18.73
2,500 – 3,749 ft.	73.23	102.78	10.98	15.42
3,750 – 4,999 ft.	47.12	76.04	7.07	11.41
5,000 – 7,499 ft.	75.30	73.24	11.30	10.99
7,500 – 9,999 ft.	88.46	77.47	13.27	11.62
10,000 – 12,499 ft.	96.34	87.88	14.45	13.18
12,500 – 14,999 ft.	92.51	108.85	13.88	16.33
15,000 – 17,499 ft.	142.72	135.14	21.41	20.27
17,500 – 19,999 ft.	109.17	164.69	16.38	24.70
20,000 – Deeper ft.	163.52	243.97	24.53	36.60

3. Oil, Gas and Associated Wells; Region 3? Offshore State Waters*

Producing Depths	Cost – New by depth, per foot		15% of Cost – New by depth, per foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0 – 1,249 ft.	N/A	N/A	N/A	N/A
1,250 – 2,499 ft.	363.54	494.92	54.53	74.24
2,500 – 3,749 ft.	272.56	369.11	40.88	55.37
3,750 – 4,999 ft.	279.91	406.55	41.99	60.98
5,000 – 7,499 ft.	231.95	239.64	34.79	35.95
7,500 – 9,999 ft.	224.79	214.19	33.72	32.13
10,000 – 12,499 ft.	229.55	220.43	34.43	33.06
12,500 – 14,999 ft.	227.13	209.90	34.07	31.49
15,000 – 17,499 ft.	189.70	243.52	28.46	36.53
17,500 – Deeper ft.	N/A	310.10	N/A	46.52

*As classified by Louisiana Office of Conservation.

B. - B.1. ...

2. Serial Number to Percent Good Conversion Chart

Year	Beginning Serial Number	Ending Serial Number	25 Year Life Percent Good
2003	227742	Higher	96
2002	226717	227741	92
2001	225352	226716	88
2000	223899	225351	84
1999	222882	223898	80
1998	221596	222881	76
1997	220034	221595	72
1996	218653	220033	68

1995	217588	218652	64
1994	216475	217587	60
1993	215326	216474	56
1992	214190	215325	52
1991	212881	214189	48
1990	211174	212880	44
1989	209484	211173	40
1988	207633	209483	36
1987	205211	207632	32
1986	Lower	205210	30*
VAR.	900000	Higher	50

*Reflects residual or floor rate.

3. Adjustments for Allowance of Economic Obsolescence

a. All wells producing 10 bbls oil or 100 mcf gas, or less, per day, as well as, all active service wells (i.e. injection, salt water disposal, water source, etc.) shall be allowed a 40 percent reduction. Taxpayer shall provide the assessor with proper documentation to claim this reduction.

B.3.b. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:205 (February 1997), amended by the Department of Revenue, Tax Commission. LR 24:480 (March 1998), LR 25:313 (February 1999), LR 26:507 (March 2000), LR 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003), LR 30:488 (March 2004).

Chapter 11. Drilling Rigs and Related Equipment

§1103. Drilling Rigs and Related Equipment Tables

A. Land Rigs

Depth "0" to 7,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
3,000	351,200	52,700
4,000	422,000	63,300
5,000	502,500	75,400
6,000	583,000	87,500
7,000	762,500	114,400
Depth 8,000 to 10,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
8,000	975,000	146,300
9,000	1,209,500	181,400
10,000	1,510,000	226,500
Depth 11,000 to 15,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
11,000	1,810,500	271,600
12,000	1,934,000	290,100
13,000	1,998,500	299,800
14,000	2,167,200	325,100
15,000	2,648,500	397,300
Depth 16,000 to 20,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
16,000	3,129,000	469,400
17,000	3,612,900	541,900
18,000	4,096,600	614,500

19,000	4,525,500	678,800
20,000	4,790,000	718,500
Depth 21,000 + Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
21,000	5,054,500	758,200
25,000 +	6,112,500	916,900

B. Jack-Ups

Type	Water Depth Rating	Fair Market Value	Assessment
IC	0-199 FT.	\$ 13,500,000	\$ 2,025,000
	200-299 FT.	20,000,000	3,000,000
	300- Up FT.	50,000,000	7,500,000
IS	0-199 FT.	15,000,000	2,250,000
	200-299 FT.	25,000,000	3,750,000
	300- Up FT.	30,000,000	4,500,000
MC	0-199 FT.	5,000,000	750,000
	200-299 FT.	10,000,000	1,500,000
	300- Up FT.	20,670,000	3,100,500
MS	0-249 FT.	10,500,000	1,575,000
	250- Up FT.	20,670,000	3,100,500

* * *

C. ...

D. Well Service Rigs Land Only (Good Condition)

Class	Mast	Engine	Fair Market Value	Assessment
I	72' X 125M# 75' X 150M#	6V71	161,875	24,280
II	96' X 150M# 96' X 180M# 96' X 185M# 96' X 205M# 96' X 210M# 96' X 212M# 96' X 215M#	8V71	210,875	31,600
III	96' X 240M# 96' X 250M# 96' X 260M# 102' X 215M#	8V92	209,125	31,400
IV	102' X 224M# 102' X 250M# 103' X 225M# 103' X 250M# 104' X 250M# 105' X 225M# 105' X 250M#	12V71	259,875	39,000
V	105' X 280M# 106' X 250M# 108' X 250M# 108' X 260M# 108' X 268M# 108' X 270M# 108' X 300M#	12V71 12V92	285,250	42,800
VI	110' X 250M# 110' X 275M# 112' X 300M# 112' X 350M#	12V71 (2) 8V92	329,875	49,500
VII	117' X 215M#	(2) 8V92 (2) 12V71	422,625	63,400

* * *

Note: These tables assume complete rigs in good condition. If it is documented to the assessor that any rig is incomplete or is in less than good condition, these amounts should be adjusted.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:939 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 22:117 (February 1996), LR 23:205 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:487 (March 1998), LR 25:315 (February 1999), LR 26:508 (March 2000), LR 27:426 (March 2001), LR 28:519 (March 2002), LR 30:488 (March 2004).

Chapter 15. Aircraft

§1503. Aircraft (Including Helicopters) Table

A. Aircraft (Including Helicopters)

Cost Index (Average)		Average Economic Life (10 Years)		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2003	.995	1	92	.92
2002	1.012	2	84	.85
2001	1.018	3	76	.77
2000	1.027	4	67	.69
1999	1.045	5	58	.61
1998	1.048	6	49	.51
1997	1.057	7	39	.41
1996	1.074	8	30	.32
1995	1.091	9	24	.26
1994	1.130	10	21	.24
1993	1.162	11	20	.23

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:943 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:206 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:316 (February 1999), LR 26:509 (March 2000), LR 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003), LR 30:489 (March 2004).

Chapter 25. General Business Assets

§2503. Tables Ascertaining Economic Lives, Percent Good and Composite Multipliers of Business and Industrial Personal Property

A. ...

* * *

B. Cost Indices

Year	Age	National Average 1926 = 100	January 1, 2003 = 100*
2003	1	1118.6	.995
2002	2	1100.0	1.012
2001	3	1093.4	1.018
2000	4	1084.3	1.027
1999	5	1065.0	1.045

Year	Age	National Average 1926 = 100	January 1, 2003 = 100*
1998	6	1061.8	1.048
1997	7	1052.7	1.057
1996	8	1036.0	1.074
1995	9	1020.4	1.091
1994	10	985.0	1.130
1993	11	958.0	1.162
1992	12	939.8	1.184
1991	13	928.5	1.199
1990	14	910.2	1.223
1989	15	886.5	1.256
1988	16	841.4	1.323
1987	17	806.9	1.379

Year	Age	National Average 1926 = 100	January 1, 2003 = 100*
1986	18	795.4	1.399
1985	19	787.9	1.413
1984	20	776.4	1.434
1983	21	755.8	1.473
1982	22	742.4	1.499
1981	23	709.2	1.570
1980	24	642.8	1.732
1979	25	584.4	1.905
1978	26	534.7	2.082

*Reappraisal Date: January 1, 2003 – 1113.1 (Base Year)

C. ...

D. Composite Multipliers 2004 (2005 Orleans Parish)

Age	3 Yr	5 Yr	8 Yr	10 Yr	12 Yr	15 Yr	20 Yr	25 Yr
1	.70	.85	.90	.92	.94	.95	.97	.98
2	.50	.70	.80	.85	.88	.91	.94	.96
3	.35	.53	.68	.77	.81	.87	.92	.95
4	.21	.35	.55	.69	.75	.81	.88	.92
5		.24	.45	.61	.69	.76	.86	.91
6		.21	.35	.51	.61	.71	.82	.88
7			.27	.41	.53	.66	.78	.86
8			.24	.32	.46	.59	.75	.84
9			.22	.26	.39	.53	.71	.82
10				.24	.33	.49	.68	.80
11				.23	.28	.43	.64	.79
12					.26	.37	.59	.76
13					.24	.31	.54	.72
14						.28	.49	.68
15						.26	.44	.65
16						.26	.44	.64
17							.37	.61
18							.34	.55
19							.31	.48
20							.30	.43
21							.29	.38
22								.34
23								.33
24								.35
25								.38
26								.42

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 10:944 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:207 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:317 (February 1999), LR 26:509 (March 2000), LR 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003), LR 30:489 (March 2004).

Chapter 27. Guidelines for Application, Classification and Assessment of Land Eligible to be Assessed at Use Value

§2703. Eligibility Requirements and Application for Use Value Assessment

A. ...

1. meet the definition of bona fide agricultural, horticultural, marsh or timberland as described in Section 2302 of Title 47 of the Louisiana Revised Statutes of 1950 and the eligibility requirements of R.S. 47:2303; and

A.2 - B.1. ...

2. the landowner must sign an agreement that the land will be devoted to one or more of the designated uses as defined in Section 2302 of Title 47 of the Louisiana Revised Statutes of 1950 and meet the eligibility requirements of R.S. 47:2303.

C. ...

AUTHORITY NOTE: Promulgated in accordance with ISA Constitution of 1974, Article VII, §18, R.S. 47:2302, R.S. 47:2303 and R.S. 47:2304.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 3:289 (June 1977), amended by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), LR 15:1097 (December 1989), LR 19:212 (February 1993), amended by the Department of Revenue, Tax Commission, LR 25:318 (February 1999), LR 26:510 (March 2000), LR 30:490 (March 2004).

§2705. Classification

A. - B. ...

Vernon

C. ...

AUTHORITY NOTE: Promulgated in accordance with LSA – Constitution of 1974, Article VII, §18, R.S. 47:2302, R.S. 47:2303 and R.S. 47:2304.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 3:289 (June 1977), amended by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), LR 15:1097 (December 1989), LR 19:212 (February 1993), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:208 (February 1997), amended by the Department of Revenue, Tax Commission, LR 25:318 (February 1999), LR 26:510 (March 2000), LR 27:428 (March 2001), LR 28:521 (March 2002), LR 29:372 (March 2003), LR 30:491 (March 2004).

§2711. Tables? Agricultural and Horticultural Lands

A. Weighted Average Income Per Acre 1999 - 2002

Commodity	Acres	Percent	Net Income	Weighted Fractional
Beef **	2,335,838	37.298	(27.22)	-0-
Soybeans (Wheat) *	845,000	13.493	(16.36)	-0-
Cotton	678,750	10.838	(44.37)	-0-
Rice (Crawfish) *	548,250	8.754	69.19	605.67
Sugarcane	456,250	7.285	205.39	1,496.33
Corn	403,750	6.447	(43.67)	-0-
Idle Crop ***	362,516	5.789		-0-
Grain Sorghum	217,500	3.473	(10.90)	-0-
Conservation Reserve	200,899	3.208	43.73	140.29
Dairy **	171,466	2.738	(126.61)	-0-
Sweet Potatoes	23,500	0.375	210.87	79.13
Catfish	13,466	0.215	(72.71)	-0-
Watermelon	2,975	0.047	(292.79)	-0-
Southern Peas	1,561	0.025	341.93	8.52
Tomatoes	562	0.009	10,841.73	97.21
Strawberries	388	0.006	9,779.33	60.51
Total	6,262,669	100.000	---	2,487.65

Weighted Average Net Income - \$24.88

B. Suggested Capitalization Rate for Agricultural and Horticultural Lands

Risk Rate	1.86%
Illiquidity Rate	0.09%
Safe Rate *	5.68%
Capitalization Rate **	7.63%

§2707. Map Index Table

A. Listing of general soil maps and modern soil surveys for the state of Louisiana Published by U.S. Dept. of Agriculture, Natural Resources Conservation Service in Cooperation with Louisiana Agricultural Experiment Station

Parish	Date (General)	Map No. (General)	Date Published or Status(Modern)

Bienville	Nov., 1971	4-R-16791-B	August, 2003

Jeff Davis	Jan., 1970	4-R-28746-A	September, 2003

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 and R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 3:290 (June 1977), amended by the Department of Revenue and Taxation, Tax Commission, LR 10:946 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:208 (February 1997), amended by the Department of Revenue, Tax Commission, LR 25:319 (February 1999), LR 26:511 (March 2000), LR 27:428 (March 2001), LR 28:521 (March 2002), LR 29:372 (March 2003), LR 30:491 (March 2004).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 through R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:764 (December 1987), LR 17:1213 (December 1991), LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 26:511 (March 2000), LR 30:491 (March 2004).

