

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Seed Commission

Contaminated Seed Stock and Other Propagating Stock (LAC 7:XIII.Chapter 3)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953 (B), and under the authority of R.S. 3:1433, the Commissioner of Agriculture and Forestry declares an emergency to exist and adopts by emergency process the attached regulations governing the sale, distribution and planting of contaminated seed stock, in particular, Cheniere rice.

In August of 2006, the United States Department of Agriculture (USDA) announced that trace amounts of a genetically modified trait, LibertyLink 601 (LL traits) had been found in the U.S. rice supply. Foundation seed of Cheniere rice produced in 2003 has been found to have LL traits. The announcement also indicated that based on the scientific data reviewed, the USDA and the U. S. Food and Drug Administration concluded that no human health, food safety, or environmental concerns were associated with this genetically modified rice. The rice industry in Louisiana contributes over \$250,000,000 to Louisiana's economy through the sale of rice.

Following that announcement, the rice market has experienced turmoil because of the uncertainty of being able to market such rice, despite the conclusions regarding human health, food safety and environmental concerns. Some rice importing countries have expressed concerns about genetically modified rice. The European Union has stated that the countries in the union will not buy rice contaminated with LL traits. It is vital that Louisiana's rice industry maintain the European Union as a market for Louisiana rice. Further it is necessary to forestall any embargo of rice that comes from Louisiana by other rice importing countries.

Maintaining markets for Louisiana rice is vital to both Louisiana's rice industry and to Louisiana's overall economy. The embargo by the European Union and the treat of an embargo by other rice importing countries created an imminent peril to the welfare of the citizens of Louisiana and to Louisiana's economy. The Seed Commission has determined that limiting the sale, distribution and planting of seeds of Cheniere rice and other varieties of rice that test positive for LL traits will best serve Louisiana's rice industry. This Rule is enabled by R.S. 3:1433.

This Rule becomes effective upon signature, January 26, 2007, and will remain in effect for 120 days.

Title 7

AGRICULTURE AND ANIMALS

Part XIII. Seeds

Chapter 3. Contaminated Seed Stock and Other Propagating Stock

§301. Planting of Cheniere rice and other varieties with LL traits

A. The following seeds may not be sold, offered for sale, or planted in Louisiana as seed for purposes of producing a new plant, except as otherwise provided by this Chapter:

1. the Cheniere variety of rice;
2. any portion of any variety of rice that tests positive, according to tolerances established by the department, for LL traits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR:34:

§303. Planting of Breeder, Foundation or Registered Cheniere Rice Seed Stock

A. Breeder, Foundation or Registered Cheniere rice seed may be sold, offered for sale or planted in Louisiana only for the purpose of seed stock increase, subject to the sampling and testing requirements set out in this chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR:34:

§305. Planting of Breeder, Foundation or Registered Rice Seed of other Varieties Stock

A. Breeder, Foundation or Registered seed of other varieties of rice where the variety as a whole is found to test positive, according to tolerances established by the department, for LL traits may be sold, offered for sale or planted in Louisiana only for the purpose of seed stock increase, subject to the sampling and testing requirements set out in this chapter.

B. If a portion of a variety of rice, other than Cheniere rice, is found to test positive for LL traits according to tolerances established by the department, but there is no need to declare the variety as a whole to be contaminated with LL traits then the variety may continue to be planted in Louisiana. However, the portion found to test positive shall be placed under a "stop-sale" order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR:34:

§307. Sampling of Rice Seed for the Detection of LL Traits

A. Samples of all Breeder, Foundation, Registered and Certified rice seed shall be taken by the Louisiana Department of Agriculture and Forestry (department) for testing. The department shall conduct the testing or cause the testing to be done in laboratories approved by the department. The department shall determine the method and manner of sampling and the number of samples that are needed.

B. Each sample must test negative for LL traits according to tolerances established by the department.

C. All costs incurred by the department in regard to sampling, including but not limited to the taking, transportation, testing, and disposal of samples, shall be paid by the person or entity requesting the sampling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR:34:

§309. Stop-Sale

A. If any lot of Breeder, Foundation, Registered or Certified rice seed that are subject to the requirements of this Chapter tests positive for LL traits according to tolerances established by the department then such seed shall be placed under a "stop-sale" order and moved, handled or disposed of only with the express permission of the commissioner or his designate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR:34:

Bob Odom
Commissioner

0702#014

DECLARATION OF EMERGENCY

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Scholarship/Grant Programs□Post-Secondary Institutions
(LAC 28:IV.301 and 1903)

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

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

This Declaration of Emergency is effective February 7, 2007, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG0782E)

Title 28

EDUCATION

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

Chapter 3. Definitions

§301. Definitions

A. ...

First-Time Freshman—a student who is awarded TOPS opportunity, performance, or honors and enrolls for the first-time as a full-time freshman in an academic program in a post-secondary school subsequent to high school graduation, and is enrolled full-time at the end of the 14th class day or later (9th class day or later for Louisiana Tech) or enrolls for the first time, full-time in a Louisiana public community or technical college that offers a Vocational or Technical Education Certificate or Diploma Program or a non-academic undergraduate degree to pursue a skill, occupational training, or technical training subsequent to high school graduation, and is enrolled full-time at the end of the 14th class day or later (9th class day or later for term and quarter institutions). A student who is awarded TOPS opportunity, performance, or honors and begins in an academic program in a post-secondary college or university in a summer session will be considered a first-time freshman for the immediately succeeding fall term. A student who is awarded TOPS opportunity, performance, or honors and begins in a non-academic program in a post-secondary school in a summer term will be considered a first-time freshman at the time of such enrollment. The fact that a student enrolls in a post-secondary school prior to graduation from high school and/or enrolls less than full time in a post-secondary school prior to the required date for full time enrollment shall not preclude the student from being a first-time freshman.

Full-Time Student—

a. a student enrolled in an institution of higher education who is carrying a full-time academic workload as determined by the school under the standards applicable to all students enrolled;

b. for continuation purposes, a student must be enrolled full-time at the end of the 14th class day or later at a semester school or the 9th class day or later at a quarter or term school;

c. for continuation purposes, a student is considered to have met the full-time requirement if by the completion of the academic year he has earned at least 24 hours of total credit as reported by the institution for the fall and spring semesters at institutions defining 12 semester hours as the minimum for standing as a full-time undergraduate or as reported by the institution for the fall, winter and spring quarters at institutions defining eight quarter hours as the minimum for standing as a full-time undergraduate. For purposes of TOPS and except where specified otherwise within these rules, a student shall be credited for hours earned as reported by the institution which the student attends in accordance with that institution's published policies. Students should be aware that these policies may differ depending on the school the student attends (see

§§705.A, 705.D, 805.A, and 907.A for more expanded TOPS requirements);

d. for programs which permit graduate study, a graduate student must have earned at least 18 hours of total credit during the fall, winter and spring terms;

e. a student enrolled in two or more institutions of higher education when such multiple enrollment is necessary for the student to gain access to the courses required for completion of the degree in the chosen discipline and where the total number of hours earned at all institutions during the academic year is the equivalent of carrying a full-time academic workload as determined by the institution which will award the degree;

f. correspondence courses may not be used to establish full time status.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), repromulgated LR 27:1842 (November 2001), amended LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:

Chapter 19. Eligibility and Responsibilities of Post-Secondary Institutions

§1903. Responsibilities of Post-Secondary Institutions

A. - B.1. ...

2. institutions will bill LASFAC based on their certification that the recipient of a TOPS Award or a GO-Youth ChalleNGe Program Grant is enrolled full-time, as defined in §301, at the end of the 14th class day or later for semester schools and the 9th class day or later for quarter and term schools, and for any qualifying summer sessions at the end of the last day to drop and receive a full refund for the full summer session. Institutions shall not bill for students who are enrolled less than full-time at the end of the 14th class day for semester schools or the 9th class day for quarter and term schools, and for any qualifying summer sessions at the end of the last day to drop and receive a full refund for the summer session, unless the student qualifies for payment for less than full-time enrollment as defined in §2103.C. Students failing to meet the full-time enrollment requirement are responsible for reimbursing the institution for any awards received. Refunds of awards to students who are not receiving federal Title IV aid, for less than full-time enrollment after the 14th or 9th class day, as applicable, shall be returned to the state. Refunds to students who are receiving federal Title IV aid shall be refunded to the state in accordance with the institution's federal Title IV aid refund procedures;

B.3. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, 17:3041.10-3041.15, 17:3041.21-3041.26 and R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 and 2002 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 28:775 (April 2002), LR 28:1760 (August 2002), LR 28:2333 (November 2002), LR 30:784 (April 2004), LR 30:1166 (June 2004), LR 31:40 (January 2005), LR 31:3111, 3114 (December 2005), LR 33:

George Badge Eldredge
General Counsel

0702#084

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Sewage Sludge Regulatory Management
(LAC 33:VII.301 and IX.107, 6901, 6903, 6905,
6907, 6909, 6911, 6913, and 7135)(OS066E5)

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

This is a renewal of Emergency Rule OS066E4, which was effective on September 29, 2006, and published in the *Louisiana Register* on October 20, 2006. The department is drafting a rule to promulgate these regulations. This Emergency Rule revises the regulations to:

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

Prior to the Emergency Rule issued September 1, 2005, sewage sludge was managed by three different programs within the state and the EPA. The multiple permitting process was a cumbersome and expensive process for both the state and the regulated community, resulting in inadequately permitted and/or designed facilities to accept the waste, which is produced in a persistent manner. The

potential for dumping of sewage sludge presents a potential health risk to the public and the environment in areas of the state that are under-developed for receiving the waste. This Emergency Rule attempts to streamline and expedite the permitting process by removing the solid waste requirements for the management of sewage sludge from the solid waste regulations (LAC 33, Part VII). Sewage sludge will be managed by LAC 33:IX.Chapter 69 that is reflective of and equivalent to the Clean Water Act Section 503 program at the federal level.

This Emergency Rule is effective on January 27, 2007, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning OS066E5 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Title 33

ENVIRONMENTAL QUALITY

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 3. Scope and Mandatory Provisions of the Program

§301. Wastes Governed by These Regulations

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

A. - A.8. ...

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

B. - B.6. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2515 (November 2000), LR 28:780 (April 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2485 (October 2005), LR 33:

Part IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 1. General Provisions

§107. Definitions

* * *

Sewage Sludge—any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. *Sewage sludge* includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings

(33 CFR Part 159), and sewage sludge products. *Sewage sludge* does not include grit or screenings, or ash generated during the incineration of sewage sludge.

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2538 (November 2000), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

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

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

§6901. General Provisions

A. Purpose and Applicability

1. Purpose

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

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

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

d. ...

2. Applicability

a. This Chapter applies to:

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

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

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

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

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

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

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

c. ...

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

B. Compliance Period

1. - 3.a. ...

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

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

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

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

C. Permits and Permitting Requirements

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

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

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

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

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

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

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

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

iii. All treatment facilities that prepare sewage sludge for the use of land application and all land applicators of biosolids who are not presently operating under an effective standard solid waste permit shall apply for a permit within 180 days after June 1, 2006.

