

# Rules

## RULE

### 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, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., and in accordance with R.S. 47:6020 through 6020.4 and 36:104, hereby amends the following Sections of the regulations for the Angel Investor Tax Credit Program.

The Department of Economic Development, Office of the Secretary, has found a need to amend the rules regarding the regulation of the Angel Investor Tax Credit Program pursuant to R.S. 47:6020 through 6020.4, and 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 rules, the State of Louisiana may suffer 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 32:1594 (September 2006).

#### §3303. Accredited Investor

A. An *Accredited Investor* shall be defined as:

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 32:1594 (September 2006).

#### §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 fifty 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 La. R.S. 51:2453(1)(b)(i) through (v), (c), and (d), and in Section 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 32:1594 (September 2006).

### **§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 32:1595 (September 2006).

Michael J. Olivier  
Secretary

0609#048

## **RULE**

### **Department of Environmental Quality Office of the Secretary Legal Affairs Division**

#### **Clean Air Mercury Rule Incorporation by Reference (LAC 33:III.3003)(AQ257ft)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.3003 (Log #AQ257ft).

This rule is identical to federal regulations found in 70 FR 28606-28700 (May 18, 2005), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rulemaking incorporates by reference the federal Clean Air Mercury Rule (CAMR) and provides for participation in the EPA-administered cap-and-trade program for annual mercury emissions. The federal rule seeks to reduce mercury emissions from coal-fired electrical generating units (EGUs). The federal EGU mercury cap-and-trade program for coal-fired EGUs was promulgated on May 18, 2005, and is closely based upon the highly successful Acid Rain Program. States have until November 2006 to submit to EPA their corresponding EGU emissions control

plan based upon Section 111 of the Clean Air Act Amendments of 1990.

Mercury is a metal that exists naturally in the environment around the world. It has been demonstrated that mercury can be transported globally in the atmosphere. This mercury transport occurs from both natural and man-made sources. Emissions from coal-fired EGUs in the United States have been determined to be a significant source of mercury. Although there are numerous sources of mercury exposure in homes, industries, and nature, some of the most significant exposure risks occur when the mercury in the atmosphere eventually settles to the ground and finds its way into lakes, rivers, and streams. This mercury in the bottom sediments of some rivers and lakes undergoes methylation, a process carried out by bacteria in certain conditions. Methyl mercury then gets into the food chain and results in mercury exposure to persons who eat fish. There are numerous fish consumption advisories in Louisiana. Human exposure to mercury can affect the nervous system and the function of several internal organs, such as the brain and the kidneys. Young children, especially the unborn, developing fetus, are particularly susceptible to the effects of mercury.

The federal rule establishes mercury limits from new and existing coal-fired EGUs and creates a market based cap-and-trade program that will reduce EGU emissions of mercury in two separate phases, in the years 2010 and 2018. Each state receives a mercury budget for each year. Louisiana's budget is 0.601 tons of mercury for years 2010-2017 and 0.237 tons of mercury thereafter. Each state can adopt any methodology to allocate their mercury allowances. The department will adopt the federal model rule for mercury allowance allocations that are based upon baseline heat input. It also will adopt the new source set-aside of five percent of the allowances in Phase 1, and three percent in Phase 2. New coal-fired EGUs will have to meet stringent new source performance standards in addition to being subjected to the caps. While individual states do have the authority to develop an alternative rule different from the federal cap-and-trade program, the department has concluded that alternatives to the EPA program which produce earlier and deeper reductions of mercury may not be technologically feasible and that rules which require all coal-fired EGUs to install mercury controls may not be cost effective, possibly subjecting the electricity rate payer to higher than necessary rates without a corresponding decrease in state-wide mercury deposition levels. The basis and rationale for this rule are to mirror the federal regulations for CAMR.

The substantive changes to AQ257ft are identical to federal corrections and amendments to the Clean Air Mercury Rule (CAMR) found in 70 FR 51266-51269 (August 30, 2005) and 71 FR 33388-33402 (June 9, 2006), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the substantive changes; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

These amendments correct portions of the promulgated CAMR. EPA addressed technical corrections in 70 FR 51266-51269 and subsequently addressed amendments in 71 FR 33388-33402. The amendments include a change in the definition of coal to exclude petroleum coke. The other amendments are non-controversial.

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

### Title 33

## ENVIRONMENTAL QUALITY

### Part III. Air

#### Chapter 30. Standards of Performance for New Stationary Sources (NSPS)

##### Subchapter A. Incorporation by Reference

#### §3003. Incorporation by Reference of 40 Code of Federal Regulations (CFR) Part 60

A. Except for 40 CFR Part 60, Subpart AAA, and as modified in this Section, Standards of Performance for New Stationary Sources, published in the *Code of Federal Regulations* at 40 CFR Part 60, July 1, 2005, are hereby incorporated by reference as they apply to the state of Louisiana. Also incorporated by reference are revisions to 40 CFR Part 60, Subparts A, B, Da, and HHHH as promulgated as the Clean Air Mercury Rule on May 18, 2005, in the *Federal Register*, 70 FR 28606-28700, as corrected in the *Federal Register*, 70 FR 51266-51269, August 30, 2005, and as amended in the *Federal Register*, 71 FR 33388-33402, June 9, 2006; and Subpart EEEE, "Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006," and Subpart FFFF, "Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004," promulgated on December 16, 2005, in the *Federal Register*, 70 FR 74870-74924.

B. - C. ...

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 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:809 (May 2006), LR 32:1596 (September 2006).

Herman Robinson, CPM  
Executive Counsel

0609#017

**RULE**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

Incorporation by Reference of the  
CAIR SO<sub>2</sub> Trading Program  
(LAC 33:III.506)(AQ260ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted the Air regulations, LAC 33:III.506 (Log #AQ260ft).

This Rule is identical to federal regulations found in 40 CFR Part 96, Subparts AAA, BBB, CCC, FFF, GGG, and HHH (July 1, 2005), and 70 FR 25162-25405 (May 12, 2005) and 71 FR 25328-25469 (April 28, 2006), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule incorporates by reference the federal regulations concerning the Clean Air Interstate Rule (CAIR) SO<sub>2</sub> Trading Program. This action is necessary in order for Louisiana to adopt the general and specific provisions for the CAIR SO<sub>2</sub> Trading Program, under Section 110 of the Clean Air Act, as a means of mitigating interstate transport of fine particulate and sulfur dioxide. By adopting 40 CFR Part 96, Subparts AAA-HHH, the state is authorizing EPA to assist the state in implementing the CAIR SO<sub>2</sub> Trading Program.

On March 10, 2005, EPA announced the Clean Air Interstate Rule (CAIR), a rule that will achieve reduction in air pollution by regulating sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) emissions from 23 states and the District of Columbia. These pollutants contribute to levels of fine particles (PM<sub>2.5</sub>) in areas above the air quality standard in downwind states. In addition, NO<sub>x</sub> emissions in 25 eastern states and the District of Columbia contribute to levels of ozone in areas above the air quality standard for 8-hour ozone in other downwind states. In developing the CAIR SO<sub>2</sub> regulations and the cap-and-trade program, the Environmental Protection Agency relied on the successful Acid Rain Program/cap-and-trade program. The resulting CAIR SO<sub>2</sub> cap-and-trade program and the Acid Rain Program use a common SO<sub>2</sub> allowance system. EPA has promulgated changes to the Acid Rain Program that provide for this common structure. These revisions enable the CAIR SO<sub>2</sub> cap-and-trade program to accept Acid Rain SO<sub>2</sub> allocations for trading, selling, and/or determining compliance with the CAIR SO<sub>2</sub> program. The basis and rationale for this rule are to mirror the federal regulations.

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

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 5. Permit Procedures**

**§506. Clean Air Interstate Rule Requirements**

A. Reserved.

B. Reserved.

C. Annual Sulfur Dioxide. Except as specified in this Section, the Federal SO<sub>2</sub> Model Rule, published in the *Code of Federal Regulations* at 40 CFR Part 96, July 1, 2005, and as revised at 70 FR 25162-25405, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, is hereby incorporated by reference, except for Subpart III—CAIR SO<sub>2</sub> Opt-in Units and all references to opt-in units.

D. Copies of documents incorporated by reference in this Section may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html); from the Department of Environmental Quality, Office of Environmental Services, Air Permits Division; or from a public library.

E. Modifications or Exceptions. A copy of each report or notice or of any other documentation required by the referenced regulations (i.e., 40 CFR Part 96) to be provided to "the Administrator" shall be provided to the Office of Environmental Services, Air Permits Division, by the person required to make submission to "the Administrator."

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:1597 (September 2006).

Herman Robinson, CPM  
Executive Counsel

0609#019

**RULE**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

Incorporation by Reference of the Acid Rain Program  
(LAC 33:III.505)(AQ259ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.505 (Log #AQ259ft).

This Rule is identical to federal regulations found in 40 CFR Part 72 (July 1, 2005), and 70 FR 25162-25405 (May 12, 2005) and 71 FR 25328-25469 (April 28, 2006), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule replaces the existing Acid Rain Program regulations with an incorporation by reference of the recently revised federal regulations concerning the Acid Rain Program. This action is necessary in order for Louisiana to adopt the general and specific provisions for the CAIR SO<sub>2</sub> Trading Program, under Section 110 of the Clean Air Act, as a means of mitigating interstate transport of fine particulate and sulfur dioxide. By adopting the Acid Rain Program, 40 CFR Part 72, in its entirety, the state is authorizing EPA to assist the state in implementing the CAIR SO<sub>2</sub> Trading Program.