§2713. Assessment of Timberland

A. - C.4. ...

D. Production Costs of Timberland. The average timberland production costs are hereby established to be \$10.46/acre/year.

E. Gross Returns of Timberland. The gross value per cubic foot of timber production is hereby established to be \$0.81/cubic/foot.

F. Capitalization Rate for Timberland. The capitalization rate for determining use value of timberlands is hereby established to be as follows.

Timberland	Class 1, 2, and 3	Class 4
Risk Rate	0.97%	4.47%
Illiquidity Rate	0.10%	3.60%
Safe Rate	5.68%	5.68%
Other Factors	5.55%	5.55%
Capitalization Rate	12.30%	19.30%

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 through R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:248 (April 1987), LR 14:872 (December 1988), LR 17:1213 (December 1991), LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 26:511 (March 2000), LR 30:492 (March 2004).

§2717. Tables? Use Value

A. Average Assessed Value Per Acre of Agricultural and Horticultural Land, by Class

Class	Assessed Value	
	Per Acre Upper	Per Acre Lower
Class I	\$34.79	\$29.40
Class II	\$29.19	\$21.94
Class III	\$21.52	\$19.04
Class IV	\$18.62	\$12.40

B. Average Assessed Value Per Acre of Timberland, by Class

Class	Assessed Value Per Acre
Class 1	\$40.52
Class 2	\$29.34
Class 3	\$13.95
Class 4	\$8.89

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 through R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:248 (April 1987), LR 13:764 (December 1987), LR 14:110 (February 1988), LR 17:1213 (December 1991), LR 22:117 (February 1996), LR 23:208 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:491 (March 1998), LR 26:511 (March 2000), LR 30:492 (March 2004).

Chapter 31. Public Exposure of Assessments; Appeals
§3101. Public Exposure of Assessments, Appeals to the Board of Review and Board of Review Hearings

A. - J. ...

Form 3101
Exhibit A
Appeal to Board of Review
By Taxpayer
For Real and Personal Property
 * * *

I feel that the Fair Market Value of this real property as of January 1, 2003, the official reappraisal valuation date on which assessments are currently based was:

* * *

Form 3103.A
Exhibit A
Appeal To Louisiana Tax Commission
By Taxpayer or Assessor
For Real and Personal Property
 * * *

I understand that property is assessed at a percentage of fair market value, which means the price for the property which would be agreed upon between a willing and informed buyer and a willing and informed seller, under usual and ordinary circumstances, the highest price the property would bring on the open market, if exposed for sale for a reasonable time. I feel that the Fair Market Value of this real property, as of January 1, 2003, the official reappraisal valuation date on which assessments are based, was:

* * *

AUTHORITY NOTE: Promulgated in accordance with LSA-Constitution of 1974, Article VII, §18, R.S. 47:2302, R.S. 47:2303 and R.S. 47:2304.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 3:289 (June 1977), amended by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), LR 15:1097 (December 1989), LR 19:212 (February 1993), amended by the Department of Revenue, Tax Commission, LR 25:319 (February 1999), LR 26:512 (March 2000), LR 30:492 (March 2004).

§3105. Practice and Procedure for Public Service Properties Hearings

A. - S. ...

Form 3105.A
Exhibit A
Appeal To Louisiana Tax Commission
By Taxpayer or Assessor
For Public Service Property
 * * *

I feel that the Fair Market Value of this real property, as of January 1, 2003, the official reappraisal valuation date on which assessments are currently based, was:

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:1856.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 4:339 (September 1978), amended by the Department of Revenue and Taxation, Tax Commission, LR 10:947 (November 1984), LR 15:1097 (December 1989), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 23:209 (February 1997), amended by the Department of Revenue, Tax Commission,

LR 24:493 (March 1998), LR 25:320 (February 1999), LR 26:513 (March 2000), LR 30:492 (March 2004).

Chapter 35. Miscellaneous

§3501. Service Fees? Tax Commission

A. The Tax Commission is authorized by R.S. 47:1838 to levy and collect fees on an interim basis for the period beginning on July 1, 2003 and ending on June 30, 2004, in connection with services performed by the Tax Commission as follows:

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1835 and R.S. 47:1838.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 19:212 (February 1993), amended LR 20:198 (February 1994), amended by the Department of Revenue, Tax Commission, LR 24:494 (March 1998), LR 25:320 (February 1999), LR 26:513 (March 2000), LR 28:521 (March 2002), LR 30:493 (March 2004).

Elizabeth L. Guglielmo
Chairman

0403#028

RULE

**Department of Social Services
Office of Family Support**

Food Stamp Program? Time Limitation for Certain Aliens
(LAC 67.III.1932 and 1995)

The Department of Social Services, Office of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 3, Food Stamps.

Pursuant to Public Law 107-171, The Food Stamp Reauthorization Act of 2002, the agency has amended §§1932 and 1995, to comply with mandates issued by the U. S. Department of Agriculture, Food and Nutrition Service. Section 4401 of P.L. 107-171 provides for the restoration of food stamp eligibility to qualified aliens who are otherwise eligible and under the age of 18 regardless of their date of entry into the United States. Section 4401 also eliminates the deeming requirements for any qualified alien under the age of 18. These requirements count the income and resources of the alien's sponsor when determining food stamp eligibility and benefit amounts for the alien child.

A Declaration of Emergency effecting these changes was signed October 1, 2003, and published in the October issue of the *Louisiana Register*.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter D. Citizenship and Alien Status

§1932. Time Limitations for Certain Aliens

A. ...

B. The following qualified aliens are eligible for an unlimited period of time:

1. - 5. ...

6. effective October 1, 2003, individuals who are lawfully residing in the United States and are under 18 years of age;

7. ...

AUTHORITY NOTE: Promulgated in accordance with P. L. 104-193, P. L. 105-33, P. L. 105-185, and P. L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711 (April 1999), amended LR 29:606 (April 2003), LR 30:493 (March 2004).

Subchapter K. Action on Households with Special Circumstances

§1995. Sponsored Aliens

A. The full amount of income and resources of an alien's sponsor and the sponsor's spouse are counted in determining the eligibility and allotment level of a sponsored alien until the alien becomes a citizen or has worked 40 qualifying quarters of Social Security coverage. These provisions do not apply to battered aliens, their children, the alien parent of a battered child, or effective October 1, 2003, any alien under 18 years of age.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.11, P.L. 104-193, P. L. 104-208, P. L. 105-33, and P. L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), LR 24:355 (February 1998), LR 30:493 (March 2004).

Ann S. Williamson
Secretary

0403#081

RULE

**Department of Social Services
Office of Family Support**

Strategies to Empower People (STEP) Program
(LAC 67:III.1209, 1213, 1221, 1231,1237-1249, 1983, 1987, 5103-5107, 5111, 5321, 5335, 5339, 5341, 5701-5729)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to Act 58 of the 2003 Regular Session of the Louisiana Legislature, the Department of Social Services, Office of Family Support, has adopted LAC 67:III, Subpart 16, Chapter 57, Strategies to Empower People (STEP) Program and has amended Subpart 2, Chapter 12, Family Independence Temporary Assistance Program (FITAP), Subpart 3, Chapter 19, Food Stamps, Subpart 12, Chapter 51, Child Care Assistance Program (CCAP), and Subpart 13, Chapter 53, Kinship Care Subsidy Program (KCSP).

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 2. Family Independence Temporary Assistance Program

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance

§1209. Notices of Adverse Actions

A. A notice of adverse action shall be sent at least 13 days prior to taking action to reduce or terminate benefits. In some circumstances advance notice is not required. A

concurrent notice shall be sent to the client at the time of action in the following situations:

1 - 9. ...

10. Repealed.

11. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B. and R.S. 46:237, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2447 (December 1999), amended LR 26:349 (February 2000), LR 29:2565 (December 2002), LR 30:493 (March 2004).

§1213. Domestic Violence

A. The secretary shall waive, for as long as necessary, pursuant to a determination of good cause, any public assistance program requirement that will create obstacles for a victim of domestic violence to escape a domestic violence situation, including but not limited to, time limits on receipt of assistance; work, training, or educational requirements; limitations on TANF assistance to noncitizens; child support or paternity establishment cooperation requirements; residency requirements; and any other program requirements which will create obstacles for such victim to escape violence or penalize that victim for past, present, and potential for abuse. However, a victim of domestic violence shall develop a plan that specifies the necessary actions, goals, and services that may enable the victim to become free of a domestic violence situation. This plan shall be made part of the participant's Family Success Agreement.

B. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.1.B, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2447 (December 1999), amended LR 30:494 (March 2004).

Subchapter B. Conditions of Eligibility

§1221. Age Limit

A. A dependent child must be:

1. under 18 years of age; or
2. 18 years of age, enrolled in a secondary school or its equivalent, and expected to graduate on or before his 19th birthday.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.2, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2448 (December 1999), amended LR 30:494 (March 2004).

§1231. Immunization

A. Failure to follow the schedule of immunizations as promulgated by the Louisiana Office of Public Health for any child under 18 years of age, without good cause, shall result in case closure.

1. The appropriate STEP sanction shall be imposed on a work-eligible family.
2. The case of a family that is not work-eligible shall be closed for at least one month and until the child is in compliance.

B. No person is required to comply with this provision if that person or his/her parent or guardian submits a written statement from a physician stating that the immunization procedure is contraindicated for medical reasons, or if the

person or his/her parent or guardian objects to the procedure on religious grounds.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.4, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2451 (December 1999), amended LR 30: 494 (March 2004).

§1237. School Attendance

A. Work-eligible FITAP recipients must meet the school attendance requirements outlined in LAC 67:III.Chapter 57.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.3, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2452 (December 1999), amended LR 30:494 (March 2004).

§1239. Assignment of Support Rights and Cooperation with Support Enforcement Services

A. - B.2.d. ...

3. Failure to cooperate in establishing paternity or obtaining child support will result in case closure. The appropriate STEP sanction shall be imposed on a work-eligible family. The case of a family that is not work-eligible shall be closed for at least one month and until the family cooperates.

B.4. - E. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2452 (December 1999), amended LR:30 494 (March 2004).

§1241. Sanctions for Refusal to Accept a Job

A. Refusal to accept a job will result in the appropriate sanction being imposed on a work-eligible family.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.1.B, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2452 (December 1999), amended LR:30:494 (March 2004).

§1243. Work Requirements

A. Recipients must meet the work requirements outlined in LAC 67:III.Chapter 57.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.7., 46:231.8 and 46:231.9, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR 30: 494 (March 2004).

§1245. Parenting Skills Education

A. Recipients must meet the requirements for parenting skills education as outlined in LAC 67:III.Chapter 57.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.5, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR:30:494 (March 2004).

§1247. Time Limits

A. The Office of Family Support shall deny FITAP cash benefits to families if the parent has received FITAP for at least 24 months, whether consecutive or not, during the prior 60-month period. Only months of FITAP receipt after the

January 1, 1997 date of implementation count toward the 24-month limit.

B. The following situations represent exemptions from the 24-month time limit:

1. the household contains a permanently incapacitated or disabled individual; or

2. months after June 1999 in which a recipient receives the earned income disregard shall not count toward the 24-month time limit.

C. An extension of the 24-month time limit may be granted in the following situations:

1. an individual has been actively seeking employment by engaging in appropriate job-seeking activities and required work activities as specified in the participant's Family Success Agreement (FSA) but is unable to find employment;

2. factors relating to job availability are unfavorable;

3. an individual loses his job as a result of factors not related to his job performance;

4. an extension of benefits of up to one year will enable an individual to complete employment-related education or training, including workplace literacy, and is required as part of an FSA, where an individual has received an assessment that indicates such activities will likely result in long-term success in the workforce;

5. other hardships have occurred which affect the individual's ability to obtain employment.