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

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

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

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

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

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

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

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

be adversely affected by the application of sewage sludge or a material derived from sewage sludge to the land.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the lab methods utilized;

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

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

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

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

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

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

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

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

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

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

(e) PCB—one composite sample; and

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

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

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

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

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

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

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

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

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

(h) potable water wells within a 1-mile radius of the facility (locate on an aerial photograph; include private and public potable water wells);

(i) the name of the drinking water aquifer.

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

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

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

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

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

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

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

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

D. Sewage Sludge Disposed in a Municipal Solid Waste Landfill

1. - 2. ...

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

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

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

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

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

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

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

i. the date obtained, pumped, or removed;

ii. the origin or source;

iii. the volume generated at each site;

iv. the transfer or disposal site; and

v. the total amount that was transported or disposed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a). the name and address of the person who prepared the sewage sludge;
- (b). the name and address of the person who either owns the land or leases the land where the sewage sludge is to be stored, if different from the person who prepared the sewage sludge;
- (c). the location, by either street address or latitude and longitude, of the land;
- (d). an explanation of why the sewage sludge needs to remain on the land;
- (e). an explanation of how human health and the environment will not be affected;
- (f). the approximate date when the sewage sludge will be stored on the land and the approximate length of time the sewage sludge will be stored on the land; and
- (g). the final use and disposal method after the storage period has expired.

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

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

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

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

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

5. Materials Prohibited from Feedstock or Supplements That Are Blended, Composted, or Mixed with Sewage Sludge

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

ii. The blending, composting, or mixing of sewage sludge with feedstock or supplements containing any of the materials listed in Table 1 of LAC 33:IX.6901.F is prohibited.

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

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

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

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

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

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

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

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

8. Sewage sludge mixed with grease shall be disposed in a permitted landfill and shall not be introduced into any

part of a treatment works, including its collection system, or applied to the land.

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

G. Exclusions

1. Co-Firing of Sewage Sludge

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

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

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

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

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

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

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

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

H. Sampling and Analysis

1. Sampling

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

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

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

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

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

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

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

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

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

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

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

h. Incineration of Sewage Sludge—Standards of Performance and Particulate Matter. Materials and Methods

at 40 CFR Part 60 as incorporated by reference at LAC 33:III.3003.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Feed Crops—crops produced primarily for consumption by animals.

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

Fiber Crops—crops such as flax and cotton.

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

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

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

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

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

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

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

Other Container—either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of 1 metric ton or less.

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

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

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

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

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

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

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

Qualified Groundwater Scientist—an individual with a baccalaureate or post-graduate degree in the natural sciences or engineering who has sufficient training and experience in

groundwater hydrology, subsurface geology, and/or related fields, as may be demonstrated by state registration, professional certification, or completion of accredited university programs, to make sound professional judgments regarding groundwater monitoring, pollutant fate and transport, and corrective action.

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

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

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:781 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:

§6903. Land Application

A. Applicability

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

that is applied to the land, and to the land on which sewage sludge or a material derived from sewage sludge is applied.

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

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

b. ...

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

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

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

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

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

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

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

2. General Management Practices

a. All Sewage Sludge or Material Derived from Sewage Sludge

i. ...

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

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

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

(a) - (b). ...

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

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

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

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

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

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

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

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

3. Repealed.

Equation (1). Repealed.

E. - F.1.c. ...

2. Vector Attraction Reduction—Sewage Sludge

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

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

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

G. Frequency of Monitoring

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

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

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

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

H. Recordkeeping

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

2. Additional Recordkeeping

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

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

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

i. - ii.(b). ...

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

(d). - (e), Certification. ...

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

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

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

I. Reporting

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

2. Additional Reporting Requirements

a. Reporting requirements for a person who prepares the sewage sludge or a material derived from

sewage sludge having an Exceptional Quality Permit are as indicated in Subparagraph J.4.b of this Section.

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

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

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

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

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

July	November 28
August	
September	
October	February 28
November	
December	
¹ Separate reports must be submitted for each monitoring period.	

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

J. Exceptional Quality Permit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ii. the following certification statement:

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:785 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

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

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

B. Siting

1. Location Characteristics

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

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

i. shall not be located less than 1,000 feet from an established school, hospital, institution, day-care facility, nursing home, hotel/motel, playground, park, golf course, or restaurant/food establishment unless special permission is granted by the owner of the established school, hospital, institution, day-care facility, nursing home, hotel/motel, playground, park, golf course, or restaurant/food establishment. The permission must be in the form of an affidavit executed by the owner waiving the 1,000-foot

buffer zone. However, in no case shall the facility be located less than 200 feet from any of the above establishments;

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

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

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

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

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

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

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

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

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

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

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

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

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

k. Facilities located in, or within 1,000 feet of, swamps, marshes, wetlands, estuaries, wildlife-hatchery

areas, habitat of endangered species, archaeological sites, historic sites, publicly owned recreation areas, and similar critical environmental areas shall be isolated from such areas by effective barriers that eliminate probable adverse impacts from facility operations.

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

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

2. Facility Characteristics

a. Perimeter Barriers, Security, and Signs

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

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

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

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

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

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

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

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

3. Facility Surface Hydrology

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

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

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

4. Facility Geology

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

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

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

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

6. Facility Administrative Procedures

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

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

C. Operations

1. Composters, Mixers, Blenders, and Preparers

a. Facility Operations and Maintenance Manual

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

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

- (a) site and project description;
- (b) regulatory interfaces;
- (c) process management plan;
- (d) pathogen treatment plan;
- (e) odor management plan;
- (f) worker health and safety management plan;
- (g) housekeeping and nuisance management plan;
- (h) emergency preparedness plan;
- (i) security, community relations, and public access plan;
- (j) regulated chemicals (list and location of regulated chemicals kept on-site);
- (k) recordkeeping procedures;
- (l) feedstock, supplements, and process management;
- (m) product distribution records;

- (n). operator certification; and
- (o). administration of the operations and maintenance manual.

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

b. Facility Operational Standards

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

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

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

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

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

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

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

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

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

vii. Odor Management

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

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

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

2. Composters Only

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

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

3. Facility Closure Requirements

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

i. date of planned closure;

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

iii. closure schedule and estimated cost.

b. Closure Requirements

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

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

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

c. Remediation/Removal Program

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

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

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

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

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

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

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

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

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

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

authority will determine whether the facility has been closed properly.

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:794 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:

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

A. - A.2. ...

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

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

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

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

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

demonstrated through the use of financial tests, including the amount of liability coverage;

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

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

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

e. - i.i. ...

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:796 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:

§6909. Pathogens and Vector Attraction Reduction

A. Scope. This Section contains the following:

1. ...

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

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

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

* * *

C. Pathogens

1. Sewage Sludge—Exceptional Quality

a. - b. ...

c. Exceptional Quality—Alternative 1

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable

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

c.ii. - d. ...

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

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

e. *Exceptional Quality*—Alternative 3

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

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

f. *Exceptional Quality*—Alternative 4

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

ii. ...

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

g. *Exceptional Quality*—Alternative 5

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

ii. ...

h. *Exceptional Quality*—Alternative 6

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

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

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

vii. - viii. ...

3. Repealed.

a. Repealed.

b. Repealed.

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

d. Repealed.

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

k. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:806 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

§6911. Incineration

A. - A.2. ...

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

* * *

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:809 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

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

A. General Conditions

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

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

3. Enforcement Actions

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

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

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

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

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

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

b. Exception. In cases where the permit application is withdrawn by the applicant, a written notification shall be provided to the Office of Environmental Services, Water Permits Division, stating that no sewage sludge use or disposal practice or other activity that would require a permit from the Office of Environmental Services, Water Permits Division, is currently taking place. Provided that the

application was not made in response to previous enforcement action, the applicant is then exempt from enforcement action for causes listed under this Paragraph.

4. Toxic Pollutants

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Proper Operation and Maintenance

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

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

3. Proper Operation and Maintenance

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

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

C. Monitoring and Records

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

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

3. Laboratory Accreditation

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

- i. submitted on behalf of any facility, as defined in R.S.30:2004;
- ii. required as part of any permit application;
- iii. required by order of the department;
- iv. required to be included on any monitoring report submitted to the department;
- v. required to be submitted by a contractor; or
- vi. otherwise required by department regulations.

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

generated will be considered invalid and in violation of the LPDES permit.

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

D. Reporting Requirements

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

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

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

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

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

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

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

a. All permit applications shall be signed as follows:

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

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

(b) the manager of one or more manufacturing, production, or operating facilities, provided the manager is

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

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

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

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

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

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

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

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

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

c. Changes to Authorization. If an authorization under Subparagraph D.7.b of this Section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Subparagraph D.7.b of this Section must be submitted to the administrative authority prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

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

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with the system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information is, to the

best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

Chapter 71. Appendices

§7135. Appendix R—Financial Assurances Documents

Document 1. Liability Endorsement

COMMERCIAL PREPARER OR LAND APPLIER OF
SEWAGE SLUDGE
LIABILITY ENDORSEMENT
* * *

[See Prior Text in Liability Endorsement]

Document 2. Certificate of Insurance

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

[See Prior Text in Certificate of Liability Insurance]

Document 3. Letter of Credit

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

[See Prior Text in Irrevocable Letter of Credit]

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

* * *

[See Prior Text in Irrevocable Letter of Credit]

Document 4. Trust Agreement

COMMERCIAL PREPARER OR LAND APPLIER OF
SEWAGE SLUDGE FACILITY

TRUST AGREEMENT/STANDBY TRUST AGREEMENT

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

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

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

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

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

* * *

[See Prior Text in Trust Agreement]

Document 5. Surety Bond

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

Date bond was executed: _____

Effective date: _____

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

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

State of incorporation: _____

Surety: [name and business address]

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

Total penal sum of bond: \$ _____

Surety's bond number: _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

[See Prior Text in Financial Guarantee Bond]

Document 6. Performance Bond

COMMERCIAL PREPARER OR LAND APPLIER OF
SEWAGE SLUDGE FACILITY
PERFORMANCE BOND

Date bond was executed: _____

Effective date: _____

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

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

State of incorporation: _____

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

[agency interest number, site name, facility name, facility permit number, facility address, and closure and/or post-closure amount(s)]

for each facility guaranteed by this bond (indicate closure and/or post-closure costs separately)]

Total penal sum of bond: \$ _____

Surety's bond number: _____

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

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

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

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

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

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

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

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

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

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

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance, as

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

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

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

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

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

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

* * *

[See Prior Text in Facility Performance Bond]

Document 7. Letter of Credit

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

* * *

[See Prior Text in Irrevocable Letter of Credit]

Document 8. Certificate of Insurance

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

* * *

[See Prior Text in Certificate of Insurance]

Document 9. Letter from the Chief Financial Officer

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

* * *

[See Prior Text in Letter]

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

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

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

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

* * *

[See Prior Text in Letter]

Document 10. Corporate Guarantee

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

* * *

[See Prior Text in Corporate Guarantee]

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

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

* * *

[See Prior Text in Corporate Guarantee]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:818 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2519 (October 2005), LR 33:

Mike D. McDaniel, Ph.D.
Secretary

0702#012

DECLARATION OF EMERGENCY

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

Protective Helmets and Safety Vests (LAC 35:I.309)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective February 17, 2007 (extending the Emergency Rule status), and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this rule to require safety vests for all persons while riding a horse on the racetrack proper. The practice is currently in place but the requirement for wearing a safety vest is only applicable to jockeys. The amendment makes the requirement applicable to all persons riding a horse, including exercise riders.