On March 10, 2005, EPA announced the Clean Air Interstate Rule (CAIR), a rule that will achieve reduction in air pollution by regulating sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) emissions from 23 states and the District of Columbia. These pollutants contribute to levels of fine particles (PM<sub>2.5</sub>) in areas above the air quality standard in downwind states. In addition, NO<sub>x</sub> emissions in 25 eastern states and the District of Columbia contribute to levels of ozone in areas above the air quality standard for 8-hour ozone in other downwind states. In developing the CAIR SO<sub>2</sub> regulations and the cap-and-trade program, the Environmental Protection Agency relied on the successful Acid Rain Program/cap-and-trade program. The resulting CAIR SO<sub>2</sub> cap-and-trade program and the Acid Rain Program use a common SO<sub>2</sub> allowance system. EPA has promulgated changes to the Acid Rain Program that provide for this common structure. These revisions enable the CAIR SO<sub>2</sub> cap-and-trade program to accept Acid Rain SO<sub>2</sub> allocations for trading, selling, and/or determining compliance with the CAIR SO<sub>2</sub> program. The recent changes to the Acid Rain Program at the federal level due to CAIR will require the state to modify its Acid Rain rule at LAC 33:III.505. The incorporation of the federal Acid Rain Rule will ensure continuity between the Acid Rain Program and the implementation of the CAIR SO<sub>2</sub> Program. The basis and rationale for this Rule are to mirror the federal regulations.

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

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

**Chapter 5. Permit Procedures**

**§505. Acid Rain Program Permitting Requirements**

A. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR Part 72, July 1, 2005, and as revised at 70 FR 25162-25405, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

B. Copies of documents incorporated by reference in this Section may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html); from the Department of Environmental Quality, Office of Environmental Services, Air Permits Division; or from a public library.

C. Modifications or Exceptions. A copy of each report or notice or of any other documentation required by the referenced regulations (i.e., 40 CFR Part 72) to be provided to "the Administrator" shall be provided to the Office of Environmental Services, Air Permits Division, by the person required to make submission to "the Administrator."

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 by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 21:678 (July 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2446 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2429, 2436 (October 2005), LR 32:1598 (September 2006).

Herman Robinson, CPM  
Executive Counsel

0609#018

**RULE**

**Department of Environmental Quality**  
**Office of the Secretary**  
**Legal Affairs Division**

Major Stationary Source/Major Modification Emission  
Thresholds for Baton Rouge Ozone Nonattainment Area  
(LAC 33:III.111, 504, 509, 607, 709, and 711)(AQ253)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.111, 504, 509, 607, 709, and 711 (Log #AQ253).

The department promulgated an emergency rule on June 15, 2005, to address rule revisions needed for transition from the 1-hour ozone National Ambient Air Quality Standard (NAAQS) to the 8-hour ozone NAAQS. The 1-hour ozone standard was revoked by the EPA in the federal 8-hour ozone implementation rule. The revocation of the 1-hour ozone standard was effective June 15, 2005. Under the 1-hour ozone standard the five-parish Baton Rouge ozone nonattainment area was classified as severe. Under the 8-hour ozone standard the Baton Rouge area is classified as marginal with an attainment date of June 15, 2007. To continue efforts toward attainment of the 8-hour ozone standard in the Baton Rouge area, this Rule promulgates the revisions in LAC 33:III.Chapters 5 and 6 to the major stationary source threshold values, the major modification significant net increase values, and the minimum offset ratios for the Baton Rouge nonattainment area at values more in line with those listed for a classification of serious than for the marginal classification. These revisions include changing references to the ozone standard from the 1-hour standard to the 8-hour standard; amending text to reflect the NSR requirements applying to large sources in nonattainment areas for the 8-hour standard; including nitrogen oxides as a precursor for ozone; including the current fine particle (PM<sub>2.5</sub>) NAAQS; and amending Tables

1 and 1a in LAC 33:III.711 to reflect the 8-hour ozone standard. Without this action the Baton Rouge nonattainment area, which is classified as marginal under the 8-hour ozone standard, would revert to marginal levels in Table 1 of LAC 33:III.504. This rule will promulgate in LAC 33:III.504.M, the thresholds set forth in Emergency Rule AQ253E that were effective as of June 15, 2005. The rule revisions will constitute a revision to the Louisiana State Implementation Plan (SIP) for air quality. The basis and rationale for this rule are to continue efforts toward attainment of the ozone standard and cleaner air in the five-parish Baton Rouge area.

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

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part 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 32:1599 (September 2006).

**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<sub>x</sub> are the regulated pollutants under this Section. VOC and NO<sub>x</sub> 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<sub>x</sub> increases. For applications deemed administratively 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<sub>x</sub> 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<sub>x</sub> 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

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 <sub>x</sub>			
Marginal	100	40(40) <sup>2</sup>	1.10 to 1
Moderate	100	40(40) <sup>2</sup>	1.15 to 1
Serious	50	25 <sup>3</sup> (5) <sup>4</sup>	1.20 to 1 w/LAER or 1.40 to 1 internal w/o LAER
Severe	25	25 <sup>3</sup> (5) <sup>4</sup>	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 <sub>2</sub>	100	40	>1.00 to 1
PM <sub>10</sub> <sup>1</sup>			
Moderate	100	15	>1.00 to 1
Serious	70	15	>1.00 to 1
Lead	100	0.6	>1.00 to 1

<sup>1</sup>The requirements of LAC 33:III.504 applicable to major stationary sources and major modifications of PM<sub>10</sub> shall also apply to major stationary sources and major modifications of PM<sub>10</sub> precursors, except where the administrator determines that such sources do not contribute significantly to PM<sub>10</sub> levels that exceed the PM<sub>10</sub> NAAQS in the area.

<sup>2</sup>Consideration 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.

<sup>3</sup>For serious and severe ozone nonattainment areas, the increase in emissions of VOC or NO<sub>x</sub> 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<sub>x</sub>.

<sup>4</sup>Consideration of the net emissions increase will be triggered for any project that would increase VOC or NO<sub>x</sub> 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<sub>x</sub> for a period of five years after the effective date of the rescission of the NO<sub>x</sub> waiver, and within the contemporaneous period thereafter.

- VOC= volatile organic compounds
- NO<sub>x</sub> = oxides of nitrogen
- CO = carbon monoxide
- SO<sub>2</sub> = sulfur dioxide
- PM<sub>10</sub>= particulate matter of less than 10 microns in diameter

M. Notwithstanding the major stationary source and major modification significant net increase threshold values and minimum offset ratios established by Subsection L, Table 1 of this Section, the provisions of this Subsection shall apply to sources located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge as long as each parish's nonattainment designation

with respect to the 8-hour national ambient air quality standard (NAAQS) for ozone is "marginal" or "moderate."

1. For an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO<sub>x</sub>, consideration of the net emissions increase will be triggered for any project that would:

- a. increase emissions of VOC or NO<sub>x</sub> 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<sub>x</sub>;
- b. an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO<sub>x</sub> with a significant net emissions increase of VOC, including HRVOC, or NO<sub>x</sub> 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 32:1599 (September 2006).

**§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<sub>x</sub>) 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 <sub>10</sub> 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 <sub>2</sub> S)	10 tpy
Total reduced sulfur (including H <sub>2</sub> S)	10 tpy
Reduced sulfur compounds (including H <sub>2</sub> S)	10 tpy
Municipal waste combustor organics <sup>1</sup>	0.0000035 tpy
Municipal waste combustor metals <sup>2</sup>	15 tpy
Municipal waste combustor acid gases <sup>3</sup>	40 tpy
Municipal solid waste landfills emissions <sup>4</sup>	50 tpy

<sup>1</sup>Measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

<sup>2</sup>Measured as particulate matter.

<sup>3</sup>Measured as sulfur dioxide and hydrogen chloride.

<sup>4</sup>Measured 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 <sup>3</sup>	8-hour average
Nitrogen dioxide	14 µg/m <sup>3</sup>	annual average
Particulate matter	10 µg/m <sup>3</sup> of PM <sub>10</sub>	24-hour average
Sulfur dioxide	13 µg/m <sup>3</sup>	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 <sup>3</sup>	3-month average
Fluorides	0.25 µg/m <sup>3</sup>	24-hour average
Total reduced sulfur	10 µg/m <sup>3</sup>	1-hour average
Hydrogen sulfide	0.2 µg/m <sup>3</sup>	1-hour average
Reduced sulfur compounds	10 µg/m <sup>3</sup>	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 32:1600 (September 2006).