D. Eligibility for cash assistance under a program funded by Part IV of the Social Security Act is limited to a lifetime limit of 60 months. No cash assistance will be provided to a family that includes an adult who has received assistance for 60 months (whether or not consecutive) unless one of the following hardships exists (in households with two caretaker relatives, both caretaker relatives must meet at least one of these criteria).

1. An individual has been actively seeking employment by engaging in appropriate job-seeking activities and required work activities as specified in the participant's Family Success Agreement (FSA) but is unable to find employment.

2. Factors relating to job availability are unfavorable.

3. An individual loses his job as a result of factors not related to his job performance.

4. An extension of benefits of up to one year will enable an individual to complete employment-related education or training, including workplace literacy, and is required as part of an FSA, where an individual has received an assessment that indicates such activities will likely result in long-term success in the workforce.

5. Other hardships have occurred which affect the individual's ability to obtain employment.

E. Any month for which such assistance was provided will be disregarded from the 24- and 60-month time limits with respect to the individual, if the individual was:

1. a minor child; and

2. not the head of a household or married to the head of a household.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.6. and R.S. 46:460.5(A)(3), Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December

1999), amended LR 26:349 (February 2000), LR 27:2263 (December 2001), amended LR 30:494 (March 2004).

§1249. Drug Screening, Testing, Education and Rehabilitation Program

A. - D. ...

E. Failure to Cooperate. Failure or refusal of a recipient to participate in drug screening, testing, or participation in the education and rehabilitation program, without good cause, will result in case closure.

1. The appropriate STEP sanction shall be imposed on a work-eligible family.

2. The case of a family that is not work-eligible shall remain closed for at least one month and until the client has complied.

F. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B., Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR:30:495 (March 2004).

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter I. Income and Deductions

§1983. Income Deductions and Resource Limits

A.1. - 2. ...

3. The maximum dependent care deduction is \$200 per month for each child under two years of age and \$175 for each other dependent.

a. A child care expense that is paid for or reimbursed by the STEP Program or the Child Care Assistance Program is not deductible except for that portion of the cost which exceeds the payment or reimbursement.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 (d)(2) and (d)(6), P.L. 104-193, P.L. 106-387 and P.L. 107-171, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:285 (May 1986), amended LR 12:423 (July 1986), LR 12:824 (December 1986), LR 13:181 (March 1987), LR 14:684 (October 1988), LR 15:14 (January 1989), amended by the Department of Social Services, Office of Family Support, LR 19:303 (March 1993), LR 19:905 (July 1993), LR 20:780 (July 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:186 (February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 29:607 (April 2003), LR 30:495 (March 2004).

Subchapter J. Determining Household Eligibility and Benefit Levels

§1987. Categorical Eligibility for Certain Recipients

A. Households Considered Categorically Eligible

1. Households in which a member is a recipient of benefits from the FITAP, STEP, and/or Kinship Care Subsidy Programs, and households in which all members are recipients of SSI, shall be considered categorically eligible for food stamps.

A.2. - D. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:28196 et seq., 7 CFR 271, 272, 273.10, and 274; F.R. 56:63612-63613, P.L. 104-193, 7 CFR 273.2(j)(2)(xi), Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:90 (February 1987), amended LR 12:755 (November 1986), amended

by the Department of Social Services, Office of Family Support, LR 18:142 (February 1992), LR 18:686 (July 1992), LR 18:1267 (November 1992), LR 24:1783 (September 1998), LR 26:349 (February 2000), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 30:495 (March 2004).

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance Program

§5103. Conditions of Eligibility

A. Family Independence Temporary Assistance Program (FITAP) recipients who are satisfactorily participating in the Strategies to Empower People (STEP) Program, as determined by the case worker, are categorically eligible. The program will pay 100 percent of the FITAP/STEP participant's child care costs, up to the maximum amounts listed in 5109.B. The following eligibility criteria must be met:

A.1. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444(December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 30:496 (March 2004).

§5105. Funding Availability

A. Louisiana's share of the national total of available funds for child care programs is based on factors determined by federal law and regulation. Funds are appropriated by Congress and allocated on an annual basis so that a limited amount of federal funding is available each year through the Child Care and Development Fund (CCDF). Therefore, a determination will be made of the number of children, or "slots," that the CCDF can pay for based on available funding.

1. The children of STEP participants shall be categorically eligible for child care benefits. The children of STEP participants whose FITAP eligibility is terminated due to earned income will be given priority status with slots available for them as long as other eligibility factors are met and funding is available.

A.2. - 2.a. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 26:2827 (December 2000), LR 30:496 (March 2004).

§5107. Child Care Providers

A. The head of household, or parent/caretaker relative in the case of a STEP participant, shall be free to select a child care provider of his/her choice including center-based child care (licensed Class A Day Care Centers and licensed Class A Head Start Centers which provide before-and-after school care and/or summer programs), registered Family Child Day Care Homes, in-home child care, and public and non-public BESE-regulated schools which operate kindergarten, pre-kindergarten, and/or before-and after school care programs.

B. - C. ...

D. Under no circumstance can the following be considered an eligible child care provider:

1. ...

2. the child's parent or guardian; or parent/caretaker relative in the case of a STEP participant, regardless of whether that individual lives with the child (if the child's non-custodial parent is residing in the Family Child Day

Care Home (FCDCH) in which the child receives care and is not working during the hours that care is needed, the FCDCH provider is ineligible to receive Child Care Assistance payments for that child);

D.3. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444(December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004).

§5111. Ineligible Payments

A. - B.2. ...

C. If an Intentional Program Violation is established, Fraud and Recovery will send a notice to the person to be disqualified and a copy of the notice to the parish office. The parish office will take action to disqualify for the appropriate situations:

1. - 2. ...

3. 24 months for the third violation and for any additional violations. EXCEPTION: The disqualification process will be waived for STEP participants and for participants in federally-or state-funded work or training programs.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2830 (December 2000), amended LR 30:496 (March 2004).

Subpart 13. Kinship Care Subsidy Program (KCSP) Chapter 53. Application, Eligibility, and Furnishing Assistance.

Subchapter B. Conditions of Eligibility

§5321. Age Limit

A. A dependent child must be:

1. under 18 years of age; or

2. 18 years of age, enrolled in a secondary school or its equivalent and expected to graduate on or before his nineteenth birthday.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B and R.S. 46:237, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:352 (February 2000), amended LR 30:496 (March 2004).

§5335. School Attendance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B and R.S. 46:237, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:354 (February 2000), repealed LR 30:496 (March 2004).

§5339. Parenting Skills Education

A. As a condition of eligibility for KCSP benefits any child under age 19 who is pregnant or the parent of a child under the age of one must attend a parenting skills education program. Failure to meet this requirement without good cause shall result in that minor's ineligibility. Ineligibility will continue until the child has complied.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:355 (February 2000), amended LR 30:496 (March 2004).

§5341. Drug Screening, Testing, Education and Rehabilitation Program

A. - C. ...

D. Failure to Cooperate. Failure or refusal of a recipient to participate in drug screening, testing, or participation in the education and rehabilitation program, without good cause, will result in ineligibility of the noncompliant individual. Cooperation is defined as participating in the component in which the recipient previously failed to cooperate. This includes drug screening, drug testing, or satisfactory participation for two weeks in an education and rehabilitation program.

E. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:355 (February 2000), amended LR 30:497 (March 2004).

Subpart 16. Strategies to Empower People (STEP) Program

Chapter 57. Strategies to Empower People (STEP) Program

Subchapter A. Designation and Authority of State Agency

§5701. General Authority

A. The Strategies to Empower People Program is established in accordance with state and federal laws effective October 1, 2003, to assist recipients of cash assistance to become self-sufficient by providing needed employment-related activities and support services.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:497 (March 2004).

§5703. Program Administration

A. The STEP program will be administered by OFS State Office, Regional and Parish staff.

B. The Department of Social Services will coordinate with the Louisiana Workforce Commission, who will identify, direct, and coordinate the provision of employment services offered through the STEP program. These services will include but are not limited to:

1. job readiness, job preparation, and job search;
2. workplace literacy and related assessments; and
3. applicable skill-based training, employer-based training, and other employment activities designed to meet the needs of Louisiana employers with a preference towards demand occupations.

C. The Louisiana Workforce Commission shall coordinate the provision of services utilizing the Department of Labor, one-stop services centers, the Louisiana Community and Technical College system, and the Department of Education adult literacy and community-based organizations.

D. A grievance procedure is available for resolving displacement complaints by regular employees or their representatives relating to STEP participants. A grievance procedure is also available for resolving complaints by, or on behalf of, STEP participants in a work-related activity. This grievance procedure hears complaints relating to on-the-job working conditions and workers' compensation coverage.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:497 ((March 2004).

§5705. Definitions

Family Assessment? consists of an initial employability assessment and a comprehensive assessment.

1. Initial employability assessment is designed to determine the applicant's level of employability, immediate needs, and family circumstances during the application process.

2. Comprehensive assessment is conducted once the applicant is certified for eligibility and shall include workplace literacy, basic skills and educational attainment, interests and aptitude related to employment, barriers to employment, need for education, supportive services such as child care and transportation, and other supportive services. Specialized assessments can occur for issues that arise after an initial assessment has been completed and could include substance abuse, domestic violence, mental health screening, or others as determined by the department.

Family Success Agreement (FSA)? the mutually developed contract between a Family Independence Temporary Assistance Program (FITAP) recipient, on behalf of their family, and the agency that sets forth mutual and time-bound responsibilities, expectations, activities, and goals designed to transition the family from receipt of FITAP to self-sufficiency.

Family Transition Assessment (FTA)? mutually developed plan between a FITAP recipient, on behalf of their family, and the agency, for those families nearing the end of their FITAP eligibility to identify the action plan necessary to enable a successful transition from receipt of FITAP to self-sufficiency.

Strategies to Empower People (STEP)? the program that provides education, employment, training and related services for families receiving FITAP assistance.

Temporary Exception? a limited time period in which the work-eligible recipient does not have to participate in an assigned work activity due to temporary incapacity or illness, unavailable child care, or a domestic violence situation.

Work-Eligible Family? a FITAP family (including cases which do not receive cash because their benefit would be less than \$10) which includes at least one adult under age 60 or a teen head of household who is not permanently disabled or incapacitated, or who is not caring for a family member who is permanently disabled or incapacitated as documented by a medical professional.

Work-Eligible Recipient? an adult under age 60 or a teen head of household who is included in a work-eligible family and who is not permanently disabled or incapacitated, or who is not caring for a family member who is permanently

disabled or incapacitated, as documented by a medical professional.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:497 (March 2004).

§5707. Domestic Violence

A. The secretary shall waive, for as long as necessary, pursuant to a determination of good cause, any public assistance program requirement that will create obstacles for a victim of domestic violence to escape a domestic violence situation, including but not limited to time limits on receipt of assistance, work, training or educational requirements, limitations on TANF requirements, residency requirements, and any other program requirements which will create obstacles for such victim to escape violence or penalize that victim for past, present, and potential for abuse. However, a victim of domestic violence shall develop a plan that specifies the necessary actions, goals, and services that may enable the victim to become free of a domestic violence situation. Such plan shall be made a component of the participant's Family Success Agreement.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:498 (March 2004).

Subchapter B. Participation Requirements

§5709. School Attendance

A. Work-eligible FITAP recipients, in order to ensure appropriate child development, educational attainment, and school attendance for each minor child included in the assistance unit, shall agree in the Family Success Agreement (FSA) to:

1. actively participate in their child's education through parent-teacher conferences, homework assistance, or other activities; and
2. provide documentation to the department that they are ensuring school attendance and are engaged in the child's learning.

B. Work-eligible, minor parents who have not yet received a high school diploma or its equivalent shall attend school or related education classes designed to obtain a high school diploma or its equivalent. School attendance shall be the primary work activity for those minor parents who do not have a high school diploma or its equivalent.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:498 (March 2004).

§5711. Parenting Skills Education

A. Work-eligible recipients and minors who are pregnant or have a child under age one shall participate in parenting skills education as a primary work activity under the FSA. Applicable child care and transportation shall be provided to participants to enable their participation.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:498 (March 2004).

§5713. Work Activities

A. Work-eligible recipients shall participate in appropriate work activities as agreed upon in the FSA. These activities may include but are not limited to:

1. subsidized or unsubsidized employment;
2. unpaid work experience;
3. on-the-job training;
4. job search;
5. job readiness;
6. vocational education;
7. attendance in secondary school for those individuals who have not graduated from high school;
8. participation in GED or basic skills training;
9. employment-related education;
10. job skills training;
11. community service; and
12. the provision of child care to an individual who is participating in community service.

B. Participants who are found not to possess basic workplace or basic literacy skills, as determined by an assessment, shall combine employment and job readiness and job search activities with activities designed to increase their basic and workplace literacy skills.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:498 (March 2004).