Title 35

HORSE RACING

Part I. General Provisions

Chapter 3. General Rules

§309. Protective Helmets and Safety Vests

A. All persons exercising or schooling horses are compelled to wear protective helmets recommended by the stewards and approved by the commission, and a safety vest designed to provide shock-absorbing protection to the upper body, as evidenced by a label with a rating of five, by the British Equestrian Trade Association. This shall also apply to association outriders and pony riders in post parade. Anyone failing to comply with this requirement may be fined or suspended.

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

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:423 (December 1976), amended LR 3:19 (January 1977), LR 4:271 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 33:

Charles A. Gardiner III
Executive Director

0702#019

DECLARATION OF EMERGENCY

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

Triple Play (LAC 35:XIII.11515 and 11517)

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

effective February 9, 2007, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this rule to further promote horseracing and increased revenues therefrom, by ensuring fair and alternate wagering opportunities to the public.

Title 35

HORSE RACING

Part XIII. Wagering

Chapter 115. Triple Play

§11515. Scratches and Nonstarters

A. In the event a triple play ticket designates a selection in any one or more of the races comprising the triple play and that selection is scratched, excused or determined by the stewards to be a nonstarter in the race, prior to the official start of the first leg, all tickets designating that horse shall be refunded and the money deducted from the pool.

B. In the event the scratch was made in the second leg after the start of the first leg, a consolation payoff shall be computed for those bets combining the winners of the first and third legs with the scratched betting interest as follows: from the gross pool shall be deducted the statutory take-out and then the amount represented by bets on combinations involving betting interests scratched from the third leg (reduced by the take-out thereon). The resulting remainder shall be divided by the amounts bet on the combination of such first and third leg winners with all betting interests (less breakage) to determine the consolation price per dollar payable to those bets combining winners of the first and third legs with a betting interest scratched in the second leg. The breakage shall not be deducted from the pool.

C. If a betting interest is scratched in the third leg after the start of the first leg, a consolation payoff shall be computed as for those bets combining the winners of the first and second legs with such scratched betting interest as follows: from the gross pool shall be deducted the statutory take-out and then the amount represented by bets on combinations involving betting interests scratched from the second leg (reduced by the rate of the take-out thereon). The resulting remainder shall be divided by the amount bet on the combination of such first and second leg winners with all betting interests in the third leg (less breakage) to determine the consolation price per dollar payable to those bets combining winners of the first and second legs with an betting interest scratched in the third leg. The breakage shall not be deducted from the pool.

D. If betting interests are scratched in both the second and third legs after the start of the first leg, a consolation payoff shall be computed for those bets combining the winner of the first leg with the betting interests scratched in both the second and third legs as follows: from the gross pool shall be deducted the takeout and the remainder shall be divided by the amount bet on the winner of the first leg combined with all other betting interests (less breakage) to determine the consolation price per dollar payable to those tickets combining the winner of the first leg with the scratched betting interests from both the second and third legs. The breakage shall not be deducted from the pool.

E. If all three legs of the triple play are cancelled or declared "no contest," the entire pool shall be refunded.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 14:80 (February 1988), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 33:

§11517. Dead Heats

A. In the event of a dead heat for win between two or more horses in any triple play race, all the horses in the dead heat for win shall be considered as official winning horses in the race for the purpose of calculating the pool and payoffs. There shall be a separate payoff price, per dollar calculated, for each winning combination as follows: from the gross pool is deducted the takeout, consolation payoff amounts, if any, and amounts wagered on all winning combinations. The balance shall be divided by the number of different winning combinations upon which bets were sold, each resulting allocated part being assigned to each respective winning combination. An allocated part plus the amounts bet on each winning combination when divided by the amount bet on each winning combination (less breakage) shall be the resulting payoff per dollar per respective winning combination.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 14:80 (February 1988), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 33:

Charles A. Gardiner III
Executive Director

0702#021

DECLARATION OF EMERGENCY

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

Total Dissolved Carbon Dioxide Testing (LAC 35:I.1720)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective February 17, 2007 (extending the Emergency Rule status), and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this rule to correct the penalty phase of the current Rule. Currently, penalties for violations of the total dissolved carbon dioxide Rule are applicable only for positive tests discovered through post-race analysis. The amendment allows for violators to be sanctioned where analysis reveals a positive, both from post- and pre-race analysis. Additionally, this action adds the penalty of a redistributed purse to a second offense.

Title 35

HORSE RACING

Part I. General Provisions

Chapter 17. Corrupt and Prohibited Practices

§1720. Total Dissolved Carbon Dioxide Testing

A. - B3. ...

4. In the event a sample drawn from a horse contains an amount of TCO₂ which exceeds the levels described above, the following penalties shall apply.

a. ...

b. The second time the laboratory reports an excessive TCO₂ level, the stewards shall suspend the trainer for the duration of the race meeting plus ten days or for a period not to exceed six months, whichever is greater, the purse shall be redistributed and the case referred to the commission.

4.c. - 6. ...

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

HISTORICAL NOTE: Adopted by the Department of Economic Development, Racing Commission LR 26:1992 (September 2000), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 32:1221 (July 2006), LR 33:

Charles A. Gardiner III
Executive Director

0702#020

DECLARATION OF EMERGENCY

**Office of the Governor
Office of Financial Institutions**

Louisiana International Banking
(LAC 10:III.1101-1105)

Editor's Note: This Emergency Rule is being repromulgated due to an error upon submission. The original Emergency Rule may be viewed on page 2212 of the December 2006 edition of the *Louisiana Register*.

The Office of Financial Institutions, pursuant to the emergency provision of the Administrative Procedure Act, R.S. 49:953.(B), adopts the following Emergency Rule of the International Banking Statutes as authorized by R.S. 6:551.7 and 6:551.24. This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective January 11, 2007 and shall remain in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Office of Financial Institutions has found an immediate need, since no such rules exist at this time, to provide rules for the establishment of fees and assessments to ensure that the costs of regulation of international banking activities in Louisiana are adequately recaptured. Without this Emergency Rule the public welfare may be harmed as a result of the inability for international banks to establish facilities to engage in activities that could enhance economic growth in Louisiana. The failure to adopt this Rule may impede economic development in Louisiana that could improve the standard of living and enrich the quality of life for citizens of this state.

The Office of Financial Institutions is re-adopting this emergency provision, as the previous publishing of the Emergency Rule was not properly presented for oversight review as required by R.S. 49:953(B).

Title 10

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC**

Part III. Banks

Chapter 11 Louisiana International Banking

§1101. General Provisions

The Depository Institutions' Section of the Louisiana Office of Financial Institutions ("OFI") is funded entirely through assessments and fees levied on state-chartered depository institutions for services rendered. All fees detailed in this Rule are nonrefundable and must be paid at the time the application is filed with this office. An applicant may request that a reduced fee be charged for the simultaneous filing of multiple applications. This privilege will not be afforded to applications that will not be expected to be consummated within 12 months of the filing date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:551.7 and 6:551.24.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:

§1103. Fees and Assessments

A. Pursuant to the authority granted under R.S. 6:551.7 and 6:551.24, the following fee and assessment structure is hereby established to cover necessary costs associated with the administration of the International Banking Statutes, R.S. 6:551.1 et seq.

Description	Fee
A. Application for a foreign bank, bank holding company, or financial holding company, to establish and operate a subsidiary bank in Louisiana.	\$10,000
B. Application for a foreign bank to establish and operate a branch, an international banking facility, a representative office, or an agency in Louisiana.	\$2,000
C. Application for a U.S. bank or foreign bank to organize or acquire a subsidiary to engage in international banking activities specifically authorized in the Edge Act or to operate as an agreement corporation.	\$2,000
D. Application for a foreign bank to establish and operate an administrative office in Louisiana.	\$1,000
E. Examination fee for each foreign bank, branch, agency, representative office, international banking facility, administrative office, or Edge Act subsidiary operating in Louisiana. Fee per examiner.	\$50 per hour
F. Examination fee for each branch, agency, representative office, international banking facility, administrative office, or Edge Act subsidiary of an out-of-state foreign bank. This fee shall be billed to the primary state regulator of the out-of-state foreign bank being examined, and due upon receipt of the OFI invoice.	The greater of \$50 per hour per examiner or the actual expenses incurred by this office to conduct or assist in conducting such examinations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:551.7 and 6:551.24.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:

§1105. Administration

A. The commissioner may increase any of the fees in §1103 when a combination of two or more of the transactions described in that Section occur, said fee not to exceed the lesser of \$50 per hour, or the combined fees as stated above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:551.7 and 6:551.24.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:

John Ducrest, CPA
Commissioner

0702#001

DECLARATION OF EMERGENCY

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

CommunityCARE Program
Immunization Pay-for-Performance Initiative
(LAC 50:I.2915)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:I.2915 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing compiled the previously promulgated Rules governing the CommunityCARE Program to establish LAC 50:I.Chapter 29 (*Louisiana Register*, Volume 29, Number 6). The CommunityCARE Program provides a medical home for designated Medicaid recipients by linking the recipient to a primary care provider selected by the recipient. The bureau promulgated an Emergency Rule to amend the provisions governing the CommunityCARE Program in order to implement an immunization pay-for-performance initiative fee based on the provider's participation in the Louisiana Immunization Network for Kids Statewide and performance in achieving immunization benchmarks (*Louisiana Register*, Volume 32, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2006 Emergency Rule. This action is being taken to enhance federal revenue.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Medicaid Managed Care

Chapter 29. CommunityCARE

§2915. Immunization Pay-for-Performance

A. Effective February 28, 2007, a supplemental payment will be implemented as an incentive to promote the immunization of Medicaid eligible children.

1. Qualification for the supplemental payment shall be based on the CommunityCARE primary care provider's

participation in the Louisiana Immunization Network for Kids Statewide (LINKS) and performance in achieving state-established immunization benchmarks for children being up to date with recommended immunizations.

2. The supplemental payment will be issued on a quarterly basis.

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 33:

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0702#063

DECLARATION OF EMERGENCY

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

Early and Periodic Screening, Diagnosis and Treatment
Dental Program Reimbursement Rate Increase
(LAC 50:XV.6901-6905)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:XV.6903 and to adopt §6905 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides coverage and reimbursement of dental services under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Reimbursement for these services is a flat fee established by the bureau minus the amount that any third party coverage would pay (*Louisiana Register*, Volume 29, Number 2). Additional funds were allocated by the Legislature during the 2003 and 2004 Regular Sessions and the bureau subsequently increased the reimbursement rate for certain dental procedures and established coverage for additional procedures (*Louisiana Register*, Volume 30, Number 2 and Volume 31, Number 3). As a result of the allocation of additional funds by the legislature during the 2006 Regular Session, the bureau promulgated an Emergency Rule to increase the reimbursement fees for

certain dental procedures and establish coverage for additional procedures (*Louisiana Register*, Volume 32, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 1, 2006 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients and to maintain access to EPSDT dental services by encouraging the continued participation of dental providers in the Medicaid Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis and Treatment

Chapter 69. Dental

§6901. General Provisions

A. Medicaid recipients who are under 21 years of age are eligible to receive services covered by the EPSDT Dental Program.

