

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Fixed Wing Aircraft; Standards for Commercial Aerial Pesticide Applications (LAC 7:XXIII.145)

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

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

This Emergency Rule becomes effective upon the signature of the commissioner, June 6, 2006, and shall remain in effect for 90 days.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticide

Subchapter I. Regulations Governing Application of Pesticides

Chapter 1. Advisory Commission on Pesticides

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

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

c. malathion insecticide applied with the following conditions to control false chinch bugs in soybeans.

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

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

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

strictly complied with and observed by said aerial applicators.

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

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

vi. There shall be no aerial spraying when wind velocity exceeds 10 m.p.h.

vii. Aerial applicators will terminate application if rainfall is imminent.

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

ix. Spraying will not be conducted in fields where other aircraft are working.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

xxvii. Aircraft shall have an operational Differentially Corrected Global Positioning System (DGPS) and flight data logging software that will log and display the date and time

of the entire flight from take-off to landing and differentiate between spray-on and spray-off.

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

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

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

xxxi. The DGPS must be equipped with software for flight data logging that has a system memory capable of storing a minimum of 3 hours of continuous flight log data with the logging rate set at one second intervals. The DGPS shall automatically select and log spray on/off at 1-second intervals while ferry and turnaround time can be 2-second intervals. The full logging record will include position, time, date, altitude, speed in M.P.H., cross-track error, spray on/off, aircraft number, pilot, job name or number, and differential correction status. The flight data log software shall be compatible with DOS compatible PC computers, dot matrix, laser, or ink jet printers and plotters. The system must compensate for the lag in logging spray on/off. The system will display spray on/off at the field boundary without a sawtooth effect and must be capable to end log files, rename, and start a new log in flight.

xxxii. The software must generate the map of the entire flight within a reasonable time. Systems that require five minutes or more to generate the map for a three-hour flight on a PC (minimum a 386 microprocessor with 4 MB of memory) will not be accepted. When viewed on the monitor or the printed hard copy, the flight path will clearly differentiate between spray on and off. The software must be capable of replaying the entire flight in slow motion and stop and restart the replay at any point during the flight. Must be able to zoom to any portion of the flight for viewing in greater detail and print the entire flight or the zoomed-in portion. Must have a measure feature that will measure distance in feet between swaths or any portion of the screen. Must be able to determine the exact latitude/longitude at any point on the monitor.

xxxiii. Flight information software provided by the applicator must have the capability to interface with MapInfo (version 3.0 or 4.0). The interface process must be

"user friendly", as personnel will be responsible to operate the system in order to access the information.

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

xxxv. Applications of ULV malathion shall not be made prior to sunrise on May 15, 2006 and shall not be made after sunset on September 2, 2006.

xxxvi. Applications of ULV malathion shall be restricted to seven day intervals.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 21:927 (September 1995), LR 26:1964 (September 2000), LR 32:

Bob Odom
Commissioner

0606#022

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of the Commissioner

Sale of Fluid Milk Products (LAC 7:XXXI.331)

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rules governing the below cost sale of fluid milk products within 48 hours prior to their expiration date.

The sale below cost of fluid milk products in Louisiana is prohibited unless the retailer meets the requirements set out in LAC 7:XXXI, §323.A.2. Often, however, consumers refuse to purchase fluid milk products that are within forty-eight hours of their expiration date unless the price is reduced to below cost. The notice requirement of §323 A.2.a.iii is very difficult, if not impossible, for retailers to comply with regarding the sale of fluid milk products within 48 hours of their expiration date. The inability of a retailer to meet the above cited notice requirement places the retailer in the position of either having to discard the fluid milk products at a total loss or of having to violate the prohibition on the sale below cost of fluid milk products.

The total loss of the value of fluid milk products creates a financial hardship on the retailer, reduces the retailer's ability to purchase fluid milk products, jeopardizes the health and safety of the consuming public, and adversely affects the production and processing of milk and milk products in Louisiana, thereby presenting an imminent peril to the public's health, safety and welfare.

The Commissioner of Agriculture and Forestry has, therefore, determined that these Emergency Rules are necessary to immediately implement a procedure to allow for the sale below cost of fluid milk products within 48 hours prior to their expiration date. These Rules become effective immediately (May 25, 2006) and will remain in effect 120 days, unless renewed by the Commissioner or until permanent Rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXI. Milk, Milk Products and Substitutions

Chapter 3. Dairy Stabilization Board

§331. Sale of Fluid Milk Products within 48 Hours of Expiration Date

A. The notification procedure and requirements for sale provided for in this applies exclusively to fluid milk product that is within 48 hours of expiration.

B. Retailers of fluid milk products may satisfy the notice requirements of §323.A.2.a.iii by a notification letter directed to and received by the director of the board informing the director of the retailer's intention to engage in below-cost sales of fluid milk product within 48 hours of the expiration date if any fluid milk products needs to be sold within the 48 hour time period.

C. Any retailer desiring to utilize the notification procedure set out in Subsection B above must also comply with the following requirements.

1. Fluid milk products offered or sold below cost in conformity with this Section may not be advertised except inside the retail establishment at the point of sale during the period the fluid milk is actually being offered for sale at less than cost. Point of sale shall be the display, fixture or shelf where the fluid milk is displayed for sale.

2. The sale of fluid milk below cost in conformity with this Section may not exceed two consecutive days.

3. The size of the advertisement at the point of sale may not exceed two feet by two feet.

4. All such advertisements must clearly state the expiration date.

D. A retailer's ability to offer and to sell fluid milk products below cost in conformity with this Section may be revoked if it is determined that the retailer has abused or violated the provisions of this Section.

1. Abuse of the provisions of this Section include, but is not limited to, unreasonably frequent below cost sales and intentional over-stocking to permit sales below cost. It shall be presumed that retailers having below-cost sales of expiring fluid milk products more often than once per calendar quarter are intentionally over-stocking.

2. The board's revocation of a retailer's ability to offer and to sell fluid milk products below cost in conformity with this Section shall be in writing and sent to the retailer.

3. A retailer aggrieved by a revocation by the Board shall have the right to appeal the revocation to the Board by written notice received by the board within 10 days of the retailer's receipt of the written revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4108.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:

Bob Odom
Commissioner

0606#012

DECLARATION OF EMERGENCY

Department of Economic Development Office of the Secretary

Angel Investor Tax Credit Program (LAC 13:I.Chapter 33)

The Department of Economic Development, Office of the Secretary, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), hereby revises and re-adopts the following Rules of the Angel Investor Tax Credit Program, in order to revise and recreate LAC 13: Part I, Chapter 33. This Emergency Rule shall become effective on June 1, 2006, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

The Department of Economic Development, Office of the Secretary, has found an immediate need to revise and re-adopt the Rules for the Angel Investor Tax Credit Program pursuant to R.S. 47:6020 through 6020.4. The state needs to provide for the growth and stability of Louisiana's entrepreneurial business environment by making available ready sources of capital necessary to support this environment. This program is intended to provide economic benefits to Louisiana-based investors who will make new investments or increase their existing investment in Louisiana-based economic development projects that will create and/or retain jobs for Louisiana citizens; and to enhance the entrepreneurial business environment and raise ready sources of capital for this environment through encouraging third parties to invest in early stage wealth-creating businesses expanding the economy of the state, enlarging the quality of jobs available in Louisiana. Without these Emergency Rules the public welfare may be harmed as the result of the failure to enhance the growth and stability of Louisiana's entrepreneurial business environment by making available ready sources of capital necessary to support this environment, and the loss of business investment and economic development projects creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 33. Angel Investor Tax Credit

§3301. General

A. The intent of the Angel Investor Tax Credit Program Act of 2005 (Act 400 of 2005; La. 47:6020 through 6020.4, the provisions of which shall hereinafter be referred to as "Act 400") is to enhance the entrepreneurial business environment and raise ready sources of capital for this environment through encouraging third parties to invest in early stage wealth-creating businesses expanding the economy of the state, enlarging the quality jobs available in Louisiana to retain the presence of young people in Louisiana. These provisions are to be read in pari materiae with Act 400. For the purposes of this rule, the "secretary" shall be either the Secretary of Economic Development or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006); LR 32:

§3303. Accredited Investor

A. An Accredited Investor—

1. an angel pool (which may be a limited liability corporation or limited liability partnership, as provided below) as determined by the secretary, all of whose participants shall be accredited investors;

2. a person who has individual net worth, or joint net worth with the person's spouse, that exceeds \$1 million at the time of the purchase;

3. a person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year;

4. persons, including corporations, partnerships, limited liability partnerships and limited liability corporations composed of persons meeting the qualifications of Paragraphs A.2 and 3 above, provided that the person's share of the tax credits of the entrepreneurial business shall not exceed that person's share of the profits of the entrepreneurial business or a person's share of the tax credits as a partner or a member of a limited liability corporation or partnership shall not exceed that person's share of the profits of the LLC.

B. Angel pools may receive certification from the secretary upon showing:

1. the proposed pool of investors is organized solely for the purposes of making angel investments;

2. participants in the pool are given the opportunity to screen applicants for pool investments and to participate in deal reviews as well as post investment review of company performance;

3. participants are given the opportunity to opt in or out of proposed angel investments and are not participating solely upon the determinations of an investment or fund manager;

4. such other factors of operation of the pool as may distinguish it from the operation of a venture fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006); LR 32:

§3305. Louisiana Entrepreneurial Business

A. A Louisiana Entrepreneurial Business shall be defined as those businesses approved by the secretary under Act 400 and that meet the following requirements.

1. A business shall provide the secretary with a business plan that includes all appropriate long and short term forecasts and contingencies of business operations, including research and development, profit, loss and cash flow projections and details of expenditure of angel investor funding in accordance with Act 400 and shall also include the following:

a. the principal business operations of the business are located in Louisiana including Louisiana as the primary place of employment for the employees of the business;

b. demonstrating a plan or progression through which more than 50 percent of its sales will be from outside of Louisiana;

c. that the business is to operate as a person defined as an *employer* within the meaning of R.S. 51:2453(1)(b)(i) through (v), (c), and (d), and in §1105.A.1 through A.5 of the Quality Jobs Rules.

2. The secretary shall also find that the business is not a business primarily engaged in the business of retail sales, real estate, professional services, gaming or gambling, natural resource extraction or exploration, or financial services including venture capital funds.

3. Such other findings by the secretary as shall be consistent with Act 400, provided that under no circumstances shall the secretary's certification of the applicant as a Louisiana entrepreneurial business be considered or implied to be an endorsement of the business or any investment in that business and the applicant shall so advise all investors of this fact.

B. Approval of the secretary shall be obtained upon application by letter that submits the above business plan together with the Louisiana taxpayer identification number of the business and all other information regarding those items necessary to qualify the investment in the business for the angel tax credit as provided for by Act 400 addressed to the Secretary of Economic Development, Post Office Box 94185, Baton Rouge, LA 70802-9185. Upon receipt, the secretary shall make such requests for other information necessary to a determination that the business should or should not be certified as a Louisiana entrepreneurial business. The secretary's certification of the business shall include the Louisiana taxpayer identification number of the business. This certification shall be in effect for one year from the date of the Secretary's letter. The certification may be extended for additional one year periods upon application to the secretary showing that the business continues to be an entrepreneurial business within the meaning of the act and these rules, and the application includes the use of proceeds previously raised, number of employees, amount of payroll, annual revenue, and such other information as shall be requested by the secretary or his representative. In order to continue to be certified, the business shall be in compliance with all reporting and other provisions of Act 400 and these rules with respect to the administration of the credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006); LR 32:

§3307. The Angel Investor Tax Credit

A. The following rules shall be applicable to investments by Accredited Investors in Louisiana Entrepreneurial Businesses.

1. By January 31 of each year, Louisiana entrepreneurial businesses certified by the secretary shall, by affidavit of its chief financial officer, provide the secretary with the list of those accredited investors, the Louisiana taxpayer identification number of the accredited investors and the amount of their investment in accordance with the statute and these rules, who have invested in the business provided that the business shall report up to and no more

than \$2,000,000 total for the calendar year 2005 that shall have been invested by accredited investors in the manner prescribed by Act 400 in order to obtain a tax credit for the accredited investors of no more than \$1,000,000 total for the tax year ending the previous December 31.

2. All tax credit amounts reported to the secretary shall be fully credited to the accredited investor unless the total of all such investments shall exceed \$10,000,000 and the total of such credits shall exceed \$5,000,000 in which case the secretary shall prorate the total amount of investment and tax credits earned and advise each accredited investor of the amount of his credit for the tax year ending December 31, no later than February 28 of the following year.

3. The secretary shall provide the accredited investor with all other necessary and appropriate certificates as provided by statute and as shall assist the Department of Revenue in its determination of applicability of the credit. No credit certificates shall be issued until after a determination has been made as to whether or not there is a necessity for prorating of the credits as provided above. When issued, the certificates shall include the Louisiana taxpayer identification number of the accredited investor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:229 (February 2006); LR 32:

Michael J. Olivier
Secretary

0606#015

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.505, 507, 703, and 1301)

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

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

This Declaration of Emergency is effective June 7, 2006, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG0672E)

Title 28
EDUCATION

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

**Chapter 5. Application; Application Deadlines, and
Proof of Compliance**

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

A.1. - 3. ...

B. Deadline to Facilitate Timely Payment

B.1 - C.1. ...

2. Returning Students

a. Beginning with the 2002-2003 through the 2004-2005 Academic Year (College), in order for a returning student to receive the full benefits of a TOPS award as provided in §701.E, the final deadline for receipt of a student's initial FAFSA or the On-Line Application is May 1 of the Academic Year (College) he first enrolls as a full-time student in an eligible college or university.

b. Beginning with the 2005-2006 Academic Year (College), in order for a returning student to receive the full benefits of a TOPS award as provided in §701.E, the final deadline for receipt of the student's initial FAFSA or the On-Line Application is the July 1 immediately preceding the Academic Year (College) he first enrolls as a full-time student in an eligible college or university.

3. - 3.c....

d. If a returning student graduates in the 2003-2004 Academic Year (High School) and will be a first-time student in the fall semester of 2006, the student must submit the initial FAFSA or the On-Line Application no later than July 1, 2007.

C.4. - E. ...

F. Renewal FAFSA

1.a. Through the 2004-2005 Academic Year (College), in order to remain eligible for TOPS awards, a student who is eligible for federal grant aid must file a renewal FAFSA so that it is received by May 1 of each Academic Year (College) after initial eligibility is established.

b. Beginning with the 2005-2006 Academic Year (College), in order to remain eligible for TOPS awards, a student who is eligible for federal grant aid must file a renewal FAFSA so that it is received by the July 1 immediately preceding each Academic Year (College) after initial eligibility is established.

2. Students who can demonstrate that they do not qualify for federal grant aid because of their family's financial condition are not required to submit a renewal FAFSA.

3.a. In the event of a budgetary shortfall, applicants who do not file a renewal FAFSA or who do not complete all sections of the FAFSA will be the first denied a TOPS award.

b. Students who can demonstrate that they do not qualify for federal grant aid because of their family's financial condition and do not want to be the first denied a TOPS award must file a renewal FAFSA so that it is received by the July 1 immediately preceding each

Academic Year (College) after initial eligibility is established.

F.4. - G. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), repromulgated LR 27:1847 (November 2001), amended LR 30:2017 (September 2004), LR 31:37 (January 2005), LR 32:

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

A. LASFAC will continue to process eligibility for both new and renewal applicants during each award year until July 1 after the spring term of that award year.

B.1. Through the 2004-2005 Academic Year (College), all documentation and certifications necessary to establish student eligibility including, but not limited to, high school and/or college transcripts and certifications, copies of student aid reports, applicant confirmation forms, promissory notes, ACT and/or SAT scores, residency affidavits, proof of citizenship or permanent residency status and other documents that may be utilized in determining eligibility, must be received by LASFAC no later than May 1 of the award year. For example, to receive an award for the 2004-2005 award year, LASFAC must have in its possession all documents relevant to establishing eligibility by May 1, 2005.

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

C.1. Returning students, who graduated high school during the 2001-2002 Academic Years (High School) and who enroll in an eligible college or university in the spring semester 2003, must submit documentation that establishes TOPS eligibility no later than May 1, 2004.

2. Returning students, who enroll in an eligible college or university in the fall semester of 2003 through the spring semester of 2005, must submit documentation that establishes TOPS eligibility no later than May 1 of the Academic Year (College) the student enrolls in an eligible college or university. For example, a student who seeks to enroll in an eligible college or university in the fall semester of 2003 must submit documentation that establishes TOPS eligibility no later than May 1, 2004.

3. Returning students, who enroll in an eligible college or university in the fall semester of 2005 or later, must submit documentation that establishes TOPS eligibility

no later than July 1 immediately following the Academic Year (College) the student enrolls as a full-time student in an eligible college or university. For example, a student who seeks to enroll in an eligible college or university in the fall semester of 2006 must submit documentation that establishes TOPS eligibility no later than July 1, 2007.

D.1. A student who successfully completed an undergraduate degree prior to or during the 2001-2002 Academic Year (College) and wishes to receive his remaining award eligibility to attend a postgraduate school must provide the documentation and certifications required to establish student eligibility no later than May 1, 2004.

2. A student who successfully completes an undergraduate degree during the 2002-2003 through the 2004-2005 Academic Year (College) and wishes to receive his remaining award eligibility to attend a postgraduate school must provide the documentation and certifications required to establish student eligibility no later than May 1 of the Academic Year (College) the student seeks to receive his remaining award eligibility. For example, to receive the remaining award for the 2003-2004 Academic Year (College), the student must submit the required documents no later than May 1, 2004.

3. A student who successfully completes an undergraduate degree during the 2005-2006 Academic Year (College) or later and wishes to receive his remaining award eligibility to attend a postgraduate school must provide the documentation and certifications required to establish student eligibility no later the July 1 immediately following the Academic Year (College) the student seeks to receive his remaining award eligibility. For example, to receive the remaining award for the 2006-2007 Academic Year (College), the student must submit the required documents no later than July 1, 2007.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), repromulgated LR 27:1847 (November 2001), amended LR 28:447 (March 2002), LR 30:1161 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 32:

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

§703. Establishing Eligibility

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

5.a.ii. for purposes of satisfying the requirements of 703.A.5.a.i., above, or 803.A.6.a., the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses.

Core Curriculum Course	Equivalent (Substitute) Course
Geometry, Trigonometry, Calculus, or Comparable Advanced Mathematics	Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III*, Advanced Mathematics I, Advanced Mathematics II
Chemistry	Chemistry Com
Fine Arts Survey	Speech Debate (2 units)
Western Civilization	European History
Civics	AP American Government
-	*Applied Mathematics III was formerly referred to as Applied Geometry

A.5.a.iii. - I.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 22:338 (May 1996), repromulgated LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999); LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:

Chapter 13. Leveraging Educational Assistance Partnership (LEAP)

§1301. General Provisions

A. - E. ...

F. Reallocation of Funds. Uncommitted institutional allotted funds are reallocated if not committed by the deadline of November 1 for colleges and universities and campuses of Louisiana Technical College and January 1 for proprietary schools. The method of reallocation is dependent upon the amount of funds available for reallocation. If the reallocation amount is less than \$50,000, then only two- and four-year colleges and universities, which have fully committed their original allotment by the appropriate deadline, receive a reallocation. If \$50,000 or more is available for reallocation, it is reallocated to eligible schools of all types, which have fully committed their original allotment by the appropriate deadline.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:641 (April 1998), amended LR 24:1910 (October 1998), LR 25:1458 (August 1999), repromulgated LR 27:1860 (November 2001), amended LR 28:2332 (November 2002), LR 32:

Core Curriculum Course	Equivalent (Substitute) Course
Physical Science	General Science, Integrated Science
Algebra I	Algebra I, Parts 1 and 2, Integrated Mathematics I
Applied Algebra IA and IB	Applied Mathematics I and II
Algebra I, Algebra II and Geometry	Integrated Mathematics I, II and III
Algebra II	Integrated Mathematics II
Geometry	Integrated Mathematics III

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0606#062

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs—LEAP
(LAC 28:IV.1301)

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

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

This Declaration of Emergency is effective June 7, 2006, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG0673E)

Title 28

EDUCATION

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

Chapter 13. Leveraging Educational Assistance Partnership (LEAP)

§1301. General Provisions

A. - D. ...

E. Allocation of Funds

1. Annually, funds are allocated to postsecondary institutions based on school type, the school's prior year first-time, full-time enrollment and the amount of the prior year's allocation that was expended. Initial funds, for first-time recipients, are computed as a percentage of all participating institutions first-time, full-time enrollment as of October 10 of the prior fiscal year. A student's enrollment in an undergraduate degree granting school which is a component of a state supported medical center, shall be a first-time, full-time freshman for the purpose of this program. Continuation funds for students who had previously received LEAP are computed as a percentage of the allocated funds used during the previous year. The continuation formula applies 60 percent for four-year schools and 40 percent for two-year schools.

2. For the 2006-2007 Academic Year (College), the allocations described in E.1. above shall be made to postsecondary institutions based on 2004-2005 Academic Year (College) formula data.

F. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 22:338 (May 1996), repromulgated LR 24:641 (April 1998), amended LR 24:1910 (October 1998), LR 25:1458 (August 1999),

repromulgated LR 27:1860 (November 2001), amended LR 28:2332 (November 2002), LR 32:

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0606#061

DECLARATION OF EMERGENCY

Tuition Trust Authority Office of Student Financial Assistance

START Savings Program
(LAC 28:VI.107, 305, 311 and 315)

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

The Emergency Rules are necessary to allow the Louisiana Office of Student Financial Assistance and educational institutions to effectively administer these programs. A delay in promulgating Rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LATTA has determined that these Emergency Rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective on June 8, 2006, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (ST0674E)

Title 28

EDUCATION

Part VI. Student Financial Assistance—Higher Education Savings

Chapter 1. General Provisions

Subchapter A. Student Tuition Trust Authority

§107. Applicable Definitions

Variable Earnings—refers to that portion of funds in an ESA, invested in equities, bonds, short-term fixed income investments or a combination of any of the three.

Variable Earnings Transaction Fund—the subaccount established within the Louisiana Education Tuition and Savings Fund to receive funds as directed by rule.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:450 (March 2002), LR 28:777 (April 2002), LR 28:2334 (November 2002), LR 29:556 (April 2003), LR 30:786 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 31:639 (March 2005), LR 32:

Chapter 3. Education Savings Account

§305. Deposits to Education Savings Accounts

A.1. - E.1. ...