§5715. Temporary Exceptions

A. A work-eligible applicant or recipient of cash assistance shall immediately participate in work activities for the minimum number of hours per week required by federal law unless one of the following exceptions applies. These temporary exceptions shall not exceed six months in a twelve-month period. The exceptions include:

1. temporary incapacity, illness or disability of household head as documented by a medical professional. The documentation shall include a description and reason for the incapacity, illness, or temporary disability, an indication of how long the condition is expected to persist, and a reasonable expectation of when the participant can return to a work activity. Incapacity, illness, or disability determined for a period of longer than six months shall be referred for eligibility to Supplemental Security Income assistance and to the Louisiana Rehabilitation Services;

2. inability to obtain appropriate child care; or

3. status as a victim of domestic violence based on evidence presented to the department which may include, but not limited to, information from law enforcement agencies or domestic violence providers. This exception shall only be granted if a participant develops a plan to address the domestic violence situation and incorporates this plan in the FSA.

B. During a period in which a participant receives a temporary exception to the work requirement, a revised FSA shall be developed to enable satisfactory progress toward meeting employment and educational activity requirements.

C. Participants who receive a temporary exception shall be informed that this time is counted against their time limits for receipt of cash assistance.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:498 (March 2004).

§5717. Sanctions

A. Sanctions shall be used as a last resort to inform participants that they have not met the expectations set forth in the FSA. Participants shall be sanctioned for the following violations:

1. failure of the participant to provide documentation to the department that they are ensuring school attendance and are engaged with their child's learning;
2. failure of a work-eligible, minor parent with a child who has not yet received a high school diploma or its equivalent, to attend school or related education classes designed to obtain a high school diploma or its equivalent;
3. failure of a public assistance recipient who is pregnant or has a child under age one to attend parenting education and other training conducive to the unique needs of new parents;
4. failure of work-eligible families to meet the required employment and education activities for the minimum number of hours without good cause, as specified in the FSA; or
5. failure of work-eligible families to meet other requirements such as but not limited to immunization, cooperation with Support Enforcement Services, compliance with substance abuse screening, testing, treatment, etc. as specified in the FSA.

B. If it is determined that a work-eligible family has failed to meet the required activities as specified in the FSA without good cause, that family shall be ineligible for FITAP benefits as follows:

1. first sanction? a minimum of one month or until compliance, whichever is longer;
2. second sanction? a minimum of two months or until compliance, whichever is longer;
3. third or subsequent sanction? a minimum of three months or until compliance, whichever is longer.

C. The following represent good cause for not complying with the requirements set forth in the FSA.

1. Appropriate child care or transportation is unavailable within a reasonable distance from the participant's home or worksite after efforts have been made, and assistance has been offered, to secure child care or transportation.

2. Situations related to domestic violence. Any participant that receives a good cause exception related to domestic violence shall complete a plan that specifies the necessary actions, goals, and services that may enable the victim to become free of the violence and incorporate this plan into their FSA.

3. Situations related to the treatment of a mental or physical illness, including substance abuse treatment, where there is verification that participation in required activities would impair a treatment plan of a mental health or medical professional. Any participant that receives a good cause exception related to mental or physical illness shall incorporate the completion of the identified treatment plan in the FSA.

4. Temporary, short-term illness, or the temporary care of a family member who is ill, as documented by a medical professional.

5. Temporary emergency crisis, such as homelessness, fire, accident, dislocation due to natural causes, hurricane, flood, or similar circumstances that can be substantiated.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:499 (March 2004).

Subchapter C. STEP Program Process

§5719. Family Assessment

A. A Family Assessment shall be completed on all FITAP/STEP applicants in order to assist the worker in identifying family strengths, weaknesses, opportunities and barriers as well as determining programs that the applicants will need to become self-sufficient.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:499 (March 2004).

§5721. Job Readiness

A. A work-eligible applicant for cash assistance shall participate in job readiness activities as part of the core services available under STEP. The applicant shall receive an initial employability assessment designed to determine their level of employability, immediate needs, and family circumstances.

B. Job developers, through performance-based contracts, will provide job readiness services that shall include, but are not limited to:

1. workplace literacy assessment;
2. résumé development;
3. interview skills;
4. job search;
5. workplace standards and soft-skills development;
6. work ethics;
7. interest inventories related to job market and skills;
8. assistance with identification of available jobs and employers;
9. life skills development;
10. budget and financial management; and
11. client follow-up.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:499 (March 2004).

§5723. Comprehensive Assessment

A. Once the applicant is certified for eligibility, a comprehensive assessment shall be conducted and include workplace literacy, basic skills and educational attainment, interests and aptitude related to employment, barriers to employment, need for education, supportive services such as child care and transportation, and other supportive services.

B. Specialized assessments can occur for issues that arise after an initial assessment has been completed and could include substance abuse, domestic violence, mental health screening, or others as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:499 (March 2004).

§5725. Family Success Agreement (FSA)

A. Upon determination of eligibility and after completion of the comprehensive assessment, work-eligible participants shall enter into a contractual agreement, known as the Family Success Agreement (FSA), with the department. The FSA will specify:

1. the client's time-bound goals, responsibilities, and work activity participation; and
2. the department's obligation to provide necessary supportive services, assessments, notifications, information, and case management.

B. The FSA shall be updated at least every six months or as the client's needs, goals, barriers, and family circumstances change.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004).

§5727. Family Transition Assessment

A. The department shall complete a Family Transition Assessment (FTA) to assist participants with their transition from cash assistance. The plan will be completed with participants who:

1. have received three of the six months of earned income disregard; or
2. have received 18 months of FITAP assistance when subject to the 24-month time limit; or
3. have received 54 months of FITAP assistance when subject to the 60-month time limit; or
4. when it is determined that the family is leaving FITAP, whichever occurs first.

B. The FTA shall include but is not limited to:

1. a plan for on-going success in the work force;
2. identification of short and long-term goals;
3. identification of potential barriers and an action plan to overcome these barriers; and
4. information regarding eligibility for supportive services including, but not limited to: Medicaid benefits, Food Stamp benefits, Child Care, transportation, Louisiana Child Health Insurance Program, the earned income tax credit, and TANF-funded services.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004).

§5729. Support Services

A. Clients may be provided support services that include but are not limited to:

1. a full range of case maintenance and case management services designed to lead to self-sufficiency;
2. transportation assistance;
3. Food Stamp benefits;
4. Medicaid benefits;
5. Child Care;
6. TANF-funded services;

7. other services necessary to accept or maintain employment; and

8. transitional benefits (post-FITAP support services):

a. these services may be provided to participants who are or become ineligible for cash assistance due to earned income. They include a transportation payment of \$120 per month and other supportive service payments not to exceed a combined total of \$200 per state fiscal year and used to cover certain costs deemed necessary for employment. The payments may begin with the first month of FITAP ineligibility and continue through the twelfth month of ineligibility or through the last month of employment, whichever comes first. The 12 months need not be consecutive.

B. Support services may be provided to:

1. persons participating in the Family Assessment;
2. persons referred by the Agency to other activities, such as drug counseling, prior to their participation in a work activity;
3. FITAP recipients participating in approved activities necessary to meet exemptions to the FITAP time limits;
4. FITAP recipients to facilitate their attendance in the FITAP Drug Testing Program or Parenting Skills Program;
5. allow participation in educational activities for FITAP recipients who are exempt from STEP.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004).

Ann S. Williamson
Secretary

0403#082

RULE

Department of Social Services Office of Family Support

TANF Initiatives? Teen Pregnancy Prevention Program
(LAC 67:III.5401-5407, 5505-5509,
5525, 5529, 5539, 5575, and 5577)

In accordance with R.S.49: 950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, has amended LAC 67:III, Subpart 15, Chapter 55, §§5505, 5507, 5509, 5525, and 5539, has repealed §5529 and Subpart 14, Chapter 54, the Teen Pregnancy Prevention Program, and has adopted §§5575 and 5577, pursuant to Act 14 of the 2003 Legislative Session.

The agency has repealed Section 5529, Youth in Transition, as funds are no longer being allocated for this program. Additionally, the agency has repealed Subpart 14, Chapter 54, Teen Pregnancy Prevention Program. The program will now be administered by the Department of Education through a Memorandum of Understanding with the agency. Program information has been incorporated into Chapter 55, TANF Initiatives and adopted as Section 5575, Teen Pregnancy Prevention Program. Section 5577, Skills Training for Incarcerated Fathers, has been adopted as a new TANF Initiative.

These changes were effected October 21, 2003, by a Declaration of Emergency that was published in the November issue of the *Louisiana Register*.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 14. Teen Pregnancy Prevention

Chapter 54. Teen Pregnancy Prevention Program

§5401. Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1018 (July 2001), repealed LR 30:501 (March 2004).

§5403. Strategy

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S.36:474, Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:1996 (September 2002), repealed LR 30:501 (March 2004).

§5405. Goals and Objectives

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474, Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:1996 (September 2002), repealed LR 30:501 (March 2004).

§5407. Program Activities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474, Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:1599 (July 2002), repealed LR 30:501 (March 2004).

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5505. Nonpublic School Early Childhood Development Program

A. ...

B. These services meet the TANF goal to reduce the incidence of out-of-wedlock births by placing children in learning environments at the pre-school level to foster an interest in learning, increase literacy levels, and increase the likelihood of developing responsible behavior.

C. Eligibility for services is limited to families in which the child is one year younger than the eligible age for public school kindergarten and who have earned income at or below 200 percent of poverty level.

D. ...

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 28:350 (February 2002), amended LR 29:715 (May 2003), LR 30:501 (March 2004).

§5507. Adult Education, Basic Skills Training, Job Skills Training, and Retention Services Program

A. The Office of Family Support shall enter into memoranda of understanding or contracts to create programs to provide adult education and literacy, basic skills training, jobs skills training, court-ordered training and job 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. - D. ...

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; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:870 (April 2002), amended LR 30:501 (March 2004).

§5509. Domestic Violence Services

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to provide for services pertaining to domestic violence including rural outreach, services to children in shelters, and training of law enforcement and DSS personnel.

B. - D. ...

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 28:351 (February 2002), amended LR 30:501 (March 2004).

§5525. Pre-GED/Skills Option Program

A. - B. ...

C. Eligibility for services is not limited to needy families; however certain populations are targeted for services provided by the Options Program and the JAG LA Program. They include:

1. Eligible participants in the Options Program shall be students 16 years of age or older and meet one or more of the following:

a. failed the eighth grade LEAP 21 English language arts or math test for one or more years;

b. failed English language arts, math, science, or social studies portion of the Graduation Exit Exam;

c. participated in alternate assessment; or

d. earned not more than 5 Carnegie units by age 17, not more than 10 Carnegie units by age 18, and not more than 15 Carnegie units by age 19;

2. eligible participants in the JAG LA Program shall be 16-21 years of age (or at least 15 years of age in the middle school pilot program) and must face at least two designated barriers to success that include economic, academic, personal, environmental, or work related.

D. ...

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; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), amended LR 30:501 (March 2004).

§5529. Youth in Transition

Repealed.

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 of the Louisiana Legislature, Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), repealed LR 30:502 (March 2004).

§5539. Truancy Assessment and Service Centers

A. OFS shall enter into memoranda of understanding or contracts for truancy assessment and service centers designed to identify, assess, and intervene to ensure that children in kindergarten through sixth grade attend school regularly.

B. - D. ...

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, Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002), amended LR 30:502 (March 2004).

§5575. Teen Pregnancy Prevention Program

A. The Department of Social Services, Office of Family Support, shall enter into memoranda of understanding or contracts effective July 1, 2003, to prevent or reduce out-of-wedlock and teen pregnancies by enrolling youth ages 8 through 20 in supervised, safe environments, with adults leading activities according to a research-based model aimed at reducing teen pregnancy.

B. Services offered by providers meet the TANF goals to prevent and reduce the incidence of out-of-wedlock births by providing research-based prevention and intervention programming for students who live in poor communities and/or show evidence of academic underperformance, dropping out, or engaging in negative behaviors that can lead to dependency, out-of-wedlock births, or imprisonment.

C. Eligibility for services is not limited to needy families. Custodial and non-custodial parents, legal guardians, or caretaker relatives of youth who are participants in the program may also receive parenting training and educational services.

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 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:502 (March 2004).

§5577. Skills Training For Incarcerated Fathers

A. The Office of Family Support shall enter into memoranda of understanding or contracts effective September 1, 2003, to provide educational rehabilitation services to incarcerated male inmates to assist them in becoming self-sustaining individuals upon release.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is limited to male inmates housed in a local or state Louisiana correctional facility, who have served a majority of their sentence and are nearing release and who are the parents of minor children.