B. Provider Participation is limited to those dentists who are duly licensed and authorized to practice dentistry in the state of Louisiana and who are enrolled in the Medicaid Program as a dental provider.

C. Prior authorization is required for certain dental services covered in the EPSDT Dental Program. Services requiring prior authorization are identified in the Dental Services Manual, EPSDT Dental Program Fee Schedule.

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 33:

§6903. Covered Services

A. Effective March 2, 2007, the following dental procedures are reimbursed at the state's established fee schedule:

1. prefabricated stainless steel crown with resin window; and

2. appliance removal (not by the dentist who placed the appliance), including removal of archbar.

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 29:175 (February 2003), amended LR 30:252 (February 2004), LR 31:667 (March 2005), LR 33:

§6905. Reimbursement

A. Services covered in the EPSDT Dental Program shall be reimbursed at the lower of either:

1. the dentist's billed charges minus any third party coverage; or

2. the state's established schedule of fees minus any third party coverage.

B. The EPSDT Program Dental Fee Schedule is available in the Dental Services Manual.

C. Effective for dates of service on and after November 1, 2006, the reimbursement fees for:

1. comprehensive orthodontic treatment services shall be increased to the 2006 National Dental Advisory Service Comprehensive Fee Report 70th Percentile rate; and

2. all other dental services are increased by 25 percent of the fees on file in the EPSDT Dental Program Fee Schedule as of October 31, 2006 unless otherwise stated in this Chapter.

D. The following dental services will be excluded from the rate increase:

1. complete denture, maxillary;
2. complete denture, mandibular;
3. immediate denture, maxillary;
4. immediate denture, mandibular;
5. maxillary partial denture, resin base (including clasps);
6. mandibular partial denture, resin base (including clasps);
7. reline complete maxillary denture (laboratory);
8. reline complete mandibular denture (laboratory);
9. reline maxillary partial denture (laboratory);
10. reline mandibular partial denture (laboratory);
11. hospital call; and
12. behavior management, by report.

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 33:

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0702#064

DECLARATION OF EMERGENCY

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

Early and Periodic Screening, Diagnosis, and Treatment
Personal Care Services
Personal Care Workers Wage Pass-Through
(LAC 50:XV.7321)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.7321 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for personal care services in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (*Louisiana Register*, Volume 28, Number 2). This Emergency Rule is being promulgated to amend the provisions of the February 20, 2003 Rule governing the reimbursement methodology for personal care services in the EPSDT Program to implement an hourly wage pass-through payment to providers for personal care workers.

This action is being taken to promote the health and well-being of Medicaid recipients by assuring continued access to services through assisting providers to recruit and retain sufficient personal care workers. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$591,322 for state fiscal year 2006-2007.

Effective February 9, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for personal care services in the EPSDT Program to implement a wage pass-through payment to providers for personal care workers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment

Chapter 73. Personal Care Services

§7321. Reimbursement

A. ...

B. Personal Care Workers Wage Pass-Through.

1. Effective February 9, 2007, an hourly wage pass-through payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) personal care workers who provide services to Medicaid recipients.

a. At least 75 percent of the wage pass-through shall be paid to personal care workers as wages. If less than 100 percent of the pass-through is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

b. The minimum hourly rate paid to personal care workers shall be the current minimum wage plus 75 percent of the wage pass-through.

2. Providers shall be required to submit a certified wage register to the department verifying the personal care workers' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

a. gross wage paid to the direct support professional(s);

b. total number of direct support hours worked; and

c. the amount paid in employee benefits.

3. A separate report shall be submitted for paid overtime.

4. The provider shall submit quarterly wage reports that verify that the 75 percent wage pass-through has been paid to the appropriate staff.

5. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage pass-through.

6. Audit procedures shall be established by the department to verify the wage-pass through payments reimbursed to providers.

7. Noncompliance or failure to demonstrate that the wage pass-through was paid directly to personal care workers may result in:

a. forfeiture of eligibility for wage pass-through payments;

b. recoupment of previous wage pass-through payments;

c. Medicaid fraud charges; and

d. loss of provider license.

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 29:179 (February 2003), amended LR 33:

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

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0702#031

DECLARATION OF EMERGENCY

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

Hospital Services—Inpatient Hospitals—Disproportionate
Share Hospital Payment Methodologies
(LAC 50:V.Chapter 3)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated an Emergency Rule to repeal and replace all Rules governing disproportionate share hospital payment methodologies (*Louisiana Register*, Volume 31, Number 6). In compliance with Act 182 and Act 323 of the 2005 Regular Session, the June 20, 2005 Emergency Rule was amended to establish provisions for provider fees levied on hospitals as a result of the Healthcare Affordability Act (*Louisiana Register*, Volume 31, Number 7) and to revise the definition of a small rural hospital (*Louisiana Register*, Volume 31, Number 9). The June 20, 2005 Rule was subsequently amended to incorporate the provisions of the July 1, 2005 and September 1, 2005 Emergency Rules (*Louisiana Register*, Volume 31, Number 10).

The October 25, 2005 Emergency Rule was amended to: 1) change the provisions governing DSH payments to other uninsured hospitals; 2) establish provisions governing payments to private community hospitals for services rendered to displaced, uninsured citizens from mandatory evacuation parishes affected by Hurricanes Katrina and Rita; 3) change the provisions governing DSH payments to high

uninsured hospitals and to establish provisions governing payments to public community hospitals (*Louisiana Register*, Volume 32, Number 7); and 4) revise the provisions governing disproportionate share hospital payments to non-rural community hospitals as a result of the allocation of additional funds by the legislature during the 2006 Regular Session (*Louisiana Register*, Volume 32, Number 9). The department subsequently amended the October 25, 2005 Emergency Rule to incorporate the provisions of the June 28, 2006 and September 15, 2006 Emergency Rules (*Louisiana Register*, Volume 32, Number 10) and to revise the definition of a small rural hospital (*Louisiana Register*, Volume 33, Number 1). The department now proposes to amend the October 23, 2006 Emergency Rule to incorporate the provisions of the December 18, 2006 Emergency Rule. This action is being taken to enhance federal revenue.

Effective February 21, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the October 23, 2006 Emergency Rule governing disproportionate share hospital payment methodologies.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Medical Assistance Program—Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Disproportionate Share Hospital Payment Methodologies

§301. General Provisions

A. The reimbursement methodology for inpatient hospital services incorporates a provision for an additional payment adjustment for hospitals serving a disproportionate share of low income patients.

B. The following provisions govern the disproportionate share hospital (DSH) payment methodologies for qualifying hospitals.

1. Total cumulative disproportionate share payments under any and all disproportionate share hospital payment methodologies shall not exceed the federal disproportionate share state allotment for Louisiana for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The department shall make necessary downward adjustments to hospital's disproportionate share payments to remain within the federal disproportionate share allotment and the state disproportionate share appropriated amount.

2. Appropriate action including, but not limited to, deductions from DSH, Medicaid payments and cost report settlements shall be taken to recover any overpayments resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

3. DSH payments to a hospital determined under any of the methodologies described in this Chapter 3 shall not exceed the hospital's net uncompensated cost as defined in §§305-313 or the disproportionate share limits as defined in Section 1923(g)(1)(A) of the Social Security Act for the state fiscal year to which the payment is applicable. Any Medicaid profit shall be used to offset the cost of treating the uninsured in determining the hospital specific DHH limits.

4. Qualification is based on the hospital's latest filed cost report and related uncompensated cost data as required by the department. Qualification for small rural hospitals is

based on the latest filed cost report. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments with the exception of public state-operated hospitals, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

5. Hospitals shall be notified by letter at least 60 days in advance of calculation of DSH payment to submit documentation required to establish DSH qualification. Only hospitals that timely return DSH qualification documentation will be considered for DSH payments. The required documents are:

- a. obstetrical qualification criteria;
- b. low income utilization revenue calculation;
- c. Medicaid cost report; and
- d. uncompensated cost calculation.

6. Hospitals and/or units which close or withdraw from the Medicaid Program shall become ineligible for further DSH pool payments for the remainder of the current DSH pool payment cycle and thereafter.

C. A hospital receiving DSH payments shall furnish emergency and non-emergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§303. Disproportionate Share Hospital Qualifications

A. In order to qualify as a disproportionate share hospital, a hospital must:

1. have at least two obstetricians who have staff privileges and who have agreed to provide obstetric services to individuals who are Medicaid eligible. In the case of a hospital located in a rural area (i.e., an area outside of a metropolitan statistical area), the term *obstetrician* includes any physician who has staff privileges at the hospital to perform nonemergency obstetric procedures; or
2. treat inpatients who are predominantly individuals under 18 years of age; or
3. be a hospital which did not offer nonemergency obstetric services to the general population as of December 22, 1987; and

4. have a utilization rate in excess of one or more of the following specified minimum utilization rates:

- a. Medicaid utilization rate is a fraction (expressed as a percentage). The numerator is the hospital's number of Medicaid (Title XIX) inpatient days. The denominator is the total number of the hospital's inpatient days for a cost reporting period. Inpatient days include newborn and psychiatric days and exclude swing bed and skilled nursing days. Hospitals shall be deemed disproportionate share

providers if their Medicaid utilization rates are in excess of the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments; or

- b. hospitals shall be deemed disproportionate share providers if their low-income utilization rates are in excess of 25 percent. Low-income utilization rate is the sum of:

- i. the fraction (expressed as a percentage). The numerator is the sum (for the period) of the total Medicaid patient revenues plus the amount of the cash subsidies for patient services received directly from state and local governments. The denominator is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the cost reporting period from the financial statements; and

- ii. the fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for inpatient services which are attributable to charity (free) care in a period, less the portion of any cash subsidies as described in §303.A.4.b.i in the period which are reasonably attributable to inpatient hospital services. The denominator is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero. This numerator shall not include contractual allowances and discounts (other than for indigent patients ineligible for Medicaid), i.e., reductions in charges given to other third-party payers, such as HMOs, Medicare, or Blue Cross; nor charges attributable to Hill-Burton obligations. A hospital providing "free care" must submit its criteria and procedures for identifying patients who qualify for free care to the Bureau of Health Services Financing for approval. The policy for free care must be posted prominently and all patients must be advised of the availability of free care and the procedures for applying. Hospitals not in compliance with free care criteria will be subject to recoupment of DSH and Medicaid payments; or

5. effective November 3, 1997, be a small rural hospital as defined in §311.A.2.a-h; or

6. effective June 28, 2006, be a public community hospital as defined in §305.A.; or

7. effective June 28, 2006, be a private community hospital as defined in §307.A.; or

8. effective September 15, 2006, be a non-rural community hospital as defined in §308.A.; and

9. effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§305. Public Community Hospitals

A. Definitions

Public Community Hospital—a hospital owned by a parish, city, or other local government instrumentality that does not qualify as a small rural hospital.

Uncompensated Care Costs—Net uncompensated care cost is the total allowable cost of inpatient and outpatient hospital services less Medicare costs, Medicaid payments (excluding DSH payments), costs associated with patients who have insurance for services provided, private payer

payments and all other inpatient and outpatient payments received from patients.