**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 32:1601 (September 2006).

**Chapter 7. Ambient Air Quality**  
**§709. Measurement of Concentrations—PM<sub>10</sub>, PM<sub>2.5</sub>, Sulfur Dioxide, Carbon Monoxide, Atmospheric Oxidants, Nitrogen Oxides, and Lead**

A. PM<sub>10</sub>, PM<sub>2.5</sub>, 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 32:1601 (September 2006).

**§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 <sub>10</sub>	50 µg/m <sup>3</sup>	(Annual arithmetic mean)
	150 µg/m <sup>3</sup>	(Maximum 24-hour concentration not to be exceeded more than once per year)
PM <sub>2.5</sub>	15.0 µg/m <sup>3</sup>	(Annual arithmetic mean)
	65 µg/m <sup>3</sup>	24-hour
Sulfur Dioxide (SO <sub>2</sub> )	80 µg/m <sup>3</sup>	or 0.03 ppm (Annual arithmetic mean)
	365 µg/m <sup>3</sup>	or 0.14 ppm (Maximum 24-hour concentration not to be exceeded more than once per year)
Carbon Monoxide (CO)	10,000 µg/m <sup>3</sup>	or 9 ppm (Maximum 8-hour concentration not to be exceeded more than once per year)
	40,000 µg/m <sup>3</sup>	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 <sub>2</sub> )	100 µg/m <sup>3</sup>	(0.05 ppm) (Annual arithmetic mean)
Lead	1.5 µg/m <sup>3</sup>	(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 <sub>10</sub>	50 µg/m <sup>3</sup>	(Annual arithmetic mean)
	150 µg/m <sup>3</sup>	(Maximum 24-hour concentration not to be exceeded more than once per year)

Table 1a. Secondary Ambient Air Quality Standards		
Air Contaminant	Maximum Permissible Concentration	
PM <sub>2.5</sub>	15.0 µg/m <sup>3</sup>	(Annual arithmetic mean)
	65 µg/m <sup>3</sup>	24-hour
Sulfur Dioxide (SO <sub>2</sub> )	1,300 µg/m <sup>3</sup>	(Maximum 3-hour concentration not to be exceeded more than once per year)
Carbon Monoxide (CO)	10,000 µg/m <sup>3</sup>	or 9 ppm (Maximum 8-hour concentration not to be exceeded more than once per year)
	40,000 µg/m <sup>3</sup>	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 <sub>2</sub> )	100 µg/m <sup>3</sup>	(0.05 ppm) (Annual arithmetic mean)
Lead	1.5 µg/m <sup>3</sup>	(Maximum arithmetic mean averaged over a calendar quarter)

1. - 2. ...

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

Table 2. Ambient Air—Methods of Contaminant Measurement		
Air Contaminant	Sampling Interval	Analytical Method
PM <sub>10</sub>	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix J.
PM <sub>2.5</sub>	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.

Table 2. Ambient Air—Methods of Contaminant Measurement		
Air Contaminant	Sampling Interval	Analytical Method
Lead	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix G.
Total Suspended	24 hours	Any method complying with Particulate (TSP) reference method in Title 40, Code of Federal Regulations, Part 50, Appendix 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 32:1602 (September 2006).

Herman Robinson, CPM  
Executive Counsel

0609#021

## RULE

### Department of Environmental Quality Office of the Secretary Legal Affairs Division

#### Oil and Gas Construction Activities Storm Water Waiver (LAC 33:IX.2511)(WQ069ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX.2511 (Log #WQ069ft).

This Rule is identical to federal regulations found in 71 FR 33628-33640 (June 12, 2006), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule implements the June 12, 2006, revision to 40 CFR 122 (71 FR 33628-33640), which modifies the National Pollutant Discharge Elimination System (NPDES) regulations to provide that certain storm water discharges from field activities or operations, including construction, associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities are exempt from NPDES permit requirements. The Department of Environmental Quality, Office of Environmental Services, became the NPDES permit issuing authority for the State of Louisiana on August 27, 1996. This rule is necessary in order to comply with federal regulations that require the LPDES program to be consistent with the EPA NPDES program. The basis and rationale for this rule are to mirror the federal regulations. This Rule promulgates Emergency Rule WQ069E published in the July 20, 2006 *Louisiana Register*.

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

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

#### Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program Chapter 25. Permit Application and Special LPDES Program Requirements

##### §2511. Storm Water Discharges

A. - A.1.e.iv. ...

2. The state administrative authority may not require a permit for discharges of storm water runoff from the following:

a. mining operations composed entirely of flows that are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and that are not contaminated by contact with, or that have not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations, except in accordance with Subparagraph C.1.d of this Section; and

b. all field activities or operations associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities, except in accordance with Subparagraph C.1.c of this Section. Discharges of sediment from construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities are not subject to the provisions of Clause C.1.c.iii of this Section.

[Note to Subparagraph A.2.b: The department encourages operators of oil and gas field activities or operations to implement and maintain Best Management Practices (BMPs) to minimize discharges of pollutants, including sediment, in storm water both during and after construction activities to help ensure protection of surface water quality during storm events. Appropriate controls would be those suitable to the site conditions and consistent with generally accepted engineering design criteria and manufacturer specifications. Selection of BMPs could also be affected by seasonal or climate conditions.]

A.3. - E.7.c. ...

8. Any storm water discharge associated with small construction activities identified in Subparagraph B.15.a of this Section requires permit authorization by March 10, 2003, unless designated for coverage before then.

E.9. - G.4.d, certification. ...

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

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

(November 2000), repromulgated LR 27:40 (January 2001), amended LR 28:467 (March 2002), LR 29:701 (May 2003), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 31:1321 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2510 (October 2005), LR 32:1603 (September 2006).

Herman Robinson, CPM  
Executive Counsel

0609#020

## RULE

### 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, Bureau of Health Services Financing 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 Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

#### 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.

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 meet the recipient qualifications for this 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, Office for Citizens with Developmental Disabilities, LR 32:1604 (September 2006).

#### 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:

- is attributable to an intellectual or physical impairment or combination of intellectual and physical impairments;
- is manifested before the person reaches age 22;
- is likely to continue indefinitely;
- results in substantial functional limitations in three or more of the following areas of major life activity:

- self-care;
- receptive and expressive language;
- learning;
- mobility;
- self-direction;
- capacity for independent living; or
- economic self-sufficiency;

f. 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:

- were in a medical institution;
  - need home and community-based services in order to remain in the community; and
  - have a special income level equal to 300 percent of the Supplemental Security Income (SSI) federal benefit rate;
- be a resident of Louisiana;
  - be a citizen of the United States or a qualified alien; and
  - 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 32:1604 (September 2006).

## **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 32:1605 (September 2006).

### **§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 32:1605 (September 2006).

### **§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 can include 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 32:1605 (September 2006).

#### **§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 of the absence or need for relief of those unpaid persons normally providing care for the recipient.

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 32:1606 (September 2006).

#### **§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 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 32:1606 (September 2006).

#### **§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.

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 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 32:1606 (September 2006).

### **§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 32:1607 (September 2006).

### **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. Day Habilitation and Prevocational Services. The provider must possess a current, valid license as an Adult Day Care Center in order to provide these services.

2. Supported Employment Services. The provider must possess a valid certificate of compliance as a Community Rehabilitation Provider (CRP) from Louisiana Rehabilitation Services.

3. 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.

4. 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.

5. 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 32:1607 (September 2006).

### **Chapter 61. 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 32:1607 (September 2006).

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

0609#062

### **RULE**

#### **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 has amended 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 Rule is promulgated in accordance with the Administrative Procedure Act, R. S. 49:950 et seq.

### **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 32:1607 (September 2006).

## **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 32:1608 (September 2006).

### **§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.

2. - 2.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 32:1608 (September 2006).

## **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 32:1608 (September 2006).

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

0609#063

## **RULE**

### **Department of Natural Resources Office of Mineral Resources**

#### **Dry Hole Credit Program (LAC 43:V.Chapter 4)**

Under the authority of R.S. 30:150 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the Department of Natural Resources, Office of Mineral Resources has adopted LAC 43:V.401 et seq.

The purpose of this regulation is to detail the procedure to be utilized to administer the Dry Hole Credit Program allowed for by R.S. 30:150 et seq., as enacted by Act 298 of the 2005 Regular Session of the Legislature.

#### **Title 43**

#### **NATURAL RESOURCES**

#### **Part V. Office of Mineral Resources**

#### **Chapter 4. Dry Hole Credit Program**

#### **§401. Definitions**

A. Unless the context requires otherwise, the terms set forth hereinafter shall have the following respective meanings, to-wit:

*Coastal Zone*—that portion of the land and water bottoms of the state of Louisiana, including the Gulf of Mexico, set forth and defined as the coastal zone in R.S. 49:214.24.

*Dry Hole*—a completed well which is not productive of oil or gas in any sand and classified as a Status 29 well by the Office of Conservation.

*Dry Hole Credit*—the lesser of the value of 5 billion cubic feet of natural gas production (or the natural gas equivalent of condensate production) multiplied by the spot market price per cubic foot of natural gas at the Henry Hub (or any other gas gathering and marketing facility recognized by OMR from which spot market sales of gas occur, if Henry Hub is not available for comparison pricing), valued at the time application is made for certification as a royalty relief receiving well, or 50 percent of the dry hole well cost of the dry hole credit well which serves as the basis for the dry hole credit sought. The value of dry hole credit may be further modified if the dry hole credit well was drilled as a unit well in a unit which did not contain the entirety of the state mineral lease on which it was drilled or

contains lands and leases in addition to that on which the dry hole credit well was drilled.