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 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:502 (March 2004).

Ann S. Williamson
Secretary

0403#083

RULE

**Department of Transportation and Development
Office of Weights and Measures**

**Minimum Standards for Reflectivity of Work-Site Materials
(LAC 73:III.Chapter 3)**

In accordance with the applicable provisions of the Administrative Procedure Act, R. S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development hereby amends Chapter 3 entitled "Minimum Standards for Reflectivity of Work-Site Materials," in accordance with the provisions of R.S. 48:35.

Title 73

WEIGHTS, MEASURES, AND STANDARDS

Part III. Weights and Standards

**Chapter 3. Minimum Standards for Reflectivity of
Work-Site Materials**

**§301. Minimum Standards for Reflective Sign
Sheeting**

A. Reflective sheeting shall be one of the following types as specified on the plans and complying with ASTM D 4956 except as modified herein. The sheeting shall be an approved product listed in QPL 13.

1. Type I. A medium-intensity retroreflective sheeting referred to as "engineering grade" and typically enclosed lens glass-bead sheeting.

2. Type II. A medium-high-intensity retroreflective sheeting sometimes referred to as "super engineering grade" and typically enclosed lens glass-bead sheeting.

3. Type III. A high-intensity retroreflective sheeting, that is typically encapsulated glass-bead retroreflective material.

4. Type VI. An elastomeric-high-intensity retro-reflective sheeting without adhesive. This sheeting is typically a vinyl microprismatic retroreflective material.

5. DOTD Type VII (Fluorescent Orange). A super-intensity retroreflective sheeting, that is typically an unmetallized microprismatic retroreflective element material.

6. Type IX. A very high-intensity retroreflective sheeting having highest retroreflectivity at short distances as determined by the R_A values at 1??observation angle. This sheeting is typically an unmetallized microprismatic retroreflective element material.

B. Adhesive Classes. The adhesive required for retroreflective sheeting shall be Class 1 (pressure sensitive) or Class 2 (heat activated) as specified in ASTM D 4956.

C. Identification Marks. Type II sheeting shall be distinguished by integral identification marks that cannot be removed or affected by physical or chemical methods without causing damage to the sheeting. The markings shall be inconspicuously placed on 12-inch (300-mm) centers and shall be visible from a distance of not more than 3 feet (1.0 m).

D. Alternate Sheeting Type. DOTD Type VII (Fluorescent Orange). Minimum Coefficients of Retroreflection shall be as specified in Table 1015-1. Luminance factors and color requirements shall be as specified in Table 1015-2.

Table 1015-1 Coefficients of Retroreflection for DOTD Type VII (Fluorescent Orange) Sheeting¹

Observation Angle, degrees	Entrance Angle, degrees	Fluorescent Orange
0.2	-4	180
0.2	+30	90
0.5	-4	72
0.5	+30	36

¹Minimum Coefficient of Retroreflection (R_A) ($cd\ lx^{-1}m^{-2}$)

Table 1015-2 Fluorescent Orange Color Specification Limits (Daytime)

Color	1		2		3		4		Luminance Factor, min.
	x	y	x	y	x	y	x	y	Y%
Fluor. Orange	0.583	0.416	0.535	0.400	0.595	0.351	0.645	0.355	25

(The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 Standard Colorimetric System measured with Standard Illuminant D65.)

E. Accelerated Weathering. Reflective sheeting, when processed, applied and cleaned in accordance with the manufacturer's recommendations shall perform in accordance with the accelerated weathering standards in Table 1015-3.

Table 1015-3 Accelerated Weathering Standards²

Type	Retroreflectivity ¹				Colorfastness ³	
	Orange		All Colors, except Orange		Orange	All Colors, except Orange
I	Not used		2 years	50 ⁷	Not used	2 Years
II	1 Year	65 ⁵	Not used		1 Year	3 Years
III	1 Year	80 ⁶	3 Years	80 ⁶	1 Year	3 Years
III (for drums)	1 Year	80 ⁶	1 Year	80 ⁶	1 Year	1 Year
VI	1/2 Year	50 ⁷	1/2 Year	50 ⁷	1/2 Year	1/2 Year
DOTD Type VII (Fluor. Orange)	1 Year	80 ⁸	Not Used		1 Year	Not used
IX	Not used		3 Years	80 ⁷	Not used	3 Years

¹Percent retained retroreflectivity of referenced table after the outdoor test exposure time specified.

²At an angle of 45° from the horizontal and facing south in accordance with ASTM G7.

³Colors shall conform to the color specification limits of ASTM D4956 and Table 1015-2 herein after the outdoor test exposure time specified.

⁴ASTM D4956, Table 4.

⁵ASTM D4956, Table 6.

⁶ASTM D4956, Table 7.

⁷ASTM D4956, Table 12.

⁸Table 1015-1.

⁹ASTM D4956, Table 3.

F. Performance. Reflective sheeting for signs, when processed, applied and cleaned in accordance with the manufacturer's recommendations shall perform outdoors in accordance with the performance standards in Table 1015-4.

Table 1015-4 Reflective Sheeting Performance Standards

Type	Retroreflectivity ¹ -- Durability ²			Colorfastness ³
	Orange		All Colors, except Orange	
I	Not used		7 years 50 ⁷	3 Years
II	3 Years	65 ⁵	Not used	
III	3 Years	80 ⁶	10 Years 80 ⁶	3 Years
DOTD Type VII (Fluor. Orange)	3 Years	80 ⁷	Not Used	
IX	Not used		7 Years 80 ⁸	3 Years

¹Percent retained retroreflectivity of referenced table after installation and the field exposure time specified.

²All sheeting shall maintain its structural integrity, adhesion and functionality after installation and the field exposure time specified.

³All colors shall conform to the color specification limits of ASTM D4956 and Table 1015-2 herein after installation and the field exposure time specified.

⁴ASTM D4956, Table 4.

⁵ASTM D4956, Table 6.

⁶ASTM D4956, Table 7.

⁷Table 1015-1.

⁸ASTM D4956, Table 3.

G Temporary Signs, Barricades, Channelizing Devices, Drums and Cones. Reflective sheeting for temporary signs, barricades and channelizing devices, shall meet the requirements of ASTM D 4956, Type III except that the initial sequence of temporary advanced warning construction signs used on the mainline of freeways and expressways shall meet the requirements of DOTD Type VII (Fluorescent Orange).

1. Reflective sheeting for vertical panels shall meet the requirements of ASTM D 4956, Type III.

2. Reflective sheeting for drums shall be a minimum of 6 inches (150 mm) wide and shall meet the requirements of ASTM D 4956, Type III, and the Supplementary Requirement S2 for Reboundable Sheeting as specified in ASTM D 4956. Reflective sheeting for traffic cone collars shall meet the requirements of ASTM D 4956, Type VI.

H. Sheeting Guaranty. The contractor shall provide the Department with a guaranty from the sheeting manufacturer stating that if the retroreflective sheeting fails to comply with the performance requirements of this Subsection, the sheeting manufacturer shall do the following:

Table 1015-5 Manufacturer's Guaranty-Reflective Sheeting

Type	Manufacturer shall restore the sign face in its field location to its original effectiveness at no cost to the Department if failure occurs during the time period ¹ specified below.		Manufacturer shall replace the sheeting required to restore the sign face to its original effectiveness at no cost to the Department if failure occurs during the time period specified below.
	Orange	All Colors, except Orange	All Colors, except Orange
I	Not used	<5 years	5-7 years
II	<3 years	<5 years	5-10 years
III	<3 years	<7 years	7-10 years
DOTD Type VII (Fluor. Orange)	<3 years	Not used	Not used
IX	Not used	<5 years	5-10 years

¹From the date of sign installation.

1. Replacement sheeting for sign faces, material, and labor shall carry the unexpired guaranty of the sheeting for which it replaces.

2. The sign fabricator shall be responsible for dating all signs with the month and year of fabrication at the time of sign fabrication. This date shall constitute the start of the guaranty obligation period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measures LR 24:703 (April 1998), amended LR 26:357 (February 2000), LR 30:502 (March 2004).

§303. Minimum Standards for Striping

A. Temporary Pavement Markings

1. Temporary Tape. Temporary tape shall comply with ASTM D 4592, Type I (removable) or Type II (non-removable) and shall be an approved product listed in QPL-60.

2. Painted Stripe. Paint shall be an approved traffic paint complying with Subsection 1015.12. of the *Louisiana Standard Specifications for Roads and Bridges*. Glass beads for drop-on application shall comply with Subsection 1015.13 of the *Louisiana Standard Specifications for Roads and Bridges*.

3. Temporary Raised Pavement Markings for Asphaltic Surface Treatment. Temporary raised pavement markers for asphaltic surface treatment shall be flexible reflective tabs having a nominal width of 4 inches (10 cm). The markers shall be yellow with amber reflective area on both sides. The body of the marker shall consist of a base and vertical wall made of polyurethane or other approved material and shall be capable of maintaining a reasonable vertical position after installation. The initial minimum reflectivity at an entrance angle of -4 degrees and an observation angle of 0.2 degrees shall be 230 mcd/lx when measured in accordance with ASTM E 810.

a. The reflective material shall be protected with an easily removable cover of heat resistant material capable of withstanding and protecting the reflective material from the

application of asphalt at temperatures exceeding 325°F (160°C).

b. The markers shall be an approved product listed in QPL 74.

B. Traffic Paint. The contractor shall have the option of furnishing either alkyd traffic paint or water-borne traffic paint; however, the same type paint shall be used throughout the project. Each paint container shall bear a label with the name and address of manufacturer, trade name or trade-mark, type of paint, number of gallons, batch number and date of manufacture. Paints shall be approved products listed in QPL 36; shall show no excessive settling, caking or increase in viscosity during 6 months of storage, and shall be readily stirred to a suitable consistency for standard spray gun application. An infrared curve shall be generated in accordance with DOTD TR 610 and compared with the standard curve made during the initial qualification process.

1. Alkyd Traffic Paint. This material shall be a rapid-setting compound suitable for use with hot application equipment. The material shall meet the requirements of Table 1015-11.

Table 1015-11 Alkyd Traffic Paint Physical Properties

Property	Test Method	Requirements	
		Min	Max
Weight, kg/L	ASTM D 1475	1.5	---
Viscosity @ 25°C, Krebs Units	ASTM D 562	85	115
Dry to No Pick Up, s	ASTM D 711	---	180
Directional Reflectance, %	ASTM E 97		
White		80	---
Yellow		50	---
Bleeding	Fed. Spec. TTP-115	Pass	
Total Solids, % by mass	ASTM D 1644, Method A	70	---
Film Shrinkage	¹	Pass	
Hiding Power	²	Pass	
Pigment, %	ASTM D 2371	50	55
Nonvolatiles in Vehicle, % by mass	ASTM D 215	35	---
Flexibility	Fed. Spec. TTP-1952	Pass	
Pigment Composition	³	Pass	

¹Film Shrinkage: With a film applicator, cast a wet film with a thickness of 30 mils (750 µm) over a smooth glass plate. Allow sample to cure at room condition for 4 to 5 hours. Using a micrometer, measure the plate thickness before the film is cast using five measurements to obtain an average. The cured film shall have a minimum thickness of 12 mils (300 µm).

²Hiding Power: The paint shall have a wet hiding power of at least 350 square feet per gallon (8.6 m²/L). The compound shall have sufficient hiding power to cover any pavement when applied at a wet film thickness of 15 mils (375 µm).

³Pigment Composition: White paint shall contain at least 1.5 pounds (180 g) of titanium dioxide (TiO₂) pigment per gallon (L) as determined using DOTD TR 523 with at least 92 percent TiO₂ content. The TiO₂ shall comply with ASTM D 476. Yellow paint shall contain at least 1.3 pounds (160 g) of medium chrome yellow pigment per gallon (L) as determined using DOTD TR 523. Medium chrome yellow pigment shall comply with ASTM D 211, Type III.

2. Water Borne Traffic Paint. This material shall be a rapid setting waterborne compound suitable for use with hot application equipment. The material shall meet the requirements of Table 1015-12.