B. DSH payments to a public community hospital shall be calculated as follows.

1. Each qualifying public community hospital shall certify to the Department of Health and Hospitals its uncompensated care costs. The basis of the certification shall be 100 percent of the hospital's allowable costs for these services, as determined by the most recently filed Medicare/Medicaid cost report. The certification shall be submitted in a form satisfactory to the department each fiscal year. The department will claim the federal share for these certified public expenditures. The department's subsequent reimbursement to the hospital may be more or less than the federal share so claimed.

C. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid, other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Hospitals shall submit an attestation that patients whose care is included in the hospital's net uncompensated costs are not Medicaid eligible at the time of registration.

D. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§307. Private Community Hospitals

A. Definitions

Community Hospital—a private hospital that is not a small rural hospital which provided services to uninsured evacuees during the period February 1, 2006 through June 30, 2006.

Evacuee—a Louisiana citizen who resided in one of the mandatory evacuated parishes for Hurricane Katrina on August 24, 2005 or Hurricane Rita on September 23, 2005.

Mandatory Evacuated Parish or Area—a parish or a designated area of a parish for which a mandatory evacuation order was issued for Hurricane Katrina or Hurricane Rita. The parishes and designated areas include:

a. the mandatory evacuated parishes and designated areas for Hurricane Katrina include:

- i. Orleans Parish;
- ii. Jefferson Parish;
- iii. St. Bernard Parish;
- iv. Plaquemines Parish;
- v. Assumption Parish;
- vi. St. John Parish;
- vii. St. Charles Parish;
- viii. Lafourche Parish;
- ix. Terrebonne Parish;
- x. St. James Parish [south of Vacherie past LA Highway 20 and LA Highway 3127 and part of Paulina

(Grand Point) past LA Highway 642 and LA Highway 3125, (zip codes 70090 and 70763)];

xi. St. Tammany Parish [all areas south of Interstate 12 including Slidell, Lacombe, Mandeville, and Covington, (zip codes 70458, 70461, 70445, 70471, 70448, 70447, 70433, and 70435)];

xii. Tangipahoa Parish [areas south of LA Highway 22 including Akers, Bedico and Lee's Landing, (zip codes 70454 and 70421)];

xiii. St. Mary Parish [Cypremont Point, (zip code 70538) and Burns (zip code 70522)]; and

xiv. Iberia Parish [areas south of LA Highway 90 and down LA Highway 14 including Delcambre, (zip codes 70560 and 70528)].

b. The mandatory evacuated parishes and designated areas for Hurricane Rita include:

i. Calcasieu Parish;

ii. Cameron Parish;

iii. Jefferson Davis Parish;

iv. Plaquemines Parish;

v. Acadia Parish (areas south of LA Highway 92);

vi. Jefferson Parish (Lafitte, Crown Point, Barataria and Grand Isle);

vii. Iberia Parish (Delcambre and areas south of LA Highway 90);

viii. Lafourche Parish (south of Leon Theriot Floodgate and the lower portion of Pointe-Aux-Chenes);

ix. St. Mary Parish (all areas south of the Intercoastal Canal including Cypremont Point, Burns, Four Corners, and Louisa);

x. Terrebonne Parish (Grand Caillou/Dulac, Bayou du Large/Theriot, Pointe-Aux-Chenes and from the Montegut Fire Station south); and

xi. Vermilion Parish [south of LA Highway 14 between Cameron Parish line and LA Highway 335, south of La 335, below Kaplan and Abbeville; south of Jacqueline Street in Abbeville and back to LA Highway 14 (near Erath and Delcambre), and all mobile homes south of LA Highway 14].

Uncompensated Care Costs—Net uncompensated care cost is the total allowable cost of inpatient and outpatient hospital services less Medicare costs, Medicaid payments (excluding DSH payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

Uninsured—A person having no health insurance or sources of third party payment for services provided.

B. DSH payments to a private community hospital shall be calculated as follows.

1. Payment for allowable evacuee uninsured services shall be calculated by multiplying each qualifying hospital's allowable uninsured evacuee charges by its hospital specific cost-to-charge ratio as determined by the department. DSH payments to each qualifying community hospital shall not exceed the hospital specific net uncompensated care costs for the state fiscal year.

C. Hospitals shall submit supporting evacuee uninsured patient specific data for hospital services provided from February 1, 2006 through June 30, 2006 in a format specified by the department. The deadline for submission of all payment requests is October 18, 2006. Submitted

uninsured patient data shall be subject to verification by the department before DSH payments are made.

D. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Hospitals shall submit an attestation that patients whose care is included in the hospital's net uncompensated costs are not Medicaid eligible at the time of registration.

E. Aggregate DSH payments for qualifying community hospitals shall be limited to the state DSH appropriated amount for community hospitals. In the event that aggregate allowable uninsured evacuee costs for community hospitals exceeds the state appropriated amount, each qualifying hospital's payment shall be calculated as follows:

1. dividing each hospital's uninsured evacuee cost by the total uninsured evacuee cost for all qualifying other community hospitals during the state fiscal year; and then

2. multiplying by the state DSH-appropriated amount for community hospitals.

F. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§308. Non-Rural Community Hospitals—SFY 2007

A. Definitions

Non-Rural Community Hospital—a non-state hospital that does not receive disproportionate share payments under any other qualification category. These hospitals may be either publicly or privately owned. In addition, psychiatric, rehabilitation and long term hospitals may qualify for this category.

B. DSH payments to a public, non-rural community hospital shall be calculated as follows.

1. Each qualifying public, non-rural community hospital shall certify to the Department of Health and Hospitals its uncompensated care costs. The basis of the certification shall be 100 percent of the hospital's allowable costs for these services, as determined by the most recently filed Medicare/Medicaid cost report. The certification shall be submitted in a form satisfactory to the department no later than October 1 of each fiscal year. The department will claim the federal share for these certified public expenditures. The department's subsequent reimbursement to the hospital shall be in accordance with the qualifying criteria and payment methodology for non-rural community hospitals included in Act 17 and may be more or less than the federal share so claimed. Qualifying public, non-rural community hospitals that fail to make such certifications by October 1st may not receive Title XIX claim payments or any disproportionate share payments until the department receives the required certifications.

C. DSH payments to private, non-rural community hospitals located in Orleans, Jefferson, Calcasieu and Cameron Parishes shall be calculated as follows.

1. If the hospital's qualifying uninsured cost is less than 3.5 percent of total hospital cost, the payment shall be 30 percent of qualifying uninsured costs.

2. If the hospital's qualifying uninsured cost is equal to or greater than 3.5 percent of the total hospital cost but less than 6.5 percent of total hospital cost, the payment shall be 50 percent of qualifying uninsured cost.

3. If the hospital's qualifying uninsured cost is equal to or greater than 6.5 percent of total hospital cost but less than or equal to 8 percent of total hospital cost, the payment shall be 80 percent of qualifying uninsured cost.

4. If the hospital's qualifying uninsured cost is greater than 8 percent of total hospital cost, the payment shall be 90 percent of qualifying uninsured cost for the portion in excess of 8 percent of total hospital cost and 80 percent of qualifying uninsured cost for the portion equal to 8 percent of total hospital cost.

D. DSH payments to private, non-rural community hospitals located in all other parishes shall be calculated as follows.

1. If the hospital's qualifying uninsured cost is less than 3.5 percent of total hospital cost, no payment shall be made.

2. If the hospital's qualifying uninsured cost is equal to or greater than 3.5 percent of total hospital cost but less than 6.5 percent of total hospital cost, the payment shall be 50 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 3.5 percent of total hospital cost.

3. If the hospital's qualifying uninsured cost is equal to or greater than 6.5 percent of total hospital cost but less than or equal to 8 percent of total hospital cost, the payment shall be 80 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 3.5 percent of total hospital cost.

4. If the hospital's qualifying uninsured cost is greater than 8 percent of total hospital cost, the payment shall be 90 percent of qualifying uninsured cost for the portion in excess of 8 percent of total hospital cost and 80 percent of an amount equal to 4.5 percent of total hospital cost.

E. The department shall determine each qualifying hospital's uninsured percentage on a hospital-wide basis utilizing charges for dates of service from January 1, 2006 through June 30, 2006.

F. Hospitals shall submit supporting patient specific data in a format specified by the department. The deadline for submission of data used to determine qualification and the initial payment is October 31, 2006. The second payment to hospitals will be based on patient specific data for dates of service from July 1, 2006 through December 31, 2006. The deadline for submission of data used to calculate final payment is by March 31, 2007. Qualification for both payments is determined from the patient specific data for dates of services from January 1, 2006 through June 30, 2006.

1. Hospitals that were non-operational due to Hurricane Katrina and became operational between July 1, 2006 through December 31, 2006, the patient specific data

during July 1, 2006 through December 31, 2006 will be used for qualification purposes.

2. Submitted hospital charge data must agree with the hospital's monthly revenue and usage reports which reconcile to the monthly and annual financial statements. The submitted data shall be subject to verification by the department before DSH payments are made.

G. In the event that the total payments calculated for all recipient hospitals are anticipated to exceed the total amount appropriated, the department shall reduce payments on a pro rata basis in order to achieve a total cost that is not in excess of the amounts appropriated for this purpose. The \$120,000,000 appropriation for the non-rural community hospital pool shall be effective only for state fiscal year 2007 and distributions from the pool shall be considered nonrecurring.

H. DSH payments shall be made as bi-annual lump sum payments.

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 33:

§309. Federally Mandated Statutory Hospitals Not Included In Any Other Group

A. Definition

Federally Mandated Statutory Hospital Not Included In Any Other Group—a hospital that meets the federal DSH statutory utilization requirements in §303.A.4.a-b.ii and is not included in any other qualifying group.

B. DSH payments to individual federally mandated statutory hospitals shall be based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the Medicaid days pool is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

C. Disproportionate share payments for individual hospitals in this group shall be calculated based on the product of the ratio determined by:

1. dividing each qualifying hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by the department from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified hospitals included in this group. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days; then

2. multiplying by the state disproportionate share appropriated amount for this pool of hospitals.

D. A pro rata decrease necessitated by conditions specified in §301.B.1-6 for hospitals in this group will be calculated based on the ratio determined by:

1. dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in this group; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§311. Small Rural Hospitals

A. Definitions

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients. Any uncompensated costs of providing health care services in a rural health clinic licensed as part of a small rural hospital as defined below shall be considered outpatient hospital services in the calculation of uncompensated costs.

