

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of Agriculture and Environmental Sciences

ULV Malathion (LAC 7:XXIII.145)

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

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

This Emergency Rule becomes effective upon the signature of the commissioner, April 24, 2007 and shall expire at 11:59 p. m. on August 21, 2007.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticide

Chapter 1. Advisory Commission on Pesticides

Subchapter I. Regulations Governing Application of Pesticides

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

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

c. malathion insecticide applied with the following conditions to control plant bugs in cotton:

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

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

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

strictly complied with and observed by said aerial applicators;

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

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

vi. aerial spraying shall not be conducted when wind velocity exceeds 10 m.p.h.;

vii. aerial applicators will terminate application if rainfall is imminent;

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

ix. spraying shall not be conducted in fields where other aircraft are working;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

xxvii. aircraft shall have an operational Differentially Corrected Global Positioning System (DGPS) and flight data logging software that will log and display the date and time of the entire flight from take-off to landing and differentiate between spray-on and spray-off;

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

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

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

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

xxxii. the software must generate the map of the entire flight within a reasonable time. Systems that require five minutes or more to generate the map for a 3-hour flight on a PC (minimum a 386 microprocessor with 4 MB of memory) will not be accepted. The flight path must clearly differentiate between spray on and off when viewed on the monitor or the printed hard copy. The software must be capable of replaying the entire flight in slow motion; stopping and restarting the replay at any point during the flight; zooming to any portion of the flight for viewing in greater detail and printing the entire flight or the zoomed-in portion. It must have a measure feature that will measure

distance in feet between swaths or any portion of the screen and to be able to determine the exact latitude/longitude at any point on the monitor;

xxxiii. flight information software provided by the applicator must have the capability to interface with MapInfo (version 3.0 or 4.0). The interface process must be "user friendly", as personnel will be responsible to operate the system in order to access the information;

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

xxxv. applications of ULV malathion shall be restricted to seven day intervals.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 21:927 (September 1995), LR 26:1964 (September 2000), LR 33:

Bob Odom
Commissioner

0705#017

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of the Commissioner

Fluoroquinolones in Seafood (LAC 7:XXXV.511)

This Rule is being adopted in accordance with R.S. 3:2A, 3:3B, R.S. 3:4608 and the emergency rule provisions of R.S. 49:953 B of the Administrative Procedure Act.

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rule declaring the country of China to be a geographic area where Fluoroquinolones is being used on or found in food producing animals or in products from such animals. The commissioner has reason to believe that China is a geographic area where Fluoroquinolones is being used on or found in food producing animals or in products from such animals because Mississippi and Alabama have found Fluoroquinolones in fish from China. Additionally, testing by the department has resulted in positive testing of fish from china for the presence of Fluoroquinolones.

Fluoroquinolones is a broad-spectrum antibiotic that has been restricted by the FDA for use in humans only. The FDA banned the extra label use of Fluoroquinolones in food producing animals in 1997 after determining that such use presented a risk to the public health. That ban is still in effect, see 21 CFR 530.41. "Extra label use" means "actual use or intended use of a drug in an animal in a manner that is not in accordance with the approved labeling," see 21 CFR 530.3(a).

Since, the FDA has not established a safe level, tolerance level or safe concentration for Fluoroquinolones there is a zero tolerance level for Fluoroquinolones. Therefore, foods in which Fluoroquinolones are found are adulterated foods under the United States and Louisiana Food, Drug, and Cosmetics Acts.

Fluoroquinolones have been known to cause hypersensitivity or allergic reactions, toxicity-related reactions, and to an increased prevalence of infections due to antibiotic-resistant microorganisms. Hypersensitivity reactions can include life-threatening anaphylaxis, as well as urticaria, dermatitis, vomiting, and diarrhea. There is a significant chance that these reactions may be attributed to other factors, thereby causing a misdiagnosis, and subsequent mistreatment of a person's medical condition.

Toxicity can affect multiple organ systems and include peripheral neuropathies, seizures, phototoxicity, tendon rupture, fatal drug interactions and arthropathies in children. Fluoroquinolones should not be taken by pregnant and lactating women due to concern over the potential effect on a developing fetus.

The sale in Louisiana of seafood adulterated with Fluoroquinolones will expose Louisiana's citizens, including unborn children and nursing infants, to Fluoroquinolones and to the potential risks cited above, thereby presenting an imminent peril to the public's health, safety and welfare.

The Commissioner of Agriculture and Forestry has, therefore, determined that this Emergency Rule is necessary to include China as geographic area to which the provisions of Title 7 Part XXXV.511 of the Louisiana Administrative Code apply.

This Rule becomes effective upon signature, May 4, 2007, and will remain in effect 120 days, unless renewed by the commissioner or until permanent rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 5. Consumer Products—Testing and Labeling

Subchapter B. Fluoroquinolones

§511. Fluoroquinolones in Seafood Prohibited; Testing and Sale of

A. - K. ...

L. The commissioner declares that he has information that would lead a reasonable person to believe that Fluoroquinolones is being used on or found in food producing animals or in products from such animals, in the following geographic area(s).

1. The geographic area or areas are:
 - a. the country of Vietnam;
 - b. the country of China.

2. All seafood harvested from or produced, processed or packed in any of the above listed geographic areas is hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

M. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Agriculture and Forestry, Office of Agro-Consumer Services, Weights and Measures Division, LR 33:38 (January 2007), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 33:

Bob Odom
Commissioner

0705#024

DECLARATION OF EMERGENCY

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

**Scholarship/Grant Programs—Eligibility
(LAC 28:IV:505, 507 and 703)**

Editor's Note: This Emergency Rule is being printed according to R.S. 49:954.1(C) which directs the Office of the State Register to publish documents submitted by a rulemaking agency without regard to validity. This Emergency Rule was not submitted in accordance with R.S. 49:950 et seq.