*Dry Hole Credit Well*—any new well drilled for purposes of developing and producing oil or gas mineral resources which:

- a. is spudded after July, 1, 2005, but completed before June 30, 2009 for the purpose of certification; and
- b. is drilled on a state mineral lease located within the coastal zone of Louisiana; and
- c. is drilled to a depth greater than 19,999 feet SSTVD; and
- d. is logged by suitable geophysical methods; and
- e. is verified by OMR as a dry hole by being classified as a Status 29 well by the Office of Conservation; and
- f. is not "commercially productive" by being completely plugged and abandoned according to rules promulgated by the Office of Conservation as evidenced by a copy of the well abandonment certificate duly signed by the appropriate authority in the Office of Conservation; and
- g. has had copies of any and all well information derived from drilling same, including geophysical and geological, surrendered to OMR to be held as a public record; and
- h. has been certified by the Office of Mineral Resources as a dry hole credit well.

*Dry Hole Well Cost*—a detailed, itemized list of actual costs (not AFE or estimated costs) of drilling the dry hole credit well from well site preparation (including such things as preparing board road, anchoring pads, dredging, permitting and similar preparatory work, but not including legal fees, lease related costs, hearing costs, title searches and similar types of cost), equipment and materials actually utilized in drilling the dry hole credit well, to plugging and abandoning the well according to rules promulgated by the Office of Conservation. All actual costs claimed shall conform generally to costs recognized and accepted as costs attributable to drilling a well only by the Council of Petroleum Accountants Societies (COPAS).

*OMR*—the Office of Mineral Resources, an office of the Department of Natural Resources and the statutorily designated staff of the Louisiana State Mineral Board.

*Pre-Qualifying Well*—any permitted, but undrilled, well for which pre-qualifying certification is sought and which meets the following criteria, to-wit:

- a. application is made by completely and accurately filling out the pre-qualifying form provided by OMR; and
- b. the proposed well is permitted to be drilled on a state mineral lease located in the coastal zone of Louisiana; and
- c. the proposed well is permitted to spud subsequent to certification by OMR of the dry hole credit well which applicant seeks to use as the basis for the dry hole credit offset; and
- d. applicant is the proper party granted authority to utilize the dry hole credit derived from the dry hole credit well, or his successor or assignee; and
- e. the proposed well has been permitted by the Office of Conservation to be drilled to a depth reasonably calculated to produce hydrocarbons from sands below 19,999 feet SSTVD; and

f. the proposed well is permitted to spud after July 1, 2005 and completed before June 30, 2009; and

g. applicant has obtained from the Office of Coastal Restoration and Management a letter setting forth the minimum mitigation to be required from the applicant if the well is drilled and completed as a hydrocarbon producer, which mitigation shall amount to not less than 125 percent of the wetlands impact of the pre-qualifying well if it becomes a royalty relief receiving well together with applicants agreement to fulfill said mitigation obligation; and

h. is certified as a pre-qualifying well by OMR.

*Royalty Relief Receiving Well*—any new well drilled for purposes of developing and producing oil or gas mineral resources which:

- a. is spudded after July 1, 2005, but completed before June 30, 2009 for the purpose of certification; and
- b. is drilled after certification of the dry hole credit well sought to be utilized for the dry hole credit; and
- c. is drilled by the person or entity which has earned the dry hole credit for the dry hole credit well sought to be utilized, or his successor or assignee; and
- d. is drilled on a state mineral lease located within the coastal zone of Louisiana; and
- e. is drilled and completed as an oil or gas well, as so designated by the Office of Conservation, capable of producing from hydrocarbon bearing sands below 19,999 feet SSTVD; and
- f. has been previously certified as a pre-qualifying well by OMR; and

g. does not utilize or attempt to utilize any other state tax credit (other than an income tax credit) or royalty modification of any kind to modify royalty paid to the state on production therefrom; and

h. has, from being qualified as a pre-qualifying well, a letter from the Office of Coastal Restoration and Management setting forth the mitigation required from the applicant, which shall amount to not less than 125 percent of the wetlands impact of the royalty relief receiving well, together with the agreement by the applicant to perform said mitigation; and

i. has been certified as a royalty relief receiving well by OMR.

*SMB*—the Louisiana State Mineral Board created by Act 93 of the 1936 Regular Session of the Louisiana Legislature.

*True Vertical Depth*—the actual vertical depth sub sea (below mean sea level) and referred to as SSTVD.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:150 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1608 (September 2006).

#### **§403. Application for Status as a Dry Hole Credit Well**

A. Only one person or entity shall be able to earn a dry hole credit for each dry hole credit well. The person or entity drilling a dry hole, having the right to apply (whether as the sole working interest party or by agreement between all working interest parties) and desiring to qualify said dry hole as a dry hole credit well, shall apply for status as a dry hole credit well by completely and accurately filling out the

provided form and sending same to OMR at 617 North Third Street, LaSalle Building, Eighth Floor, P.O. Box 2827, Baton Rouge, LA 70821-2827, accompanied by the following, to-wit:

1. the 1 inch and 5 inch electrical survey; and
2. any side wall cores, logs or well surveys run on the well; and
3. a copy of that part of the daily drilling report showing the spud date and location and the last part showing drilling cessation, including pulling the drill stem out with the date thereof; and
4. a well survey verifying SSTVD and any deviation from vertical taken by the drill pipe; and
5. a copy of the well history report filed with the commissioner of conservation; and
6. a copy of the well abandonment certificate signed by the appropriate authority from the Office of Conservation showing that the well has been plugged and abandoned in conformity with the rules and regulations promulgated by the Office of Conservation; and
7. copies of any other data or information derived from the drilling of the dry hole which may reflect upon its status; and
8. a statement of dry hole cost (which shall be subject to audit by, and at the sole discretion of, the staff of OMR); and
9. written proof (which may include the AFE of the dry hole well showing the applicant to be the sole working interest party or, if more than one working interest owner, a written, notarized agreement, signed by all working interest owners as shown on the AFE, stating that applicant is the authorized party to receive the dry hole credit) that the applicant is the proper person to earn the dry hole credit if the well is certified as a dry hole credit well.

B.1. If the state mineral lease on which the certified dry hole credit well is drilled is part of a unit, either a voluntary unit or a commissioner's unit, which either:

- a. contains only a portion of the said state mineral lease; or
- b. if the unit contains the entirety of the lease on which dry hole credit well is drilled, but additional leases as well;

2. then the value of the dry hole credit allowed using that said dry hole credit well as its basis, whether the value of the dry hole credit is computed by utilizing the dry hole cost of that said dry hole credit well or by computing the value of 5 billion cubic feet of natural gas (or its equivalent in condensate), shall be reduced by multiplying the total dry hole credit by a fraction comprised of the proportion of the acreage of the state mineral lease on which the dry hole credit well is drilled, allocated in the unit to the total acreage of the unit.

C. All applicants must be duly registered with OMR pursuant to the requirements of Act 449 of the 2005 Regular Session of the Louisiana Legislature.

D. All data given to OMR on all dry hole credit wells certified pursuant to this rule shall be kept in a database at OMR and deemed a public record.

E. After all data submitted has been reviewed by the staff of OMR and the dry hole proposed by the applicant is determined to meet the criteria for a dry hole credit well, OMR shall issue a letter under the signature of the assistant

secretary of OMR to the applicant certifying that the submitted dry hole has been deemed a dry hole credit well, and further, containing the serial number of the dry hole credit well, the applicant's name as the party or entity to whom the dry hole credit will be issued, that portion of the accepted total dry hole cost of the dry hole credit well which may be applied against royalty from a royalty relief receiving well (or fraction thereof if the dry hole credit well was a unit well containing leases other than that on which the dry hole credit well was located) and the spud, and plugging and abandonment dates of the dry hole credit well.

F. A report shall be made by OMR to the SMB at its next called meeting following the issuance of the dry hole credit letter giving such information as shall be required by the SMB at the time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1609 (September 2006).

#### **§405. Assignment of a Dry Hole Credit**

A. The party named on the certification from OMR of a dry hole credit well as the party to whom the dry hole credit is issued may assign the entirety of the dry hole credit to another party or entity, but the dry hole credit shall not be divided in any assignment, either by assigning fractional interests or by assigning the entirety of the interest to more than one assignee.

B. Any assignment of a dry hole credit shall be in the form of an instrument signed by both assignor and assignee, duly witnessed and properly notarized, containing, in addition to language of transference of the dry hole credit, the complete legal names of the assignor and assignee, their respective business domiciliary addresses and correct, up-to-date telephone numbers, facsimile number and email address (if any), the serial number of the dry hole credit well which forms the basis of the dry hole credit together with the value of the dry hole credit being transferred, as both are set forth on the certification of dry hole credit well status belonging to the assignor. The original certification of dry hole credit well status shall be attached to and be a part of the assignment.

C. No assignment or transfer of a dry hole credit shall be valid unless approved by the SMB. The assignment or transfer of the dry hole credit shall utilize the same procedure as required for the assignment or transfer relating to minerals or mineral rights required under R.S. 30:128(A).

D. An assignee of a dry hole credit must be registered with OMR as a prospective lease holder in full compliance with Act 449 of the 2005 Regular Session of the Louisiana Legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1610 (September 2006).