2. Deposits for investment options that include Variable Earnings will be assigned a trade date based on the method of deposit and the date of receipt.

a. Deposits by check will be assigned a trade date three business days after the business day during which they were received.

b. Deposits made by electronic funds transfer through the Automated Clearing House (ACH) Network, or its successor, will be assigned a trade date of three business days after the business day during which they were received.

c. Deposits made by all other means of electronic funds transfer will be assigned a trade date of one business day after the business day during which they were received.

3. Deposits for investment options that include variable earnings, which are received via check or electronic funds transfer through the Automated Clearing House Network, will be deposited into the fixed earnings option until the trade date. Earnings accrued on these deposits prior to the trade date shall be deposited in the Variable Earnings Transaction Fund.

4. Deposits received on weekends and holidays will be considered received on the next business day.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1270 (July 1998), LR 26:2263 (October 2000), LR 27:1880 (November 2001), LR 30:788 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 32:

§311. Termination and Refund of an Education Savings Account

A. - C.2.b. ...

c. The deposits to or the current value of an account invested in a variable earnings option, whichever is less, less earning enhancements allocated to the account and earnings thereon if the account has been open for less than 12 months. Any increase in the value of an account invested in a variable earnings option over the amount deposited shall be forfeited by the account owner and deposited in the Variable Earnings Transaction Fund, if the account was invested in a variable earnings option and terminated within 12 months of the date the account was opened.

C.2.d. - H. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR 26:2265 (October 2000), amended LR 27:38 (January 2001), LR 27:1882 (November 2001), LR 28:779 (April 2002), LR 30:790 (April 2004), LR 31:639 (March 2005), LR 32:

§315. Miscellaneous Provisions

A. - M.2. ...

3. Earnings reported by the state treasurer on deposits made by check or an ACH transfer, which is not honored by the financial institution on which it was drawn subsequent to the trade date, shall be forfeited by the account owner and deposited into the Variable Earnings Transaction Fund.

N. - R. ...

S. Variable Earnings Transaction Fund

1. Monies in the Variable Earnings Transaction Fund shall be used to pay any charges assessed to the START Saving Program by a financial institution and any loss of value between the purchase and redemption of units in a variable earnings option that are incurred when a check or

ACH transfer is dishonored after the trade date by the financial institution on which it was drawn.

2. After the payment of expenses as provided in Paragraph 1, above, LATTA may declare monies remaining in the Variable Earnings Transaction Fund as surplus. Such surplus shall be appropriated to the Saving Enhancement Fund to be used as earnings enhancements.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038 (October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:

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0606#077

DECLARATION OF EMERGENCY

Department of Environmental Quality

Office of the Secretary

Legal Affairs Division

8-Hour Ambient Ozone Standard and
Nonattainment New Source Review
(LAC 33:III.111, 504, 509, 607, 709, and 711)(AQ253E3)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality to use emergency procedures to establish rules, and under the authority of R.S. 30:2011, the secretary of the department hereby finds that imminent peril to the public welfare exists and declares that an emergency action is necessary to implement rules concerning the revised primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone and transitional provisions for nonattainment new source review under the revised standard.

This is a renewal and revision of Emergency Rule AQ253E2, which was effective on February 10, 2006, and published in the *Louisiana Register* on February 20, 2006. This Emergency Rule, AQ253E3, is revised to mirror the text of proposed Rule AQ253, which was published as a Notice of Intent in the *Louisiana Register* on May 20, 2006. Changes in this Rule from the previous Emergency Rule include:

1. NO_x is added as a regulated pollutant;
2. a clarification is made that emissions reductions due to shutdown or curtailment may be credited;
3. the list of highly reactive VOCs is revised;
4. the "extreme" classification is added to Table 1 in LAC 33:III.504.L and Footnote 1 is revised;
5. PM_{2.5} has been added to LAC 33:III.Chapter 7; and
6. the changes to LAC 33:III.Chapter 22 are eliminated, and LAC 33:III.2202 will not be repealed.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 1. General Provisions

§111. Definitions

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below.

* * *

Ozone Exceedance—a daily maximum 8-hour average ozone measurement that is greater than the value of the standard.

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 15:1061 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:777 (August 1991), LR 21:1081 (October 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006), LR 32:

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review Procedures

A. ...

1. For an area that is designated nonattainment for the ozone national ambient air quality standard (NAAQS), VOC and NO_x are the regulated pollutants under this Section. VOC and NO_x emissions shall not be aggregated for purposes of determining major stationary source status and significant net emissions increases.

2. Except as specified in Subsection M of this Section, the potential to emit of a stationary source shall be compared to the major stationary source threshold values listed in Subsection L. Table 1 of this Section to determine whether the source is major.

3. Except as specified in Subsection M of this Section, the emissions increase that would result from a proposed modification, without regard to project decreases, shall be compared to the trigger values listed in Subsection L. Table 1 of this Section to determine whether a calculation of the net emissions increase over the contemporaneous period must be performed.

a. - d. ...

4. Except as specified in Subsection M of this Section, the net emissions increase shall be compared to the significant net emissions increase values listed in Subsection L. Table 1 of this Section to determine whether a nonattainment new source review must be performed.

5. - 7. ...

8. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after December 20, 2001 and prior to June 23, 2003, and for which the nonattainment new source review (NNSR) permit was issued in accordance with Subsection D of this Section on or before June 14, 2005, the provisions of this Section governing serious ozone nonattainment areas applied to VOC and NO_x increases. For applications deemed administratively

On April 30, 2004, EPA enacted 8-hour ozone NAAQS classifications, effective June 15, 2004 (69 FR 23858). The revised 8-hour NAAQS is more protective than the existing 1-hour ozone NAAQS. In order to transition from the existing 1-hour standard to the new 8-hour standard, EPA adopted a rule for implementation of the 8-hour ozone NAAQS-Phase 1 (the "Phase 1 Implementation Rule") on April 30, 2004 (69 FR 23951). In the Phase 1 Implementation Rule, EPA revoked the 1-hour standard in full, including the associated designations and classifications, effective on June 15, 2005.

Litigation by a number of stakeholders pending in the United States Court of Appeals for the District of Columbia Circuit challenged various aspects of the Phase 1 Implementation Rule, resulting in EPA's agreement to reconsider several portions of the Rule through renewed notice and public comment. EPA only recently made final decisions on reconsideration, thus clearing the way for effectiveness of the Phase 1 Implementation Rule (70 FR 30592, May 26, 2005). As a result, Louisiana is required to adopt the 8-hour revised standard and measures to implement such standard. Additionally, the Phase 2 Implementation Rule (70 FR 71612, November 29, 2005) promulgated the final 8-hour ozone requirements for new source review. This Emergency Rule is necessary to address two of the most immediate aspects of implementation: 1) revision of LAC 33:III.711 to replace the 1-hour primary ambient air quality standard with the 8-hour standard; and 2) revision of nonattainment new source review provisions for parishes that were reclassified from severe under the 1-hour standard to marginal under the 8-hour standard (parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge). Because such parishes are still in nonattainment, the department is adopting measures to ensure that these parishes continue to make progress toward attainment while still accommodating growth. Regulatory changes will also delete references to the 1-hour standard and substitute the 8-hour standard, and take other actions to transition to the 8-hour standard. The attainment date for the Baton Rouge area under the 8-hour standard is June 15, 2007. Failure to adopt this Rule on an emergency basis (i.e., without the delays for public notice and comment) would result in imminent peril to the public welfare as the department would not have the authority to enforce the 8-hour standard.

This Emergency Rule is effective on June 10, 2006, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning AQ253E3, you may contact the Regulation Development Section at (225) 219-3550.

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

complete in accordance with LAC 33:III.519.A on or after June 23, 2003, and for which the NNSR permit was issued in accordance with Subsection D of this Section on or before June 14, 2005, the provisions of this Section governing severe ozone nonattainment areas applied to VOC and NO_x increases.

B. - D.4. ...

5. Except as specified in Subsection M of this Section, emission offsets shall provide net air quality benefit, in accordance with offset ratios listed in Subsection L. Table 1 of this Section, in the area where the NAAQS for that pollutant is violated.

D.6. - F. ...

1. All emission reductions claimed as offset credit shall be from decreases of the same pollutant or pollutant class (e.g., VOC) for which the offset is required. Interpollutant trading, for example using a NO_x credit to offset a VOC emission increase, is not allowed. Except as specified in Subsection M of this Section, offsets shall be required at the ratio specified in Subsection L. Table 1 of this Section.

2. - 7.c. ...

8. Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours below baseline levels may be generally credited if such reductions are surplus, permanent, quantifiable, and federally enforceable, and if:

a. the shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this Subparagraph, the administrative authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emissions unit (However, in no event may credit be given for shutdowns that occurred before August 7, 1977.);

b. the shutdown or curtailment occurred on or after the date the permit application or application for emission reduction credits (ERCs) was filed; or

c. the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit.

F.9. - K. Visibility Impairment. ...

L. Table 1—Major Stationary Source/Major Modification Emission Thresholds

Pollutant	Major Stationary Source Threshold Values (tons/year)	Major Modification Significant Net Increase (tons/year)	Offset Ratio Minimum
Ozone		Trigger Values	
VOC/NO _x			
Marginal	100	40(40) ³	1.10 to 1
Moderate	100	40(40) ³	1.15 to 1
Serious	50	25 ³ (5) ⁴	1.20 to 1 w/LAER or 1.40 to 1 internal w/o LAER

Pollutant	Major Stationary Source Threshold Values (tons/year)	Major Modification Significant Net Increase (tons/year)	Offset Ratio Minimum
Severe	25	25 ³ (5) ⁴	1.30 to 1 w/LAER or 1.50 to 1 internal w/o LAER
Extreme	10	Any increase	1.50 to 1
CO			
Moderate	100	100	>1.00 to 1
Serious	50	50	>1.00 to 1
SO ₂	100	40	>1.00 to 1
PM ₁₀ ¹			
Moderate	100	15	>1.00 to 1
Serious	70	15	>1.00 to 1
Lead	100	0.6	>1.00 to 1

¹The requirements of LAC 33:III.504 applicable to major stationary sources and major modifications of PM₁₀ shall also apply to major stationary sources and major modifications of PM₁₀ precursors, except where the administrator determines that such sources do not contribute significantly to PM₁₀ levels that exceed the PM₁₀ NAAQS in the area.

²Consideration of the net emissions increase will be triggered for any project that would increase emissions by 40 tons or more per year, without regard to any project decreases.

³For serious and severe ozone nonattainment areas, the increase in emissions of VOC or NO_x resulting from any physical change or change in the method of operation of a stationary source shall be considered significant for purposes of determining the applicability of permit requirements, if the net emissions increase from the source equals or exceeds 25 tons per year of VOC or NO_x.

⁴Consideration of the net emissions increase will be triggered for any project that would increase VOC or NO_x emissions by five tons or more per year, without regard to any project decreases, or for any project that would result in a 25 ton or more per year cumulative increase in emissions of VOC within the contemporaneous period or of NO_x for a period of five years after the effective date of the rescission of the NO_x waiver, and within the contemporaneous period thereafter.

VOC= volatile organic compounds

NO_x = oxides of nitrogen

CO = carbon monoxide

SO₂ = sulfur dioxide

PM₁₀= particulate matter of less than 10 microns in diameter

M. Notwithstanding the parish's nonattainment status with respect to the 8-hour national ambient air quality standard (NAAQS) for ozone, the provisions of this Subsection shall apply to sources located in the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge.

1. For an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x, consideration of the net emissions increase will be triggered for any project that would:

a. increase emissions of VOC or NO_x by 25 tons per year or more, without regard to any project decreases;

b. increase emissions of the highly reactive VOC (HRVOC) listed below by 10 tons per year or more, without regard to any project decreases:

- i. 1,3-butadiene;
- ii. butenes (all isomers);
- iii. ethylene;
- iv. propylene.

2. The following sources shall provide offsets for any net emissions increase:

- a. a new stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x;
- b. an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x with a significant net emissions increase of VOC, including HRVOC, or NO_x of 25 tons per year or more.

3. The minimum offset ratio for an offset required by Paragraph M.2 of this Section shall be 1.2 to 1.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:

§509. Prevention of Significant Deterioration

A. - A.5. ...

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

Major Modification—

- a. ...
- b. Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for volatile organic compounds (VOCs) or nitrogen oxides (NO_x) shall be considered significant for ozone.

c. - d. ...

Major Stationary Source—

- a. - c. ...
- d. a major source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone;

e. - Table A. ...

Regulated NSR Pollutant—

- a. any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrative authority (e.g., volatile organic compounds and nitrogen oxides are precursors for ozone);

b. - d. ...

Significant—

- a. in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate emissions
	15 tpy of PM ₁₀ emissions
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics ¹	0.0000035 tpy
Municipal waste combustor metals ²	15 tpy
Municipal waste combustor acid gases ³	40 tpy
Municipal solid waste landfills emissions ⁴	50 tpy

¹Measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

²Measured as particulate matter.

³Measured as sulfur dioxide and hydrogen chloride.

⁴Measured as nonmethane organic compounds.

b. - c. ...

C. - I.5. ...

- a. the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide	575 µg/m ³	8-hour average
Nitrogen dioxide	14 µg/m ³	annual average
Particulate matter	10 µg/m ³ of PM ₁₀	24-hour average
Sulfur dioxide	13 µg/m ³	24-hour average
Ozone	No <i>de minimis</i> air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would require the performance of an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1 µg/m ³	3-month average
Fluorides	0.25 µg/m ³	24-hour average
Total reduced sulfur	10 µg/m ³	1-hour average
Hydrogen sulfide	0.2 µg/m ³	1-hour average
Reduced sulfur compounds	10 µg/m ³	1-hour average

I.5.b. - AA.15.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment,

Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:

Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking

§607. Determination of Creditable Emission Reductions

A. - C. ...

1. If the design value for the nonattainment area is above the national ambient air quality standard (NAAQS) for ozone, the department shall compare the current total point-source emissions inventory for the modeled parishes to the base case inventory, except that, beginning with the 2005 emissions inventory, this comparison shall be made to the base line inventory.

2. - 4.a. ...

i. if the design value for the nonattainment area is above the NAAQS for ozone and the current total point-source inventory for the modeled parishes exceeds the base case inventory or base line inventory, as appropriate per Paragraph C.1 of this Section, baseline emissions shall be the lower of actual emissions, adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section, or emissions attributed to the stationary point source(s) in question in the base case or base line inventory, as appropriate; or

ii. if the design value for the nonattainment area is not above the NAAQS for ozone or the current total point-source inventory for the modeled parishes does not exceed the base case inventory or base line inventory, as appropriate per Paragraph C.1 of this Section, baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section; and

C.4.b. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

Chapter 7. Ambient Air Quality

§709. Measurement of Concentrations—PM₁₀, PM_{2.5}, Sulfur Dioxide, Carbon Monoxide, Atmospheric Oxidants, Nitrogen Oxides, and Lead

A. PM₁₀, PM_{2.5}, sulfur dioxide, carbon monoxide, atmospheric oxidants, nitrogen oxides, and lead shall be measured by the methods listed in LAC 33:III.711.C, Table 2 or by such other equivalent methods approved by the department. The publications or their replacements listed in LAC 33:III.711.C, Table 2 are incorporated as part of these regulations by reference.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR

14:348 (June 1988), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

§711. Tables 1, 1a, 2—Air Quality

A. Table 1. Primary Ambient Air Quality Standards

Table 1. Primary Ambient Air Quality Standards		
Air Contaminant	Maximum Permissible Concentration	
PM ₁₀	50 µg/m ³	(Annual arithmetic mean)
	150 µg/m ³	(Maximum 24-hour concentration not to be exceeded more than once per year)
PM _{2.5}	15.0 µg/m ³	(Annual arithmetic mean)
	65 µg/m ³	24-hour
Sulfur Dioxide (SO ₂)	80 µg/m ³	or 0.03 ppm (Annual arithmetic mean)
	365 µg/m ³	or 0.14 ppm (Maximum 24-hour concentration not to be exceeded more than once per year)
Carbon Monoxide (CO)	10,000 µg/m ³	or 9 ppm (Maximum 8-hour concentration not to be exceeded more than once per year)
	40,000 µg/m ³	or 35 ppm (Maximum 1-hour concentration not to be exceeded more than once per year)
Ozone	0.08 ppm daily maximum 8-hour average	The standard is met at an ambient air monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR 50, Appendix I.
Nitrogen Dioxide (NO ₂)	100 µg/m ³	(0.05 ppm) (Annual arithmetic mean)
Lead	1.5 µg/m ³	(Maximum arithmetic mean averaged over a calendar quarter)

1. - 2. ...

B. Table 1a. Secondary Ambient Air Quality Standards

Table 1a. Secondary Ambient Air Quality Standards		
Air Contaminant	Maximum Permissible Concentration	
PM ₁₀	50 µg/m ³	(Annual arithmetic mean)
	150 µg/m ³	(Maximum 24-hour concentration not to be exceeded more than once per year)
PM _{2.5}	15.0 µg/m ³	(Annual arithmetic mean)
	65 µg/m ³	24-hour
Sulfur Dioxide (SO ₂)	1,300 µg/m ³	(Maximum 3-hour concentration not to be exceeded more than once per year)
Carbon Monoxide (CO)	10,000 µg/m ³	or 9 ppm (Maximum 8-hour concentration not to be exceeded more than once per year)
	40,000 µg/m ³	or 35 ppm (Maximum 1-hour concentration not to be exceeded more than once per year)

Air Contaminant	Maximum Permissible Concentration	
Ozone	0.08 ppm daily maximum 8-hour average	The standard is met at an ambient air monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR 50, Appendix I.
Nitrogen Dioxide (NO ₂)	100 µg/m ³	(0.05 ppm) (Annual arithmetic mean)
Lead	1.5 µg/m ³	(Maximum arithmetic mean averaged over a calendar quarter)

1. - 2. ...

C. Table 2. Ambient Air—Methods of Contaminant Measurement

Air Contaminant	Sampling Interval	Analytical Method
PM ₁₀	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix J.
PM _{2.5}	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix L.
Sulfur Dioxide	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix A.
	Continuous	Any method complying with reference or equivalent methods in Title 40, Code of Federal Regulations, Part 53, Subpart B.
Total Oxidants	Continuous	Any method complying with reference or equivalent methods in Title 40, Code of Federal Regulations, Part 50, Appendix D, and Part 53, Subpart B.
Carbon Monoxide	Continuous	Any method complying with reference or equivalent methods in Title 40, Code of Federal Regulations, Part 50, Appendix C, and Part 53, Subpart B.
Nitrogen Dioxide	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix F.
Lead	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix G.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

Mike D. McDaniel, Ph.D.
Secretary

0606#035

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Sewage Sludge Regulatory Management
(LAC 33:VII.301 and IX.107, 6901, 6903, 6905,
6907, 6909, 6911, 6913, and 7135)(OS066E3)

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

Emergency Rule OS066E2, which was effective on April 29, 2006, and published in the *Louisiana Register* on May 20, 2006, is hereby rescinded and is being reissued with amendments. This Emergency Rule, OS066E3, has been revised to:

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

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

This Emergency Rule is effective on June 1, 2006 and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning OS066E3 you may contact the Regulation Development Section at (225) 219-3550.

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

Title 33

ENVIRONMENTAL QUALITY

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 3. Scope and Mandatory Provisions of the Program

§301. Wastes Governed by These Regulations

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

A. - A.8. ...

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

B. - B.6. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2515 (November 2000), LR 28:780 (April 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2485 (October 2005), LR 32:

Part IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 1. General Provisions

§107. Definitions

* * *

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

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2538 (November 2000), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

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

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

§6901. General Provisions

A. Purpose and Applicability

1. Purpose

a. This Chapter establishes standards, which consist of general and other requirements, pollutant limits, general and other management practices, and operational standards, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works and of domestic septage. Standards are included in this Chapter for sewage sludge and domestic septage (hereafter referred to collectively as *sewage sludge* for the purposes of this Chapter) and a material derived from sewage sludge that is applied to the land and sewage sludge fired in a sewage sludge incinerator. Also included in this Chapter are pathogen and alternative vector attraction reduction requirements for sewage sludge and a material derived from sewage sludge applied to the land; the siting, operation, and financial assurance requirements for commercial preparers or land applicers of sewage sludge and a material derived from sewage sludge; and the standards for transporters of sewage sludge and for vehicles of transporters of sewage sludge.

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

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

d. ...

2. Applicability

a. This Chapter applies to:

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

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

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

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

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

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

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

c. ...

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

B. Compliance Period

1. - 3.a. ...

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

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

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

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

C. Permits and Permitting Requirements

1.a. Except as exempted in Paragraph C.2 of this Section, no person shall prepare sewage sludge or a material derived from sewage sludge, apply sewage sludge or a material derived from sewage sludge to the land, or own or operate a sewage sludge incinerator without first obtaining a permit in accordance with the deadlines set forth in Subparagraphs C.1.b-d of this Section.

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

i. granted an exemption under LAC 33:Part VII for any form of use or disposal of sewage sludge will have 180 days to submit an application for permit coverage under these regulations;

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

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

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

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

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

iii. All treatment facilities that prepare sewage sludge for the use of land application and all land applicators of biosolids who are not presently operating under an effective

standard solid waste permit shall apply for a permit within 180 days after June 1, 2006.

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

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

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

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

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

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

a. The person who applies bulk sewage sludge or a bulk material derived from sewage sludge to the land is exempt from the requirement of obtaining a permit if the person applies bulk sewage sludge or a bulk material derived from sewage sludge that was obtained from a facility that possesses an Exceptional Quality Permit under LAC 33:IX.6903.J.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b). the lab methods utilized;

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

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

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

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

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

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

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

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

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

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

(e). PCB—one composite sample; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Sewage Sludge Disposed in a Municipal Solid Waste Landfill

1. - 2. ...

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

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

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

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

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

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

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

i. the date obtained, pumped, or removed;

ii. the origin or source;

iii. the volume generated at each site;

iv. the transfer or disposal site; and

v. the total amount that was transported or disposed.