Small Rural Hospital—a hospital (excluding a long-term care hospital, rehabilitation hospital, or freestanding psychiatric hospital but including distinct part psychiatric units) that meets the following criteria:

a. had no more than 60 hospital beds as of July 1, 1994 and is located in a parish with a population of less than 50,000 or in a municipality with a population of less than 20,000; or

b. meets the qualifications of a sole community hospital under 42 CFR §412.92(a); or

i. met the qualifications of a sole community hospital as of June 30, 2005 and subsequently converts to critical access hospital status; or

c. had no more than 60 hospital beds as of July 1, 1999 and is located in a parish with a population of less than 17,000 as measured by the 1990 census; or

d. had no more than 60 hospital beds as of July 1, 1997 and is a publicly-owned and operated hospital that is located in either a parish with a population of less than 50,000 or a municipality with a population of less than 20,000; or

e. had no more than 60 hospital beds as of June 30, 2000 and is located in a municipality with a population, as measured by the 1990 census, of less than 20,000; or

f. had no more than 60 beds as of July 1, 1997 and is located in a parish with a population, as measured by the 1990 and 2000 census, of less than 50,000; or

g. was a hospital facility licensed by the department that had no more than 60 hospital beds as of July 1, 1994, which hospital facility:

i. has been in continuous operation since July 1, 1994;

ii. is currently operating under a license issued by the department; and

iii. is located in a parish with a population, as measured by the 1990 census, of less than 50,000; or

h. has no more than 60 hospital beds or has notified the department as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located in a municipality with a population of less than 13,000 and in a parish with a population of less than 32,000 as measured by the 2000 census; or

i. has no more than 60 hospital beds or has notified DHH as of December 31, 2003 of its intent to reduce its number of hospital beds to no more than 60 and is located:

i. as measured by the 2000 census, in a municipality with a population of less than 7,000;

- ii. as measured by the 2000 census, in a parish with a population of less than 53,000; and
- iii. within 10 miles of a United States military base; or
- j. has no more than 60 hospital beds as of September 26, 2002 and is located:
 - i. as measured by the 2000 census, in a municipality with a population of less than 10,000; and
 - ii. as measured by the 2000 census, in a parish with a population of less than 33,000; or
 - k. has no more than 60 hospital beds as of January 1, 2003 and is located:
 - i. as measured by the 2000 census, in a municipality with a population of less than 11,000; and
 - ii. as measured by the 2000 census, in a parish with a population of less than 90,000; or
 - l. has no more than 40 hospital beds as of January 1, 2005, and is located:
 - i. in a municipality with a population of less than 3,100; and
 - ii. in a parish with a population of less than 15,800 as measured by the 2000 census.

B. Payment based on uncompensated cost for qualifying small rural hospitals shall be in accordance with the following two pools.

1. *Public (Nonstate) Small Rural Hospitals*—small rural hospitals as defined in §311.A.2 which are owned by a local government.

2. *Private Small Rural Hospitals*—small rural hospitals as defined in §311.A.2 that are privately owned.

C. Payment to hospitals included in §311.B.1-2. is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for each pool. If the cost reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year.

D. Pro Rata Decrease

1. A pro rata decrease necessitated by conditions specified in §301.B.1-6 for rural hospitals described in this §311 will be calculated using the ratio determined by:

- a. dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals in §311; then
- b. multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH appropriated amount.

2. No additional payments shall be made after the final payment is disbursed by the department for the state fiscal year. Recoupment shall be initiated upon completion of an audit if it is determined that the actual uncompensated care costs for the state fiscal year for which the payment is applicable is less than the actual amount paid.

E. Qualifying hospitals must meet the definition for a small rural hospital contained in §311.A.2. Qualifying hospitals must maintain a log documenting the provision of uninsured care as directed by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§313. Public State-Operated Hospitals

A. Definitions

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

Public State-Operated Hospital—a hospital that is owned or operated by the state of Louisiana.

B. DSH payments to individual public state-owned or operated hospitals shall be up to 100 percent of the hospital's net uncompensated costs. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

C. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment, the department shall calculate a pro rata decrease for each public state-owned or operated hospital based on the ratio determined by:

- 1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public state-owned or operated hospitals during the state fiscal year; then
- 2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment.

D. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Acute hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

- 1. an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and
- 2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:
 - a. patient age;
 - b. family size;
 - c. number of dependent children; and
 - d. household income.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

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

Interested persons may submit written comments to Jerry Phillips at Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0702#066

DECLARATION OF EMERGENCY

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

Intermediate Care Facilities for the Mentally Retarded
Direct Service Professionals Wage Enhancement
(LAC 50:VII.32903)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:VII.32903 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for intermediate care facilities for the mentally retarded (ICFs/MR) that included the Inventory for Client and Agency Planning (ICAP) instruments (*Louisiana Register*, Volume 31, Number 9).

This Emergency Rule is being promulgated to amend the provisions of the September 20, 2005 Rule governing the reimbursement methodology for ICFs/MR by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff employed with the facility. It is the intent that this wage enhancement be paid to the direct care staff.

This action is being taken to prevent imminent peril to the health and well-being of ICFs/MR residents by assuring continued access to services through assisting providers to recruit and retain sufficient direct care staff. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$6,566,104 for state fiscal year 2006-2007.

Effective February 9, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services

Financing amends the provisions governing the reimbursement methodology for intermediate care facilities for the mentally retarded by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for the Mentally Retarded

Chapter 329. Reimbursement

Subchapter A. Reimbursement Methodology

§32903. Rate Determination

A. - D.1.d. Table ...

e. Direct Service Provider Wage Pass-Through. For dates of service on or after February 9, 2007, the direct care reimbursement in the amount of \$2 per hour to ICF-MR providers shall include a direct care service worker wage enhancement incentive. It is the intent that this wage enhancement be paid to the direct staff. Noncompliance with the wage enhancement shall be subject to recoupment.

i. At least 75 percent of the wage pass-through shall be paid to the direct support professional and 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

ii. The wage enhancement will be added on to the current ICAP rate methodology as follows:

(a) Per diem rates for recipients residing in 1-8 bed facilities will increase \$16.00;

(b) Per diem rates for recipients residing in 9-16 bed facilities will increase \$15.00; and

(c) Per diem rates for recipients residing in 16+ bed facilities will increase \$8.00;

D.2. - H.2. ...

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 31:1592 (July 2005), repromulgated LR 31:2253 (September 2005), amended LR 33:

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0702#033

DECLARATION OF EMERGENCY

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

Nursing Facilities—Direct Support Professionals Wage Enhancement (LAC 50:VII.1305)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:VII.1305 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule to establish a prospective payment system for nursing facilities based on recipient care needs that incorporates acuity measurements as determined under the Resource Utilization Group III (RUG III) resident classification methodology (*Louisiana Register*, Volume 28, Number 8). The August 20, 2002 Rule was subsequently amended to adopt provisions governing a quarterly adjustment of individual nursing facility rates based on overall case mix and to allow for the offset of installation costs for automatic fire sprinkler systems and two-hour rated walls in Medicaid-certified nursing facilities (*Louisiana Register*, Volume 32, Number 12). This Emergency Rule is being promulgated to amend the provisions of the December 20, 2006 Rule governing the reimbursement methodology for nursing facilities by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff employed with the nursing facility. It is the intent that this wage enhancement be paid to the direct care staff.

This action is being taken to promote the health and well-being of nursing facility residents by assuring continued access to services through assisting providers to recruit and retain sufficient direct care staff. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$11,476,836 for state fiscal year 2006-2007.

Effective February 9, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1305. Rate Determination

A. - D.1.h.Example ...

i. For dates of service on or after February 9, 2007, the facility-specific direct care rate will be increased by a \$4.70 wage enhancement prior to the case-mix adjustment for direct care staff. The \$4.70 wage enhancement will be included in the direct care component

of the floor calculations. It is the intent that this wage enhancement be paid to the direct care staff.

D.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, 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 28:1474 (June 2002), repromulgated LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:

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

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0702#026

DECLARATION OF EMERGENCY

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

Targeted Case Management Nurse Family Partnership Program (LAC 50:XV.11101-11103)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.11101-11103 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing clarified the provisions governing the Nurse Family Partnership (NFP) Program by adopting all existing Rules in codified format in Title 50 of the *Louisiana Administrative Code* (*Louisiana Register*, Volume 30, Number 5). The Nurse Family Partnership Program provides case management services to a targeted population group composed of first-time mothers in certain Department of Health and Hospitals (DHH) administrative regions. The bureau amended the May 20, 2004 Rule to expand the DHH administrative regions served and to amend the eligibility criteria and staffing qualifications (*Louisiana Register*, Volume 31, Number 8). The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) has provided clarification that eligibility for targeted case management services is not transferable between target groups. In compliance with the CMS directive, the bureau amended the August 20, 2005 Rule to clarify that the

first-time mother continues to be the focus of the NFP Program after the birth of the child (*Louisiana Register*, Volume 32, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 20, 2006 Emergency Rule. This action is being taken to avoid federal sanctions.

Effective March 19, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the August 20, 2005 Rule addressing the program description and recipient qualifications in the Nurse Family Partnership Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 7. Targeted Case Management

Chapter 111. Nurse Family Partnership Program

§11101. Introduction

A. Nurse Family Partnership (NFP) targeted case management is a prenatal program designed to improve the health and social functioning of Medicaid eligible first-time mothers and their babies.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services LR 30:1041 (May 2004), amended LR 31:2028 (August 2005), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 33:

§11103. Recipient Qualifications

A. A Medicaid recipient must not be beyond the twenty-eighth week of pregnancy and must attest that she meets one of the following definitions of a first-time mother in order to receive NFP case management services. The recipient:

A.1. - B.3. ...

C. Nurse Family Partnership case management services to the mother may continue up to two years after the birth of the child.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services LR 30:1041 (May 2004), amended LR 31:2028 (August 2005), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 33:

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0702#065

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office of Aging and Adult Services

Home and Community-Based Services Waiver
Adult Day Health Care
Direct Service Professionals Wage Enhancement
(LAC 50:XXI.3109)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amends LAC 50:XXI.3109 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services adopted provisions governing the reimbursement methodology for the Adult Day Health Care (ADHC) Waiver (*Louisiana Register*, Volume 30, Number 9). This Emergency Rule is being promulgated to amend the provisions of the September 20, 2004 Rule governing the reimbursement methodology for the ADHC Waiver by increasing reimbursement to providers to implement a wage enhancement for direct care staff. It is the intent that the wage enhancement be paid to the direct care staff.

This action is being taken to promote the health and well-being of waiver recipients by assuring continued access to services through assisting providers to recruit and retain sufficient direct care staff. It is estimated that implementation of this Emergency Rule will increase expenditures in the ADHC Waiver Program by approximately \$42,356 for state fiscal year 2006-2007.

Effective February 9, 2007, the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amends the provisions governing the reimbursement methodology for the Adult Day Health Care Waiver by increasing reimbursement to providers to implement a wage pass-through payment for direct care workers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services

Waivers

Subpart 3. Adult Day Health Care

Chapter 31. Reimbursement

Subchapter A. Prospective Payment System

§3109. Provider Reimbursement

A. - B.7.a. ...

i. For dates of service on or after February 9, 2007, the facility-specific direct care price will be increased by \$1.11 to include a direct care service worker wage enhancement. It is the intent that this wage enhancement be paid to the direct care service workers.

B.7.b. - B.8.b ...

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 30:2048 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

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

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0702#027

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice
Direct Support Professionals Wage Pass-Through
(LAC 50:XXI.12101)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.12101 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for the Children's Choice Waiver (*Louisiana Register*, Volume 28, Number 9). The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities is promulgating this Emergency Rule to amend the provisions of the September 20, 2004 Rule governing the reimbursement methodology for the Children's Choice Waiver to implement an hourly wage pass-through payment to providers for direct care staff.