#### **§407. Application for Status as a Pre-Qualifying Well**

A. A party desiring to apply a dry hole credit from a certified dry hole credit well to a proposed new well shall, prior to drilling the new well, complete in full an application form provided by, to be returned to, OMR at 617 North Third Street, LaSalle Building, Eighth Floor, P.O. Box 2827, Baton Rouge, LA 70821-2827, requesting that the proposed

new well be certified as a pre-qualifying well. Together with, and accompanying, the completed application form, the applicant shall provide the OMR staff with the following, to-wit:

1. a drilling permit from the Office of Conservation which indicates that the proposed pre-qualifying well will be spudded after July 1, 2005, and prior to June 30, 2009, and drilled to a depth reasonably calculated to secure hydrocarbon production below 19,999 feet SSTVD; and

2. written proof that the proposed pre-qualifying well is going to be drilled (bottom-holed) on a state mineral lease located in the coastal zone of Louisiana, either as a lease well or a unit well (for which only a portion of the total dry hole credit amount shall apply, as obtained by multiplying the dry hole calculated by a fraction which is equal to the proportion of the state mineral lease acreage on which the proposed pre-qualifying well is drilled as allocated within the unit to the total acreage of the unit); and

3. written proof in the form of an affidavit that all necessary permits and all rights-of-way have been acquired, that there are no impediments, including management approval, remaining to the drilling of the well and that the Office of Coastal Restoration and Management has been notified of the intended well in order to review the potential wetlands impact; and

4. the written certification of dry hole credit well status issued by OMR or an assignment of dry hole credit interest previously approved by the SMB showing that the applicant is the proper party to apply for pre-qualification status; and

5. written evidence from the Office of Coastal Restoration and Management, which shall have been notified of the application for pre-qualifying well status by OMR, obtained by the applicant, setting forth the estimated wetlands impact of the proposed new well together with an agreement by the applicant to mitigate not less than 125 percent of the wetlands impact, or more if required, in a manner approved by the Office of Coastal Restoration and Management.

B. No more than 20 active pre-qualifying wells and existing royalty relief receiving wells, in the aggregate, shall be certified by OMR at any one time. If a party or entity having a dry hole credit from a certified dry hole credit well proposes to drill a new well and applies for status of the new well as a pre-qualifying well, and there are already 20 active pre-qualifying wells and/or royalty relief receiving wells, in the aggregate, then that applicant shall be placed on a waiting list, in the order of date and time of application. Thereafter, if any active pre-qualifying wells become inactive, new applicants on the waiting list, in the order of their listing, may apply for status of a new well to be drilled as a pre-qualifying well provided that no pre-qualifying well status may be granted on or after June 30, 2009.

C. Upon applicant's furnishing the information hereinabove set forth, and if there are less than 20 active pre-qualifying wells and/or existing royalty relief receiving wells, in the aggregate, already certified, OMR may issue a letter certifying that:

1. as of the effective date set forth in the letter, the new proposed well, as designated by the serial number issued by the Office of Conservation on the drilling permit, is deemed an active pre-qualifying well; and

2. the pre-qualifying well status shall remain active only until:

i. the proposed new well is drilled, logged and deemed productive from hydrocarbon bearing sands located below 19,999 feet SSTVD or classified as a Status 29 dry hole by the Office of Conservation, or down hole drilling operations cease for a period in excess of six months without a log being run which indicates the well will be productive from hydrocarbon bearing sands below 19,999 feet SSTVD; or

ii. the expiration of the drilling permit used to obtain pre-qualifying status, whichever is earlier, but under no circumstances on or after June 30, 2009; and

3. the serial number of the dry hole credit well providing the basis for the dry hole credit and the amount of dry hole well cost (computed from the letter of certification of dry hole credit well status) which may be used to offset royalty payments if the pre-qualifying well becomes a royalty relief receiving well; and

4. reference, as an attachment, to the wetlands impact mitigation letter and agreement between the applicant and the Office of Coastal Restoration and Management reiterating applicant's agreement to mitigate found by the Office of Coastal Restoration and Management, but not less than 125 percent of any actual wetlands impact, upon drilling the pre-qualifying well.

D. Under no circumstances shall a well permitted as a re-entry into an existing well bore, whether for deepening, sidetracking or otherwise, qualify for certification as a pre-qualifying well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1610 (September 2006).

#### **§409. Application for Status as a Royalty Relief Receiving Well**

A. Only a pre-qualifying well may become a royalty relief receiving well.

B. A party drilling a pre-qualifying well which is logged and deemed productive from hydrocarbon bearing sands below 19,999 feet SSTVD as a producing well may request certification as a royalty relief receiving well by completing the appropriate form provided by, and returning same to OMR at P.O. Box 2827, 617 North Third Street, LaSalle Building, Eighth Floor, Baton Rouge, LA 70821-2827, accompanied by the following documentation, to-wit:

1. written proof, including appropriate portions of the drilling report showing spud location and date, and bottom hole location, date and SSTVD; the completion report and log showing SSTVD of all perforations which contribute to the present productivity; plats showing the state lease on which the well is drilled; unit plats, Office of Conservation orders or voluntary unit agreements, if drilled within a unit, showing unit allocation of acreage of the state lease on which well is drilled in proportion to total unit acreage; and data from well tests reasonably calculated to test for productivity in all completions below 19,999 feet SSTVD, indicating that:

a. the well was spudded between July 1, 2005 and completed before June 30, 2009; and

b. the well is completed as productive from hydrocarbon bearing sands below 19,999 feet SSTVD as

well as the percentage of perforations below 19,999 feet SSTVD; and

c. the well is drilled on a state mineral lease in the coastal zone of Louisiana; and

d. if the well is drilled in a unit, the proportion of state mineral lease acreage on which the well is drilled as allocated in the unit to the total acreage of the unit; and

2. the pre-qualification well certification issued by OMR showing the serial number of the pre-qualifying well, the party receiving the pre-qualifying well status and the sum of money attributed to the dry hole well cost which may be used to offset royalty payments to the state from the royalty relief receiving well; all of which indicates that the well for which royalty relief receiving well status is sought has been pre-qualified, that the applicant for royalty relief receiving well status is the same party or entity to whom the pre-qualifying well certification was given and, if applicable, the amount of dry hole well cost which may be applied to offset royalty payments to the state on production from the royalty relief receiving well, if certified. All information obtained by OMR relating to qualifying a drilled and completed well as a royalty relief receiving well shall be kept in a database at OMR as a public record.

C. If applicant's well meets all of the criteria set forth in Act 298 of the 2005 Regular Session of the Louisiana Legislature as necessary to earn a dry hole credit offset, as evidenced by the information furnished in Subsection B above, OMR shall:

1. determine the total amount of dry hole credit which may be used to offset royalty payments to the state if the royalty relief receiving well status is granted by:

a. ascertaining the Platts spot market price per cubic foot of natural gas at the Henry Hub (or any other gas gathering and marketing facility recognized by OMR from which spot market sales of gas occur, if Henry Hub is not available for comparison pricing) and multiply that price by 5 billion cubic feet of gas to arrive at a sum of money; then

b. comparing the sum of money obtained in Subparagraph a herein to that portion of the dry hole well cost which may be used as a dry hole credit as set forth on the pre-qualifying well certification; and

c. determining the lesser of the two amounts as the total dry hole credit which may be used; and

2. if the royalty relief receiving well is a unit well, ascertain the proportion of acreage allocated to the state lease on which the pre-qualifying well was actually drilled (bottom holed) within the unit to the entire acreage of the unit and multiply that proportion by the total value of the dry hole credit as previously determined in Paragraph 1 hereinabove to obtain the revised dry hole credit allowed to offset royalty payments to the state from unit production allocated to the state lease; and

3. divide the value of the dry hole credit determined in Paragraphs 1 and 2 hereinabove by 36 to yield the maximum monthly value of dry hole credit which may be used by the royalty payer to offset monthly royalty payments to the state; and

4. notify the Office of Conservation that it is in the process of qualifying a newly drilled and completed well as a royalty relief receiving well and have the applicant request that said Office of Conservation issue a new, unique LUW code for production purposes to the well serial number of the

pre-qualifying well sought to be certified as a royalty relief receiving well (no letter certifying status as a royalty relief receiving well will be issued until the Office of Conservation has issued the new, unique LUW code as requested); and

5. issue a letter certifying the previously certified pre-qualifying well, by serial number, as a royalty relief receiving well, which shall also contain the new, unique LUW code issued to that well by the Office of Conservation, the total monthly amount of dry hole credit, as calculated over a 36 month period, which may be used to offset any monthly royalty payments due the state on production from, or attributable to, the royalty relief receiving well, with the proviso that under no circumstances shall the value of monthly royalty paid to and received by the state on production from the royalty relief receiving well amount to less than one-eighth of the total value received for the sale of monthly production, less other lease allowable deductions, allocated to the lease on which the royalty relief receiving well is located.

D. Certification as a royalty relief receiving well shall attach to, and only to, the former pre-qualifying well so certified, regardless of whether interests in the said royalty relief receiving well or the lease on which the said well is located are transferred subsequent to the certification. The dry hole credit offset amount specified in the certification shall be available only to the royalty payer on royalty due the state on production from the said royalty relief receiving well.

E. The decimal percentage of production due the state which yields the value from which the dry hole credit may be deducted by the royalty payer shall be the royalty specified in the state mineral lease on which the royalty relief receiving well is located or, if a unit well, the decimal portion allocated to that lease within the unit. However, at no time shall the monthly royalty, in value, paid to the state, after deducting the maximum allowed value of the monthly dry hole credit offset, amount to less than one-eighth of the total value received for the sale of monthly production, less other lease allowable deductions, allocated to the lease on which the royalty relief receiving well is located, as mandated in R.S. 30:127 and Act 298 of the 2005 Regular Session of the Louisiana Legislature. If the royalty payer on production from the royalty relief receiving well determines that, by deducting the maximum monthly value of the dry hole credit offset allowed, the value of the monthly royalty payment to the state would amount to less than the value of a one-eighth royalty, then the royalty payer shall deduct only that much of the monthly value of the dry hole credit offset allowed as will yield a royalty payment to the state of the value of a one-eighth royalty.