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

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

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

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

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

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

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

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

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

3.a. *Storage of sewage sludge*, as defined in Subsection I of this Section, is allowed for a period not to exceed six consecutive months when:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Materials Prohibited from Feedstock or Supplements that are Blended, Composted, or Mixed with Sewage Sludge

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

ii. The blending, composting, or mixing of sewage sludge with feedstock or supplements containing any

of the materials listed in Table 1 of LAC 33:IX.6901.F is prohibited.

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

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

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

Table 1 of LAC 33:IX.6901.F
Materials Prohibited from Feedstock or Supplements That Are Blended, Composted, or Mixed with Sewage Sludge
Antifreeze
Automotive (lead-acid) batteries
Brake fluid
Cleaners (drain, oven, toilet)
Gasoline and gasoline cans
Herbicides
Household (dry cell) batteries
Oil-based paint
Pesticides
Photographic supplies
Propane cylinders
Treated wood containing the preservatives CCA and/or PCP
Tubes and buckets of adhesives, caulking, etc.
Swimming pool chemicals
Unmarked containers
Used motor oil

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

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

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

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

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

9. On a case-by-case basis, the permitting authority may impose requirements in addition to or more stringent than the requirements in this Chapter when necessary to

protect human health and the environment from any adverse effect of a pollutant in the sewage sludge.

G. Exclusions

1. Co-Firing of Sewage Sludge

a. Except for the co-firing of sewage sludge with *auxiliary fuel*, as defined in LAC 33:IX.6911.B, this Chapter does not establish requirements for sewage sludge co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge and other wastes are co-fired.

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

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

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

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

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

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

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

H. Sampling and Analysis

1. Sampling

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

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

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

2. Methods. The materials listed below are incorporated by reference in this Chapter. The materials are incorporated as they exist on the date of approval, and notice of any change in these materials will be published in the *Louisiana Register*. They are available for inspection at the

Office of the Federal Register, 7th Floor, Suite 700, 800 North Capitol Street, NW, Washington, DC, and at the Office of Water Docket, Room L-102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC. Copies may be obtained from the standard producer or publisher listed in the regulation. Information regarding other sources of these documents is available from the Department of Environmental Quality, Office of Environmental Services, Water and Waste Permits Division. Methods in the materials listed below shall be used to analyze samples of sewage sludge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. any *publicly owned treatment works (POTW)* or *privately owned sanitary wastewater treatment facility (POSWTF)*, as defined in this Subsection, regardless of ownership, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage;

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

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

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

Commercial Preparer or Land Applicator of Sewage Sludge—any person who prepares or land-applies sewage sludge or a material derived from sewage sludge for monetary profit or other financial consideration and either the person is not the generator of the sewage sludge or the sewage sludge was obtained from a facility or facilities not owned by or associated with the person.

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

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

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

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

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

Exceptional Quality—sewage sludge or a material derived from sewage sludge that meets the ceiling concentrations in Table 1 of LAC 33:IX.6903.D, the pollutant concentrations in Table 3 of LAC 33:IX.6903.D, the pathogen requirements in LAC 33:IX.6909.C.1, one of the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-h, and the concentration of PCBs of less than 10 mg/kg of total solids (dry weight).

Feed Crops—crops produced primarily for consumption by animals.

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

Fiber Crops—crops such as flax and cotton.

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

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

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

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

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

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

Land Application—the beneficial use of sewage sludge or a material derived from sewage sludge by either spraying or spreading onto the land surface, injection below the land surface, or incorporation into the soil.

Other Container—either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton,

and a vehicle or trailer with a load capacity of 1 metric ton or less.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:781 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 32:

§6903. Land Application

A. Applicability

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

2.a.i. The general requirements in Paragraph C.1 of this Section, the other requirements in Paragraph E.1 of this Section, the general management practices in Subparagraph C.2.a of this Section, and the other management practices in

Paragraph E.2 of this Section do not apply when bulk sewage sludge is applied to the land if the bulk sewage sludge is *Exceptional Quality* as defined in LAC 33:IX.6901.I and the preparer has received and maintains an Exceptional Quality Permit under the requirements in Subsection J of this Section.

ii. The general requirements in Paragraph C.1 of this Section, the other requirements in Paragraph E.1 of this Section, the general management practices in Subparagraph C.2.a of this Section, and the other management practices in Paragraph E.2 of this Section do not apply when a bulk material derived from sewage sludge is applied to the land if the derived bulk material is *Exceptional Quality* as defined in LAC 33:IX.6901.I and the preparer has received and maintains an Exceptional Quality Permit under the requirements in Subsection J of this Section.

b. ...

3.a.i. The general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section do not apply if sewage sludge sold or given away in a bag or other container is *Exceptional Quality* as defined in LAC 33:IX.6901.I and the preparer has received and maintains an Exceptional Quality Permit under the requirements in Subsection J of this Section.

ii. The general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section do not apply if a material derived from sewage sludge is sold or given away in a bag or other container and the material is *Exceptional Quality* as defined in LAC 33:IX.6901.I and the preparer has received and maintains an Exceptional Quality Permit under the requirements in Subsection J of this Section.

iii. The general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section do not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge from which the material is derived is *Exceptional Quality* as defined in LAC 33:IX.6901.I and the preparer has received and maintains an Exceptional Quality Permit under the requirements in Subsection J of this Section.

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

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

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

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

2. General Management Practices

a. All Sewage Sludge or Material Derived from Sewage Sludge

i. ...

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

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

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

(a) - (b). ...

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

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

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

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

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

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

Table 1 of LAC 33:IX.6903.C	
Slope Limitations for Land Application of Sewage Sludge	
Slope Percent	Application Restriction
0-3	None, except drainage to prevent standing water shall be provided.
3-6	A 100-foot vegetated runoff area should be provided at the down slope end of the application area if a liquid is applied. Measures should be taken to prevent erosion.
6-12	Liquid material must be injected into the soil. Solid material must be incorporated into the soil if the site is not covered with vegetation. A 100-foot vegetated runoff area is required at the down slope end of the application area for all applications. Measures must be taken to prevent erosion. Terracing may be required if deemed a necessity by the administrative authority to prevent runoff from the land application site and erosion.
>12	Unsuitable for application unless terraces are constructed and a 200-foot vegetated buffer area with a slope of less than 3 percent is provided at the down slope edge of the application area and the material is incorporated (solid material) and injected (liquid material) into the soil. Measures must be taken to prevent runoff from the land application site and to prevent erosion.

D. - D.2.d. Table 4.

3. Repealed.

Equation (1). Repealed.

E. - F.1.c.

2. Vector Attraction Reduction—Sewage Sludge

a. One of the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-j shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

b. One of the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-h shall be met when sewage sludge or a material derived from sewage sludge is applied to a lawn or a home garden.

c. One of the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-h shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

G. Frequency of Monitoring

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

Table 1 of LAC 33:IX.6903.G	
Frequency of Monitoring—Land Application	
Amount of Sewage Sludge ¹ (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year)
Equal to or greater than 15,000	Once per month (12 times per year)

¹Either the amount of bulk sewage sludge applied to the land or the amount of sewage sludge prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).

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

H. Recordkeeping

1. All *Class I sludge management facilities*, as defined in LAC 33:IX.6901.I, that prepare sewage sludge shall keep a record of the annual production of sewage sludge (i.e., dry ton or dry metric tons) and of the sewage sludge management practice used and retain such record for a period of five years.

2. Additional Recordkeeping

a. The recordkeeping requirements for the person who prepares the sewage sludge or a material derived from sewage sludge that is land applied and meets the criteria in Subparagraph A.2.a or 3.a of this Section are those indicated in Subparagraph J.4.a of this Section.

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

c. For bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site and that meets the pollutant concentrations in Table 3 of LAC 33:IX.6903.D, the Class B pathogen requirements in LAC 33:IX.6909.C.2, and one of the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-j:

i. - ii.(b).

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

(d). - (e), Certification.

d. For bulk sewage sludge applied to the land that is agricultural land, forest, a public contact site, or a reclamation site whose cumulative loading rate for each pollutant does not exceed the cumulative pollutant loading rate for each pollutant in Table 2 of LAC 33:IX.6903.D and that meets the Exceptional Quality or Class B pathogen requirements in LAC 33:IX.6909.C, and the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-j:

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

(b). the following certification statement:
"I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.6903.C.2.a.i-v and b.i was prepared for each site on which sewage sludge given away or sold in a bag or other container is applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment."

I. Reporting

1. All *Class I sludge management facilities*, as defined in LAC 33:IX.6901.I, that prepare sewage sludge shall submit the information in Paragraph H.1 of this Section to the Office of Environmental Services, Water and Waste Permits Division, on February 19 of each year.

2. Additional Reporting Requirements

a. Reporting requirements for a person who prepares the sewage sludge or a material derived from sewage sludge having an Exceptional Quality Permit are as indicated in Subparagraph J.4.b of this Section.

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

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

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

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

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

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

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

J. Exceptional Quality Permit

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

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

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

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

3.a. For the term of the Exceptional Quality Permit, the preparer of the sewage sludge or material derived from sewage sludge shall conduct continued sampling at the frequency of monitoring specified in Paragraph G.1 of this Section. The samples shall be analyzed for the parameters specified in Clauses J.1.a.i-iii of this Section, and for the pathogen and vector attraction reduction requirements in Clauses J.1.a.iv and v, as required by LAC 33:IX.6909.

b. If results of the sampling indicate that the sewage sludge or the material derived from sewage sludge no longer is *Exceptional Quality* as defined in LAC 33:IX.6901.I, then the preparer must cease any land application of the sewage sludge as an Exceptional Quality sewage sludge.

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

d. The sewage sludge or material derived from sewage sludge shall not be applied to the land as an Exceptional Quality sewage sludge until the sample analyses have shown that the sewage sludge or material derived from sewage sludge meets the criteria for *Exceptional Quality* as defined in LAC 33:IX.6901.I.

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

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

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

Table 4 of LAC 33:IX.6903.I	
Reporting—Land Application	
Monitoring Period ¹ (Once per Month)	Report Due Date
January	May 28
February	
March	

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

i. the results of the sample analysis required in Subparagraph J.3.a of this Section; and

ii. the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Exceptional Quality pathogen requirements in LAC 33:IX.6909.C.1 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

b. Reporting. The person who prepares the sewage sludge or a material derived from sewage sludge shall forward the information required in Subparagraph J.4.a of this Section to the Office of Environmental Services, Water and Waste Permits Division, on a quarterly basis. The schedule for quarterly submission is contained in the following table.

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:785 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

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

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

B. Siting

1. Location Characteristics

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

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

i. shall not be located less than 1,000 feet from an established school, hospital, institution, day-care facility,

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

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

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

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

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

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

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

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

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

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

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

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

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

facility shall be controlled to a minimum of a 3-foot depth below this zone.

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

k. Facilities located in, or within 1,000 feet of, swamps, marshes, wetlands, estuaries, wildlife-hatchery areas, habitat of endangered species, archaeological sites, historic sites, publicly owned recreation areas, and similar critical environmental areas shall be isolated from such areas by effective barriers that eliminate probable adverse impacts from facility operations.

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

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

2. Facility Characteristics

a. Perimeter Barriers, Security, and Signs

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

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

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

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

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

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

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

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

3. Facility Surface Hydrology

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

latitude. If the 24-hour/25-year storm event level is lower, the design standard shall be required.

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

c. All storm water and wastewater from a facility must conform to applicable requirements of LAC 33:IX.Chapters 23-67.

4. Facility Geology

a. Except as provided in Subparagraph B.4.c of this Section, facilities shall have natural stable soils of low permeability for the area occupied by the facility, including vehicle parking and turnaround areas, that should provide a barrier to prevent any penetration of surface spills into groundwater aquifers underlying the area or to a sand or other water-bearing stratum that would provide a conduit to such aquifer.

b. The natural soil surface must be capable of supporting heavy equipment operation during and after prolonged periods of rain.

c. A design for surfacing natural soils that do not meet the requirements in Subparagraphs B.4.a and b of this Section shall be prepared under the supervision of a registered engineer, licensed in the state of Louisiana with expertise in geotechnical engineering and geohydrology. Written certification by the engineer that the surface satisfies the requirements of Subparagraphs B.4.a and b of this Section shall be provided.

5. Facility Plans and Specifications. Facility plans and specifications represented and described in the permit application or permit modifications for all facilities must be prepared under the supervision of, and certified by, a registered engineer, licensed in the state of Louisiana.

6. Facility Administrative Procedures

a. Permit Modifications. Permit modifications shall be in accordance with the requirements of this Chapter.

b. Personnel. All facilities shall have the personnel necessary to achieve the operational requirements of the facility.

C. Operations

1. Composters, Mixers, Blenders, and Preparers

a. Facility Operations and Maintenance Manual

i. A Facility Operations and Maintenance Manual shall be developed and forwarded with the permit application to the Office of Environmental Services, Water and Waste Permits Division.

ii. The Facility Operations and Maintenance Manual must describe, in specific detail, how the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge (if applicable) will be managed during all phases of processing operations. At a minimum, the manual shall address the following:

- (a) site and project description;
- (b) regulatory interfaces;
- (c) process management plan;
- (d) pathogen treatment plan;
- (e) odor management plan;
- (f) worker health and safety management plan;
- (g) housekeeping and nuisance management plan;
- (h) emergency preparedness plan;

- (i). security, community relations, and public access plan;
- (j). regulated chemicals (list and location of regulated chemicals kept on-site);
- (k). recordkeeping procedures;
- (l). feedstock, supplements, and process management;
- (m). product distribution records;
- (n). operator certification; and
- (o). administration of the operations and maintenance manual.

iii. The Facility Operations and Maintenance Manual shall be kept on-site and readily available to employees and, if requested, to the administrative authority or his/her duly authorized representative.

b. Facility Operational Standards

i. The facility must include a receiving area, mixing area, curing area, compost storage area for composting operations, drying and screening areas, and truck wash area located on surfaces capable of preventing groundwater contamination (periodic inspections of the surface shall be made to ensure that the underlying soils and the surrounding land surface are not being contaminated).

ii. All containers shall provide containment of the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge and thereby control litter and other pollution of adjoining areas.

iii. Provisions shall be made for the daily cleanup of the facility, including equipment and waste-handling areas.

iv. Treatment facilities for washdown and contaminated water shall be provided or the wastewater contained, collected, and transported off-site to an approved wastewater treatment facility.

v. Leachate Management. Leachate produced in the composting process:

(a). must be collected and disposed off-site at a permitted facility; or

(b). must be collected, treated, and discharged on-site in accordance with LAC 33:IX.Chapters 23-67; or

(c). may be reused in the composting process as a source of moisture.

vi. Sufficient equipment shall be provided and maintained at all facilities to meet their operational needs.

vii. Odor Management

(a). The production of odor shall be minimized.

(b). Processed air and other sources of odor shall be contained and, if necessary, treated in order to remove odor before discharging to the atmosphere.

viii. Other feedstock and supplements that are blended, composted, or mixed with sewage sludge shall be treated for the effective removal of sharps including, but not limited to, sewing needles, straight pins, hypodermic needles, telephone wires, and metal bracelets.

2. Composters Only

a. Any compost made from sewage sludge that cannot be used according to these regulations shall be reprocessed or disposed in an approved solid waste facility.

b. Composted sewage sludge shall be used, sold, or disposed at a permitted disposal facility within 36 months of completion of the composting process.

3. Facility Closure Requirements

a. Notification of Intent to Close a Facility. All permit holders shall notify the administrative authority in writing at least 90 days before closure or intent to close, seal, or abandon any individual unit within a facility and shall provide the following information:

i. date of planned closure;

ii. changes, if any, requested in the approved closure plan; and

iii. closure schedule and estimated cost.

b. Closure Requirements

i. An insect and rodent inspection is required before closure. Extermination measures, if required, must be provided.

ii. All remaining sewage sludge or a material derived from sewage sludge, other feedstock, and supplements shall be removed to a permitted facility for disposal.

iii. The permit holder shall verify that the underlying soils have not been contaminated in the operation of the facility. If contamination exists, a remediation/removal program developed to meet the requirements of Subparagraph C.3.c of this Section must be provided to the administrative authority.

c. Remediation/Removal Program

i. Surface liquids and sewage sludges containing free liquids shall be dewatered or removed.

ii. If a clean closure is achieved, there are no further post-closure requirements. The plan for clean closure must reflect a method for determining that all waste has been removed, and such a plan shall, at a minimum, include the following:

(a). identification (analysis) of the sewage sludge, other feedstock, and supplements that have entered the facility;

(b). selection of the indicator parameters to be sampled that are intrinsic to the sewage sludge, other feedstock, and supplements that have entered the facility in order to establish clean-closure criteria. Justification of the parameters selected shall be provided in the closure plan;

(c). sampling and analyses of the uncontaminated soils in the general area of the facility for a determination of background levels using the indicator parameters selected. A diagram showing the location of the area proposed for the background sampling, along with a description of the sampling and testing methods, shall be provided;

(d). a discussion of the sampling and analyses of the "clean" soils for the selected parameters after the waste and contaminated soils have been excavated. Documentation regarding the sampling and testing methods (i.e., including a plan view of the facility, sampling locations, and sampling quality-assurance/quality-control programs) shall be provided;

(e). a discussion of a comparison of the sample(s) from the area of the excavated facility to the background sample. Concentrations of the selected parameter(s) of the bottom and side soil samples of the facility must be equal to or less than the background sample to meet clean closure criteria;

(f). analyses to be sent to the Office of Environmental Services, Water and Waste Permits Division, confirming that the requirements of Subparagraph C.3.b of this Section have been satisfied;

(g). identification of the facility to be used for the disposal of the excavated waste; and

(h). a statement from the permit holder indicating that, after the closure requirements have been met, the permit holder will file a request for a closure inspection with the Office of Environmental Services, Water and Waste Permits Division, before backfilling takes place. The administrative authority will determine whether the facility has been closed properly.

iii. If sewage sludge or a material derived from sewage sludge or other feedstock and supplements used in the blending, composting, or mixing process remains at the facility, the closure and post-closure requirements for industrial (Type I) solid waste landfills or non-industrial landfills (Type II), as provided in LAC 33:Part VII, shall apply.

iv. If the permit holder demonstrates that removal of most of the sewage sludge or a material derived from sewage sludge or other feedstock and supplements to achieve an alternate level of contaminants based on indicator parameters in the contaminated soil will be adequately protective of human health and the environment (including groundwater) in accordance with LAC 33:I.Chapter 13, the administrative authority may decrease or eliminate the post-closure requirements.

(a). If levels of contamination at the time of closure meet residential standards as specified in LAC 33:I.Chapter 13 and approval of the administrative authority is granted, the requirements of Clause C.3.c.iv of this Section shall not apply.

(b). Excepting those sites closed in accordance with Subclause C.3.c.iv.(a) of this Section, within 90 days after a closure is completed, the permit holder must have entered in the mortgage and conveyance records of the parish in which the property is located, a notation stating that solid waste remains at the site and providing the indicator levels obtained during closure.

v. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:794 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 32:

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

A. - A.2. ...

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

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

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

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

i. a list of commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, owned or operated by the permit holder or applicant of the facility, for which financial assurance for liability coverage is demonstrated through the use of financial tests, including the amount of liability coverage;

ii. a list of commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, owned or operated by the permit holder or applicant, for which financial assurance for the closure or post-closure care is demonstrated through the use of a financial test or self-insurance by the permit holder or applicant, including the cost estimates for the closure and post-closure care of each facility;

iii. a list of the commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, owned or operated by any subsidiaries of the parent corporation for which financial assurance for closure and/or post-closure is demonstrated through the financial test or through use of self-insurance, including the current cost estimate for the closure or post-closure care for each facility and the amount of annual aggregate liability coverage for each facility; and

iv. a list of commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for closure or post-closure care is not demonstrated through the financial test, self-insurance, or other substantially equivalent state mechanisms, including the estimated cost of closure and post-closure of such facilities.

e. - i.i. ...

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

iii. *closure plans*, as used in the guarantee, refers to the plans maintained as required by the Louisiana commercial preparer or land applier of sewage sludge rules and regulations for the closure and post-closure care of facilities, as identified in the guarantee;

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:796 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 32:

§6909. Pathogens and Vector Attraction Reduction

A. Scope. This Section contains the following:

1. ...

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

3. the alternative vector attraction reduction requirements for sewage sludge that is applied to the land.

B. Special Definitions. In addition to the terms referenced and defined at LAC 33:IX.6901.I, the following definitions apply to this Section.

* * *

C. Pathogens

1. Sewage Sludge—Exceptional Quality

a. - b. ...

c. Exceptional Quality—Alternative 1

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

c.ii. - d. ...

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

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

e. Exceptional Quality—Alternative 3

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

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

f. Exceptional Quality—Alternative 4

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is

prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

ii. ...

iii. The density of viable helminth ova in the sewage sludge shall be less than one per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

g. Exceptional Quality—Alternative 5

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

ii. ...

h. Exceptional Quality—Alternative 6

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

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

vi. Turf grown on land where sewage sludge is applied shall not be harvested for one year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the administrative authority.

vii. - viii. ...

3. Repealed.

a. Repealed.

b. Repealed.

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

d. Repealed.

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

k. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:806 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

§6911. Incineration

A. - A.2. ...

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

* * *

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

3. In conducting the performance tests required in Paragraph C.2 of this Section, the owner or operator shall use as reference methods and procedures the test methods referenced in LAC 33:IX.6901.H or other methods and procedures as specified in this Section, except as provided for in Subparagraph C.2.b of this Section.

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

v. samples of the sewage sludge charged to the incinerator shall be collected in nonporous jars at the beginning of each run and at approximately 1-hour intervals thereafter until the test ends, and "2540 G Total Fixed and Volatile Solids in Solid and Semisolid Samples" shall be used to determine dry sewage sludge content of each sample (total solids residue), except that:

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:809 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

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

A. General Conditions

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

2. Duty to Comply. The permittee must comply with all conditions of an issued final permit. Any permit noncompliance constitutes a violation of the Louisiana Environmental Quality Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

3. Enforcement Actions

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

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

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

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

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

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

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

4. Toxic Pollutants

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

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

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

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

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

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

also furnish to the administrative authority, upon request, copies of records required to be kept by the permit.