Table 1015-12 Water Borne Traffic Paint Physical Properties

Property	Test Method	Requirements	
		Min	Max
Weight, kg/L	ASTM D 1475	1.5	---
Viscosity, at 25 °C Krebs Units	ASTM D 562	75	90
Drying to No Pickup, min.	ASTM D 711	---	10
Dry through, min.	ASTM D 1640	---	20
Volume Solids, %	---	58	---
Total Solids, % by mass	ASTM D 2369	70	---
Pigment, % by mass	ASTM D 3723	45	55
Nonvolatile Vehicle, % by mass	Fed. Test 141B	40	---
Bleed Ratio	Fed. Spec. TT-P-1952	0.96	---
Daylight Reflectance, % White	Fed. Test 141B	85	---
Yellow		54	---
Hiding Power (Contrast Ratio) at 250 µm	Fed. Test 141B	0.96	---
Flexibility	Fed. Spec. TT-P-1952	Pass	
Drying Time, min.	¹	---	3
Fineness of Grind	ASTM D 1210	3	---
Freeze-Thaw	ASTM D 2243	Pass	
Heat Stability	Fed. Spec. TT-P-1952	Pass	
Color	²	Pass	
Volatile Organic Compounds (g/L)	---	---	150
Pigment Composition	³	Pass	

¹Drying Time to No Track - Paint applied at 15 mils (375 µm) wet on the road surface with paint heated to 120-150° F (50-65° C) shall not show tracking when a standard size automobile crosses in a passing maneuver at three minutes.

²Color? Yellow paint shall comply with the requirements of Table 1015-13 when tested in accordance with ASTM E 1349. White shall be a clean, bright, untinted binder.

³The white paint shall contain a minimum of 1.0 pound per gallon (120 g/L) of titanium dioxide (TiO₂) as determined using DOTD TR 523. The titanium dioxide shall comply with ASTM D 476.

Table 1015-13 Water Borne Traffic Paint Color Specification Limits (Daytime)

Color	1		2		3		4	
	x	y	x	y	x	y	x	y
Yellow	0.4756	0.4517	0.4985	0.4779	0.5222	0.4542	0.4919	0.4354

(The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE D31 Standard Colorimetric System measured with Standard Illuminant C.)

C. Large Embedment Coated Glass Beads for Pavement Markings. Large embedment coated glass beads for use with painted traffic striping and flat thermoplastic striping shall be transparent, clean, colorless glass, smooth and spherically shaped, free from milkiness, pits, or excessive air bubbles and conform to the specific requirements for the class designated. The beads shall be non-flotation, embedment coated and conform to the following specific requirements.

1. Gradation. The testing for gradation of the beads shall be in accordance with ASTM D 1214 and shall meet the gradation requirements specified below.

a. Painted Traffic Striping. Glass beads for painted traffic striping shall meet the gradation requirements of Table 1015-14.

Table 1015-14 Gradation of Large Embedment Coated Glass Beads for Painted Traffic Striping

U.S. Sieve (Metric Sieve)	Percent Retained
No. 12 (1.7 mm)	0
No. 14 (1.4 mm)	0-5
No. 16 (1.18 mm)	5-20
No. 18 (1.00 mm)	40-80
No. 20 (850 µm)	10-40
No. 25 (710 µm)	0-5
PAN	0-2

b. Flat Profile Thermoplastic Striping. Drop-on beads for flat profile thermoplastic striping shall meet the gradation requirements of Table 1015-15 as determined by the thickness of the striping.

Table 1015-15 Gradation of Embedment Coated Glass Beads for Flat Profile Thermoplastic Striping

Thickness	Number of Bead Drops	Application #1	Application #2
40 mils	Single Drop	See Table 1015-14	N/A
90 mils or greater	Double Drop	See Table 1015-16	AASHTO M247 Type I

Table 1015-16 Gradation of Large Embedment Coated Glass Beads for First Drop on Flat Thermoplastic Striping

U.S. Sieve (Metric Sieve)	Percent Retained
No. 10 (2.0 mm)	0
No. 12 (1.7 mm)	0-5
No. 14 (1.4 mm)	5-20
No. 16 (1.18 mm)	40-80
No. 18 (1.00 mm)	10-40
No. 20 (850 µm)	0-5
PAN	0-2

2. Roundness. The beads shall have a minimum of 80 percent rounds per screen for the two highest sieve quantities. The remaining sieve fractions shall have no less than 75 percent rounds as determined by microscopic examination.

3. Angular Particles. The beads shall have no more than three percent angular particles per screen.

4. Refractive Index. The beads shall have a refractive index of 1.50 to 1.52 when tested by the liquid immersion method.

5. Embedment Coating. The large beads for thermoplastic striping shall be coated with an adhesion assuring coating. The smaller AASHTO M247 Type I beads shall be coated to provide free flowing characteristics when tested in accordance with AASHTO M247 Section 4.4.1. and assure adhesion. Glass beads shall be properly coated and conform to the requirements when tested as described in DOTD TR 530 Determination of Embedment Coating on Large Embedment Coated Glass Beads for Pavement Markings.

6. Packaging and Marking. The beads shall be packaged in moisture proofed containers. Each container shall be stamped with the following information: Name and address of manufacturer, shipping point, trademark or name, the wording "Large Embedment Coated Glass Beads," class,

weight, lot number and the month and year of manufacture. The container for the AASHTO M 247 Type I beads shall be similarly stamped except that the wording shall be "Glass Beads."

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measures, LR 24:705 (April 1998), amended LR 30:504 (March 2004).

§305. Minimum Standard for Thermoplastic Pavement Markings

A. Description. This specification covers hot-sprayed or hot-extruded reflective thermoplastic compound for pavement markings on asphaltic or portland cement concrete pavement. Thermoplastic marking material applied to asphaltic surfaces shall consist of an alkyd-based formulation. Thermoplastic marking material applied to portland cement concrete surfaces shall consist of either an alkyd-based or hydrocarbon-based formulation. Material shall be so manufactured as to be applied by spray or extrusion to pavement in molten form, with internal and surface application of glass spheres, and upon cooling to normal pavement temperature, shall produce an adherent, reflectorized pavement marking of specified thickness and width, capable of resisting deformation.

1. Material shall not scorch, break down, or deteriorate when held at the plastic temperature specified in Subsection 732.03(d)(1) for 4 hours or when reheated four times to the plastic temperature. Temperature-vs-viscosity characteristics of plastic material shall remain constant when reheated four times, and shall be the same from batch to batch. There shall be no obvious change in color of material as the result of reheating four times, or from batch to batch.

B. Suitability for Application. Thermoplastic material shall be a product especially compounded for pavement markings. Markings shall maintain their original dimension and placement and shall not smear or spread under normal traffic at temperatures of below 140° F (60° C). Markings shall have a uniform cross section. Pigment shall be evenly dispersed throughout its thickness. The exposed surface shall be free from tack and shall not be slippery when wet. Material shall not lift from pavement in freezing weather. Cold ductility of material shall be such as to permit normal movement with the pavement surfaced without chipping or cracking.

C. Standard Thermoplastic Pavement Markings. Materials shall be approved products listed in QPL 63 and shall comply with AASHTO M 249 and the specifications as stated herein with the following modifications:

1. Color. The yellow thermoplastic shall comply with the requirements of Table 1015-7 when tested in accordance with ASTM E 1349.

Table 1015-7 Color Specification Limits (Daytime)

Color	1		2		3		4	
	x	y	x	y	x	y	x	y
Yellow	0.4756	0.4517	0.4985	0.4779	0.5222	0.4542	0.4919	0.4354

(The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 Standard Colorimetric System measured with Standard Illuminant C.)

2. Whiteness Index. The white thermoplastic shall have a minimum whiteness index of 40 when tested according to ASTM E 313.

D. Inverted Profile Thermoplastic Pavement Markings. Materials shall be approved products listed in QPL 63 and shall comply with AASHTO M 249 and these specifications as follows:

1. Bead Content. Glass bead content for inverted profile thermoplastic pavement markings shall be in accordance with Table 1015-8.

Table 1015-8 Bead Content

U.S. Standard Sieve Size (Microns)	Class A ¹ --10% min. (by wt.) of thermoplastic compound, Percent Retained	Class B ¹ --25% min. (by wt.) of thermoplastic compound
14 (1400)	0 - 1	Beads shall meet gradation requirement of AASHTO M 247, Type I.
16 (1190)	0 - 20	
18 (1000)	0 - 45	
20 (840)	30 - 80	
30 (595)	20 - 50	
Pan	0 - 10	

¹Refer to Section 732 when applying as drop-on beads for inverted profile thermoplastic pavement markings.

2. Bead Quality. The glass beads shall be coated with A-116 Silane or other adhesion promoting coating. The glass beads shall have a maximum of 3 percent irregular particles and a maximum of 5 percent air inclusions. The percentage of true spheres shall be 90 percent minimum for Class A beads and 80 percent minimum for Class B beads.

3. Binder Content. The binder content of the thermoplastic material shall be 19 percent minimum.

4. Titanium Dioxide. The titanium dioxide shall meet ASTM D476, Type II, Rutile grade, 93 percent minimum titanium content.

5. Yellow Pigment. The yellow pigment for the yellow thermoplastic material shall be 4 percent minimum.

6. Color. The yellow thermoplastic shall comply with the requirements of Table 1015-9 when tested in accordance with ASTM E 1349.

Table 1015-9 Color Specification Limits (Daytime)

Color	1		2		3		4	
	x	y	x	y	x	y	x	y
Yellow	0.4756	0.4517	0.4985	0.4779	0.5222	0.4542	0.4919	0.4354

(The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 Standard Colorimetric System measured with Standard Illuminant C.)

7. Whiteness Index. The white thermoplastic shall have a minimum whiteness index of 40 when tested according to ASTM E 313.

8. Specific Gravity. The specific gravity of the thermoplastic pavement marking material shall not exceed 2.35.

9. Flowability. After heating the thermoplastic material for four hours ±5 minutes at 425±3° F (218±2° C) and testing flowability, the white thermoplastic shall have a maximum percent residue of 22 percent and the yellow thermoplastic shall have a maximum residue of 24 percent.

10. Reflectivity. The initial reflectance for the in-place marking shall have the minimum reflectance value of 450 mcd/lux/sq m for white and 350 mcd/lux/sq m for yellow when measured with a geometry of 1.5 degrees observation angle and 86.5 degrees entrance angle.

11. Wet Reflectivity. The minimum in-place marking when wet shall have the minimum reflectance value of 200 mcd/lux/sq m for white and 175 mcd/lux/sq m for yellow when measured with a geometry of 1.5 degrees observation angle and 86.5 degrees entrance angle. The stripe shall be wet utilizing a pump-type garden sprayer for 30 seconds. After 5 seconds, place the reflectometer on the stripe and measure the retro reflectance.

12. Retained Reflectivity. The thermoplastic pavement marking material shall retain the minimum reflectance value of 130 mcd/lux/sq m for at least four years after placement. Failure to meet this requirement shall require the contractor to replace the portion of the material shown to be below these minimums. The contractor shall provide a written warranty indicating the terms of this requirement.

13. Inverted Profile. The thermoplastic pavement marking material shall be applied to have individual profiles having a minimum height of 0.140 inches (3.5 mm) with the recessed inverted profiles having a thickness of 0.025 to 0.050 inches (0.6 mm to 1.25 mm). The profiles shall be well defined and not excessively run back together.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measure, LR 24:707 (April 1998), amended LR 30:506 (March 2004).

§307. Minimum Standards for Preformed Plastic Pavement Marking Tape

A. General. Preformed plastic pavement marking tape shall be approved products listed on QPL 64 and shall comply with ASTM D 4505 Type I, Type I - High Performance (as specified below) or Type V, except as modified herein. The marking tape shall be Grade A, B, C, D, or E. The type and color shall be in accordance with the plans and the *Manual on Uniform Traffic Control Devices* (MUTCD).

B. Thickness. All preformed plastic pavement marking tape shall have a minimum overall thickness of 0.060 inches (1.5 mm) when tested without the adhesive.

C. Friction Resistance. The surface of the Type I preformed plastic pavement marking tape shall provide a minimum frictional resistance value of 35 British Polish Number (BPN) when tested according to ASTM E 303. The surface of the Type I-High Performance and Type V preformed plastic pavement marking tape shall provide a minimum frictional resistance value of 45 BPN when tested according to ASTM E 303, except values for the Type V are calculated by averaging values taken at downweb and at a 45 degrees angle from downweb.

D. Retro Reflective Requirements. The preformed plastic pavement marking tape shall have the minimum specific luminance values shown in Table 1015-10 when measured in accordance with ASTM D 4061.

Table 1015-10 Specific Luminance

Type	Observation Angle, degrees	Entrance Angle, degrees	Specific Luminance (mcd/sq m/lx)	
			White	Yellow
I	0.2	86	500	400
	1.0	86.5	300	175
I-High Performance	0.2	86	700	560
	1.0	86.5	400	225
V	0.2	86	1100	800
	1.0	86.5	700	500

E. Durability Requirements. The Type I-High Performance preformed plastic pavement marking tape shall show no appreciable fading, lifting or shrinkage for at least 12 months after placement when placed in accordance with the manufacturer's recommended procedures on pavement surfaces having a daily traffic count not to exceed 15,000 ADT per lane.