F. Applicant must designate by registered business name, domiciliary address, current telephone number, facsimile number (if one) and e-mail address, the royalty payer which would be authorized by OMR to apply the extension of dry hole credit royalty relief beyond the 36 month period initially granted by OMR.

G. Only one dry hole credit well may form the basis for a dry hole credit to be used to offset royalty payments to the state from only one royalty relief receiving well, and no more than 20 dry hole credit wells, in total, may be utilized as a basis to offset royalty payments to the state. The royalty relief dry hole credit shall be deemed issued when the

pre-qualifying well has been certified as a royalty relief receiving well and its utilization to offset royalty payable to the state must begin within four years of the date of said certification.

H. If the pre-qualifying well is drilled and is a dry hole, the applicant may initiate the process to have that well qualified as a dry hole credit well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1611 (September 2006).

**§411. Extending the Dry Hole Credit Offset beyond Thirty-Six Months**

A. If the payer of royalty on production from, or allocated to, a certified royalty relief receiving well is not able to utilize the full amount of the dry hole credit determined as applicable to that royalty relief receiving well to offset royalty payments to the state within the 36 month period from date of first production, a request, in writing, by the party or entity entitled to the dry hole credit to OMR to extend the period of royalty offset beyond the 36 month period may be made. The written request must identify, by LUW code and serial number, the certified royalty relief receiving well on which the extension of royalty offset is being requested, the total amount of dry hole credit utilized to offset royalty payments to the state in the 36 month period and the level of production of the royalty relief receiving well at the time of the request. The written request must be accompanied by the letter certifying the royalty relief receiving well status.

B. Should OMR decide to grant the extension, it shall issue a letter authorizing the full monthly dry hole credit offset on royalty payments to the state, which was previously granted for the 36 month period, to continue for an extension period not to exceed 24 additional months or until the full dry hole credit value is utilized, whichever is earlier. Under no circumstances shall the value of monthly royalty paid to the state during the extended 24 month period fall below the value of a one-eighth royalty, as specified in R.S. 30:127, nor shall the additional dry hole credit period exceed a total of 60 months or remain in force beyond June 30, 2013, whichever is earlier. Any dry hole credit offset not utilized within 60 months from date of first production, or before June 30, 2013, shall be lost to the payer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1613 (September 2006).

**§413. Termination of Dry Hole Credit Offset**

A. Should the total dry hole credit issued to a royalty relief receiving well be utilized in full to offset royalty payments to the state within 36 months from date of first production (or within the additional 24 month extension if granted), or a total of 60 months elapse from date of first production from the royalty relief receiving well without the total dry hole credit being utilized, or June 30, 2013 arrive, in either case, OMR shall issue a letter notifying the payer that, as of a certain date, no further dry hole credit will be available for offset against royalty paid to the state from production from that royalty relief receiving well. Upon issuance of that letter, OMR shall note the serial number and

LUW code of that royalty relief receiving well in its database as one of only 20 such royalty relief receiving wells to be allowed.

B.1.a. Should production cease in whole or in part from productive sands below 19,999 feet in a royalty relief receiving well due to either:

i. a plug back from the formerly producing, but depleted sand below 19,999 feet and perforation into and production from sands above 19,999 feet in the same well; or

ii. perforations into and production from sands above 19,999 feet commingled with production from sands below 19,999 feet in the same well;

b. the dry hole credit offset allowed against production from that well shall be terminated in whole or in part in proportion to the percentage of production derived from sands above 19,999 feet as determined by the ratio of the rate of flow from perforations above and below 19,999 feet.

2. If production from sands below 19,999 feet remains separate from production from sands above 19,999 feet in the same royalty relief receiving well, the dry hole credit offset may be used against the production from below 19,999 feet only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1613 (September 2006).

Scott A. Angelle  
Secretary

0609#001

**RULE**

**Department of Public Safety and Corrections  
Gaming Control Board**

Devices (LAC 42:XI.2413)

The Louisiana Gaming Control Board hereby amends LAC 42:XI.2413 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 42**

**LOUISIANA GAMING**

**Part XI. Video Poker**

**Chapter 24. Video Draw Poker**

**§2413. Devices**

**A. Device Specifications**

1. All devices shall include all of the specifications and features as provided in R.S. 27:302. In addition, all devices shall include the following specifications and features:

a. a video display screen utilizing a cathode ray tube or other display device as approved by the division and microprocessors in order for a person or persons to view the actual games;

b. - e.ii. ...

f. fully functioning electronic (soft) meters and mechanical (hard) meters capable of displaying accurate monetary transactions and printing a record of those transactions. In addition, the electronic (soft) meters shall be

capable of printing an accurate record of the monetary transactions:

i. any device that produces inaccurate electronic (soft) meter data shall be disabled or removed from play immediately upon notification, from the division, that it is incapable of displaying and printing accurate monetary transactions. The device shall remain disabled until testing and repair forms indicate that soft meters are accurately recording monetary transactions;

g. electronic (soft) meters that shall retain the following transactions for a period of no less than 180 days, including:

- i. credits in;
- ii. credits played;
- iii. credits won;
- iv. credits paid out;
- v. number of games played;
- vi. number of games won;
- vii. credit for games won but not collected (i.e., credit balance);

- viii. number of times logic area is accessed; and
- ix. number of times cash door is accessed;

h. ...

i. permanent serial numbers not to exceed nine alpha and/or numeric characters. The serial number plate shall be located in the upper (front) right side panel of the device and shall contain the following information:

- i. serial number of the device;
- ii. manufacturer's name;
- iii. model number of the device; and
- iv. date of assembly of the device;

j. - n. ...

o. construction which is UL-22 or CSA/NRTL standards approved;

p. - q. ...

r. meet the required central computer communications protocol requiring compatibility with the system during the enrollment procedure. A security related data exchange shall occur between the device and the central computer prior to the transmission of any information. Failure of the device to send the appropriate data back to the central computer shall indicate a communication failure and shall preclude operation of the device. In addition:

i. if a device is not polled by the central computer within the specified time period, the device shall automatically become disabled and;

l.r.ii. - 4. ...

5. Devices shipped to and transported through Louisiana shall at all times remain in the demonstration mode or other non-functioning mode. In addition, after January 1, 1996, no device operating in demonstration mode shall accept coin or currency.

6. ...

#### B. Testing of Video Gaming Devices

1. - 5. ...

6. The testing, examination, and analysis of the devices may require dismantling of devices, and some tests may result in permanent damage to one or more components. All manufacturers shall be required to provide additional parts or components to complete testing, and specialized testing equipment to ensure integrity and durability to the satisfaction of the division. In addition:

a. all manufacturers shall submit all hardware, software, and testing equipment for the testing of their video gaming devices;

b. all devices shall have built in diagnostic functions for the testing of all major components; as defined by the division.

B.6.c. - D.3. ...

#### E. Maintenance

1. - 1.c....

2. All device owners shall maintain a current, written maintenance log for each device operating within a licensed establishment, on a form approved by the division, for the purpose of keeping records of routine maintenance and repairs. All log entries shall contain the following information:

- a. time and date of access of the device;
- b. reason for access of the device;
- c. mechanical (hard) and electronic (soft) meter readings of the device;
- d. the signed and printed name and state issued permit number of the certified individual accessing the device;

E.2.e. - K.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq. and R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:197 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), amended LR 25:85 (January 1999), LR 30:269 (February 2004), repromulgated LR 30:446 (March 2004), amended LR 32:1613 (September 2006).

H. Charles Gaudin  
Chairman

0609#008

### RULE

#### Department of Revenue Policy Services Division

##### Natural Resources—Severance Tax (LAC 61:I.2903)

Under the authority of R.S. 47:633 and 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.2903 to extend the time allowed for filing certifications for reduced oil and gas severance tax rates from the fifteenth day of the second month following the month of production to the twenty-fifth day of the second month, which is the same due dates as the severance tax returns. In addition, proposed amendments require the filing of continuing certification forms for gas wells, which is consistent with the oil well requirements.

Acts 2005, No. 446 amended R.S. 47:635(A) and 640(A) to extend the oil and gas severance tax return and payment due dates to the twenty-fifth day of the second month following the month to which the tax applies effective for tax periods beginning on or after October 1, 2005. Act 38 of the 2006 Regular Legislative Session amended R.S. 47:633(7)(b) and (c)(i)(aa) to extend the due date for filing

the oil reduced severance tax rate certifications. The due date for filing reduced gas severance tax rate certifications is not specified by the severance tax statutes, R.S. 47:633(9)(b) and (c). These proposed amendments make the reduced oil and gas severance tax rate certification due dates the same as the severance tax return due dates.

#### **Title 61**

### **REVENUE AND TAXATION**

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

#### **Chapter 29. Natural Resources—Severance Tax** **§2903. Severance Taxes on Oil; Distillate, Condensate or Similar Natural Resources; Natural Gasoline or Casinghead Gasoline; Liquefied Petroleum Gases and Other Natural Gas Liquids; and Gas**

A. ...

B. Certification for Reduced Tax Rates. A taxpayer may qualify for the lesser tax rates levied in R.S. 47:633(7)(b) and (c), and R.S. 47:633(9) by certifying and reporting production and test data, on forms prescribed by the secretary.