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

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

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

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

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

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

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

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

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

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

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

(Biosolids) Use or Disposal Permit. For the purposes of this Section a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

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

B. Proper Operation and Maintenance

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

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

3. Proper Operation and Maintenance

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

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

C. Monitoring and Records

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

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

3. Laboratory Accreditation

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

- i. submitted on behalf of any facility, as defined in R.S.30:2004;
- ii. required as part of any permit application;
- iii. required by order of the department;

iv. required to be included on any monitoring report submitted to the department;

v. required to be submitted by a contractor; or

vi. otherwise required by department regulations.

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

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

D. Reporting Requirements

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

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

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

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

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

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

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

a. All permit applications shall be signed as follows:

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

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

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

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

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

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

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

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

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

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

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

c. Changes to Authorization. If an authorization under Subparagraph D.7.b of this Section is no longer accurate because a different individual or position has

responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Subparagraph D.7.b of this Section must be submitted to the administrative authority prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

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

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

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

- a. the name and address of any permit applicant or permittee;
- b. permit applications, permits, and effluent data;
- c. information required by the Sewage Sludge (Biosolids) Use or Disposal Permit Application forms provided by the administrative authority. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:

Chapter 71. Appendices

§7135. Appendix R—Financial Assurances Documents

Document 1. Liability Endorsement

COMMERCIAL PREPARER OR LAND APPLIER OF
SEWAGE SLUDGE
LIABILITY ENDORSEMENT

[See Prior Text in Liability Endorsement]

Document 2. Certificate of Insurance

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

[See Prior Text in Certificate of Liability Insurance]

Document 3. Letter of Credit

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

[See Prior Text in Irrevocable Letter of Credit]

(A). A final judgment issued by a competent court of law in favor of a governmental body, person, or other entity and against [permit holder's or applicant's name] for sudden and accidental occurrences for claims arising out of injury to persons or property due to the operation of the commercial preparer or land applier of sewage sludge site at the [name of permit holder or applicant] at [site location] as set forth in the Louisiana Administrative Code (LAC), Title 33, Part IX.6907.A.

[See Prior Text in Irrevocable Letter of Credit]

Document 4. Trust Agreement

COMMERCIAL PREPARER OR LAND APPLIER OF
SEWAGE SLUDGE FACILITY

TRUST AGREEMENT/STANDBY TRUST AGREEMENT

This Trust Agreement (the "Agreement") is entered into as of [date] by and between [name of permit holder or applicant], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the state of" or "a national bank" or "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the state of Louisiana, has established certain regulations applicable to the Grantor, requiring that a permit holder or applicant for a permit of a commercial preparer or land applier of sewage sludge processing facility shall provide assurance that funds will be available when needed for [closure and/or post-closure] care of the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected [the Trustee] to be the trustee under this Agreement, and [the Trustee] is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

[See Prior Text in Trust Agreement]

Document 5. Surety Bond

COMMERCIAL PREPARER OR LAND APPLIER OF
SEWAGE SLUDGE FACILITY
FINANCIAL GUARANTEE BOND

Date bond was executed: _____

Effective date: _____

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety: [name and business address]

[agency interest number, site name, facility name, facility permit number, and current closure and/or post-closure amount(s) for each facility guaranteed by this bond]

Total penal sum of bond: \$ _____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where Sureties are corporations acting as cosureties, we the sureties bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally

with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit or liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001, et seq. and specifically 2074(B)(4), to have a permit in order to own or operate the commercial preparer or land applier of sewage sludge facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required by the *Louisiana Administrative Code* (LAC), Title 33, Part IX.6907, when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of the facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to close is issued by the administrative authority or a court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:IX.6907.B and obtain written approval from the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority from the Surety,

THEN, this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to perform as guaranteed by this bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification or amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety has received written authorization for termination of the bond by the administrative authority.

Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.6907.B and the conditions of the commercial preparer or land applier of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

* * *

[See Prior Text in Financial Guarantee Bond]

Document 6. Performance Bond

COMMERCIAL PREPARER OR LAND APPLIER OF SEWAGE SLUDGE FACILITY PERFORMANCE BOND

Date bond was executed: _____

Effective date: _____

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety: [name(s) and business address(es)]

[agency interest number, site name, facility name, facility permit number, facility address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and/or post-closure costs separately)]

Total penal sum of bond: \$ _____

Surety's bond number: _____

Know All Persons by These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where Sureties are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001, et seq. and specifically 2074(B)(4), to have a permit in order to own or operate the commercial preparer or land applier of sewage sludge facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

AND, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide financial assurance as specified in Louisiana Administrative Code (LAC), Title 33, Part IX.6907.B and obtain written approval of the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of LAC 33:IX.6905.C.3, or of its permit, for the facility for which this

bond guarantees performances of closure, the Surety shall either perform closure, in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has been found in violation of the post-closure requirements of the LAC 33:IX.6905.C.3, or of its permit for the facility for which this bond guarantees performance of post-closure, the Surety shall either perform post-closure in accordance with the closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance, as specified in LAC 33:IX.6907.B, and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to closure plans, permit, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have lapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.6907.B and the conditions of the commercial preparer or land applier of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

* * *

[See Prior Text in Facility Performance Bond]

Document 7. Letter of Credit

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

* * *

[See Prior Text in Irrevocable Letter of Credit]

Document 8. Certificate of Insurance

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

* * *

[See Prior Text in Certificate of Insurance]

Document 9. Letter from the Chief Financial Officer

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

* * *

[See Prior Text in Letter]

(A). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, for which liability coverage is being demonstrated through the financial test specified in LAC 33:IX.6907.A. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

(B). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for [insert "closure," "post-closure," or "closure and post-closure"] is demonstrated through a financial test similar to that specified in LAC 33:IX.6907.B or other forms of self-insurance. The current [insert "closure," "post-closure," or "closure and post-closure"] cost estimates covered by the test are shown for each facility:

(C). This firm guarantees through a corporate guarantee similar to that specified in [insert "LAC 33:IX.6907.B" or "LAC 33:IX.6907.A and B"], [insert "liability coverage," "closure," "post-closure," or "closure and post-closure"] care of the following commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, of which [insert the name of the permit holder or applicant] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure and/or post-closure care so guaranteed is shown for each facility:

(D). This firm is the owner or operator of the following commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for liability coverage, closure and/or post-closure care is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:IX.6907.A and/or B. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

* * *

[See Prior Text in Letter]

Document 10. Corporate Guarantee

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

* * *

[See Prior Text in Corporate Guarantee]

(B). [Subsidiary] is the [insert "permit holder," or "applicant for a permit"] hereinafter referred to as [insert "permit holder" or "applicant"] for the following commercial preparer or land applier of sewage sludge facility covered by this guarantee: [List the agency interest number, site name, facility name, and facility permit number. Indicate for each facility whether guarantee is for liability coverage, closure, and/or post-closure and the amount of annual aggregate liability coverage, closure, and/or post-closure costs covered by the guarantee.]

[Fill in Paragraphs (C) and (D) below if the guarantee is for closure and/or post-closure.]

* * *

[See Prior Text in Corporate Guarantee]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:818 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of Environmental Assessment, LR 31:2028 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2519 (October 2005), LR 32:

Mike D. McDaniel, Ph.D.
Secretary

0606#019

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Office of Facility Planning and Control**

**Demolition or Disposing of State Owned Buildings
(LAC 34:III.701)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the provisions of R.S. 39:121, the Division of Administration, Facility Planning and Control hereby gives notice that it is adopting an Emergency Rule to amend LAC 34:III.701, Demolition or Disposing of State Owned Buildings. This rule change is the result of Act 13, 2006 which gives the Director of Facility Planning and Control the authority to approve the immediate demolition of buildings under emergency conditions. Three typographic errors have also been corrected. This is an Emergency Rule change because it allows Facility Planning and Control to demolish buildings that pose a threat to safety without waiting the 30 days required by the existing Rules. This is critical to the safety of workers involved the recovery process for Hurricanes Katrina and Rita and can affect the safety of the public as well.

Title 34

**GOVERNMENT CONTRACTS, PROCUREMENT
AND PROPERTY CONTROL**

Part III. Facility Planning and Control

**Chapter 7. Demolition or Disposing of State Owned
Buildings**

§701. Preface

A. Act 537 of 1982 enacted R.S. 38:2212.2 to provide for the demolition of state buildings. The statute prohibits the demolition of state buildings unless the appropriate legislators have been notified and unless disposition has been approved by the Office of Facility Planning and Control (FPC). Following are the procedures adopted and promulgated pursuant to this statute.

1. - 3. ...

4. Copies of the field engineer inspection report are sent to the user agency and to the Louisiana Property Assistance Agency. Contents of the report may require a response from the agency.

5. If it is determined by the office of facility planning and control that a building or structure has been damaged as a result of fire, hurricane, or natural disaster and imminent danger is presented to life or property, the director of facility planning and control, division of administration, may approve a request to raze or demolish a building or structure immediately after legislative notification has been issued.

6. If capital outlay funds are to be used for demolition, Facility Planning and Control will authorize contracts to be awarded for the demolition. When the demolition has been completed, Facility Planning and Control will notify the State Land Office and Office of Risk Management so the building can be removed from the statewide building inventory and insurance coverage will be deleted.

7. If other than capital outlay funds are to be used, the user agency will be responsible for demolition of the structure in accordance with state purchasing laws and regulations. When the demolition has been completed the user agency must notify the State Land Office and the Office of Risk Management so the building can be removed from the statewide building inventory and insurance coverage will be deleted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 20:47 (January 1994), amended LR 32:

Jerry W. Jones
Director

0606#043

DECLARATION OF EMERGENCY

**Office of the Governor
Office of Homeland Security
and Emergency Preparedness**

**Mandatory Evacuation of Designated Persons
by Local Government in Advance of Hurricanes
(LAC 55:XXI.Chapters 1 and 3)**

Under the authority of R.S. 29:727(E)(13) and in accordance with R.S. 49:953 (B), the Governor's Office of Homeland Security and Emergency Preparedness has adopted an Emergency Rule creating regulations that provide for emergency assessments, evacuation, and sheltering plans. The Governor's Office of Homeland Security and Emergency Preparedness finds that the governor and the legislature recognized an imminent peril to the public health, safety and welfare of certain identified at risk classes of people who live in areas of the state which are subject to hurricanes, by adoption of the requirements in Act 36 of the First Extraordinary Session of 2006 that rules and standards for evacuations be promulgated within a shorter time delay than that provided in the Administrative Procedure Act, R.S. 49:953(A).

These emergency regulations are adopted for the well-being, safety and protection of the citizens and visitors of the state of Louisiana who find themselves in areas subject to the dangers of hurricanes is paramount. This action preempts the normal delays for adoption of rules pursuant to the Administrative Procedure Act.

**Title 55
PUBLIC SAFETY**

**Part XXI. Homeland Security and Emergency
Preparedness**

Chapter 1. General Provisions

§101. Overview

A. Act 35 of the First Extraordinary Session of 2006, effective on March 1, 2006, established the Governor's Office of Homeland Security and Emergency Preparedness in R.S. 29:725.

B. Revised Statutes 29:727(E)(13) added by Act 36 of the First Extraordinary Session of 2006, effective February 23, 2006, requires the Office of Homeland Security and Emergency Preparedness, prior to May 31, 2006 to promulgate standards and regulations in accordance with the Administrative Procedure Act for local governments when a mandatory evacuation has been ordered for evacuation of people located in high risk areas utilizing all available modes of transportation, including but not limited to school and municipal buses, government-owned vehicles, vehicles provided by volunteer agencies, trains and ships in advance of the storm to public shelters located outside of the risk area with priority consideration being given to the special needs of the following classes of people:

1. people with specific special needs such as the elderly and the infirm;
2. tourists;
3. those who refuse to leave;
4. those without personal transportation.

C. Revised Statutes 29:727(E)(14) added by Act 36 of the First Extraordinary Session of 2006, effective February 23, 2006, requires the Office of Homeland Security and Emergency Preparedness, prior to May 31, 2006 to promulgate standards and regulations in accordance with the Administrative Procedure Act for local governments when a mandatory evacuation has been ordered for the evacuation or safe housing of essential workers located in high risk areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

§103. Goals and Objectives

A. The goals of these regulations are:

1. to protect citizens who cannot protect themselves when threatened or endangered by an approaching hurricane;
2. to reduce loss of life due to impediments to self-evacuation from an approaching hurricane;
3. to protect essential workers whose jobs require that they remain in harm's way before, during and after a hurricane; and
4. to protect personal liberty while preserving law and order in areas evacuated due to imminent threat of a hurricane.

B. The objectives of these regulations are:

1. to identify the population which lacks means to self-evacuate;
2. to identify and provide for the use of available transportation resources for use by local governments during mandatory evacuations;
3. to identify and provide means of protection for essential workers whose employment or commission

requires that they remain in areas susceptible to damage and destruction wrought by hurricanes; and

4. to provide for establishment of rules by local government for citizens in high risk areas who refuse to leave when a mandatory evacuation is ordered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

§105. Definitions

At Risk Population—people who fall within the following non-exclusive categories:

1. those without means of personal transportation;
2. the infirm who are not living in a public or private health care facility;
3. nursing home residents;
4. private Hospital patients;
5. other special needs who are not confined to a health care facility;
6. hotel and motel guests.

High Risk Area—any parish that is located in whole or in part below Interstate 10 or Interstate 12 in the state of Louisiana.

Local Government—a parish and municipality of the state of Louisiana.

Essential Worker—persons working in public safety, government, disaster response, health care, or private business as designated and deemed necessary and/or critical for disaster response by their employer or by virtue of their official commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

Chapter 3. Risk Assessment

§301. Biennial Risk Assessment

A. Every parish and municipality shall perform a biennial risk assessment for the at risk population with the results thereof to be provided to the Governor's Office of Homeland Security on or before December 1, 2006, and on or before that date every second year thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

§303. Evacuating and Sheltering Private Nursing Home Residents

A. The evacuation and sheltering of private nursing home residents and private hospital patients is and shall remain the primary responsibility of the host health care facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

§305. Municipal Risk Assessment

A. The municipal risk assessment shall consist of a survey of the people living within the corporate limits to identify the people in each category of the at risk population defined herein and the essential workers as defined herein,

and to determine whether the individuals so identified may need sheltering in a general population shelter or a special needs shelter as those terms are defined by the Louisiana Department of Health and Hospitals. The results of the municipal survey shall be furnished to the parish office of homeland security and emergency management established pursuant to R.S. 29:727(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

§307. Parish Risk Assessment

A. The parish risk assessment shall consist of a survey of the people living outside the corporate limits of any municipality to identify the people in the each category of the at risk population defined herein and the essential workers as defined herein, and to determine whether the individuals so identified may need sheltering in a general population shelter or a special needs shelter as those terms are defined by the Louisiana Department of Health and Hospitals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

§309. Transportation

A. Every parish and municipality shall prepare an inventory of all available modes of transportation, including but not limited to school and municipal buses, government-owned vehicles, vehicles provided by volunteer agencies, trains and ships for use in a mandatory evacuation. A copy of the municipal inventory shall be provided to the parish office of homeland security and emergency management established pursuant to R.S. 29:727(B). A copy of the combined parish and municipal inventory shall be submitted biennially beginning on or before December 1, 2006, and on or before that date in every second year thereafter to the Governor's Office of Homeland Security and Emergency Management.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

§311. Evacuation and Sheltering Plan

A.1. The parish office of homeland security and emergency management established pursuant to R.S. 29:727(B), using the combined list of at risk population and essential workers and the combined list of available means of transportation, shall develop an evacuation and sheltering plan for each category of at risk population to include at a minimum:

- a. use of available means of transportation for evacuation of at risk population;
- b. means of notification of the at risk population of a mandatory evacuation;
- c. means of notification of at risk population of available transportation;
- d. determination of individuals and facilities where risk of sheltering in place outweighs the risk of loss of life during the evacuation process;

e. coordination of transportation resources with a shelter destination outside of the impact area;

f. provisions for medical emergencies which occur during the evacuation process;

g. ways and means to execute the evacuation and sheltering plan within 36 hours of declaration of voluntary evacuation and within 12 hours of declaration of mandatory evacuation.

2. The plan shall be submitted to GOHSEP on or before March 1, 2007. Early compliance is encouraged.

B. The parish office of homeland security and emergency management shall develop an evacuation and sheltering plan for essential workers which shall include at a minimum provisions for food, water, and shelter for at least 72 hours post landfall of any hurricane.

C. Each parish and municipality shall make provisions for those citizens who refuse to leave when a mandatory evacuation is ordered, which provisions shall respect the rights of personal liberty and freedom of all citizens, while protecting and preserving law and order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

Col. Perry "Jeff" Smith, CPA
Acting Director

0606#041

DECLARATION OF EMERGENCY

Department of Health and Hospitals Board of Medical Examiners

Temporary Permit For Acupuncturists' Assistants (LAC 46:XLV.2131)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), which allows the Louisiana State Board of Medical Examiners to use emergency procedures to establish rules, and under the authority of R.S. 37:1270(B), and 37:1360, the Board of Medical Examiners hereby declares that emergency action is necessary in order to accommodate a continuing need for the provision of gratuitous health care services to victims, responders and relief workers of Hurricanes Katrina and Rita by volunteer acupuncturists' assistants. This Emergency Rule becomes effective on June 1, 2006, and shall remain in effect for the maximum period allowed by law or until a final Rule is promulgated, whichever occurs first. For more information concerning this Emergency Rule you may contact Rita Arceneaux, Executive Assistant, at (504) 568-6820.

This Emergency Rule is available on the internet at www.lsbme.louisiana.gov (Temporary Licensure), and may be obtained from the board office from 8 a.m. until 4:30 p.m. Monday through Friday, 630 Camp Street, New Orleans, LA 70130. Copies of this Emergency Rule may also be requested by telephone at (504) 568-6820.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 21. Acupuncturists and Acupuncturists' Assistants

Subchapter F. Restricted Licensure, Permits

§2131. Temporary Permit

A. The board may issue a temporary permit to an acupuncturist's assistant, valid for a period of not more than 60 days, to provide voluntary, gratuitous acupuncture services in this state during a public health emergency and for such periods thereafter as the Louisiana Department of Health and Hospitals ("DHH") shall deem the need for emergency services to continue to exist, at sites specified by DHH or approved by the board.

B. To be eligible for issuance of such a permit an individual shall:

1. hold a current, unrestricted license in good standing issued by the licensing authority of any state to practice as an acupuncturist's assistant;

2. prior to providing such services present or cause to be presented to the board:

a. indisputable personal identification;

b. a copy of his or her license to practice as an acupuncturist's assistant or such other information as may be deemed satisfactory to the board by which to verify state licensure;

c. a completed application containing such information as may be required by the board; and

d. notification of intent to practice on a form provided by the board, signed by a physician licensed to practice medicine in this state who will fulfill the functions of a supervising physician as described in this Section. An individual is responsible for updating the board should any of the information required and submitted on the applicant's notice of intent change after a temporary permit has been issued under this Section.

C. To be eligible for approval as a supervising physician under this Section a physician shall:

1. possess a current, unrestricted license to practice medicine in Louisiana;

2. submit a completed application containing such information as may be required by the board.

D. Although a physician must notify the board each time the physician intends to undertake the supervision of an acupuncturist's assistant under this Section, registration with the board is only required once. Notification of supervision of new or additional acupuncturist's assistants by a registered supervising physician shall be deemed given to the board upon the acupuncturist's assistant's filing with the board a notice of intent to practice in accordance with §2131.B of this Section.

E. The board shall maintain a list of physicians who are registered to supervise acupuncturists' assistants under this Section. Each registered physician is responsible for updating the board should any of the information required and submitted on the physician's application change after the physician has become registered.

F. An acupuncturist's assistant holding a permit under this Section shall practice in this state only on a voluntary,

gratuitous basis, shall perform only those acupuncture services authorized by this Section, and shall practice only at sites specified by DHH or approved by the board.

G. Acupuncture services performed by an individual issued a permit under this Section shall be limited to auricular acupuncture (insertion of disposable needles at a specified combination of points on the surface of the outer ear) utilizing the five-point protocol adopted by the National Acupuncture Detoxification Association and approved by the supervising physician. Such services may be performed under the general direction and supervision, rather than patient-specific order, of the supervising physician. All services shall be documented in written form by the acupuncturist's assistant and available for review by the supervising physician but need not be countersigned. The supervising physician shall be available during normal working hours by telephonic or other means of communication to address any questions or concerns that may arise from the provision of acupuncture services under this Section.

H. A temporary permit may be issued upon such terms, conditions, limitations or restrictions as to time, place, nature, and scope of practice as are, in the judgment of the board, deemed necessary or appropriate to its responsibilities under law. The board may, in addition, waive or modify any of the requirements of Chapters 21 and 51 of these rules, applicable to certification as an acupuncturist's assistant, that it may deem necessary or appropriate to effectuate the purposes of this Section.

I. An acupuncturist's assistant shall visibly display a permit issued under this Section, or such other identifying information as the board may specify, in plain view on his or her person at all times while exercising the privileges of such permit.

J. A temporary permit creates no right or entitlement to certification as an acupuncturist's assistant or renewal of the permit after its expiration. A temporary permit shall expire and become null and void on the earlier of:

1. 60 days from the date on which it was issued;

2. a date specified on the permit less than 60 days from the date of issuance;

3. the date the acupuncturist's assistant's term of voluntary, gratuitous service is terminated; or

4. the date on which the acupuncturist's assistant's relationship with the supervising physician, identified in the notice of intent, terminates.

K. The board may, in its discretion, extend or renew for one or two additional 60-day periods a permit that has expired provided that all conditions prerequisite to original issuance are satisfied.

L. Following termination of a declaration of emergency the board may issue, extend or renew a 60-day permit under this Section during such period as DHH shall deem the need for emergency services to continue to exist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1275, R.S. 37:1360, and R.S. 49:953(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 32:

Kim Edward LeBlanc, M.D., Ph.D
President

0606#002

DECLARATION OF EMERGENCY

Department of Health and Hospitals Board of Veterinary Medicine

Veterinary Practice
(LAC 46:LXXXV.309)

The Department of Health and Hospitals, Board of Veterinary Medicine (the "board") has adopted this Emergency Rule, effective June 9, 2006, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953, and the Veterinary Practice Act, R.S. 37:1569, as well as R.S. 29:769(E) as amended in Act No. 207 of the 2006 Regular Session of the Louisiana Legislature which became effective upon the governor's signature on June 2, 2006. The Emergency Rule is to remain in effect for a period of 120 days or until adoption of the final Rule, whichever occurs first.