1. The Type V preformed plastic pavement marking tape shall show no appreciable fading, lifting or shrinkage for at least 4 years after placement for longitudinal lines and at least 2 years after placement for symbols and legends.

2. The Type V preformed plastic pavement marking tape shall also retain the following reflectance values for at least 4 years after placement for longitudinal lines and at least 2 years after placement for symbols and legends.

Observation Angle, degrees	Entrance Angle, degrees	Specific Luminance (mcd/sq m/lx)	
		White	Yellow
1.0	86.5	100	100

F. Plastic Pavement Marking Tape Guaranty (Type I - High Performance and Type V). If the plastic pavement marking tape fails to comply with the performance and durability requirements of Subsection 1015.11 (§307) within 12 months for Type I High Performance and four years for Type V, the manufacturer shall replace the plastic pavement marking material at no cost to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measures, LR 24:708 (April 1998), amended LR 30:507 (March 2004).

§309. Minimum Standards for Raised Pavement Markers

A. Markers shall be either nonreflectorized or reflectorized, as specified. Markers shall be approved products listed in QPL 9. Infrared curves of materials used in markers shall match approved curves on file at the department's Materials and Testing Section.

1. Nonreflectorized Markers

a. Description. Nonreflectorized markers shall consist of an acrylonitrile-butadiene-styrene polymer or other approved material, and shall be 4-by-6-inches (100-by-150-mm).

b. Physical Requirements. Markers shall comply with ASTM D4280. The color shall be in accordance with the plans and the MUTCD.

2. Reflectorized Markers. Reflectorized markers shall comply with ASTM D4280, Designation H Marker with

hard, abrasion-resistant lens surface. The type and color shall be in accordance with the plans and the MUTCD. The markers shall be either standard having approximate base dimensions of 4-by-4-inches (100-by-100-mm) and a maximum height of 0.80 inches (20 mm) or low profile having approximate base dimensions of 4-by-2-inches (100-by-50-mm) and a maximum height of 0.60 inches (15 mm).

3. Adhesives

a. Epoxy Adhesive. Epoxy adhesive shall be Type V epoxy resin system complying with Subsection 1017.02.

b. Bituminous Adhesive. The adhesive shall conform to ASTM D 4280 and shall be an approved product listed in QPL 59.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Standards, LR 24:709 (April 1998), amended LR 30:507 (March 2004).

Kam K. Movassaghi, P.E., Ph.D.
Secretary

0403#084

RULE

**Department of the Treasury
Parochial Employees' Retirement System**

Internal Revenue Code Provisions
(LAC 58:XI.Chapter 1and 5)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Trustees for the Parochial Employees' Retirement System has approved for advertisement the adoption of Chapter 1 and 5 of Part XI, included in Title 58, Retirement, of the *Louisiana Administrative Code*. This Rule complies with the statutory law administered by the Board of Trustees for the Parochial Employees' Retirement System. The Rule is being adopted pursuant to newly reenacted R.S. 11:1931 (Acts 2003, Number 537, §§1 and 5), the effective date of reenactment of which will be the formal adoption of this Rule. Newly reenacted R.S. 11:1931 provides that rules and regulations be adopted which will assure that the Parochial Employees' Retirement System will remain a tax-qualified retirement plan under the United States Internal Revenue Code and the regulations thereunder. Newly repealed R.S. 11:1930, 1930.1, 1930.2, 1930.3 and 1931 (Acts 2003, Number 537, §§1, 2 and 5), the effective date of repeal of which will be the formal adoption of this Rule, has contained these tax-qualification provisions, which are now being embodied under this Rule without any change to the text. A preamble to this action has not been prepared.

Title 58

RETIREMENT

Part XI. Parochial Employees' Retirement System

Chapter 1. General Provisions

§103. Definitions

A. The following definitions shall apply in this Part.

Direct Rollover? a payment by the plan to the eligible retirement plan specified by the distributee.

Distributee? includes an employee or former employee. In addition, the employee's or former employee's surviving

spouse and the employee's or former employee's spouse or former spouse who is the alternative payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p), are *distributees* with regard to the interest of the spouse or former spouse.

Eligible Retirement Plan? an Individual Retirement Account described in Internal Revenue Code Section 408(a), an individual retirement annuity described in Section 408(b), an annuity plan described in Internal Revenue Code Section 403(a), or a qualified trust described in Internal Revenue Code Section 401(a), that accepts the distributee's eligible rollover distributions. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an Individual Retirement Account or individual retirement annuity.

Eligible Rollover Distribution? any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

a. any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life, or life expectancy, of the distributee or the joint lives, or joint life expectancies, of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;

b. any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9);

c. the portion of any distribution that is not includable in gross income, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:508 (March 2004).

Chapter 5. Scope of Benefits

§501. Limitation on Payment of Benefits

A.1. Unless the member has elected otherwise on or before December 31, 1983, the entire benefit of a member shall be distributed over a period not longer than the longest of the following periods:

a. the member's life;

b. the life of the member's designated beneficiary or the joint and last survivor lives of the member and his designated beneficiary;

c. the member's life expectancy;

d. the joint life and last survivor life expectancy of the member and his designated beneficiary.

2. If the member is married and his spouse survives him, the designated beneficiary shall be his spouse. If a member dies after the commencement of his benefits, the remaining portion of his benefit shall be distributed at least as rapidly as before his death.

B.1. If the member dies before his benefit has commenced, the remainder of such interest shall be distributed to the member's beneficiary within five years after the date of such member's death.

2. Paragraph 1 shall not apply to any portion of a member's benefit which is payable to or for the benefit of a designated beneficiary or beneficiaries, over the life of or over the life expectancy of such beneficiary, so long as such distributions begin not later than one year after the date of

the member's death, or, in the case of the member's surviving spouse, the date the member would have attained the age of 70 1/2 years. If the designated beneficiary is the member's surviving spouse and if the surviving spouse dies before the distribution of benefits commences, then Paragraph 1 shall be applied as if the surviving spouse were the member. If the designated beneficiary is a child of the member, for purposes of satisfying the requirement of Paragraph 1, any amount paid to such child shall be treated as if paid to the member's surviving spouse if such amount would become payable to such surviving spouse, if alive, upon the child's reaching age 18.

3. Paragraph 1 shall not apply if the distribution of the member's interest has commenced and is for a term certain over a period permitted in Subsection B.

C. If a survivor benefit is payable to a specified person or persons or if a benefit is payable at death under an option elected pursuant to R.S. 11:1932, the member shall be considered to have designated such person as a designated beneficiary hereunder. If there is more than one such person, then the oldest such person shall be considered to have been so designated, or, if none, then the oldest person entitled to receive a survivor benefit shall be considered to have been so designated. The designation of a designated beneficiary hereunder shall not prevent payment to multiple beneficiaries but shall only establish the permitted period of payments.

D. Distributions from the system shall be made in accordance with the requirements set forth in Internal Revenue Code Section 401(a)(9), including the minimum distribution incidental benefit rules applicable thereunder.

E.1. A member's benefits shall commence to be paid on or before the required beginning date.

2. The required beginning date shall be April 1 of the calendar year following the later of the calendar year in which the member attains 70 1/2 years of age, or the calendar year in which the employee retires.

F. The provisions of this Section shall be effective July 1, 1987.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:508 (March 2004).

§503. Early Payment of Benefits

A. In the event of plan termination, the benefit of any highly compensated employee including an active highly compensated employee and a former employee who was a highly compensated employee, is limited to a benefit that is nondiscriminatory under Internal Revenue Code, Section 401(a)(4) (see 26 U.S.C. 401 et seq.)

B.1. For plan years beginning on or after January 1, 1991, benefits distributed to any of the 25 most highly compensated active and former highly compensated employees are restricted such that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the employee under a single life annuity that is the actuarial equivalent of the sum of the employee's accrued benefit and the employee's other benefits under the plan.

2. Subsection A of this Section shall not apply if:

a. after the payment of the benefit to an employee described in Paragraph 1 of this Subsection, the value of plan assets equals or exceeds 110 percent of the value of current liabilities as defined in Internal Revenue Code Section 412(1)(7); or

b. the value of the benefits for an employee described above is less than 1 percent of the value of current liabilities.

3. For purposes of this Section, benefit includes loans in excess of the amount set forth in Internal Revenue Code Section 72(p)(2)(A), any periodic income, any withdrawal values payable to a living employee, and any death benefits not provided for by insurance on the employee's life.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:509 (March 2004).

§505. Compensation Limited

A. In addition to other applicable limitations set forth in the plan, and notwithstanding any other provisions of the plan to the contrary, for plan years beginning on or after January 1, 1994, the annual compensation of each employee taken into account under the plan shall not exceed the Omnibus Budget Reconciliation Act of 1993 annual compensation limit. The Omnibus Budget Reconciliation Act of 1993 annual compensation limit is \$150,000, as adjusted by the commissioner of Internal Revenue for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code (see 26 U.S.C. 401 et seq.). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the Omnibus Budget Reconciliation Act of 1993 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

B. For plan years beginning on or after January 1, 1994, any reference in this plan to the limitations under Internal Revenue Code Section 401(a)(17) shall mean the Omnibus Budget Reconciliation Act of 1993 annual compensation limit set forth in this Section.

C. If compensation for a prior determination period is taken into account in determining an employee's benefits accruing in the current plan year, the compensation for that prior determination period is subject to the Omnibus Budget Reconciliation Act of 1993 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first plan year beginning on or after January 1, 1994, the Omnibus Budget Reconciliation Act of 1993 annual compensation limit is \$150,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:509 (March 2004).

§507. Transfer of Benefits

A. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provisions of the plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to a retirement plan specified by the distributee in a direct rollover.

B. If a distribution is one to which Sections 401(a)(11) and 417 of the Internal Revenue Code (see 26 U.S.C. 401 et seq.) do not apply, such distribution may commence less than 30 days after the notice required under Section 1.411(a)-11(c) of the Federal Income Tax Regulations is given, provided that:

1. the plan administrator clearly informs the participant that the participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option); and

2. the participant, after receiving the notice, affirmatively elects a distribution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:510 (March 2004).

§509. Computation of Retirement Benefits

A. This Section is intended to comply with Internal Revenue Code Section 415. It shall cover only those who become members for the first time on or after January 1, 1990, and those qualified participants for whom the benefit is increased after October 14, 1987, to the extent of the benefit increase after October 14, 1987, including cost-of-living adjustments on any such increase.

B. The normal retirement benefit of a member of Plan A shall not exceed the amount set forth in R.S. 11:1942, the normal retirement benefit of a member of Plan B shall not exceed the amount set forth in R.S. 11:1962, and the normal retirement benefit of a member of Plan C shall not exceed the amount set forth in R.S. 11:1972.

C.1. Qualified Participant shall mean a member of the system who first became a member before January 1, 1990. In the case of the merger of, or transfer of assets and benefits of a member or members from, another plan maintained by an employer which joins this system, the accrued benefit under such predecessor plan shall be the accrued benefit referred to above, and the member shall be considered a qualified participant if his participation in such predecessor or merged plan commenced on or before January 1, 1990.

2. All employers contributing to the system on behalf of their employees, and all employers who may join the system, as a condition of such joining, shall elect, and such election is hereby implemented, to have the limitations of Internal Revenue Code Section 415(b) other than Paragraph 2G thereof applied without regard to Paragraph 2F thereof, which limitations are set forth in Subsection D. Such limitations shall apply to all members who are not qualified participants as described herein and to qualified participants to the extent of the benefit increase after October 14, 1987, including cost-of-living adjustments on any such increase.

D. The retirement benefit of any member of the retirement system who is not a qualified participant, as defined in Paragraph C.1 and which is not attributable to the member's after-tax employee contribution, when expressed as an annual benefit may not exceed the lesser of \$90,000 per year or 100 percent of such member's average compensation for his highest three years. For purposes of determining whether a member's benefit exceeds this limitation, the following shall apply.

1. Adjustment If Benefit Not Single Life Annuity

a. If the normal form of benefit is other than a single life annuity, such form shall be adjusted actuarially to the equivalent of a single life annuity. This single life annuity shall not exceed the maximum dollar or percent limitations outlined above.

b. No adjustment is required for the following:

- i. qualified joint and survivor annuity benefits;
- ii. pre-retirement disability benefits;
- iii. pre-retirement death benefits.

2. Adjustment If Benefit Commences before Social Security Retirement Age. If benefit distribution commences before social security retirement age, the actual retirement benefit shall not exceed the lesser of 100 percent of the member's average compensation or the adjusted dollar limitation. The adjusted dollar limitation shall be the equivalent, determined in a manner consistent with reduction of benefits for early retirement under the Social Security Act, of \$90,000 commencing at social security retirement age.