1. Oil. Oil production is certified for reduced severance tax rates provided by R.S. 47:633(7)(b) or (c)(i)(aa) by individual well. To receive the reduced tax rate on the crude oil production from an oil well, an application must be filed with the secretary on or before the twenty-fifth day of the second month following the month in which production subject to the reduced rate applies.

a. After a well has been certified for the reduced tax rate, it is necessary to file continuing certification forms on or before the twenty-fifth day of the second month following the months of production.

i. It is not necessary to include stripper wells that are certified with a "B" prefix code on the continuing certification forms.

ii. Failure to file or delinquent filing of the continuing certification forms may result in certification denial for the month's production that the report is delinquent or not filed.

b. Wells cannot be certified as both a stripper and an incapable oil well.

c. Recertification is required whenever the well operator changes.

d. All wells are subject to redetermination of their reduced rate status based on reports filed with the Department and the Office of Conservation. When a well no longer meets the qualifications for the reduced tax rate for which it was certified, the full tax rate becomes due.

2. Gas. Gas production is certified for reduced severance tax rates provided by R.S. 47:633(9)(b) and (c) by individual well. To receive the reduced severance tax rate on natural gas or casinghead gas production, an application must be filed with the secretary on or before the twenty-fifth day of the second month following the month in which production occurs.

a. After a well has been certified for the reduced tax rate, it is necessary to file continuing certification forms on or before the twenty-fifth day of the second month following the month of production.

i. It is not necessary to include incapable gas wells that are certified with an "F" prefix code on the continuing certification forms.

ii. Failure to file or delinquent filing of the continuing certification forms may result in certification denial for the month's production that the report is delinquent or not filed.

b. The well cannot be certified as both an incapable gas well and an incapable oil well.

c. If the well changes from one tax rate status to another a new certification is required.

d. Recertification is required whenever the well operator changes.

e. All wells are subject to redetermination of their reduced rate status based on reports filed with the Department and the Office of Conservation. When a well no longer meets the qualifications for the reduced tax rate for which it was certified, the full tax rate becomes due.

C. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:633, 47:648.3, and 47:1511.

HISTORICAL NOTE: Adopted by the Department of Revenue and Taxation, Severance Tax Division, August 1974, amended LR 3:499 (December 1977), amended LR 20:1129 (October 1994), repromulgated LR 20:1299 (November 1994), amended by the Department of Revenue, Severance Tax Division, LR 23:1167 (September 1997), LR 24:2321 (December 1998), Department of Revenue, Policy Services Division, LR 29:951 (June 2003), LR 32:1615 (September 2006).

Cynthia Bridges  
Secretary

0609#025

#### **RULE**

#### **Department of Social Services Office of Family Support**

Interest and Dividend Income Exclusion; Student Eligibility Requirements; Workforce Investment Act (LAC 76:III.1229, 1935, 1937, 1979, 1980, and 5329)

The Department of Social Services, Office of Family Support, has amended LAC 67:III, Subpart 2, Subpart 3, and Subpart 13. This amendment was effected by a Declaration of Emergency signed March 1, 2006, and published in the March issue of the *Louisiana Register*.

Pursuant to the authority granted to the Department by Louisiana's Temporary Assistance to Needy Families Block Grant, the agency amended §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 amended §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. 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 Section §1979.

**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 32:1616 (September 2006).

**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., P.L. 107-171

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 32:1616 (September 2006).

**§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 13:91 (February 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 19:1436 (November 1993), repealed LR 32:1616 (September 2006).

**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), LR 32:1616 (September 2006).

**§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 32:1616 (September 2006).

**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 32:1617 (September 2006).

Ann Silverberg Williamson  
Secretary

0609#034

**RULE**

**Department of Social Services**  
**Office of Family Support**

**Temporary Emergency Disaster Assistance Program**  
**(LAC 67.III.5583)**

The Department of Social Services, Office of Family Support, has adopted §5583, Temporary Emergency Disaster Assistance Program (TEDAP).

Pursuant to the TANF Emergency Response and Recovery Act of 2005, the agency adopted the Temporary Emergency Disaster Assistance Program as a new TANF Initiative effective October 26, 2005. The program provides disaster emergency services to families with dependent children or pregnant women who are displaced because of disasters. A Declaration of Emergency adopting this program was published in the November issue of the *Louisiana Register*. The Declaration was republished in January 2006 to clarify eligibility and verification requirements with an effective date of January 10, 2006. This Emergency Rule was extended May 10, 2006, as the January Declaration expired May 9, 2006. The final Rule was to be published in the June 2006 issue of the *Louisiana Register*. However, effective June 15, 2006, the agency decided to expand the type of services provided by TEDAP and to allow the provision of certain services beyond four months. The TANF goal to prevent and reduce out-of-wedlock pregnancies was added. A Potpourri announcing the changes and the public hearing scheduled to discuss these changes was published in the July issue of the *Louisiana Register*. The public hearing was held August 24, 2006, and no one other than agency personnel attended the hearing and no written comments were

submitted regarding the changes. Therefore, it is the agency's intention to make these changes final effective October 1, 2006.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5583. Temporary Emergency Disaster Assistance Program**

A. Effective October 26, 2005, the agency will enter into contracts to provide disaster emergency services to needy families with dependent children or pregnant women who are displaced because of disasters. The program will provide the following services.

1. Services or benefits considered to meet on-going basic needs. These services shall not be provided for a period (in whole or in part) to exceed four months. Such services and benefits include, but are not limited to, the provision of such items as cash assistance, food assistance, child care and transportation for unemployed participants, basic personal items, household items, housing and utility assistance.

2. Services or benefits not considered to meet ongoing basic needs. These services may be provided to participant families for a period exceeding four months if considered vital to the long-term recovery of participant families. Such services may include, but are not limited to, supportive services such as transportation for employed participants, child care for employed participants, non-medical substance abuse treatment, employment assistance or job training, or other necessary supportive services as determined by the Department of Social Services, Office of Family Support.

B. These services meet the TANF goals to end dependence of needy parents by promoting job preparation, work and marriage; to encourage the formation and maintenance of two-parent families; and to prevent and reduce out-of-wedlock pregnancies.

C. Eligibility for services is limited to needy families with minor dependent children, or minor dependent children living with caretaker relatives within the fifth degree of relationship, or pregnant women:

1. who are displaced citizens of parishes or counties for which a major disaster has been declared under the Robert T. Stafford Disaster Relief and Assistance Act; and

2. whose income is at or below 200 percent of the federal poverty level or who are categorically eligible because a member of the family receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch.

D. The secretary may establish criteria whereby needy families are deemed to be needy based on their statement, circumstances, or inability to access resources and may also relax verification requirements for other eligibility factors.

E. Services are considered non-assistance by the agency.

F. The program shall be effective for the parishes or counties and time frames as designated by the secretary.

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, TANF Emergency Response and Recovery Act of 2005.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:1617 (September 2006).

Ann Silverberg Williamson  
Secretary

0609#035

## RULE

### Department of Transportation and Development Professional Engineering and Land Surveying Board

Practice, Certification, Exams, Experience, and Services  
(LAC 46:LXI.105, 901, 903, 907,  
909, 1303, 1315, 1505, 2505)

Under the authority of the Professional Engineering and Land Surveying Licensure Law, R.S. 37:681, et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., the Professional Engineering and Land Surveying Board has amended its rules contained in LAC 46:LXI.Chapters 1 through 33.

The amendments are primarily technical housekeeping revisions of existing board rules.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXI. Professional Engineers and Land Surveyors

#### Chapter 1. General Provisions

#### §105. Definitions

A. The words and phrases defined in R.S. 37:682 shall apply to these rules. In addition, the following words and phrases shall have the following meanings, unless the content of the rules clearly states otherwise.

\* \* \*

#### *Practice of Engineering—*

a. ...

b. teaching of engineering design and the responsible charge of the teaching of engineering design shall be considered as the practice of engineering. Educational programs accredited by EAC/ABET ensure the minimum quality requirements for the teaching of engineering design. Thus, the teaching of engineering design courses and the responsible charge of the teaching of engineering design courses must be conducted by professional engineers or by engineering faculty in an EAC/ABET accredited engineering curriculum. These unlicensed engineering faculty members are exempt from licensure by the board only for the purpose of teaching of engineering design courses and the responsible charge of the teaching of engineering design courses in an EAC/ABET accredited engineering curriculum and may not otherwise practice or offer to practice engineering in the state of Louisiana as defined by R.S. 37:682 without being licensed by the board.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Surveyors, LR 4:298 (August 1978),

amended LR 5:110 (May 1979), LR 7:643 (December 1981), LR 14:449 (July 1988), LR 16:772 (September 1990), LR 17:804 (August 1991), LR 20:901 (August 1994), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1020 (July 2001), LR 30:1704 (August 2004), LR 32:1618 (September 2006).

### Chapter 9. Requirements for Certification and Licensure of Individuals and Temporary Permit to Practice Engineering

#### §901. Engineer Intern Certification

A. The requirements for certification as an engineer intern under the several alternatives provided in the licensure law are as follows.