In keeping with its function as set forth by the State Legislature in R.S. 29:769(E), as amended in the 2006 Regular Session, the board has developed and adopted this Emergency Rule thereby creating the process for adopting of a future Emergency Rule implementing temporary registration in Louisiana, during a public health emergency lawfully declared as such by the governor, for out of state veterinarians or veterinary technicians, whose licenses, certifications or registrations are current and unrestricted in another jurisdiction of the United States.

The 2006 hurricane season began June 1, 2006. The immediate implementation of this Emergency Rule is in the best interest for the protection of the public health and safety in the event a public health emergency is lawfully declared by the governor prior to the final promulgation of the Rule through regular rule-making procedure. This Emergency Rule will allow the implementation by subsequent Emergency Rule for the temporary registration in Louisiana, during a public health emergency lawfully declared as such by the governor, for out of state veterinarians or veterinary technicians, whose licenses, certifications or registrations are current and unrestricted in another jurisdiction of the United States. The Emergency Rule will not limit or adversely impact the practices of Louisiana licensed veterinarians or Louisiana registered veterinary technicians in hospitals, clinics or mobile clinics at the present time or during a declared state of public health emergency.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXXV. Veterinarians

Chapter 3. Licensure Procedures

§309. Temporary Registration during a Declared Public Health Emergency.

A. In a public health emergency lawfully declared as such by the governor of Louisiana, the requirement for a Louisiana license (veterinarian) or Louisiana registration (veterinary technician) may be suspended by the board through its emergency rule-making authority at that time to those out of state veterinarians and/or veterinary technicians, whose licenses, certifications or registrations are current and unrestricted in another jurisdiction of the United States, for a

period of time not to exceed the duration and scope of R.S. 29:769(E), as more particularly set forth in this rule.

B. The emergency rule implemented by the board pursuant to the provisions of the Administrative Practice Act shall address the necessity for such an emergency rule and the specificity necessary to address the needs of the particular declared emergency at issue. Such information will be posted on the board's Internet website along with the appropriate forms for review and use by interested parties.

C. Accordingly, the following requirements for temporary registration may be imposed pursuant to the emergency rule issued and/or any other requirements which more properly address the needs of the particular declared emergency.

D. A veterinarian or veterinary technician not licensed, certified or registered in Louisiana, whose licenses, certifications or registrations are current and unrestricted in another jurisdiction of the United States, may gratuitously provide veterinary services if:

1. the veterinarian or veterinary technician has photo identification and a license to verify a current and unrestricted license, certification or registration in another jurisdiction of the United States, and properly registers with the board prior to providing veterinary services in Louisiana as follows;

2. the veterinarian or veterinary technician is engaged in a legitimate relief effort during the emergency period, and provides satisfactory documentation to the board of the location site(s) that he will be providing gratuitous veterinary services;

3. the veterinarian or veterinary technician shall comply with the Louisiana Veterinary Practice Act, board rules, and other applicable laws, as well as practice in good faith, and within the reasonable scope of his skills, training, and ability; and

4. the veterinarian or veterinary technician renders veterinary services on a gratuitous basis with no revenue of any kind to be derived whatsoever from the provision of veterinary services within the state of Louisiana.

E. The authority provided for in the emergency rule shall be applicable for a period of time not to exceed 60 days at the discretion of the board, with the potential extension of up to two additional periods not to exceed 60 days for each extension as determined appropriate and necessary by the board.

F. All interested veterinarians or veterinary technicians shall submit a copy of their respective current and unrestricted licenses, certifications or registrations issued in other jurisdictions of the United States and photograph identification, as well as other requested information, to the Louisiana Board of Veterinary Medicine office for registration with this agency prior to gratuitously providing veterinary services in Louisiana.

G. Should a qualified veterinarian or veterinarian technician registered with the board thereafter fail to comply with any requirement or condition established by this rule, the board may terminate his registration upon notice and hearing.

H. In the event a veterinarian or veterinarian technician fails to register with the board, but practices veterinary medicine, whether gratuitously or otherwise, then such

conduct will be considered the unlawful practice of veterinary medicine and prosecuted accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 32:

Wendy Parrish
Administrative Director

0606#047

DECLARATION OF EMERGENCY

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

Family Planning Waiver (LAC 50:XXII.Chapters 21-27)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XXII.Chapters 21-27 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing implemented a family planning research and demonstration project under the authority of a Section 1115 waiver by Emergency Rule (*Louisiana Register*, Volume 32, Number 5). This waiver provides family planning services to women from age 19 through 44 years old with income at or below 200 percent of the federal poverty level. The bureau now proposes to amend the provisions governing the family planning waiver to clarify the recipient eligibility criteria and the reimbursement methodology, and to establish an official name for the waiver.

This action is being taken to promote the health and welfare of women by improving access to family planning services for women in the targeted population. It is anticipated that the implementation of this Emergency Rule will increase expenditures for family planning services by approximately \$24,879,968 for state fiscal year 2006-2007.

Effective June 20, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing the implementation of the Family Planning Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXII. 1115 Demonstration Waivers

Subpart 3. Family Planning Waiver

Chapter 21. General Provisions

§2101. Purpose

A. The family planning waiver, called Take Charge, will increase access to family planning services for women who currently are not eligible for such services, but who would be eligible for Medicaid coverage, based on their income, if they became pregnant.

B. The primary goals of this family planning waiver are to:

1. increase access to services which will allow management of reproductive health;
2. reduce the number of unintended pregnancies; and
3. decrease Medicaid expenditures from prenatal and delivery related services for women in the targeted population.

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 32:

§2103. Enrollment

A. Family planning waiver services will be available to eligible women according to the following enrollment caps.

1. For the first year, priority will be set to enroll up to 25,000 women whose pregnant woman certifications are being closed.

a. On a first-approved basis, up to 50,000 additional women who are not eligible for participation in the priority group established in Paragraph A.1 above may be enrolled until a cap of 75,000 enrollees has been reached for the first waiver year. Enrollment caps cannot be exceeded.

2. For the second year, priority will be set to enroll up to 22,250 women whose pregnant woman certifications are being closed.

a. On a first-approved basis, additional enrollees, including those established in Paragraph A.2 above, will be allowed to enroll until a cap of 110,250 enrollees has been reached for the second waiver year. Enrollment caps cannot be exceeded.

B. Additional enrollment caps for subsequent years will be published in Potpourri notices.

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 32:

Chapter 23. Eligibility

§2301. Recipient Qualifications

A. Family planning waiver services shall be provided to women who:

1. are 19 through 44 years of age;
2. have family income at or below 200 percent of the federal poverty level;

3. are not eligible for inclusion in any other Medicaid program or State Children's Health Insurance Program (SCHIP); and

4. do not have Medicare or other private health insurance coverage other than a single coverage policy which provides limited benefits, such as a dental or vision policy.

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 32:

Chapter 25. Services

§2501. Covered Services

A. Services provided in this family planning waiver include:

1. annual physical exams;

2. necessary lab tests; and
3. contraceptive services, including sterilizations and Food and Drug Administration (FDA) approved family planning pharmaceuticals, devices, methods or supplies.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§2503. Service Limits

A. There is a limit of four visits per calendar year for services rendered by a physician, nurse practitioner, physician assistant, or nurse.

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 32:

§2505. Service Delivery

A. Family planning waiver services may be delivered through any enrolled Medicaid provider whose scope of practice includes family planning 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 32:

Chapter 27. Reimbursement

§2701. Reimbursement Methodology

A. All Medicaid providers, including federally qualified health centers, rural health clinics and tribal 638 facilities, shall be reimbursed for family planning waiver services at the Medicaid fee-for-service rates.

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 32:

Implementation of this proposed Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

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

0606#064

DECLARATION OF EMERGENCY

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

Hospital Services—Inpatient Hospitals
Disproportionate Share Hospital Payment Methodologies
(LAC 50:V.Chapter 3)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is

promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt the provisions governing the disproportionate share payment methodologies for hospitals in May of 1999 (*Louisiana Register*, Volume 25, Number 5). The May 20, 1999 Rule was later amended to change the criteria used to define rural hospitals and to clarify the policy governing final payments and adjustments (*Louisiana Register*, Volume 29, Number 1).

The Benefits Improvement and Protection Act of 2000 made provisions for public hospitals to receive disproportionate share hospital adjustment payments up to 175 percent of their allowable uncompensated care cost. Act 1024 of the 2001 Regular Session directed the Department of Health and Hospitals, as the federally designated Medicaid state agency, to specify in the Medicaid State Plan how uncompensated care is defined and calculated and to determine what facilities qualify for uncompensated care payments and the amount of the payments. In determining payments, the department shall prioritize local access to primary health care for the medically indigent and uninsured, and shall not include unreimbursed costs resulting from excess inpatient hospital capacity. For the period July 1, 2003 through June 30, 2005, the state's Medicaid uncompensated care payments shall be distributed in proportion to the amount and type of uncompensated care reported by all qualified facilities as required by Act 491 of the 2001 Regular Session. Further, Senate Concurrent Resolution 94 of the 2001 Regular Session and Senate Concurrent Resolution 27 of the 2002 Regular Session of the Louisiana Legislature requested the Department of Health and Hospitals, the Louisiana State University Health Sciences Center-Health Services Division, and the Louisiana State University Health Sciences Center-Shreveport to study and recommend common acute hospital payment methodologies for state and non-state hospitals participating in the Medicaid Program and the Medicaid Disproportionate Share Program. In accordance with the Benefits Improvement and Protection Act of 2000 and the findings and recommendations contained in the final reports of the study committees, the department repealed and replaced all provisions governing disproportionate share hospital payments (*Louisiana Register*, Volume 29, Number 6). Acts 14, 526 and 1148 of the 2003 Regular Session of the Louisiana Legislature directed the department to amend the qualifying criteria and the payment methodology for disproportionate share payments to small rural hospitals. In compliance with Acts 14, 526 and 1148, the bureau amended the June 20, 2003 Emergency Rule (*Louisiana Register*, Volume 29, Number 9). The department subsequently promulgated an Emergency Rule to repeal and replace all rules governing disproportionate share hospital payment methodologies (*Louisiana Register*, Volume 31, Number 6).

Act 182 of the 2005 Regular Session of the Louisiana Legislature, enacted as the Healthcare Affordability Act, established the Louisiana Healthcare Affordability Trust Fund as a special fund in the state treasury for the purposes of preserving and enhancing the availability of inpatient and

outpatient hospital care for all patients, enhancing the stability of Medicaid funding by capturing a reliable source of funding for a portion of the state's obligation, and easing "cost-shifting" to employers and private insurers by providing reimbursement for a portion of hospitals' uncompensated care and Medicaid underpayment. The monies in the fund shall be generated by a provider fee levied on all hospitals licensed by the state under R.S. 40:2100 et seq., except for those hospitals specifically exempted by the provisions contained in Act 182. In compliance with Act 182, the department amended the June 26, 2005 Emergency Rule governing the disproportionate share payment methodologies for hospitals (*Louisiana Register*, Volume 31, Number 7).

Act 323 of the 2005 Regular Session of the Louisiana Legislature amended R.S. 40:1300.143(3)(a)(xii), relative to the Rural Hospital Preservation Act, to provide an additional definition of a rural hospital. An Emergency Rule was promulgated to amend the definition of a small rural hospital as contained in the June 26, 2005 Emergency Rule, in compliance with Act 323 (*Louisiana Register*, Volume 31, Number 9). The bureau amended the June 26, 2005 Emergency Rule to incorporate the provisions of the July 1, 2005 and September 1, 2005 Emergency Rules (*Louisiana Register*, Volume 31, Number 10). This Emergency Rule is being promulgated to continue the provisions of the October 25, 2005 Emergency Rule. This action is being taken to enhance federal revenue.

Effective June 24, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions, as contained in October 25, 2005 Emergency Rule, governing disproportionate share hospital payment methodologies.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Medical Assistance Program—Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Disproportionate Share Hospital Payment Methodologies

§301. General Provisions

A. The reimbursement methodology for inpatient hospital services incorporates a provision for an additional payment adjustment for hospitals serving a disproportionate share of low income patients.

B. The following provisions govern the disproportionate share hospital (DSH) payment methodologies for qualifying hospitals.

1. Total cumulative disproportionate share payments under any and all disproportionate share hospital payment methodologies shall not exceed the federal disproportionate share state allotment for Louisiana for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The department shall make necessary downward adjustments to hospital's disproportionate share payments to remain within the federal disproportionate share allotment and the state disproportionate share appropriated amount.

2. Appropriate action including, but not limited to, deductions from DSH, Medicaid payments and cost report settlements shall be taken to recover any overpayments resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

3. DSH payments to a hospital determined under any of the methodologies described in this Chapter 3 shall not exceed the hospital's net uncompensated cost as defined in §§305-313 or the disproportionate share limits as defined in Section 1923(g)(1)(A) of the Social Security Act for the state fiscal year to which the payment is applicable. Any Medicaid profit shall be used to offset the cost of treating the uninsured in determining the hospital specific DHH limits.

4. Qualification is based on the hospital's latest filed cost report and related uncompensated cost data as required by the department. Qualification for small rural hospitals is based on the latest filed cost report. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments with the exception of public state-operated hospitals, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

5. Hospitals shall be notified by letter at least 60 days in advance of calculation of DSH payment to submit documentation required to establish DSH qualification. Only hospitals that timely return DSH qualification documentation will be considered for DSH payments. The required documents are:

- a. obstetrical qualification criteria;
- b. low income utilization revenue calculation;
- c. Medicaid cost report; and
- d. uncompensated cost calculation.

6. Hospitals and/or units which close or withdraw from the Medicaid Program shall become ineligible for further DSH pool payments for the remainder of the current DSH pool payment cycle and thereafter.

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 32:

§303. Disproportionate Share Hospital Qualifications

A. In order to qualify as a disproportionate share hospital, a hospital must:

1. have at least two obstetricians who have staff privileges and who have agreed to provide obstetric services to individuals who are Medicaid eligible. In the case of a hospital located in a rural area (i.e., an area outside of a metropolitan statistical area), the term *obstetrician* includes any physician who has staff privileges at the hospital to perform nonemergency obstetric procedures; or
2. treat inpatients who are predominantly individuals under 18 years of age; or
3. be a hospital which did not offer nonemergency obstetric services to the general population as of December 22, 1987; and
4. have a utilization rate in excess of one or more of the following specified minimum utilization rates:

a. Medicaid utilization rate is a fraction (expressed as a percentage). The numerator is the hospital's number of Medicaid (Title XIX) inpatient days. The denominator is the total number of the hospital's inpatient days for a cost reporting period. Inpatient days include newborn and psychiatric days and exclude swing bed and skilled nursing days. Hospitals shall be deemed disproportionate share providers if their Medicaid utilization rates are in excess of the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments; or

b. hospitals shall be deemed disproportionate share providers if their low-income utilization rates are in excess of 25 percent. Low-income utilization rate is the sum of:

i. the fraction (expressed as a percentage). The numerator is the sum (for the period) of the total Medicaid patient revenues plus the amount of the cash subsidies for patient services received directly from state and local governments. The denominator is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the cost reporting period from the financial statements; and

ii. the fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for inpatient services which are attributable to charity (free) care in a period, less the portion of any cash subsidies as described in §303.A.4.b.i in the period which are reasonably attributable to inpatient hospital services. The denominator is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero. This numerator shall not include contractual allowances and discounts (other than for indigent patients ineligible for Medicaid), i.e., reductions in charges given to other third-party payers, such as HMOs, Medicare, or Blue Cross; nor charges attributable to Hill-Burton obligations. A hospital providing "free care" must submit its criteria and procedures for identifying patients who qualify for free care to the Bureau of Health Services Financing for approval. The policy for free care must be posted prominently and all patients must be advised of the availability of free care and the procedures for applying. Hospitals not in compliance with free care criteria will be subject to recoupment of DSH and Medicaid payments; or

5. effective November 3, 1997, be a small rural hospital as defined in §311.A.1.a-h; and

6. any hospital licensed by the state under R.S. 40:2100 et seq., but does not include:

- a. any hospital owned by the state;
- b. any hospital owned by the United States or any agency or department thereof;
- c. any hospital that generally seeks no reimbursement for its services;
- d. rural hospitals as defined in R.S. 40:1300.143; and
- e. hospitals certified by Medicare as separately licensed long term acute care, rehabilitation or psychiatric hospitals; and

7. effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

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 32:

§305. High Uninsured Hospitals

A. Definitions

High Uninsured Utilization Rate Hospital—a hospital that has an uninsured utilization rate in excess of the mean, plus one standard deviation of the uninsured utilization rates for all hospitals.

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

B. DSH payments to individual high uninsured hospitals shall be calculated as follows.

1. Inpatient High Uninsured. Payments shall be equal to 100 percent of the hospital's cost of furnishing inpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients. DSH payments calculated under this payment methodology shall be subject to the adjustment provision below in Subsection E; and/or

2. Outpatient High Uninsured. Payments shall be equal to 100 percent of the hospital's cost of furnishing outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients. DSH payments calculated under this payment methodology shall be subject to the adjustment provision in Subsection E below.

C. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid, other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an annual attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and

2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

D. DSH payments to individual high uninsured hospitals shall be equal to 100 percent of the hospital's net uncompensated costs and subject to the adjustment provision in §301.B.1-6.

E. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each high uninsured hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying high uninsured hospitals during the state fiscal year; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

F. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

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 32:

§307. Other Uninsured Hospitals

A. Definitions

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

Other Uninsured Utilization Rate Hospital—a qualifying hospital that is not included in §§305, 311, or 313.

B. DSH payments to an individual other uninsured hospital shall be calculated as follows:

1. Private Other Uninsured. Hospitals shall be compensated for at least 75 percent of their uncompensated care as reported on the latest uncompensated care filing prior to May 31 of the previous fiscal year. Any hospital which has not filed previously or is not yet required by regulation to make an uncompensated care filing, or which is without a full year cost report, may file an estimate of its uncompensated costs within 45 days of the end of the quarter in which such care was provided. Any such hospital otherwise eligible for uncompensated care cost compensation shall be included in the payment to be made in the quarter in which the estimate is filed, subject to final adjustment as otherwise provided. Except as hereinafter provided, the uncompensated care payment shall be paid in equal quarterly installments due on the fifteenth day of the third month in each calendar quarter. The amount of the fourth quarter payments in any fiscal year for inpatient services, outpatient services, inpatient psychiatric services and disproportionate share hospital payments shall be reduced or increased proportionately as necessary to achieve the total annual cost to the state, including federal financial participation, of implementing this amended reimbursement methodology. Amounts due to individual hospitals shall be adjusted as necessary to reflect any differences between payments during the preceding 12 months to hospitals for estimates of uncompensated care and the amount actually due during the period based on uncompensated care filings by those hospitals.

2. Public Other Uninsured. Non-state public hospitals, except small rural hospitals, shall certify to the Department of Health and Hospitals the state nonfederal share of expenditures for all of their Medicaid claims and shall provide a certification of incurred uncompensated care costs that constitute public expenditures that are eligible for financial participation under Title XIX of the Social Security

Act. Both certifications shall be submitted in a form satisfactory to the department at the earliest possible date after July 1, but no later than October 1 of each fiscal year beginning July 1, 2005. The reimbursement methodology for the hospitals participating in the certification, except small rural hospitals, shall be 100 percent of their allowable costs.

C. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid, and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and
2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:
 - a. patient age;
 - b. family size;
 - c. number of dependent children; and
 - d. household income.

D. In the event it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each other uninsured hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying other uninsured hospitals during the state fiscal year; then
2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

E. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

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 32:

§309. All Other Qualifying Hospitals Not Included in Any Other Group

A. Definition

All Other Qualifying Hospitals Not Included in Any Other Group—a hospital that meets the federal DSH statutory utilization requirements in §303.A.4.a-b.ii. and is not included in any other qualifying group.

B. DSH payments to individual other qualifying hospitals shall be based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the

Medicaid days pool is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

C. Disproportionate share payments for individual hospitals in this group shall be calculated based on the product of the ratio determined by:

1. dividing each qualifying hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by the department from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified hospitals included in this group. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days; then
2. multiplying by \$248,267 which is the state appropriation for disproportionate share payments allocated for this pool of hospitals for SFY 2005-2006.

D. A pro rata decrease necessitated by conditions specified in §301.B.1-6 for hospitals in this group will be calculated based on the ratio determined by:

1. dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in this group; then
2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

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 32:

§311. Small Rural Hospitals

A. Definitions

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients. Any uncompensated costs of providing health care services in a rural health clinic licensed as part of a small rural hospital as defined below shall be considered outpatient hospital services in the calculation of uncompensated costs.

Small Rural Hospital—a hospital (excluding a long-term care hospital, rehabilitation hospital, or freestanding psychiatric hospital but including distinct part psychiatric units) that meets the following criteria:

- a. had no more than 60 hospital beds as of July 1, 1994 and is located in a parish with a population of less than 50,000 or in a municipality with a population of less than 20,000; or
- b. meets the qualifications of a sole community hospital under 42 CFR §412.92(a); or
- c. had no more than 60 hospital beds as of July 1, 1999 and is located in a parish with a population of less than 17,000 as measured by the 1990 census; or
- d. had no more than 60 hospital beds as of July 1, 1997 and is a publicly-owned and operated hospital that is located in either a parish with a population of less than

50,000 or a municipality with a population of less than 20,000; or

e. had no more than 60 hospital beds as of June 30, 2000 and is located in a municipality with a population, as measured by the 1990 census, of less than 20,000; or

f. had no more than 60 beds as of July 1, 1997 and is located in a parish with a population, as measured by the 1990 and 2000 census, of less than 50,000; or

g. was a hospital facility licensed by the Department that had no more than 60 hospital beds as of July 1, 1994, which hospital facility:

i. has been in continuous operation since July 1, 1994;

ii. is currently operating under a license issued by the department; and

iii. is located in a parish with a population, as measured by the 1990 census, of less than 50,000; or

h. has no more than 60 hospital beds or has notified the department as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located in a municipality with a population of less than 13,000 and in a parish with a population of less than 32,000 as measured by the 2000 census; or

i. has no more than 60 hospital beds or has notified DHH as of December 31, 2003 of its intent to reduce its number of hospital beds to no more than 60 and is located:

i. as measured by the 2000 census, in a municipality with a population of less than 7,000;

ii. as measured by the 2000 census, in a parish with a population of less than 53,000; and

iii. within 10 miles of a United States military base; or

j. has no more than 60 hospital beds as of September 26, 2002 and is located:

i. as measured by the 2000 census, in a municipality with a population of less than 10,000; and

ii. as measured by the 2000 census, in a parish with a population of less than 33,000; or

k. has no more than 60 hospital beds as of January 1, 2003 and is located:

i. as measured by the 2000 census, in a municipality with a population of less than 11,000; and

ii. as measured by the 2000 census, in a parish with a population of less than 90,000; or

l. has no more than 40 hospital beds as of January 1, 2005, and is located:

i. in a municipality with a population of less than 3,100; and

ii. in a parish with a population of less than 15,800 as measured by the 2000 census.