This action is being taken to promote the health and well-being of waiver recipients by assuring continued access to services through assisting providers to recruit and retain sufficient direct care staff. It is estimated that implementation of this Emergency Rule will increase expenditures in the Children's Choice Waiver Program by approximately \$334,222 for state fiscal year 2006-2007.

Effective February 9, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with

Developmental Disabilities amends the provisions governing the reimbursement methodology for the Children's Choice Waiver to implement a wage pass-through payment to providers for direct support professionals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services

Waivers

Subpart 9. Children's Choice

Chapter 121. Reimbursement

§12101. Reimbursement Methodology

A. - B.4. ...

5. Direct Support Professionals Wage Pass-Through.

a. Effective February 9, 2007, an hourly wage pass-through payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide Family Support Services to Medicaid home and community-based waiver services recipients.

i. At least 75 percent of the wage pass-through shall be paid to personal care workers as wages. If less than 100 percent of the pass-through is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

ii. The minimum hourly rate paid to direct support professionals shall be the current minimum wage plus 75 percent of the wage pass through.

b. Providers shall be required to submit a certified wage register to the department verifying the direct support professionals' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

i. gross wage paid to the direct support professional(s);

ii. total number of direct support hours worked; and

iii. the amount paid in employee benefits.

c. A separate report shall be submitted for paid overtime.

d. The provider shall submit quarterly wage reports that verify that the 75 percent wage pass-through has been paid to the appropriate staff.

e. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage pass-through.

f. Audit procedures shall be established by the department to verify the wage-pass through payments reimbursed to providers.

g. Noncompliance or failure to demonstrate that the wage pass-through was paid directly to direct support professionals may result in:

i. forfeiture of eligibility for wage pass-through payments;

ii. recoupment of previous wage pass-through payments;

iii. Medicaid fraud charges; and

iv. loss of provider license.

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 28:1987 (September 2002), amended LR 33:

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

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0702#028

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers New Opportunities Waiver Direct Support Professionals Wage Pass-Through (LAC 50:XXI.14101)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.14101 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services implemented a home and community-based services waiver, the New Opportunities Waiver (NOW), to enhance the support services available to individuals with developmental disabilities (*Louisiana Register*, Volume 30, Number 6). The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities is promulgating this Emergency Rule to amend the provisions of the June 20, 2004 Rule governing the reimbursement methodology for the New Opportunities Waiver to implement an hourly wage pass-through payment to providers for direct care staff.

This action is being taken to promote the health and well-being of waiver recipients by assuring continued access to services through assisting providers to recruit and retain sufficient direct care staff. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$12,125,968 for state fiscal year 2006-2007.

Effective February 9, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for the New Opportunities

Waiver to implement a wage pass-through payment to providers for direct support professionals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services

Waivers

Subpart 11. New Opportunities Waiver

Chapter 141. Reimbursement

§14101. Reimbursement Methodology

A. - E.1. ...

F. Direct Support Professionals Wage Pass-Through

1. Effective February 9, 2007, an hourly wage pass-through payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide Individual and Family Support Services to Medicaid home and community-based waiver services recipients.

a. At least 75 percent of the wage pass-through shall be paid to personal care workers as wages. If less than 100 percent of the pass-through is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

b. The minimum hourly rate paid to direct support professionals shall be the current minimum wage plus 75 percent of the wage pass through.

2. Providers shall be required to submit a certified wage register to the department verifying the direct support professionals' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

a. gross wage paid to the direct support professional(s);

b. total number of direct support hours worked; and

c. the amount paid in employee benefits.

3. A separate report shall be submitted for paid overtime.

4. The provider shall submit quarterly wage reports that verify that the 75 percent wage pass-through has been paid to the appropriate staff.

5. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage pass-through.

6. Audit procedures shall be established by the department to verify the wage-pass through payments reimbursed to providers.

7. Noncompliance or failure to demonstrate that the wage pass-through was paid directly to direct support professionals may result in:

a. forfeiture of eligibility for wage pass-through payments;

b. recoupment of previous wage pass-through payments;

c. Medicaid fraud charges; and

d. loss of provider license.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended LR 33:

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

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0702#030

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office of Aging and Adult Services

Home and Community-Based Services Waivers
Elderly and Disabled Adults Waiver
Direct Service Professionals Wage Pass-Through
(LAC 50:XXI.Chapter 91)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services adopts LAC 50:XXI.Chapter 91 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the Elderly and Disabled Adults (EDA) Waiver (*Louisiana Register*, Volume 28, Number 9). This Emergency Rule is being promulgated to adopt a reimbursement methodology for the EDA Waiver and provisions to implement an hourly wage pass-through payment to providers for direct care staff.

This action is being taken to promote the health and well-being of waiver recipients by assuring continued access to services through assisting providers to recruit and retain sufficient direct care staff. It is estimated that implementation of this Emergency Rule will increase expenditures in the EDA Waiver Program by approximately \$1,946,766 for state fiscal year 2006-2007.

Effective February 9, 2007, the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services adopts the provisions governing the reimbursement methodology for the Elderly and Disabled Adults Waiver to implement a wage pass-through for direct support professionals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers

Subpart 7. Elderly and Disabled Adults Waiver

Chapter 91. Reimbursement

§9101. Reimbursement Methodology

A. Reimbursement for EDA Waiver services shall be a prospective flat rate for each approved unit of service provided to the recipient.

B. Direct Support Professionals Wage Pass-Through

1. Effective February 9, 2007, an hourly wage pass-through payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide home and community-based waiver services to Medicaid recipients. Direct support professionals are persons who deliver direct care services such as assistance with the activities of daily living.

a. At least 75 percent of the wage pass-through shall be paid to the direct support professionals as wages. If less than 100 percent of the pass-through is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

b. The minimum hourly rate paid to direct support professionals shall be the current minimum wage plus 75 percent of the wage pass through.

2. Providers shall be required to submit a certified wage register to the department verifying the direct support professionals' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

a. gross wage paid to the direct support professional(s);

b. total number of direct support hours worked; and

c. the amount paid in employee benefits.

3. A separate report shall be submitted for paid overtime.

4. The provider shall submit quarterly wage reports that verify that the 75 percent wage pass-through has been paid to the appropriate staff.

5. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage pass-through.

6. Audit procedures shall be established by the department to verify the wage-pass through payments reimbursed to providers.

7. Noncompliance or failure to demonstrate that the wage pass-through was paid directly to direct support professionals may result in:

a. forfeiture of eligibility for wage pass-through payments;

b. recoupment of previous wage pass-through payments;

c. Medicaid fraud charges; and

d. loss of provider license.

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 of Aging and Adult Services, LR 33:

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

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0702#029

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office of Aging and Adult Services

Personal Care Services—Long Term Personal Care Workers Wage Pass-Through (LAC 50:XV.12917)

The Department of Health and Hospitals, Office of the Secretary, Office Of Aging and Adult Services amends LAC 50:XV.12917 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the coverage of personal care services as an optional service under the Medicaid State Plan (*Louisiana Register*, Volume 29, Number 6). The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services is promulgating this Emergency Rule to amend the provisions of the June 20, 2003 Rule governing the reimbursement methodology for personal care services to implement an hourly wage pass-through payment to providers for personal care workers.

This action is being taken to promote the health and well-being of Medicaid recipients by assuring continued access to services through assisting providers to recruit and retain sufficient personal care workers. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$4,051,964 for state fiscal year 2006-2007.

Effective February 9, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for personal care services to implement a wage pass-through payment to providers for personal care workers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12917. Reimbursement Methodology

A. ...

B. Personal Care Workers Wage Pass-Through

1. Effective February 9, 2007, an hourly wage pass-through payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) personal care workers who provide services to Medicaid recipients.

a. At least 75 percent of the wage pass-through shall be paid to personal care workers as wages. If less than 100 percent of the pass-through is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

b. The minimum hourly rate paid to personal care workers shall be the current minimum wage plus 75 percent of the wage pass-through.

2. Providers shall be required to submit a certified wage register to the department verifying the personal care workers' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- gross wage paid to the personal care worker(s);
- total number of personal care hours worked; and
- the amount paid in employee benefits.

3. A separate report shall be submitted for paid overtime.

4. The provider shall submit quarterly wage reports that verify that the 75 percent wage pass-through has been paid to the appropriate staff.

5. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage pass-through.

6. Audit procedures shall be established by the department to verify the wage-pass through payments reimbursed to providers.

7. Noncompliance or failure to demonstrate that the wage pass-through was paid directly to personal care workers may result in:

- forfeiture of eligibility for wage pass-through payments;
- recoupment of previous wage pass-through payments;
- Medicaid fraud charges; and
- loss of provider license.

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 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

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

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to

inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0702#032

DECLARATION OF EMERGENCY

**Department of Public Safety and Corrections
State Uniform Construction Code Council**

Louisiana State Uniform Construction Code
(LAC 55:VI.905)

The Louisiana Department of Public Safety and Corrections, Louisiana State Uniform Construction Code Council hereby adopts the following Emergency Rule governing the implementation of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730.21 et seq. This Rule is being adopted in accordance with the Emergency Rule provisions of R.S. 49:953(B) of the Administrative Procedure Act. This Emergency Rule becomes effective on the date of the signature, January 29, 2007, by the authorized representative of the Louisiana State Uniform Construction Council and shall remain in effect for the maximum period allowed by the APA, which is 120 days.

As a result of the widespread damage caused by Hurricanes Rita and Katrina, the Legislature enacted and mandated a state uniform construction code to promote public safety and building integrity. This new code went into effect statewide on January 1, 2007. The Louisiana State Uniform Construction Code Council ("Council") promulgated rules in order to help clarify the building code officer registration process and the provisional registration periods for code enforcement officers. The Council instituted, in the regular rulemaking process, a rule pertaining to the qualifications for third party providers to register with the Council on a provisional basis, however, the House Commerce Committee rejected that particular Rule which resulted in no Rule currently being in place. Immediately adopting this Rule will greatly improve the facilitation of the intent of this legislation in mandating a statewide uniform construction code in allowing third party providers to provisionally register with the Council.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

§905. Third Party Providers.

A. Third party providers who are Louisiana licensed architects or engineers and who obtain a certificate of registration after January 1, 2007, shall be granted a provisional certificate for registration without certification by a recognized code organization for their specialty work only. For purposes of this section, specialty work shall be designated as follows: Architects—building; Civil engineers—building; Electrical engineers—electrical; Mechanical engineer—plumbing, fuel gas, and mechanical. This provisional certificate shall expire on December 31,

2007. Thereafter, any third party provider renewing this Certification of Registration shall satisfy the certification requirement(s) as set forth in §703.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, State Uniform Construction Code Council, LR 33:

Jill Boudreaux
Acting Undersecretary

0702#017

DECLARATION OF EMERGENCY

**Department of Revenue
Policy Services Division**

Issuance and Cancellation of a Lien; Fees
(LAC 61:I.5302)

Under the authority of R.S. 47:1511, R.S. 47:1577, R.S. 47:295, and R.S. 47:1578 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, issues an Emergency Rule to amend LAC 61:I.5302, relative to the release of property subject to a lien and to offers in compromise. This Emergency Rule shall be effective February 1, 2007, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final Rule, whichever occurs first.