1. Graduates of an Accredited Engineering Curriculum. The applicant shall be a graduate of an accredited engineering curriculum of four years or more approved by the board as being of satisfactory standing, who is of good character and reputation, who has passed the written examination in the fundamentals of engineering, who was recommended for certification by a professional engineer holding a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, who has submitted an application for certification in accordance with the requirements of R.S. 37:694, and who was duly certified as an engineer intern by the board.

2. Graduates with Advanced Engineering Degree. The applicant shall be a graduate of a non-EAC/ABET accredited engineering or related science or engineering technology curriculum of four years or more approved by the board as being of satisfactory standing, who has obtained an engineering graduate degree in an engineering discipline or sub-discipline from a university having an undergraduate accredited engineering curriculum in the same discipline or sub-discipline, approved by the board as being of satisfactory standing, who is of good character and reputation, who has passed the written examination in the fundamentals of engineering, who was recommended for certification by a professional engineer holding a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, who has submitted an application for certification in accordance with the requirements of R.S. 37:694, and who was duly certified as an engineer intern by the board.

3. Other Non-EAC/ABET Engineering Graduates. The applicant shall be a graduate of a non-EAC/ABET accredited engineering curriculum of four years or more approved by the board as being of satisfactory standing, who has a specific record of four years or more of verifiable progressive experience obtained subsequent to graduation, on engineering projects of a level and scope satisfactory to the board, who is of good character and reputation, who has passed the written examination in the fundamentals of engineering, who was recommended for certification by a professional engineer holding a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, and having a personal knowledge of his engineering experience, who has submitted an application for certification in accordance with the requirements of R.S. 37:694, and who was duly certified as an engineer intern by the board.

B. The authority for the executive secretary to issue a certificate can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:352 (November 1976), amended LR 5:114 (May 1979), LR 6:735 (December 1980), LR 7:644 (December 1981), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1027 (July 2001), LR 30:1711(August 2004), LR 32:1618 (September 2006).

### **§903. Professional Engineer Licensure**

A. The requirements for licensure as a professional engineer under the two alternatives provided in the licensure law are as follows:

1. the applicant for licensure as a professional engineer shall be an engineer intern, or an individual who meets the qualifications to be an engineer intern, who has a verifiable record of four years or more of progressive experience obtained subsequent to meeting the educational and applicable experience qualifications to be an engineer intern on engineering projects of a level and scope satisfactory to the board, who is of good character and reputation, who has passed the written examination in the principles and practice in the discipline of engineering in which licensure is sought, who was recommended for licensure by five personal references, three of whom are professional engineers who have personal knowledge of the applicant's engineering experience and character and ability, and who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional engineer by the board; or

2. the applicant for licensure as a professional engineer shall be an individual who holds a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, based on requirements that do not conflict with the provisions of the licensure law, and which were of a standard not lower than that specified in the applicable licensure law in effect in Louisiana at the time such license was issued, who is of good character and reputation, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and if the state, territory, or possession, or the District of Columbia, in which he/she is licensed will accept the licenses issued by the board on a comity basis, and who was duly licensed as a professional engineer by the board.

B. The authority for the executive secretary to issue a license can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:352 (November 1976), amended LR 5:114 (May 1979), LR 5:365 (November 1979), LR 6:735 (December 1980), LR 7:644 (December 1981), LR 10:804 (October 1984), LR 11:362 (April 1985), LR 19:56 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1028 (July 2001), LR 30:1712 (August 2004), LR 32:1619 (September 2006).

### **§907. Land Surveyor Intern Certification**

A. A land surveyor intern shall be either:

1. a graduate holding a baccalaureate degree from a curriculum of four years or more who has completed at least 30 semester credit hours, or the equivalent, in land surveying, mapping, and real property courses approved by the board, who is of good character and reputation, who has passed the written examination in the fundamentals of land surveying, who was recommended for certification by a professional land surveyor holding a valid license to engage in the practice of land surveying issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, who has submitted an application for certification in accordance with the requirements of R.S. 37:694, and who was duly certified as a land surveyor intern by the board; or

2. an individual certified by the board as a land surveyor in training or a land surveyor intern on or before January 1, 1995.

B. The authority for the executive secretary to issue a certificate can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:352 (November 1976), amended LR 5:114 (May 1979), LR 5:365 (November 1979), LR 6:735 (December 1980), LR 7:644 (December 1981), LR 10:90 (February 1984), LR 16:773 (September 1990), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1028 (July 2001), LR 30:1712 (August 2004), LR 32:1619 (September 2006).

### **§909. Land Surveyor Licensure**

A. The requirements for licensure as a professional land surveyor under the two alternatives provided in the licensure law are as follows:

1. an applicant for licensure as a professional land surveyor shall be a land surveyor intern, or an individual who meets the qualifications to be a land surveyor intern, who is of good character and reputation, who has a verifiable record of four years or more of combined office and field experience in land surveying including two years or more experience in responsible charge of land surveying projects under the supervision of a professional land surveyor, who has passed the oral examination, who has passed the written examination in the principals and practices of land surveying and Louisiana laws of land surveying, and who was recommended for licensure by five personal references (at least three of whom must be professional land surveyors who have personal knowledge of the applicant), who has submitted an application for licensure in accordance with R.S. 37:694, and who was duly licensed as a professional land surveyor by the board; or

2. the applicant shall be an individual who holds a valid license to engage in the practice of land surveying issued to him/her by the proper authority of a state, territory, or possession of the United States, or the District of Columbia, based on requirements that do not conflict with the provisions of the licensure law, who is of good character and reputation, who has passed a written examination on the fundamentals of land surveying, principles and practice of

land surveying and Louisiana laws of land surveying, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and if the state, territory, or possession, or the District of Columbia in which he/she is licensed will accept the licenses issued by the board on a comity basis, and who was duly licensed as a professional land surveyor by the board.

B. The authority for the executive secretary to issue a license can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:244 (August 1976), amended LR 2:352 (November 1976), LR 5:114 (May 1979), LR 6:735 (December 1980), LR 7:645 (December 1981), LR 11:362 (April 1985), LR 16:773 (September 1990), LR 19:56 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1029 (July 2001), LR 30:1713 (August 2004), LR 32:1619 (September 2006).

### **Chapter 13. Examinations**

#### **§1303. Approval to Take the Fundamentals of Engineering Examination**

A. - D. ...

E. The board may waive the fundamentals of engineering examination for any applicant who has an earned doctoral degree in engineering from a college or university having an undergraduate accredited engineering curriculum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 4:88 (March 1978), amended LR 5:113 (May 1979), LR 6:735 (December 1980), LR 7:647 (December 1981), LR 10:805 (October 1984), LR 14:449 (July 1988), LR 17:804 (August 1991), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1030 (July 2001), LR 30:1714 (August 2004), LR 32:1620 (September 2006).

#### **§1315. Re-Examinations**

A. Except as otherwise provided in Subsection B, an individual who fails an examination is eligible to apply to retake the examination. A request for re-examination must be submitted in writing prior to the deadline for scheduling of the examination.

B. After an individual has failed an examination for the third time, he/she is not eligible to apply to retake the examination for the next two consecutive test cycles. If an individual has failed an examination five or more times, following each successive failed examination he/she is not eligible to apply to retake the examination for the next two consecutive test cycles and must successfully complete a board-approved review course prior to reapplying.

C. Before an applicant is given approval to retake an examination, he/she may be required to appear before the board, or a committee of the board, for an oral interview/oral examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:353 (November 1976), amended LR 4:516 (December 1978), LR 5:114 (May 1979), LR 7:647 (December 1981), LR 12:692 (October 1986), LR 16:774 (September 1990), LR 19:57 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1031 (July 2001), LR 30:1715 (August 2004), LR 32:1620 (September 2006).

### **Chapter 15. Experience**

#### **§1505. Work Experience**

A. ...

B. Two years of the required work experience shall be obtained in a state, territory, or possession of the United States, or the District of Columbia. However, the board may allow substitution of two years of foreign work experience provided that the experience is obtained under the supervision of a professional engineer holding a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 5:112 (May 1979), amended LR 7:647 (December 1981), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1031 (July 2001), LR 30:1716 (August 2004), LR 32:1620 (September 2006).

### **Chapter 25. Professional Conduct**

#### **§2505. Services**

A. - E. ...

F. Firms may offer and/or provide a combination of engineering and construction services in connection with a design-build project without obtaining a firm license from the board, provided that:

1. prior to the execution of the contract for the project, the firm obtains an authorization certificate from the board by filing, on a form approved by the board, a written disclosure on which it shall designate a professional engineer (professional of record) employed by the firm and licensed in this state to be in responsible charge of all engineering services offered and/or provided by the firm for such project;

2. the professional of record and an officer of the firm sign the written disclosure submitted to the board, identifying the professional of record's role in the project and certifying that the professional of record will be in responsible charge of all engineering services offered and/or provided by the firm for the project;

3. all engineering services offered and/or provided by the firm for the project are performed by or under the responsible charge of the professional of record; and

4. in the event such professional of record's services terminate with respect to the project or his role in the project otherwise changes, then within five business days:

a. both the firm and the professional of record shall notify the board in writing of such termination or change; and

b. the firm shall file with the board a new written disclosure designating a new professional of record employed by the firm and licensed in this state to be in responsible charge of all engineering services offered and/or provided by the firm for such project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 7:648 (December

1981), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1037 (July 2001), LR 30:1721 (August 2004), LR 32:1620 (September 2006).

Donna D. Sentell  
Executive Secretary

0609#024