B. Payment based on uncompensated cost for qualifying small rural hospitals shall be in accordance with the following four pools.

1. *Public (Nonstate) Small Rural Hospitals*—small rural hospitals as defined in §311.A.2 which are owned by a local government.

2. *Private Small Rural Hospitals*—small rural hospitals as defined in §311.A.2 that are privately owned.

3. *Small Rural Hospitals*—small rural hospitals as defined in §311.A.2.i-k.

4. *Small Rural Hospitals*—small rural hospitals as defined in §311.A.2.l.

C. Payment to hospitals included in §311.B.1-3 is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for each pool. Payments to hospitals included in §311.B.4 shall be the lesser of the hospital's actual uncompensated care cost or \$250,000. If the cost reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year.

D. Pro Rata Decrease

1. A pro rata decrease necessitated by conditions specified in §301.B.1-6 for rural hospitals described in this §311 will be calculated using the ratio determined by:

a. dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals in §311; then

b. multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH appropriated amount.

2. No additional payments shall be made after the final payment is disbursed by the department for the state fiscal year. Recoupment shall be initiated upon completion of an audit if it is determined that the actual uncompensated care costs for the state fiscal year for which the payment is applicable is less than the actual amount paid.

E. Qualifying hospitals must meet the definition for a small rural hospital contained in §311.A.2. Qualifying hospitals must maintain a log documenting the provision of uninsured care as directed by the department.

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 32:

§313. Public State-Operated Hospitals

A. Definitions

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

Public State-Operated Hospital—a hospital that is owned or operated by the State of Louisiana.

B. DSH payments to individual public state-owned or operated hospitals shall be up to 100 percent of the hospital's net uncompensated costs. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

C. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment, the department shall calculate a pro rata decrease for each public state-owned or operated hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public state-owned or operated hospitals during the state fiscal year; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment.

D. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Acute hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and

2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

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 32:

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

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

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

0606#068

DECLARATION OF EMERGENCY

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

Louisiana Hurricane Relief Waiver
Uncompensated Care Costs Pool
(LAC 50:XXII.Chapters 41-53)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XXII.Chapters 41-53 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing requested

and received approval from the Centers for Medicare and Medicaid Services (CMS) to implement a multi-state 1115 demonstration waiver to ensure the continuity of health care services for individuals displaced as a result of Hurricanes Katrina and Rita. Under the demonstration waiver, Louisiana will provide services through its Medicaid Program to evacuees who qualify as members of the demonstration population consisting of parents, pregnant women, children under age 19, individuals with disabilities, low income Medicare beneficiaries, and individuals in need of long term care whose income is within the levels listed on the simplified eligibility chart.

In addition, CMS approved the establishment of a fund, the Uncompensated Care Costs (UCC) Pool, to reimburse health care providers that incur uncompensated care costs for medically necessary services and supplies rendered to evacuees and other affected individuals who do not have coverage through insurance or other options, including Title XIX and Title XXI of the Social Security Act. The bureau proposes to promulgate an Emergency Rule to adopt the provisions governing the administration of the UCC pool (*Louisiana Register*, Volume 32, Number 3). This Emergency Rule is being promulgated to continue the provisions of the March 13, 2006 Emergency Rule. This action is being taken to protect the health and welfare of uninsured individuals who were displaced from their homes by Hurricanes Katrina or Rita and subsequently required medical services and/or supplies.

Effective July 12, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes the following provisions governing the Uncompensated Care Costs Pool under the Louisiana Hurricane Relief Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXII. 1115 Demonstration Waivers

Subpart 5. Louisiana Hurricane Relief Waiver

Chapter 41. General Provisions

§4101. Purpose

A. As a result of the devastation caused by Hurricanes Katrina and Rita, many Louisiana health care providers have incurred costs in furnishing medical services and supplies to hurricane evacuees and other affected individuals who do not have health care coverage through insurance or any other financial mechanism. The purpose of the Uncompensated Care Costs (UCC) Pool is to provide reimbursement to health care providers through federal financial participation for services rendered for which there is no other source of payment.

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 32:

Chapter 43. Eligible Populations

§4301. Definitions

Affected Individual—an individual who resided in a designated individual assistance county or parish pursuant to Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as declared by the President as a result of Hurricanes Katrina and Rita, and continues to

reside in the same state where such county or parish is located.

Evacuee—an affected individual who has been displaced to another state.

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 32:

§4303. Eligibility Requirements

A. In order to qualify as a member of the eligible population, an individual must be either a United States citizen or a legal alien who resided in a designated individual assistance county or parish for Hurricane Katrina or Hurricane Rita as declared by the President.

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 32:

Chapter 45. Covered Services

§4501. Medicaid State Plan Services

A. Reimbursement is available through the UCC pool for the following services covered under the Louisiana Medicaid State Plan:

1. inpatient and outpatient hospital services, including ancillary services;
2. physician services (inpatient and outpatient);
3. mental health clinic services;
4. inpatient psychiatric services (free-standing psychiatric hospitals and distinct part psychiatric units);
5. emergency ambulance services;
6. home health services:
 - a. coverage of durable medical equipment and supplies is limited to emergency items;
7. nursing facility services;
8. pharmacy services;
9. laboratory services;
10. X-ray services;
11. hemodialysis services;
12. hospice services;
13. rural health clinic services; and
14. federally qualified health clinic facilities.

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 32:

§4503. Non-Medicaid State Plan Services

A. Reimbursement is available through the UCC pool for methadone and suboxone substance abuse treatments only to the extent that these services are not otherwise reimbursable under other funding sources including, but not limited to, grant or reimbursement programs offered through:

1. the Federal Emergency Management Agency;
2. the Substance Abuse and Mental Health Services Administration;
3. the National Institutes of Health; or
4. any other federal or state program (Medicaid, SCHIP, Medicare), private insurance or any private source.

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 32:

Chapter 47. Provider Participation

§4701. Participation Requirements

A. In order to qualify for reimbursement through the UCC pool for Medicaid State Plan covered services, the provider must have been enrolled to participate in the Louisiana Medicaid Program on or before August 24, 2005.

B. In order to qualify for reimbursement through the UCC pool for methadone and suboxone substance abuse treatments, the provider must be approved by the Office of Addictive Disorders.

C. Qualifying providers may be either a public or a private provider.

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 32:

Chapter 49. Requests for Payment

§4901. Submission Requirements

A. Requests for payment must be "person specific" for each Hurricane Katrina or Rita evacuee or other affected individual. The request must contain the following data, if known, for the evacuee or other affected individual:

1. last name;
2. first name;
3. middle initial;
4. Social Security number;
5. date of birth;
6. residential address the week prior to Hurricane Katrina or Hurricane Rita;
7. parish of residence the week prior to Hurricane Katrina or Hurricane Rita;
8. date(s) of service; and
9. any other identifying data that would assist in establishing the recipient's identity in the absence of any of the items cited in Paragraphs 1-8 above.

B. Providers may submit requests for payment of costs incurred during the following time periods:

1. dates of service from August 24, 2005 through January 31, 2006 for Hurricane Katrina; and
2. dates of service from September 23, 2005 through January 31, 2006 for Hurricane Rita.

C. Providers shall be required to sign an attestation that confirms that:

1. the services provided were medically necessary;
2. they have not received payment from any other source;
3. they will not subsequently bill another source for payment;
4. they are not aware of any other payment source for the services rendered; and
5. payment will be accepted as payment in full for the services rendered.

D. The deadline for submission of all payment requests is June 30, 2006.

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 32:

Chapter 51. Uncompensated Care Pool Reimbursement

§5101. Allowable Payment

A. Reimbursement through the UCC pool is only available for covered services provided within the state of Louisiana to individuals who meet the requirements to be a member of the eligible population.

B. Payment through the UCC pool for Medicaid State Plan services shall be an interim payment up to 70 percent of the Medicaid fee-for-service rate currently on file for the respective service. Additional payments shall be contingent on the availability of funds in the UCC Pool.

1. UCC pool payments to hospitals that qualify for Medicaid disproportionate share hospital (DSH) payments will be offset from the cost of treating uninsured patients for the state fiscal year to which the DSH payment is applicable to determine the hospital specific DSH limits.

C. Payment through the UCC pool for methadone and suboxone substance abuse treatment services shall be an interim payment up to 70 percent of the fee schedule established by the Office of Addictive Disorders. Additional payments shall be contingent on the availability of funds in the UCC Pool.

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 32:

Chapter 53. Administrative Appeals

§5301. Fair Hearings and Appeals

A. There are no provisions under this demonstration waiver for fair hearings for those individuals who have received medical services or supplies and do not have insurance coverage or any other source of payment.

B. There are no provisions under this demonstration waiver for appeals for health care providers who have incurred costs associated with the provision of the uncompensated care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

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

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

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

0606#066

DECLARATION OF EMERGENCY

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

Medicaid Eligibility Treatment of Loans, Mortgages, Promissory Notes and Other Property Agreements

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule promulgating the Medicaid Eligibility Manual in its entirety by reference, including section I-1600 which addresses the treatment of resources in the eligibility determination process (*Louisiana Register*, Volume 22, Number 5). The May 20, 1996 Rule was amended to revise Medicaid policy in regard to the treatment of certain loans, mortgages, promissory notes, and property agreements (*Louisiana Register*, Volume 31, Number 8). The bureau amended by Emergency Rule the August 20, 2005 Rule governing the transfer of resources to further define and clarify the provisions governing the treatment of loans, mortgages, promissory notes, and other property agreements during the eligibility determination process. This Emergency Rule is being promulgated to continue the provisions of the February 20, 2006 Emergency Rule. This action is being taken to avoid federal sanctions.

Emergency Rule

Effective June 21, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the August 20, 2005 Rule governing the treatment of transfer of assets in the determination of Medicaid eligibility. This policy change applies to applications, renewals of eligibility or changes in situation for all individuals, except for those persons receiving Supplemental Security Income (SSI) or deemed to be receiving SSI.

Loans, Mortgages, Promissory Notes, and Property Agreements or Assignments

A. A loan, mortgage, promissory note, property agreement or property assignment is a countable resource and a potential transfer of assets regardless of any non-assignability, non-negotiability or non-transferability provisions contained therein.

Instruments Containing Certain Provisions

A. Any loans, mortgages, promissory notes, property agreements or property assignments executed that contain any of the following provisions shall not be considered bona fide and shall be evaluated as a transfer of resources:

1. self-canceling clauses or clauses that forgive a portion of the principal;

2. payments that are not in equal amounts for the term of the loan (contain balloon payments or interest only payments) even if the principle is due within the holder's life expectancy;

3. repayment terms that exceed the holder's life expectancy; or

4. evidence exists that there is not a good faith agreement to repay the entire principal.

B. Pursuant to the rules and regulations, the department shall establish what constitutes a bona fide transaction for establishing Medicaid eligibility.

C. An opportunity to rebut the treatment of such instruments as countable resources or transfer of resources shall be provided to the applicant/recipient through the appeals process.

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

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

0606#069

DECLARATION OF EMERGENCY

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

Nursing Facility Minimum Licensing Standards Emergency Preparedness (LAC 48:I.9729)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby amends LAC 48:I.9729 as authorized by R.S. 36:254 and R.S. 40:2009.1-2116.4. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt minimum licensing standards for nursing homes (*Louisiana Register*, Volume 24, Number 1). The January 20, 1998 Rule was amended by Emergency Rule to revise the provisions governing emergency preparedness requirements for nursing facilities (*Louisiana Register*, Volume 31, Number 11). This Emergency Rule is being promulgated to amend the provisions of the October 18, 2005 Emergency Rule and supersedes the June 17, 2006 Emergency Rule published in the May 20, 2006 Louisiana Register (*Louisiana Register*, Volume 32, Number 5).

This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who are residents of nursing facilities that may be evacuated as a result of declared disasters or other emergencies. It is anticipated that the implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2006-2007.

Effective June 1, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing emergency preparedness requirements for nursing facilities.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 97. Nursing Homes

Subchapter B. Organization and General Services

§9729. Emergency Preparedness

A. The nursing facility shall have an emergency preparedness plan which conforms to the Office of Emergency Preparedness (OEP) model plan designed to manage the consequences of declared disasters or other emergencies that disrupt the facility's ability to provide care and treatment or threatens the lives or safety of the residents. The facility shall follow and execute its approved emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

1. Upon request by the department, a nursing facility shall forward information and documentation regarding emergency preparedness, evacuation and operational status to the Bureau of Health Services Financing, Health Standards Section. Such information and documentation shall, at a minimum, include:

- a. a copy of the nursing facility's emergency preparedness plan;
- b. updates, amendments, modifications or changes to the nursing facility's emergency preparedness plan;
- c. the number of operational beds; and
- d. census information.

2. If the department determines, upon review of the nursing facility's emergency preparedness plan, that the plan is not viable or does not promote the health, safety and welfare of nursing home residents, the nursing facility shall be required to amend its emergency preparedness plan.

B. At a minimum, the nursing facility shall have a written plan that describes:

1. the procedures and criteria for a determination by the nursing facility to evacuate the facility or shelter in place;

a. for evacuation determinations, the nursing facility's plan shall provide for a primary sheltering host site and alternative sheltering host sites outside the area of risk, verified by written agreements or contracts;

2. the delivery of essential care and services to residents, whether the residents are housed off-site or when additional residents are housed in the nursing facility during an emergency;

3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the nursing facility or at another location;

4. a plan for coordinating transportation services required for evacuating residents to another location, including proof of transportation or a contract with a transportation company, verified by a written transportation agreement or contract;

5. the procedures to notify the resident's family or responsible representative if the resident is evacuated to another location;

6. staffing patterns for evacuation, including contact information for such staff;

7. a procedure or method whereby each nursing home resident has a manner of identification attached to his person or clothing;

8. a procedure or method whereby each nursing home resident has the following minimum information included with him/her during all phases of the evacuation:

- a. current and active diagnoses;
- b. medications, including dosage and times administered;
- c. allergies;
- d. special dietary needs or restrictions; and
- e. next of kin, including contact information;

9. procedures for ensuring that licensed nursing staff accompany residents on buses or other transportation during evacuation; and

10. procedures for ensuring that an adequate supply of water, food, medication and supplies accompanies residents on buses or other transportation during evacuation.

C. The nursing facility's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The nursing facility's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the nursing facility's performance during the planned drill. Any revisions, modifications, amendments or changes to the plan shall be submitted to the Health Standards Section within 30 days.

D. The nursing facility's plan shall be reviewed and approved by the parish OEP, utilizing appropriate community-wide resources.

E. The plan shall be available to representatives of the Office of the State Fire Marshal.

F. Evacuation, Temporary Relocation or Temporary Cessation

1. In the event that a nursing facility evacuates, temporarily relocates or temporarily ceases operation at its licensed location and sustains damages due to wind, sustains flooding or sustains power outages longer than 48 hours, the nursing facility shall not be reopened to accept returning evacuated residents or new admissions until surveys have been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Health Standards Section, and the nursing facility has received a letter of approval from the department for reopening the facility.

a. The purpose of these surveys is to assure that the facility is in compliance with the licensing standards in the areas of health and safety requirements, the structural soundness of the building, the sanitation code and staffing requirements.

b. The Health Standards Section will determine the facility's access to the community service infrastructure, such as hospitals, transportation, physicians, professional services and necessary supplies.

2. If a nursing facility evacuates, temporarily relocates or temporarily ceases operation at its licensed location and does not sustain damages due to wind, does not sustain flooding or does not sustain power outages longer than 48 hours, the nursing facility may be reopened without the necessity of the required surveys. Prior to reopening, such nursing facility must notify the Health Standards Section that

the facility is reopening, and must receive written authority from the Health Standards Section to reopen.

G. Authority to Reopen and Execution of Emergency Preparedness Plan

1. Before reopening at its licensed location, the nursing facility must submit a detailed summary to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. A copy of the facility's approved emergency preparedness plan must be attached to the detailed summary. The detailed summary must contain, at a minimum:

- a. pertinent plan provisions and how the plan was followed and executed;
- b. plan provisions that were not followed;
- c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- d. contingency arrangements made for those plan provisions not followed; and
- e. a list of injuries and/or deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation.

2. Before reopening, the nursing facility must receive written approval from the licensing agency that the facility was in substantial compliance with the emergency preparedness plan. The licensing agency will review the facility's plan and the detailed summary submitted.

a. If the licensing agency determines from these documents that the facility was in substantial compliance with the plan, the licensing agency will issue approval to the facility for reopening, subject to the facility's compliance with any other applicable rules.

b. If the licensing agency is unable to determine substantial compliance with the plan from these documents, the licensing agency may conduct an on-site survey or investigation to determine whether the facility substantially complied with the plan.

c. If the licensing agency determines that the facility failed to comply with the provisions of its plan, the facility shall not be allowed to reopen.

H. Notification

1. In the event that a nursing facility evacuates, temporarily relocates or temporarily ceases operations at its licensed location, the nursing facility must immediately give notice to the Health Standards Section, by facsimile, telephone or email, of the following:

- a. the date and time of the evacuation;
- b. the sheltering host site(s) to which the nursing facility is evacuating; and
- c. a list of residents being evacuated, which shall indicate the evacuation site for each resident;

2. Within 48 hours of a nursing facility's evacuation, temporary relocation or temporary cessation of operations, the nursing facility must notify the Health Standards Section of any deviations from the intended sheltering host site(s) and must provide the Health Standards Section with a list of all residents and their locations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:49 (January 1998), amended LR 32:

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

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

0606#010

DECLARATION OF EMERGENCY

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

Pharmacy Benefits Management Program
Erectile Dysfunction Drug Coverage

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repealed the May 20, 1999 and March 20, 2005 Rules governing the coverage of erectile dysfunction drugs and terminated coverage of these drugs under the Medicaid Program (*Louisiana Register*, Volume 31, Number 11). Section 104 of Public Law 109-91 as enacted on October 20, 2005 by the 109th United States Congress, eliminated Medicaid coverage of erectile dysfunction drugs except for the treatment of conditions other than sexual or erectile dysfunction for which the drugs have been approved by the Food and Drug Administration.

In compliance with the directives of Section 104 of Public Law 109-91 and regulations established by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, the bureau amended by Emergency Rule the November 20, 2005 Rule. This Emergency Rule is being promulgated to continue the provisions of the February 20, 2006 Emergency Rule. This action is being taken to avoid federal sanctions.

Emergency Rule

Effective June 21, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing shall not cover and reimburse prescription drugs for the treatment of sexual or erectile dysfunction under the Medicaid Program. Erectile dysfunction drugs shall be covered for the treatment of conditions other than sexual or erectile dysfunction for which the drugs have been approved by the Food and Drug Administration.

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

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

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

0606#070

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Division of Long Term Supports and Services

Home and Community Based Services Waivers Elderly and Disabled Adults Waiver (LAC 50:XXI.Chapters 81-89)

The Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services amends LAC 50:XXI.Chapters 81-89 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing home and community-based waiver services for elderly and disabled adults in LAC 50:XXI.Chapters 81-89 (*Louisiana Register*, Volume 30, Number 8). The Division of Long Term Supports and Services hereby amends the provisions governing the Elderly and Disabled Adult Waiver to:

1. eliminate the duplication of like services currently provided in the waiver and as a Medicaid State Plan service;
2. define the existing service package and establish new services; and
3. revise the methodology for allocation of waiver opportunities.

This action is being taken to avoid sanctions from the Centers for Medicare and Medicaid Services. It is anticipated that the implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2006-2007.

Effective July 1, 2006, the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services amends the following provisions governing the Elderly and Disabled Adult Waiver Program.

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

Subpart 7. Elderly and Disabled Adult Waiver Chapter 81. General Provisions §8101. Introduction

A. The target population for the Elderly and Disabled Adult (EDA) Waiver is individuals who meet Medicaid financial eligibility and the level of care for a nursing facility and who are:

1. 65 years of age or older; and
2. 21-64 years of age and disabled according to Medicaid standards or Social Security Income disability criteria.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:1029 (August 1993), amended LR 24:42 (January 1998), repromulgated LR 30:1698 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:

§8103. Request for Services Registry

A. The Department of Health and Hospitals (DHH) is responsible for the Request for Services Registry, hereafter referred to as "the registry," for the Elderly and Disabled Adult Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll-free telephone number maintained by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 28:835 (April 2002), amended LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:

§8105. Programmatic Allocation of Waiver Opportunities

A. When funding is appropriated for a new EDA Waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available and that the individual will be evaluated for a possible EDA Waiver opportunity assignment.

B. EDA Waiver opportunities are offered based on the date of first request for services with priority given to individuals who are in a nursing facility, but could return to their home if EDA Waiver services are provided. Priority is also given to those persons who have indicated that they are at imminent risk of nursing facility placement.

C. The remaining waiver opportunities, if any, are offered on a first-come, first-serve basis to individuals who qualify for a nursing facility level of care, but who are not at imminent risk of being admitted to a nursing facility.

D. If the applicant is determined to be ineligible for any reason, the next individual on the registry is notified as stated above and the process continues until an individual is

determined eligible. An EDA Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

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 24:42 (January 1998), repromulgated LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:

Chapter 83. Services

§8301. Service Descriptions

A. The following services are available to recipients in the EDA Waiver. All services must be provided in accordance with the recipient's approved comprehensive plan of care (CPOC).

1. Support Coordination is services that will assist recipients in gaining access to necessary waiver and State Plan services, as well as needed social, educational and other services, regardless of the funding source for these services. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the recipient's approved CPOC.