With respect to release of a lien, the amendment conforms the language in the regulation to the language in R.S. 47:1578(B)(3), as amended by Act 56 of the 2004 Regular Legislative Session to clarify that the secretary is authorized to release any part of the property subject to the recorded lien when it is determined that the state's interest in the part to be released has no value.

Louisiana Revised Statutes 47:1578 and 47:295 allow the secretary to compromise certain judgments for taxes as well as to waive, reduce, or compromise individual income tax, penalties, interest, or other amounts. This Emergency Rule is necessary to allow the Department of Revenue to inform taxpayers and their representatives that the secretary will only accept one offer from a taxpayer in a 10-year period and that a nonrefundable payment of at least 10 percent of the amount offered must accompany the offer in compromise application. A delay in adopting this rule could have an adverse impact on the taxpayers who are unaware of the recent changes implemented for the offer in compromise program.

Title 61

REVENUE AND TAXATION

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

Chapter 53. Miscellaneous Fees

§5302. Issuance and Cancellation of a Lien; Fees

A. - C.3. ...

4. when the amount paid to the secretary in partial satisfaction of the liability is not less than the value of the interest of the state of Louisiana in the part of the property to

be released or the secretary determines that the interest of the state of Louisiana in the part to be released has no value. This provision is subject to approval by the Board of Tax Appeals.

D. - E. ...

F. Offers in Compromise

1. The secretary will only accept one offer from any applicant in a 10-year period.

2. A nonrefundable payment of at least 10 percent of the amount offered must accompany an Offer in Compromise application.

G. The department shall assess a fee against the taxpayer for the filing of a tax lien and the cancellation of a lien. The amount of the fee to be assessed against the taxpayer shall be determined according to the amount charged the department by the parish in which the lien is filed. In the event a lien is filed in more than one parish for the same taxes, each lien shall be treated separately and the total charges per parish for the liens shall be assessed against the taxpayer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:295, R.S. 47:1511, R.S. 47:1577, and R.S. 47:1578.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:347 (February 2002), amended LR 30:1045 (May 2004), amended LR 33:

Cynthia Bridges
Secretary

0702#003

DECLARATION OF EMERGENCY

**Department of Social Services
Office of Community Services**

Daycare Services (LAC 67:V.2301)

The Department of Social Services, Office of Community Services, has exercised the emergency provisions of the Administrative Procedure Act. R.S. 49:953(B) to amend LAC 67:V., Subpart 4, Family Services, Chapter 23, Daycare, effective February 12, 2007. This Emergency Rule shall remain in effect for a period of 120 days.

Emergency action is necessary in this matter in order to provide an increase in the maximum reimbursement rates to Class A Day Care Centers to bring the Office of Community Services reimbursement rates for day care services to the department level for these services.

Title 67

SOCIAL SERVICES

Part V. Community Services

Subpart 4. Family Services

Chapter 23. Daycare

§2301. Daycare Services

A. ...

B. Class A Day Care Centers will be reimbursed for day care services at the same reimbursement rate as the Office of Family Support Child Care Assistance Program. When a

center's rate is less than the maximum amount reimbursed by the department, the department reimbursement rate will be the center's usual charge for day care services.

C. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 11:689 (July 1985), amended LR 18:868 (August 1992), LR 25:2443 (December 1999), LR 31:101 (January 2005), LR 33:

Ann Silverberg Williamson
Secretary

0702#062

DECLARATION OF EMERGENCY

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

Earned Income Tax Credit and Tax Assistance Program
for Filers without Children (LAC 67:III.Chapter 58)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67:III, Subpart 17, Chapter 58, the Earned Income Tax Credit and Tax Assistance Program for Filers without Children. This rule, effective March 1, 2007, shall remain in effect for a period of 120 days.

Pursuant to Executive Order KBB 2005-17, Section 2C, the agency shall adopt Subpart 17, Chapter 58, the Earned Income Tax Credit and Tax Assistance Program for Filers without Children, to provide a tax filing service offered free of charge to low-income taxpayers. This program serves EITC filers who are not TANF-eligible.

The authorization for emergency action in this matter is by the Solutions to Poverty Network Council, created by Executive Order KBB 2005-17. The federal Earned Income Tax Credit (EITC), a tax credit for low-income individuals and families whose income derives from employment, is the nation's largest anti-poverty program. Over 10 percent of low-income filers in Louisiana who qualify for EITC do not claim it due to lack of awareness and education on income tax issues. Of the number of filers who claim the credit, a large number needlessly pay fees disproportionate to their income level to access their own tax refunds. The Earned Income Tax Credit and Tax Assistance Program for Filers without Children educates low-income taxpayers on eligibility for EITC and other credits, and provides a free tax filing service to those who can least afford to pay a commercial preparer. In improving Louisiana's access to and retention of a major federal tax credit for low-wage workers, the program rewards work while reducing poverty. The program meets the Solutions to Poverty Executive Order's stated objective to encourage family and individual self-sufficiency.

Title 67
SOCIAL SERVICES
Part III. Family Support
Subpart 17. Earned Income Tax Credit and Tax Assistance Program for Filers without Children
Chapter 58. Earned Income Tax Credit and Tax Assistance Program for Filers without Children
Subchapter A. Designation and Authority of State Agency

§5801. Authority

A. The Earned Income Tax Credit and Tax Assistance Program for Filers without Children Program is established in accordance with Executive Order KBB 2005-17 Louisiana Solutions to Poverty Network Council, effective November 1, 2006, to provide a tax filing service offered free of charge to low-income taxpayers.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 2005-17 Louisiana Solutions to Poverty Network Council.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5803. Administration

A. The Earned Income Tax Credit and Tax Assistance Program for Filers without Children Program shall be administered by the Department of Social Services, Office of Family Support through contracts with outside entities.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 2005-17 Louisiana Solutions to Poverty Network Council.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Subpart B. Eligibility

§5805. Conditions of Eligibility

A. Eligibility for services is limited to:

1. individuals without minor children who meet the U.S. Department of the Treasury Internal Revenue Service's Earned Income Tax Credit income eligibility standard; or

2. married couples without minor children who meet the U.S. Department of the Treasury Internal Revenue Service's Earned Income Tax Credit income eligibility standard.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 2005-17 Louisiana Solutions to Poverty Network Council.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Ann Silverberg Williamson
Secretary

0702#058

DECLARATION OF EMERGENCY

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

FITAP/STEP—Eligibility Requirements and Criteria in
Family Transition Assessment
(LAC 67:III.1247 and 5727)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend

Title 67 Part III, Subpart 2, Family Independence Temporary Assistance Program, Section 1247 and Subpart 16, Strategies to Empower People (STEP) Program, Section 5727 effective February 9, 2007. This Rule shall remain in effect for a period of 120 days.

Pursuant to the authority of Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant and in accordance with the Administrative Procedure Act, the agency shall amend §1247 E.1-2 to restore language concerning the eligibility requirements for cash assistance stated in Title IV of the Social Security Act and restore language in §5727 B.1-4 which addresses criteria in the Family Transition Assessment to assist participants upon their transition from cash assistance. This text was erroneously omitted from a previous Rule.

Emergency action in this Rule is necessary because failure to amend this language in a timely manner could result in loss of benefits to eligible individuals, noncompliance with federal regulations and the imposition of penalties and sanctions by the Administration for Children and Families, the federal agency responsible for overseeing Louisiana's TANF Block Grant.

Title 67
SOCIAL SERVICES
Part III. Family Support
Subpart 2. Family Independence Temporary Assistance Programs
Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1247. Time Limits

A. - D.3....

E. Any month for which such assistance was provided will be disregarded from the 24- and 60-month time limits with respect to the individual, if the individual was:

1. a minor child; and

2. not the head of a household or married to the head of a household.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.6. and R.S. 46:460.5(A)(3); Act 58, 2003 Reg. Session; Act 675, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR 26:349 (February 2000), LR 27:2263 (December 2001), LR 30:494 (March 2004), LR 31:102 (January 2005), LR 33:

Subpart 16. Strategies to Empower People (STEP) Program

Chapter 57. Strategies to Empower People (STEP) Program

Subchapter C. STEP Program Process

§5727. Family Transition Assessment

A. ...

B. The FTA shall include but is not limited to:

1. a plan for on-going success in the work force;

2. identification of short and long-term goals;

3. identification of potential barriers and an action plan to overcome these barriers; and

4. information regarding eligibility for supportive services including, but not limited to: Medicaid benefits, food stamp benefits, child care, transportation, Louisiana

Child Health Insurance Program, the earned income tax credit, and TANF-funded services.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session; Act 110 and Act 675, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004), amended LR 31:103 (January 2005), LR 33:

Ann Silverberg Williamson
Secretary

0702#060

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

TANF Initiatives—Earned Income
Tax Credit (EITC) Program
(LAC 67:III.5581)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to amend LAC 67:III, Subpart 15, Chapter 55 TANF Initiatives, §5581, Earned Income Tax Credit (EITC) Program. This Emergency Rule effective March 1, 2007, will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective November 1, 2006, since it will expire before the final rule takes effect. (The final rule will be published in the April 2007 issue of the *Louisiana Register*.)

Pursuant to the authority granted to the department by Louisiana's TANF Block Grant, the agency is amending language in §5581 so that financial literacy will be provided to families receiving services through the Earned Income Tax Credit (EITC) Program. Additionally, the agency is amending the TANF goal being met by the services provided as well as restricting eligibility factors. The authorization for emergency action in this matter is contained in Act 16 of the 2005 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

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

Chapter 55. TANF Initiatives

§5581. Earned Income Tax Credit (EITC) Program

A. The agency has entered into contracts to provide public awareness, education and targeted outreach strategies regarding the benefits of claiming the Earned Income Tax Credit (EITC) Program, state tax credit programs, and free taxpayer assistance to EITC-eligible families and to provide financial literacy to families receiving services under this program. Strategies include collaboration with the Internal Revenue Service, various state departments and the targeted expansion of existing outreach activities to assure that free

taxpayer assistance to EITC-eligible families is available statewide.

B. These services meet the TANF goal to end dependence of needy parents by promoting job preparation, work, and marriage.

C. Eligibility for services is limited to those families with minor children who meet the Internal Revenue Service's EITC income eligibility standards.

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 1, 2004 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 31:1610 (July 2005), amended LR 33:

Ann Silverberg Williamson
Secretary

0702#059

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Oyster Season—Little Lake Public Oyster Seed Grounds

In accordance with the emergency provisions of the Administrative Procedure Act, Louisiana Revised Statutes (R.S.) 49:953(B) and 967(D), and under the authority of R.S. 56:433, R.S. 56:435.1, and R.S. 56:435.1.1(D) notice is hereby given that the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declare:

The oyster season in the Little Lake Public Oyster Seed Grounds as described in Louisiana Administrative Code (LAC) 76:VII.521 shall open at one-half hour before sunrise on February 21, 2007.

The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of non-living reef material in seed oyster loads, or if oyster resources and/or reefs are being adversely impacted, or if enforcement problems are encountered.

The secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource has ended, or may open areas if substantial oyster resources are located.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action unless such closure is ordered by the Department of Health and Hospitals for public health concerns.

Earl P. King, Jr.
Chairman

0702#034