3. Adjustment If Benefit Commences after Social Security Retirement Age. If benefit distribution commences after social security retirement age, the dollar limitation shall be increased to the equivalent of \$90,000 commencing at social security retirement age.

4. Social Security Retirement Age Defined. For purposes of this Subsection, the term *social security retirement age* means the age used as the retirement age under 42 U.S.C.A. §416(l) of the Social Security Act, except that such section shall be applied:

- a. without regard to the age increase factor; and
- b. as if the early retirement age under Section 416(l)(2) of such Act were 62.

5. Interest Assumption. The interest rate used for adjusting the maximum limitations above shall be:

- a. for benefits commencing before social security retirement age and for forms of benefit other than straight life annuity, the greater of:
 - i. five percent; or
 - ii. the rate used to determine actuarial equivalence for other purposes of this retirement system;
- b. for benefits commencing after social security retirement age, the lesser of:
 - i. five percent; or
 - ii. the rate used to determine actuarial equivalence for other purposes under this retirement system.

6. Adjustment for Less than 10 Years of Participation or Service

a. If retirement benefits are payable under this retirement system to a member who has less than 10 years of participation in the retirement system, the dollar limitation referred to in the first Paragraph of this Subsection (\$90,000) will be multiplied by a fraction, the numerator of which is

the member's number of years of participation in the system (not greater than 10), and the denominator of which is 10.

b. If retirement benefits are payable under this retirement system to a member who has less than 10 years of service with the employer, the percentage limitation referred to in the first Paragraph of this Subsection (100 percent of compensation) and the dollar limitation referred to in Paragraph 9 below (\$10,000) will be multiplied by a fraction, the numerator of which is the member's number of years of service with the employer (not greater than 10) and the denominator of which is 10.

7. Annual Adjustment. The \$90,000 limitation provided in this Subsection shall be adjusted annually to the maximum dollar limits allowable by the secretary of the Treasury of the United States under Internal Revenue Code Section 415(d), such adjustments not to take effect until the first day of the fiscal year following December 31, 1987. The adjustment shall not exceed the adjustment in effect for the calendar year in which the fiscal year of the system begins. The adjusted earlier limitation is applicable to employees who are members of the system and to members who have retired or otherwise terminated their service under the system with a nonforfeitable right to accrued benefits, regardless of whether they have actually begun to receive benefits. This system shall be considered specifically to provide for such post-retirement adjustments. For any limitation year beginning after separation from service occurs, the annual adjustment factor is a fraction, the numerator of which is the adjusted dollar limitation for the limitation year in which the compensation limitation is being adjusted and the denominator of which is the adjusted dollar limitation for the limitation year in which the member separated from service. No adjustment shall be permitted with respect to limitations applicable after October 14, 1987.

8. Member or Participant in More than One Plan. If a member is a member or participant in more than one defined benefit pension plan maintained by the state, its agencies, or its political subdivisions, then such member's benefit, considered in the aggregate after taking into account the benefits provided by all such retirement plans, shall not exceed the limits provided in this Subsection.

9. Total Annual Benefits Not in Excess of \$10,000. Notwithstanding the preceding provisions of this Subsection, the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitations of this Subsection if:

a. the retirement benefits payable with respect to such participant under such plan and under all other defined benefit plans of the employer do not exceed \$10,000 for the plan year, or for any prior plan year; and

b. the employer has not at any time maintained a defined contribution plan in which the participant participated.

10. Average Compensation

a. For purposes of R.S. 11:1942, 1962, and 1972, average compensation shall include any amounts properly considered as the regular rate of pay of the member, as defined in R.S. 11:231 and unreduced by amounts excluded from income for federal income tax purposes by reason of 26 U.S.C.A. 125, 414(h), or 457 or any other provision of federal law of similar effect.

b. For purposes of Subsection D, average compensation shall include total compensation payable by the employer and included in the employee's income for federal income tax purposes and shall exclude amounts not includable in the member's gross income by reason of 26 U.S.C.A. §§125, 414(h) and 457 or any other provision of federal law. A member's highest three years shall be the period of consecutive calendar years (not more than three) during which the member both was an active participant in the plan and had the greatest aggregate compensation from the employer.

11. Benefit Limitations at Age 62

a. Where a retirement benefit is provided at or after age 62 years, but prior to the member's social security retirement age, then the benefit as limited by the provisions of this Section shall not exceed an annual benefit of \$90,000 reduced by:

i. for a member whose social security retirement age is 65, 5/9 of 1 percent for each month by which benefits commence before the month in which the member attains age 65;

ii. for a member whose social security retirement age is greater than 65, 5/9 of 1 percent for each of the first 36 months and 5/12 of 1 percent for each of the additional months, up to 24 months, by which benefits commence before the month in which the member attains social security retirement age.

b. If the benefit begins before age 62, the benefit shall be limited to the actuarial equivalent of the member's limitation for benefits commencing at age 62 years, with the reduced dollar limitation for such benefits further reduced for each month by which benefits commence before the month in which the member attains age 62 years. In order to determine actuarial equivalence for this purpose, the interest rate assumption used by the plan may not be less than the greater of 5 percent or the rate specified in the plan for determining actuarial equivalence for early retirement. Social Security retirement age is age 65 years, if the member was born before January 1, 1938; age 66 years, if born before January 1, 1955; and age 67, if born after December 31, 1954.

12. Treasury Regulation Applicable. That portion of the benefit designated herein which is attributable to member contributions shall be determined in accordance with Treasury Regulations §1.415-3(d)(1).

E. The provisions of this Section shall apply if any member is covered, or has ever been covered, by another plan maintained by the employer, including a qualified plan, or a welfare benefit fund, as defined in Internal Revenue Code Section 419(e), or an individual medical account, as defined in Internal Revenue Code Section 415(l)(2), which provides an annual addition as described in Paragraph 5 of this Subsection.

1. If a member is, or has ever been, covered under more than one defined benefit plan maintained by the employer, the sum of the member's annual benefits from all such plans shall not exceed the maximum permissible amount set forth in Subsection D of this Section.

2. If the employer maintains or at any time maintained, one or more qualified defined contribution plans covering any member in this system, a welfare benefit fund, as defined in Internal Revenue Code Section 419(e), or an

individual medical account as defined in Internal Revenue Code Section 415(l)(2), the sum of the member's defined contribution fraction and defined benefit fraction shall not exceed 1.0 in any limitation year, and the annual benefit otherwise payable to the member under this system shall be limited in order to satisfy such limitation.

3.a. *Defined Benefit Fraction* shall mean a fraction, the numerator of which is the sum of the member's projected annual benefits under all of the defined benefit plans, whether or not terminated, maintained by the employer, and the denominator of which is the lesser of 125 percent of the dollar limitation determined for the limitation year under Internal Revenue Code Sections 415(b) and (d) and in accordance with Subsection D of this Section or 140 percent of the highest average compensation, including any adjustments under Internal Revenue Code Section 415(b).

b. Notwithstanding the provisions of Subparagraph 3.a of this Paragraph, if the member was a member as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than 125 percent of the sum of the annual benefits under such plans which the member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plans after May 5, 1986. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Internal Revenue Code Section 415 for all limitation years beginning before January 1, 1987.

4.a. *Defined Contribution Fraction* shall mean a fraction, the numerator of which is the sum of the annual additions to the member's account under all of the defined contribution plans, whether or not terminated, maintained by the employer for the current and all prior limitation years, including the annual additions attributable to the member's nondeductible employee contributions to this and all other defined benefit plans maintained by the employer whether or not terminated and the annual additions attributable to all welfare benefit funds, as defined in Internal Revenue Code Section 419(e) or individual medical accounts, as defined in Internal Revenue Code Section 415(l)(2) that are maintained by the employer, and the denominator of which is the sums of the maximum aggregate amounts for the current and all prior limitation years of service with the employer, regardless of whether a defined contribution plan was maintained by the employer. The maximum aggregate amount in any limitation year is the lesser of 125 percent of the dollar limitation determined under Internal Revenue Code Sections 415(b) and (d) of the Internal Revenue Code in effect under Internal Revenue Code Section 415(c)(1)(A) or 35 percent of the member's compensation for such year.

b. If a member is, or ever has been covered under more than one defined contribution plan maintained by the employer, the sum of the member's annual additions to all such plans for each limitation year shall not exceed the maximum permissible amount and shall be taken into account for purposes of determining the defined benefit fraction.

c. If the employee was a member as of the first day of the first limitation year beginning after December 31,

1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0 under the terms of this plan. Under the adjustment, an amount equal to the product of the excess of the sum of the fraction over 1.0 times the denominator of this fraction, shall be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plans made after May 5, 1986, but using the limitation provided in Internal Revenue Code Section 415 made applicable to the first limitation year beginning on or after January 1, 1987.

d. The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions.

5.a. Annual Additions of a member for the limitation year shall mean the sum of the following amounts credited to a member's account for the limitation year:

- i. employer contributions;
- ii. employee contributions;
- iii. forfeitures.

b. Amounts allocated to an individual medical account, as defined in Internal Revenue Code Section 415(l)(2), which is a part of a pension or annuity plan maintained by the employer, are treated as annual additions to a defined contribution plan. Additionally, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separated account of a key employee, as defined in Internal Revenue Code Section 419A(d)(3), or under a welfare benefit fund, as defined in Internal Revenue Code Section 419(e), maintained by the employer, are treated as annual additions to a defined contribution plan.

c. Until such time as employee contributions become picked up pursuant to Internal Revenue Code Section 414(h)(2), the employee contribution shall be deemed to be a defined contribution plan, and the defined contribution plan fraction shall apply to limit contributions and benefits under this Section. If a member has made nondeductible employee contributions pursuant to the provisions of this system, the amount of such contributions shall be treated as an annual addition to a qualified defined contribution plan, for purposes of this Section.

6. The amount of annual additions which may be credited to the member's account for any limitation year shall not exceed the maximum permissible amount. Contributions and benefits under any other plan of the employer, to the extent that an adjustment is required to satisfy the requirements of this Section in the aggregate, shall be limited or reduced to the extent necessary to satisfy such requirement without reducing accrued benefits; however, only after such other plans have been modified shall the benefits and contributions under this plan be reduced. As soon as it is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year shall be determined on the basis of the member's actual compensation for the limitation year. If

there is an excess amount, the excess shall be disposed of as follows.

a. Any nondeductible voluntary employee contribution, to the extent it would reduce the excess amount, shall be returned to the member.

b. If after the application of Subparagraph a of this Paragraph, an excess amount still exists, then any nondeductible mandatory contribution to the extent it would reduce the excess amount, shall be returned to the member.

c. If after the application of Subparagraph b of this Paragraph, an excess amount still exists, and the member is covered by the plan at the end of the limitation year, the excess amount in the member's account shall be used to reduce employer contributions, including any allocation of forfeitures, for such member in the next limitation year if necessary.

d. If after the application of Subparagraph b of this Paragraph, an excess amount still exists, and the member is not covered by the plan at the end of the limitation year, the excess amount shall be held unallocated in a suspense account. The suspense account shall be applied to reduce future employer contributions for all remaining members in the next limitation year, and each succeeding limitation year if necessary.

e. If a suspense account is in existence at any time during a limitation year pursuant to the provisions of this Section, it shall not participate in the allocation of the trust's investment gains and losses. If a suspense account is in existence at any time during a particular limitation year, all amounts in the suspense account shall be allocated and reallocated to members' accounts before any employer or any employee contributions may be made to the plan for that limitation year. Excess amounts shall not be distributed to members or former members.

7. *Excess Amount* of a member for a limitation year shall mean the excess of the member's annual additions for the limitation year over the maximum permissible amount.

8. The *Limitation Year* shall be the calendar year, or the 12 consecutive month period elected by the employer hereunder.

9.a. The maximum permissible amount for a member for a limitation year shall be the maximum annual addition that may be contributed or allocated to a member's account under the plan for any limitation year and shall not exceed the lesser of:

i. the defined contribution dollar limitation;

ii. 25 percent of the member's compensation for the limitation year.

b. The compensation limitation provided for in Clause 9.a.ii. of Subparagraph a of this Paragraph, shall not apply to any contribution for medical benefits, within the meaning of Internal Revenue Code Sections 401(h) or 419A(f)(2), which is otherwise treated as an annual addition pursuant to Internal Revenue Code Sections 415(l) or 419A(d)(2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:510 (March 2004).

Thomas B. Sims
Administrative Director
and
Dainna S. Tully
Assistant Director

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