2. Transition Intensive Support Coordination is services that will assist recipients who are currently residing in nursing facilities in gaining access to necessary waiver and State Plan services, as well as needed social, educational and other services, regardless of the funding source for these services. Support coordinators will initiate and oversee the process for assessment and reassessment, as well as be responsible for ongoing monitoring of the provision of services included in the recipient's approved CPOC.

3. Environmental Accessibility Adaptation is necessary physical adaptations made to the home to ensure the health, safety, and welfare of the recipient, or enable the recipient to function with greater independence in the home. Without these necessary adaptations, the recipient would require institutionalization. These services must be provided in accordance with state and local laws governing licensure and/or certification.

a. There is a lifetime cap per recipient for this service.

4. Personal Emergency Response System (PERS). This is an electronic device which enables the recipient to secure help in an emergency. PERS services are limited to specific recipients.

5. Companion Services are services provided to a functionally-impaired recipient that include care, supervision and socialization during the day or night.

6. Transition Services. These services assist an individual, who has been approved for an EDA Waiver opportunity, to leave a nursing facility and return to live in the community.

a. Service Limit. Funds are available one time per lifetime for specific items as approved in the recipient's CPOC.

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 24:42 (January 1998), repromulgated LR 30:1699 (August 2004), amended by the Department of Health and

Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:

§8303. Comprehensive Plan of Care

A. Reimbursement shall not be made for EDA Waiver services provided prior to department's approval of the comprehensive plan of care (CPOC).

B. The support coordinator shall complete a CPOC which shall contain the:

1. types and number of services (including waiver and all other services) necessary to maintain the waiver recipient safely in the community;

2. individual cost of each service (including waiver and all other services); and

3. average cost of services per day covered by the CPOC.

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 24:42 (January 1998), repromulgated LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:

Chapter 85. Admission and Discharge Criteria

§8501. Admission Criteria

A. Admission to the EDA Waiver Program shall be determined in accordance with the following criteria:

1. initial and continued Medicaid financial eligibility;

2. initial and continued eligibility for a nursing facility level of care;

3. justification, as documented in the approved CPOC, that the EDA Waiver services are appropriate, cost effective and represent the least restrictive environment for the individual;

4. assurance that the health, safety and welfare of the individual can be maintained in the community with the provision of EDA Waiver services; and

5. the individual is either in a nursing facility or is at imminent risk of nursing facility placement.

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 24:42 (January 1998), repromulgated LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:

§8503. Admission Denial or Discharge Criteria

A. Admission shall be denied or the recipient shall be discharged from the EDA Waiver Program if one of the following conditions is determined.

1. The individual does not meet the criteria for Medicaid financial eligibility.

2. The individual does not meet the criteria for a nursing facility level of care.

3. The recipient is incarcerated or placed under the jurisdiction of penal authorities or courts.

4. The recipient has a change of residence to another state.

5. The individual is admitted to an acute care hospital, rehabilitation hospital or a nursing facility with the intent to stay or a stay that is longer than 90 consecutive days.

6. Continuity of services is interrupted as a result of the recipient not receiving and/or refusing EDA Waiver services during a period of 30 consecutive days.

7. The health, safety and welfare of the individual cannot be assured through the provision of EDA Waiver services within the individual's cost effectiveness.

8. The individual fails to cooperate in the eligibility determination process or in the performance of the CPOC.

9. Failure on behalf of the individual to maintain a safe and legal home environment.

10. It is not cost effective to serve the individual in the EDA Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:42 (January 1998); amended LR 24:457 (March 1998), repromulgated LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:

Chapter 87. Waiver Cost Effectiveness

§8701. Waiver Costs Limit

A. In order to assure the cost effectiveness of the EDA Waiver, each recipient shall have access to an array of waiver services whose average cost per day shall not exceed a limit set by the department. This limit shall be set, at least annually, at a percentage of the average costs borne by the Medicaid Program for the equivalent population receiving nursing facility services, including an allowance for temporary, brief periods of excess costs in order to maintain a recipient in the community.

B.1.-3. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:42 (January 1998), repromulgated LR 30:1700 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:

Chapter 89. Provider Responsibilities

§8901. Reporting Requirements

A. Support coordinators and direct service providers are obligated to report changes to the department that could affect the waiver recipient's eligibility including, but not limited to, those changes cited in the denial or discharge criteria.

B. Support coordinators and direct service providers are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and welfare of the recipient and completing an incident report. The incident report shall be submitted to the department with the specified requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 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 24:42 (January 1998), repromulgated LR 30:1700 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for

responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0606#065

DECLARATION OF EMERGENCY

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

Home and Community-Based Services Waivers Supports Waiver (LAC 50:XXI.Chapters 53-61)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities adopts LAC 50:XXI Chapters 53-61 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals currently provides community-based services to individuals who meet the level of care requirements for institutional placement through four Medicaid home and community-based services (HCBS) waivers as authorized by §1915(c) of the Social Security Act. The Medicaid HCBS waivers are: the Adult Day Health Care Waiver, Elderly and Disabled Adult Waiver, Children's Choice Waiver and New Opportunities Waiver. The Office for Citizens with Developmental Disabilities now proposes to implement a new HCBS waiver, hereafter referred to as the Supports Waiver, to promote independence for individuals who are age 18 or older with a developmental disability, while ensuring health and safety through a system of recipient safeguards. The mission of the Supports Waiver is to create options and provide meaningful opportunities that enhance the lives of men and women with developmental disabilities through vocational and community inclusion.

This action is being taken to secure enhanced federal funding. It is estimated that the increase in expenditures due to implementation of this Emergency Rule will be \$31,254,780 for state fiscal year 2006-2007.

Effective July 1, 2006, the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities adopts provisions governing the implementation of a new home and community-based services waiver to be called the Supports Waiver.

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

Subpart 5. Supports Waiver

Chapter 53. General Provisions

§5301. Purpose

A. The mission of this waiver is to create options and provide meaningful opportunities that enhance the lives of men and women with developmental disabilities through vocational and community inclusion. The Supports Waiver is designed to:

1. promote independence for individuals with a developmental disability who are age 18 or older while ensuring health and safety through a system of recipient safeguards;

2. provide an alternative to institutionalization and costly comprehensive services through the provision of an array of services and supports that promote community inclusion and independence by enhancing and not replacing existing informal networks; and

3. increase high school to community transition resources by offering supports and services to those 18 years and older.

B. Allocation of Waiver Opportunities. Waiver opportunities (slots) shall be allocated in the following manner for those individuals who request the waiver services and who meet the eligibility requirements.

1. Reserved capacity will be for those persons currently receiving state general funded vocational and habilitative services through the Office for Citizens with Developmental Disabilities.

2. The next reserved capacity will be for those persons currently waiting for state general funded vocational and habilitative services through the Office for Citizens with Developmental Disabilities.

3. All other waiver opportunities shall be offered on a first come, first served basis to individuals who request this waiver service and who meet the recipient qualifications.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

Chapter 55. Target Population

§5501. Recipient Qualifications

A. In order to qualify for the Supports Waiver, an individual must be 18 years of age or older and meet the definition for a developmental disability as defined in R.S. 28:451.2. Developmental disability means either:

1. a severe chronic disability of a person that:
 - a. is attributable to an intellectual or physical impairment or combination of intellectual and physical impairments;
 - b. is manifested before the person reaches age 22;
 - c. is likely to continue indefinitely;
 - d. results in substantial functional limitations in three or more of the following areas of major life activity:
 - i. self-care;
 - ii. receptive and expressive language;
 - iii. learning;
 - iv. mobility;
 - v. self-direction;
 - vi. capacity for independent living; or
 - vii. economic self-sufficiency;
 - e. is not attributable solely to mental illness;
 - f. reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated;

2. a substantial developmental delay or specific congenital or acquired condition in a person from birth through age 9 which, without services and support, has a high probability of resulting in those criteria in

Subparagraphs A.1.a-f above later in life that may be considered to be a developmental disability.

B. The individual must:

1. meet the requirements for an intermediate care facility for the mentally retarded level of care, which requires active treatment of mental retardation or a developmental disability under the supervision of a qualified mental retardation or developmental disability professional;

2. meet the financial eligibility requirements for the Medicaid program as a member of the group of individuals who would be eligible for Medicaid if they:

a. were in a medical institution;

b. need home and community-based services in order to remain in the community; and

c. have a special income level equal to 300 percent of the Supplemental Security Income (SSI) federal benefit rate;

3. be a resident of Louisiana;

4. be a citizen of the United States or a qualified alien; and

5. meet the health and safety assurances.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

Chapter 57. Covered Services

§5701. Supported Employment Services

A. Supported employment services consists of intensive, ongoing supports and services necessary for a recipient to achieve the desired outcome of employment in a community setting in the state of Louisiana where a majority of the persons employed are without disabilities. Recipients utilizing these services may need long-term supports for the life of their employment due the nature of their disability, and natural supports would not meet this need.

B. Supported employment services provide supports in the following areas:

1. individual job, group employment, or self-employment;

2. job assessment, discovery and development; and

3. initial job support and job retention, including assistance in personal care with activities of daily living in the supported employment setting and follow-along.

C. When supported employment services are provided at a work site where a majority of the persons employed are without disabilities, payment is only made for the adaptations, supervision and training required by recipients receiving the service as a result of their disabilities. It does not include payment for the supervisory activities rendered as a normal part of the business setting.

D. Transportation is included in supported employment services, but whenever possible, family, neighbors, friends, coworkers or community resources that can provide needed transportation without charge should be utilized.

E. These services are also available to those recipients who are self-employed. Funds for self-employment may not be used to defray any expenses associated with setting up or operating a business.

F. Supported employment services may be furnished by a coworker or other job-site personnel under the following circumstances:

1. the services furnished are not part of the normal duties of the coworker or other job-site personnel; and

2. these individuals meet the pertinent qualifications for the providers of service.

G. Service Limitations

1. Services for job assessment, discovery and development in individual jobs and self-employment shall not exceed 120 units of service in a Comprehensive Plan of Care year.

2. Services for job assessment, discovery and development in group employment shall not exceed 20 units of service in a Comprehensive Plan of Care year.

3. Services for initial job support, job retention and follow-along shall not exceed 240 units of service in a Comprehensive Plan of Care year.

H. Restrictions. Recipients receiving supported employment services may also receive prevocational or day habilitation services. However, these services cannot be provided in the same service day.

I. Choice of this service and staff ratio needed to support the recipient must be documented on the Comprehensive Plan of Care.

J. There must be documentation in the recipient's file that these services are not available from programs funded under Section 110 of the Rehabilitation Act of 1973 or Sections 602(16) or (17) of the Individuals with Disabilities Education Act [230 U.S.C. 1401 (16 and 71)] and those covered under the state plan.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

§5703. Day Habilitation

A. Day habilitation is services that assist the recipient to gain desired community living experience, including the acquisition, retention or improvement in self-help, socialization and adaptive skills, and/or to provide the recipient an opportunity to contribute to his or her community. These services focus on enabling the recipient to attain or maintain his/her maximum functional level and shall be coordinated with any physical, occupational, or speech therapies identified in the individualized Comprehensive Plan of Care. Day habilitation services may serve to reinforce skills or lessons taught in other settings.

B. Day habilitation services are provided on a regularly scheduled basis for one or more days per week, five or more hours per day in a setting separate from the recipient's private residence. Activities and environments are designed to foster the acquisition of skills, appropriate behavior, greater independence, and personal choice.

C. Day habilitation provides services in the following areas:

1. volunteer activities;
2. community inclusion; and
3. facility-based activities.

D. Day habilitation includes assistance in personal care with activities of daily living in the day habilitation setting.

E. All transportation costs are included in the reimbursement for day habilitation services. The recipient must be present to receive this service. If a recipient needs transportation, the provider must physically provide, arrange

for, or pay for appropriate transport to and from a central location that is convenient for the recipient and agreed upon by the team. The recipient's transportation needs and this central location shall be documented in the Comprehensive Plan of Care.

F. Service Limitations. Services shall not exceed 240 units of service in a Comprehensive Plan of Care.

G. Restrictions. Recipients receiving day habilitation services may also receive prevocational or supported employment services, but these services cannot be provided in the same service day.

H. Choice of this service and staff ratio needed to support the recipient must be documented on the Comprehensive Plan of Care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

§5705. Prevocational Services

A. Prevocational services prepare a recipient for paid or unpaid employment in the community and include teaching concepts such as compliance, attendance, task completion, problem solving and safety that are associated with performing compensated work. Services are aimed at a generalized result, not job task oriented, and are directed to habilitative, rather than explicit employment objectives.

B. Prevocational services are provided in a supervised facility-based setting where more than 25 percent of the persons employed are individuals with a developmental disability. These services are operated through a provider agency that is licensed by the appropriate state licensing agency. Services are furnished five or more hours per day on a regularly scheduled basis for one or more days per week.

C. Prevocational services are provided to persons not expected to join the general work force within one year of service initiation. If compensated, pay must be in accordance with United States Department of Labor's Fair Labor Standards Act.

D. Prevocational services reimbursement includes assistance in personal care with activities of daily living in the facility-based setting. Choice of this service and staff ratio needed to support the recipient must be documented on the Comprehensive Plan of Care.

E. All transportation costs are included in the reimbursement for prevocational services. The recipient must be present to receive this service. If a recipient needs transportation, the provider must physically provide, arrange, or pay for appropriate transport to and from a central location that is convenient for the recipient and agreed upon by the team. The recipient's transportation needs and this central location shall be documented in the Comprehensive Plan of Care.

F. Service Limitations. Services shall not exceed 240 units of service in a Comprehensive Plan of Care.

G. Restrictions. Recipients receiving prevocational services may also receive day habilitation or supported employment services, but these services cannot be provided in the same service day.

H. There must be documentation in the recipient's file that this service is not available from programs funded under Section 110 of the Rehabilitation Act of 1973 or Sections

602(16) or (17) of the Individuals with Disabilities Education Act [230 U.S.C. 1401 (16 and 71)] and those covered under the state plan.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

§5707. Respite

A. Respite care is a service provided on a short-term basis to a recipient who is unable to care for himself/herself because the unpaid caregiver is absent or needs relief.

B. Respite may be provided in:

1. the recipient's home or private place of residence;
2. the private residence of a respite care provider; or
3. a licensed respite care facility determined appropriate by the recipient or responsible party.

C. Service Limitations. Services shall not exceed 428 units of service in a Comprehensive Plan of Care year.

D. Choice and need for this service must be documented on the Comprehensive Plan of Care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

§5709. Habilitation

A. Habilitation offers services designed to assist recipients in acquiring, retaining and improving the self-help, socialization and adaptive skills necessary to reside successfully in home and community settings.

B. Habilitation is provided in the home or community, includes necessary transportation as part of the reimbursement rate and is based on need with a specified number of hours weekly as outlined in the approved Comprehensive Plan of Care.

C. Habilitation services include, but are not limited to:

1. acquisition of skills needed to do household tasks such as laundry, dishwashing and housekeeping, grocery shopping in the community; and
2. travel training to community sites other than supported employment, day habilitation, or prevocational sites where life activities take place.

D. Service Limitations. Services shall not exceed 285 units of service in a Comprehensive Plan of Care year.

E. Choice and need for this service must be documented on the Comprehensive Plan of Care.

F. Recipients receiving habilitation may use this service in conjunction with other Support Waiver services, as long as other services are not provided during the same period in a day.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

§5711. Individual Goods and Services

A. Individual goods and services allow the recipient access to goods and services necessary to ensure health and safety, which are essential to his/her independence in the community and are not otherwise covered in Medicaid State Plan services.

NOTE: Goods and services must be clearly linked to an assessed recipient's need established in the Comprehensive Plan of Care. Experimental or prohibited treatments are excluded.

B. Adult incontinence care products are available to all recipients through the Supports Waiver. Individuals, who are 18 to 21 years old, must access incontinence care products through the EPSDT State Plan services.

NOTE: These services must be prior authorized, be in accordance with the Comprehensive Plan of Care, and not otherwise available through any other funding source or community resource.

C. The following services are available for recipients who are age 21 or older:

1. eyeglasses and routine eye examinations not otherwise covered;
2. dental care not related to dentures and not otherwise covered; and
3. hearing aids and other durable medical equipment not otherwise covered.

NOTE: Recipients who are age 18 through 21 may receive these services as outlined on their Comprehensive Plan of Care through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

§5713. Personal Emergency Response System

A. A personal emergency response system (PERS) is an electronic device connected to the recipient's phone which enables a recipient to secure help in the community. The system is programmed to signal a response center staffed by trained professionals once a "help" button is activated.

B. This service must be prior authorized and be in accordance with the Comprehensive Plan of Care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

Chapter 59. Provider Participation

§5901. General Provisions

A. In order to participate in the Medicaid Program as a provider of Supports Waiver services, a provider must meet all qualifications outlined in LAC 50.XXI, Subpart 1, Chapter 1 and all applicable amendments.

B. If transportation is provided as part of a service, the provider must have \$1,000,000 liability insurance coverage on any vehicles used in transporting a recipient.

C. In addition to meeting the requirements cited in this §5901.A and B, providers must meet the following requirements for the provision of designated services.

1. Supported Employment. The provider must be a community rehabilitation provider certified through Louisiana Rehabilitation Services in order to provide this service.

2. Day Habilitation. The provider must possess a current, valid license as an Adult Day Care Center in order to provide this service.

3. Pre-Vocational Services. The provider must possess a current, valid license as an Adult Day Care Center or be a

community rehabilitation provider certified through Louisiana Rehabilitation Services in order to provide this service.

4. Respite and Habilitation Services. The provider must possess a current, valid license as a Personal Care Attendant agency or a Respite Care Center in order to provide these services.

5. Individual Goods and Services. The provider must comply with the applicable state and local laws governing licensure and/or certification for the service being performed.

6. Personal Emergency Response System. The provider must be enrolled to participate in the Medicaid Program as a provider of personal emergency response systems.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

Chapter 61. Reimbursement

§6101. Reimbursement Methodology

A. The reimbursement for all services will be paid on a per claim basis, based on established rates determined through consultation with stakeholders, review of current rates and costs for similar services and available funding. The reimbursement rate covers both service provision and administration.

B. Supported Employment Services. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the recipient. A standard unit of service in job assessment, discovery and development is six hours or more per day. A standard unit of service in initial job support, job retention and follow-along is one hour or more per day.

C. Day Habilitation. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the recipient. A standard unit of service is one day, consisting of five or more hours, excluding time spent in transportation.

D. Prevocational Services. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the recipient. A standard unit of service is one day, consisting of five or more hours, excluding time spent in transportation.

E. Respite. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the recipient. One-quarter hour (15 minutes) is the standard unit of service.

F. Habilitation. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the recipient. One-quarter hour (15 minutes) is the standard unit of service.

G. Individual Goods and Services. Reimbursement will be paid at cost, based on the recipient's need, but shall not exceed \$500 in a Comprehensive Plan of Care year.

H. Personal Emergency Response System (PERS). Reimbursement for the maintenance of the PERS is paid through a monthly rate. Installation of the device is paid through a one time fixed cost.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

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

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

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

0606#067

DECLARATION OF EMERGENCY

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

Targeted Case Management
Individuals with Developmental Disabilities
(LAC 50:XV.10101, 10501, 10505, and 11701)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends LAC 50:XV.10101, 10501, 10505, and 11701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing case management services provided to targeted population groups and certain home and community-based services waiver recipients (*Louisiana Register*, Volume 25, Number 7). In May 2004, the Bureau promulgated the July 1999 Rule in a codified format in Title 50 of the *Louisiana Administrative Code* (*Louisiana Register*, Volume 30, Number 5).

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities proposes to implement a new home and community-based services waiver for persons with developmental disabilities, under the authority of §1915(c) of the Social Security Act, called the Supports Waiver. In accordance with the requirements for §1915(c) waivers, the targeted population served in the Supports Waiver will receive an offer of case management services. The department now proposes to amend the provisions governing Targeted Case Management in LAC 50:XV to include recipients receiving services in the Supports Waiver and to change the name of the Mentally Retarded/Developmentally Disabled Waiver.

This action is being taken to secure enhanced federal funding. It is estimated that the increase in expenditures due to implementation of this Emergency Rule will be approximately \$3,083,190 for state fiscal year 2006-2007.

Effective June 1, 2006, the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amends the provisions governing Targeted Case Management to include the Supports Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 7. Targeted Case Management

Chapter 101. General Provisions

§10101. Program Description

A. - D.2. ...

E. Recipients who are being transitioned from a developmental center into the New Opportunities Waiver (NOW) may receive their case management services through the Office for Citizens with Developmental Disabilities (OCDD).

F. - G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1036 (May 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

Chapter 105. Provider Participation

§10501. Participation Requirements

A. - D.7. ...

8. assure the recipient's right to elect to receive or terminate case management services (except for recipients in the New Opportunities Waiver, Elderly and Disabled Adult Waiver, Children's Choice and Supports Waiver programs). Assure that each recipient has freedom of choice in the selection of an available case management agency (every six months), a qualified case manager or other service providers and the right to change providers or case managers;

D.9. - D.12. ...

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 30:1037 (May 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

§10505. Staff Education and Experience

A. - D.2. ...

E. Case Manager Trainee

1. The case management agency must obtain prior approval from the Bureau before a case management trainee can be hired. The maximum allowable caseload for a case manager trainee is 20 recipients. The case management trainee position may be utilized to provide services to the following target populations:

- a. Infants and Toddlers;
- b. HIV;
- c. New Opportunities Waiver;
- d. Elderly and Disabled Adult Waiver;
- e. Targeted EPSDT;
- f. Children's Choice Waiver; and
- g. Supports Waiver.

E.2a. - e. ...

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 30:1038 (May 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

Chapter 117. Individuals with Developmental Disabilities

§11701. Introduction

A. The targeted population for case management services shall consist of individuals with developmental disabilities who are participants in the NOW or Supports Waiver Programs.

B. - C. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1043 (May 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

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

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

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

0606#009

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

CCAP—Job Search and Repair and Improvement Grants
(LAC 67:III.Chapter 51)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III.5102, 5103, 5104, 5107, and 5109 in the Child Care Assistance Program (CCAP) effective June 1, 2006, pursuant to ACF Guidance, ACYF-IM-CC-05-03, Flexibility in Spending CCDF Funds in Response to Federal or State Declared Emergency Situations. This Rule shall remain in effect for a period of 120 days.

Through a Declaration of Emergency signed February 1, 2006, the agency expanded the eligibility criteria at §§5102, 5103, 5104, and 5109 to include Job Search as a qualifying activity for child care assistance. The number of months that participation in Job Search could be used as a countable Training or Employment Mandatory Participant (TEMP) activity was originally set at three months (§5103.B.4.e). This Emergency Rule increases the number of months to

four months. It was the agency's decision to allow this extra month of child care assistance for participants of Job Search so that those victims of Hurricanes Katrina and Rita might have adequate child care while searching for employment.

A Notice of Intent containing these amendments was published in the May issue of the Louisiana Register.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 12. Child Care Assistance Program

Chapter 51. Child Care Assistance Program

Subchapter A. Administration, Conditions of Eligibility, and Funding

§5102. Definitions

* * *

Training or Employment Mandatory Participant (TEMP)—a household member who is required to meet criteria described in §5103.B.4 (effective June 1, 2006), including the head of household, the head of household's legal spouse or non-legal spouse, the MUP age 16 or older whose child(ren) need child care assistance, and the MUP under age 16 whose child(ren) live with the MUP and the MUP's disabled parent/guardian who is unable to care for the MUP's child(ren) while the MUP goes to school/work.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2826 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:1484 (July 2004), LR 31:2262 (September 2005), LR 32:

§5103. Conditions of Eligibility

A. - A.1. ...

B. Low-income families not receiving FITAP cash assistance, including former FITAP recipients who are given priority consideration, must meet the following eligibility criteria:

1. - 3. ...

4. Effective September 1, 2002, unless disabled as established by receipt of Social Security Administration Disability benefits, Supplemental Security Income, Veterans' Administration Disability benefits for a disability of at least 70 percent, or unless disabled and unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination, the TEMP must be:

a. employed or effective June 1, 2006, conducting Job Search for a minimum average of 25 hours per week effective April 1, 2003, and all countable employment hours must be paid at least at the federal minimum hourly wage; or

b. ...

c. engaged in some combination of employment which is paid at least at the federal minimum hourly wage, or effective June 1, 2006, Job Search, or job training, or education as defined in §5103.B.4.b that averages, effective April 1, 2003, at least 25 hours per week;

d. ...

e. effective June 1, 2006, participation in Job Search as a countable TEMP activity can only be used for four calendar months per State Fiscal Year.

5. - 6. ...

7. The family requests child care services, provides the information and verification necessary for determining

eligibility and benefit amount, and meets appropriate application requirements established by the state. Required verification includes birth verification for all children under 18 years of age, proof of all countable household income, proof of the hours of all employment or education/training or, effective June 1, 2006, Job Search, and effective October 1, 2004, proof of immunization for each child in need of care.

B.8. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193, Act 58 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

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 29:1106 (July 2003), LR 29:1833 (September 2003), LR 30:496 (March 2004), LR 30:1487 (July 2004), LR 31:101 (January 2005), LR 31:2263 (September 2005), LR 32:

§5104. Reporting Requirements Effective February 1, 2004

A. ...

B. A Low Income Child Care household that is included in a Food Stamp semi-annual reporting household is subject to the semi-annual reporting requirements in accordance with §2013. In addition, these households must report the following changes within 10 days of the knowledge of the change:

1. ...

2. an interruption of at least three weeks or a termination of any TEMP's employment, or training ,or effective June 1, 2006, Job Search; or

3. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, 7 CFR Part 273, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:1487 (July 2004), amended LR 31:2263 (September 2005), LR 32:

Subchapter B. Child Care Providers

§5107. Child Care Provider

A. - H.2. ...

I. CCAP offers Repair and Improvement Grants to either licensed or registered providers, or to those who have applied to become licensed or registered, to assist with the cost of repairs and improvements necessary to comply with DSS licensing or registration requirements and/or to improve the quality of child care services.

1. - 1.c. ...

2.a. A provider can receive no more than one such grant for any state fiscal year. Exception: effective June 1, 2006, for the State Fiscal Year 2005/2006, providers in the following parishes will be eligible to receive two repair and improvement grants: Orleans, Plaquemines, Jefferson, St. Bernard, St. Tammany, Washington, Calcasieu, and Cameron.

b. To apply, the provider must submit an application form indicating that the repair or improvement is needed to meet DSS licensing or registration requirements, or to improve the quality of child care services. Two written estimates of the cost of the repair or improvement must be provided and the provider must certify that the funds will be used for the requested purpose. If the provider has already

paid for the repair or improvement, verification of the cost in the form of an invoice or cash register receipt must be submitted. Reimbursement can be made only for eligible expenses incurred no earlier than six months prior to the application. If a provider furnishes estimates to receive a grant, the grant must be spent for the requested purpose within three months of the date the grant is issued.

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, Act 58, 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

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), LR 30:1484, 1487 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:

§5109. Payment

A. - B.2.b. ...

3. The number of hours authorized for payment is based on the lesser of the following:

a. ...

b. the number of hours per week the head of household, the head of household's spouse or non-legal spouse, or the minor unmarried parent is working and/or attending a job training or educational program and/or effective June 1, 2006, conducting Job Search, plus one hour per day for travel to and from such activity; or

B.3.c. - E. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445 (December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), LR 30:2078 (September 2004), LR 31:2265 (September 2005), LR 32:

Ann S. Williamson
Secretary

0606#016

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

FITAP/KCSP/STEP—Parenting Skills Education and Eligibility Factors

(LAC 67:III.1209, 1223, 1225, 1229, 1245, 1291, 5307, 5321, 5323, 5329, 5339, 5341, 5391, and 5711)

The following Emergency Rule is being repromulgated to correct codification errors. The original Emergency Rule may be viewed on pages 788-791 of the May 20, 2006 edition of the *Louisiana Register*.

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III, Subpart 2, Subpart 13, and Subpart 16 effective

May 1, 2006. This Rule shall remain in effect for a period of 120 days.

Pursuant to the authority granted to the Department by Louisiana's Temporary Assistance to Needy Families Block Grant, the agency will amend §1209, §1223, §1225, §1229, §1245, and §1291 in the Family Independence Temporary Assistance Program (FITAP); §5307, §5321, §5323, §5329, §5339, §5341, and §5391 in the Kinship Care Subsidy Program (KCSP) and §5711 in the Strategies to Empower People (STEP) Program. Section 1209 is amended to align with policy the need for a concurrent notice; §1223 is amended to expand the definition of a qualified alien; §1225 is amended to provide good cause for the requirement of enumeration; §1229 is amended regarding deductions for dependent care; §1245 is amended for consistency with KCSP and the STEP Program regarding Parenting Skills Education; §1291 is amended to clarify and correct procedures regarding failure to cooperate in substance abuse screening, testing, or participation. The Kinship Care Subsidy Program is being amended at: §5307 to send a concurrent notice when a child has been certified for Supplemental Security Income; §5321 to define the age limit for KCSP benefits; §5323 to expand the definition of a qualified alien; §5329 to exempt the receipt of Supplemental Security Income in determining eligibility and to exempt at pretest income for children receiving foster care payments and SSI; §5339 to address the age requirement regarding Parenting Skills Education; §5341 and §5391 are repealed as Drug Screening, Testing, Education, and Rehabilitation and the Substance Abuse Treatment Program do not apply to recipients of KCSP benefits. §5711 in the STEP Program is being amended to address FITAP and KCSP recipients who must participate in Parenting Skills Education and to clarify the scope of Parenting Skills Education.

The authorization for emergency action in this matter is contained in Act 16 of the 2005 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 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 Action

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. - 16. ...

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, Act 16, 2005 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), LR 32:

Subchapter B. Conditions of Eligibility

§1223. Citizenship

A. Each FITAP recipient must be a United States Citizen, a non-citizen national, or a qualified alien. A non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. A qualified alien is:

1. - 9. ...

10. an alien who is a victim of a severe form of trafficking in persons, or effective May 1, 2006, an eligible relative of a victim of a severe form of trafficking in persons.

B. - B.8. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B., P.L. 106-386, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2448 (December 1999), amended LR 26:1342 (June 2000), LR 27:2263 (December 2001), LR 28:1599 (July 2002), LR 32:

§1225. Enumeration

A. Each applicant for, or recipient of, FITAP is required to furnish a Social Security number or to apply for a Social Security number if such a number has not been issued or is not known, unless, effective May 1, 2006, good cause has been established.

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 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 26:1342 (June 2000), LR 32:

§1229. Income

A. - B.2. ...

C. Earned Income Deductions. Each individual in the income unit who has earned income is entitled to the following deductions only.

1. Standard Deduction of \$120

2. \$900 Time-Limited Deduction. This deduction is applied for six months when a recipient's earnings exceed the \$120 standard deduction. The months need not be consecutive nor within the same certification periods. The deduction is applicable for a six-month lifetime limit for the individual.

3. Dependent Care Deduction. Recipients may be entitled to a deduction for dependent care for:

a. an incapacitated adult;

b. effective May 1, 2006, a child age 13 or older who is not receiving CCAP; or

c. effective May 1, 2006, the amount charged by a child care provider that exceeds the CCAP maximum for a child in care.

D. - G. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B., R.S. 46:231.2, P.L. 108-447, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 26:1342 (June 2000), LR 26:2831 (December 2000), LR 31:2956 (November 2005), LR 32:

§1245. Parenting Skills Education

A. Effective May 1, 2006, recipients who are pregnant or have a child under age one shall participate in parenting

skills education as outlined in LAC 67:III.Chapter 57, §5711.

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. Act 16, 2005 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), LR 32:

Subchapter D. Special Initiatives

§1291. Substance Abuse Treatment Program

A. - E.4. ...

5. Failure to Cooperate. Failure or refusal of a recipient to participate in substance abuse screening, testing, or participation in the education and rehabilitation program, without good cause, will result in the following actions effective May 1, 2006.

a. At application, the application is rejected, unless the person is an 18-year-old dependent child. Exclude any 18-year old dependent child that fails to cooperate until they participate.

b. For certified cases in which the family is not work-eligible, the case will be closed for at least one month and until the client complies with this requirement, whichever is later.

c. For certified cases in which the family is work-eligible, a STEP sanction will be imposed with the appropriate occurrence and reason. The case must remain closed for the duration of the sanction period and until the client complies with this requirement, whichever is later.

d. For certified cases in which an 18-year-old dependent child fails to cooperate, exclude him from the grant until he participates.

6. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:1492 (June 2002), amended LR 32:

Subpart 13. Kinship Care Subsidy Program (KCSP) Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance

§5307. Notices of Adverse Action

A. A notice of adverse action shall be sent at least 13 days prior to taking action to 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. - 13. ...

14. effective May 1, 2006, the child has been certified for Supplemental Security Income and that fact has been established.

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 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:351 (February 2000), amended LR 29:2565 (December 2002), LR 32:

Subchapter B. Conditions of Eligibility

§5321. Age Limit

A. Effective May 1, 2006, a dependent child must be under 18 years of age.

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, Act 16, 2005 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), LR 31:103 (January 2005), LR 32:

§5323. Citizenship

A. Each KCSP recipient must be a United States citizen, a non-citizen national, or a qualified alien. A non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. A qualified alien is:

1. - 9. ...

10. an alien who is a victim of a severe form of trafficking in persons, or effective May 1, 2006, an eligible relative of a victim of a severe form of trafficking in persons.

B. - B.8. ...

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, P.L. 106-386, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:352 (February 2000), amended LR 27:2264 (December 2001), LR 28:1600 (July 2002), LR 32:

§5329. Income

A. Income is any gain or benefit to a household that has monetary value and is not considered a resource. Count all income in determining pretest eligibility except income from:

1. - 28. ...

29. effective May 1, 2006, Supplemental Security Income (SSI).

B. - B.2.c. ...

3. For purposes of this pretest, income is defined as countable income belonging to any member of the KCSP income unit. Exception effective May 1, 2006: Income for children receiving foster care and Supplemental Security Income is not included in the income test.

C. Income after Pretest. The child is determined eligible for KCSP if the child's countable income is, effective July 1, 2006, less than \$280. If the child's countable income is, effective July 1, 2006, \$280 or more, the child is ineligible.

D. Payment Amount. Payment amount is, effective July 1, 2006, \$280 a month for each eligible child.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, and P.L. 108-447, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:353 (February 2000), amended LR 26:2832 (December 2000), LR 31:2958 (November 2005), LR 32:

§5339. Parenting Skill Education

A. As a condition of eligibility for KCSP benefits, effective May 1, 2006, any child under age 18 who is pregnant or the parent of a child under the age of one must attend a parenting skills education program as outlined in LAC 67:III.Chapter 57, §5711. 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, Act 16, 2005 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), LR 32:

§5341. Drug Screening, Testing, Education, and Rehabilitation Program

Repealed.

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, Act 16, 2005 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), repealed LR 32:

Subchapter D. Special Initiatives

§5391. Substance Abuse Treatment Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:1493 (June 2002), repealed LR 32:

Subpart 16. Strategies to Empower People (STEP) Program

Chapter 57. Strategies to Empower People (STEP) Program

Subchapter B. Participation Requirements

§5711. Parenting Skills Education

A. Effective May 1, 2006, FITAP and KCSP recipients who are pregnant or have a child under age one shall participate in parenting skills education as the primary work activity under the Family Success Agreement. Parenting Skills Education consists of family strengthening, parenting information, and money management information. The lessons provide key parenting practices for parents to learn child nurturance that includes care, safety, and understanding child development. 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, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:498 (March 2004), amended LR 32:

Ann Silverberg Williamson
Secretary

0606#048

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Food Stamp/FITAP/KCSP—Interest Income
Exclusion and Student Status Changes
(LAC 67:III.1229, 1935, 1937, 1979, 1980, and 5329)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III, Subpart 2, Subpart 3, and Subpart 13 effective

June 29, 2006. This declaration is necessary to extend the original Emergency Rule effective January 10, 2006, since it is effective for a maximum of 120 days and will expire on June 28, 2006 before the final Rule takes effect. (The final Rule will be published in the September 2006 issue.)

Pursuant to the authority granted to the department by Louisiana's Temporary Assistance to Needy Families Block Grant, the agency will amend §1229 in the Family Independence Temporary Assistance Program (FITAP) and §5329 in the Kinship Care Subsidy Program to exclude interest and dividends from countable income with the exception of dividends received from a resource-exempt trust fund. Pursuant to P.L. 107-171, The Food Stamp Reauthorization Act of 2002 (also known as the Farm Bill), the agency will amend §1980 in the Food Stamp Program to exclude education assistance received by any household member and the interest and dividend income specified above from countable income. Section 4107 of the Farm Bill gives the state the option to exclude certain types of income that the state agency does not include for TANF purposes. Technical changes are being made to combine and amend §§1935 and 1937 to clarify student eligibility requirements and to change the obsolete term Job Training Partnership Act to Workforce Investment Act in §1979.

Emergency action in this matter is necessary as thousands of Louisiana citizens have suffered extensive damage to their home and/or business property due to Hurricanes Katrina and Rita and have incurred enormous expense. Many will receive insurance settlements that may be invested until property repairs can be completed. The interest or dividend income from these settlements may adversely impact household eligibility for FITAP, KCSP, or Food Stamp benefits, thereby creating imminent peril to public health and welfare. Therefore, it is the agency's intention to remove this barrier to FITAP, KCSP, and Food Stamp eligibility and benefits and exclude these payments from countable income.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 2. Family Independence Temporary Assistance Program

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1229. Income

A. Income is any gain or benefit to a household that has monetary value and is not considered a resource. Count all income in determining pretest eligibility except income from:

1. - 18. ...
19. loans;
20. - 29. ...
30. effective March 1, 2006, interest income;
31. effective March 1, 2006, dividend income.

Exception: Dividends received from a resource-exempt trust fund will not be excluded as income.

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S.36:474, R.S. 46:231.1.B, R.S. 46:231.2, P.L. 108-447, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999),

amended LR 26:1342 (June 2000), LR 26:2831 (December 2000) LR 31:2956 (November 2005), LR 32:

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter E. Students

§1935. Student Provisions (Effective March 1, 2006)

A. An individual enrolled at least half-time (as defined by the institution) in an institution of higher education is considered a student. A student is ineligible to receive Food Stamp benefits unless the individual meets at least one of the following conditions:

1. under age 18 or over age 49;
2. physically or mentally unfit;
3. receiving FITAP benefits;
4. employed an average of at least 20 hours per week, and be paid for such employment, or if self-employed, employed for an average of at least 20 hours per week and receives weekly earnings at least equal to the federal minimum hourly wage multiplied by 20 hours;
5. participating in a state or federally financed work-study program during the regular school year;
6. participating in an on-the-job training program;
7. responsible for, and physically providing, the care of a dependent household member who is:
 - a. under age 6; or
 - b. age 6 or over but under age 12 and adequate child care is not available;
8. is a single parent who is a full-time student (as defined by the institution) and who is responsible for, and physically providing, the care of a dependent child under age 12, regardless of the availability of adequate child care;
9. assigned to or placed in an institution of higher education through:
 - a. the work program under Title IV of the Social Security Act, which is the Strategies to Empower People (STEP) Program;
 - b. the Workforce Investment Act of 1998;
 - c. a Food Stamp employment and training program (LaJET);
 - d. a program under section 236 of the Trade Act of 1974; or
 - e. a state or local government employment and training program, as determined appropriate by FNS.

B. An institution of higher education is a:

1. business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certificate (GED) for enrollment in the curriculum; or
2. college or university that offers degree programs regardless of whether a high school diploma or equivalency certificate (GED) is required.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security LR 9:131 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 24:1783 (September 1998), LR 32:

§1937. Student Related Provisions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security LR 12:756 (November 1986), amended LR 13:91 (February 1987),

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 19:885 (July 1993), LR 19:1436 (November 1993), repealed LR 32:

Subchapter I. Income and Deductions

§1979. Income

A. Earnings to individuals who are participating in on-the-job training programs under the Workforce Investment Act (formerly the Job Training Partnership Act) shall be counted as income. This provision does not apply to household members under 19 years of age who are under the parental control of another adult member.

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:26937 et seq., 7 CFR 273.9, P. L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:657 (November 1987), amended by the Department of Social Services, Office of Family Support, LR 32:

§1980. Income Exclusions

A. In addition to those income exclusions previously adopted and codified in Chapter 19, Certification of Eligible Households, the following income types will be excluded from countable income for the Food Stamp Program:

1. - 22. ...
 23. loans;
 24. - 39.b. ...
 40. effective March 1, 2006, dividend income.
- Exception: Dividends received from a resource-exempt trust fund will not be excluded as income;
41. effective March 1, 2006, interest income;
 42. effective March 1, 2006, education assistance.

AUTHORITY NOTE: Promulgated in accordance with P.L. 103-66, 7 CFR 273.9(c)(11), P.L. 104-193, P.L. 107-171, P.L. 108-447.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 21:188 (February 1995), amended LR 23:82 (January 1997), LR 29:607 (April 2003), LR 31:2956 (November 2005), LR 32:

Subpart 13. Kinship Care Subsidy Program

Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§5329. Income

A. Income is any gain or benefit to a household that has monetary value and is not considered a resource. Count all income in determining pretest eligibility except income from:

1. - 18. ...
19. loans;
20. - 28. ...
29. effective March 1, 2006, interest income;
30. effective March 1, 2006, dividend income.

Exception: Dividends received from a resource-exempt trust fund will not be excluded as income.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, P.L. 108-447, P. L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:353 (February

2000), amended LR 26:2832 (December 2000), LR 31:2958 (November 2005), LR 32:

Ann Silverberg Williamson
Secretary

0606#050

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

TANF—Alternative to Abortion and Freedom Schools
(LAC 67:III.5549, 5569 and 5583)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to adopt LAC 67:III, Subpart 15, Chapter 55, §5569, Alternatives to Abortion Services Program and §5583, Children's Defense Fund Freedom Schools as new TANF Initiatives and to amend §5549, OCS Child Welfare Programs. This Emergency Rule effective June 1, 2006, will remain in effect for a period of 120 days.

As a result of Act 1 of the 2004 Legislative Session, the agency repealed several TANF Initiatives including Alternatives to Abortion effective September 2004, as funding for the program was no longer available. Pursuant to Act 16 of the 2005 Regular Session of the Louisiana Legislature, the agency is adopting the Children's Defense Fund Freedom Schools and re-establishing Alternatives to Abortion Services Program as funds have once again been appropriated for this initiative. The agency is also amending §5549, OCS Child Welfare Programs to remove reference to Maintenance of Effort funds as monies for this program will now consist of federal funds only.

The authorization for emergency action in this matter is contained in Act 16 of the 2005 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5549. OCS Child Welfare Programs

Effective April 12, 2002

A. OFS shall enter into a Memorandum of Understanding with the Office of Community Services (OCS), the state child welfare agency, for collaboration in identifying and serving children in needy families who are at risk of abuse or neglect. The methods of collaboration include:

A.1. - B. ...

C. Financial eligibility is limited to needy families which include a minor child living with a custodial parent or an adult caretaker relative. A needy family is a family in which any member receives a Family Independence Temporary

Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), or Supplemental Security Income (SSI).

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:2374 (November 2002), amended LR 31:486 (February 2005), LR 32:

§5569. Alternatives to Abortion Services Program

A. Effective June 1, 2006, the Office of Family Support shall enter into contracts with public agencies, non-profit organizations, or for-profit organizations to provide intervention services including crisis intervention, counseling, mentoring, support services, and pre-natal care information, in addition to information and referrals regarding healthy childbirth, adoption, and parenting to help ensure healthy and full-term pregnancies as an alternative to abortion.

B. These services meet the TANF goals to provide assistance to needy families so children may be cared for in their own homes or in the homes of relatives and to encourage the formation and maintenance of two-parent families by providing pregnancy and parenting support to low-income women, their male partners, and families who are experiencing an unplanned pregnancy.

C. Eligibility for services is limited to pregnant women, their male partners, and/or pregnant minors whose family's income is at or below 200 percent of the federal poverty level.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§5583. Children's Defense Fund Freedom Schools

A. Effective June 1, 2006, the agency shall enter into contracts to create supportive, nurturing, literature-rich environments for children ages 5 to 18 years of age by focusing on literacy, cultural heritage, parental involvement, servant-leadership, and social action. The Freedom Schools program connects the needs of children and their families with the resources of the community.

B. These services meet the TANF goal to prevent and reduce out-of-wedlock pregnancies.

C. Eligibility for services is not limited to needy families.

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; HB 1 2006 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

Ann Silverberg Williamson
Secretary

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