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)).

This 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 this Emergency Rule is necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective April 12, 2007, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG0785E)

**Title 28
EDUCATION**

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

**Chapter 5. Applications, Federal Grant Aid and ACT
Test**

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

A.1. - C.3.w. ...

x. A student, who enrolls for the first time as a full time student at an accredited out-of-state college and subsequently returns to Louisiana and enrolls as a full-time student in an eligible college or university for the fall semester of 2006, will be eligible for his TOPS award beginning with the fall semester of 2006 if his initial FAFSA or the on-line application is received no later than July 1, 2007.

C.4. - G. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), repromulgated LR 27:1847 (November 2001), amended LR 30:2017 (September 2004), LR 31:37 (January 2005), LR 32:2238 (December 2006), LR 33:83 (January 2007), LR 33:

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

A. - B.1. ...

2. Beginning with the 2005-2006 academic year (college), all documentation and certifications necessary to establish student initial eligibility including, but not limited to, high school and/or college transcripts and certifications, copies of student aid reports, applicant confirmation forms, promissory notes, ACT and/or SAT scores, residency affidavits, proof of citizenship or permanent residency status and other documents that may be utilized in determining eligibility, must be received by LASFAC no later than July 1 immediately following the academic year (college) the student is first eligible for payment of a TOPS award. For example, if a student's initial FAFSA is received no later than July 1, 2007, for that student to receive an award for the 2007-2008 academic year (college), LASFAC must have in its possession all documents relevant to establishing eligibility by July 1, 2008.

C.1. - D.3. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), repromulgated LR 27:1847 (November 2001), amended LR 28:447 (March 2002), LR 30:1161 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 32:2238 (December 2006), LR 33:

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

§703. Establishing Eligibility

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

(c) for students graduating in academic year (high school) 2004-2005 through 2005-2006, at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work documented on the student's official transcript as approved by the Louisiana Department of Education constituting a core curriculum as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
1	Geometry, Trigonometry*, Calculus or comparable Advanced Mathematics *Trigonometry cannot be used to fulfill this requirement for students graduating in Academic Year (High School) 2005-2006 and thereafter
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit, nonpublic)
1	Fine Arts Survey; (or substitute 2 units performance courses in music, dance, or theater; or 2 units of studio art or visual art; or one elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language

Units	Course
1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE); or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum); BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer Electronics I (1/2 or 1 credit) Computer Electronics II (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit) Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

(d). for students graduating in academic year (high school) 2006-2007, at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work documented on the student's official transcript as approved by the Louisiana Department of Education constituting a core curriculum as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
1	Geometry, Trigonometry*, Calculus or comparable Advanced Mathematics *Trigonometry cannot be used to fulfill this requirement for students graduating in Academic Year (High School) 2005-2006 and thereafter
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit, nonpublic)
1	Fine Arts Survey; (or substitute 2 units performance courses in music, dance, or theater; or 2 units of studio art or visual art; or one elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language

Units	Course
1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE); or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum); BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer Electronics I (1/2 or 1 credit) Computer Electronics II (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Database Design and Programming (1/2 or 1 credit) Database Programming with PL/SQL (1/2 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Digital Media I (1/2 or 1 credit) Digital Media II (1/2 or 1 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Java Programming (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit) Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

(e). beginning with the graduates of academic year (high school) 2007-2008, at the time of high school graduation, an applicant must have successfully completed 17.5 units of high school course work that constitutes a core curriculum and is documented on the student's official transcript as approved by the Louisiana Department of Education as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
1	Geometry, Calculus or comparable Advanced Mathematics
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for 1 unit; provided however, that such Agriscience unit shall not be considered a science elective for the purpose of the math or science elective requirement below)
1	An elective from among the following math subjects: Geometry, Calculus, Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III, Advanced Mathematics I, Advanced Mathematics II, Integrated Mathematics III or the following science subjects: Biology II, Chemistry II, Physics or Physics II

Units	Course
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit, nonpublic)
1	Fine Arts Survey; (or substitute 2 units performance courses in music, dance, or theater; or 2 units of studio art or visual art; or 1 elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language
1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE) or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum). BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer Electronics I (1/2 or 1 credit) Computer Electronics II (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Database Design and Programming (1/2 or 1 credit) Database Programming with PL/SQL (1/2 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Digital Media I (1/2 or 1 credit) Digital Media II (1/2 or 1 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Java Programming (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit) Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

A.5.a.ii. - J.3.b.ii. ...

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

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

31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:

George Badge Eldredge
General Counsel

0705#052

DECLARATION OF EMERGENCY

Tuition Trust Authority Office of Student Financial Assistance

START Savings Program—2006 Interest Rates (LAC 28:VI.315)

Editor's Note: This Emergency Rule is being printed according to R.S. 49:954.1(C) which directs the Office of the State Register to publish documents submitted by a rulemaking agency without regard to validity. This Emergency Rule was not submitted in accordance with R.S. 49:950 et seq.

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

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

This Declaration of Emergency is effective on April 12, 2007, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (ST0784E)

Title 28

EDUCATION

Part VI. Student Financial Assistance—Higher Education Savings—Tuition Trust Authority

Chapter 3. Education Savings Account

§315. Miscellaneous Provisions

A.1.a - B.14. ...

15. For the year ending December 31, 2006, the Louisiana Education Tuition and Savings Fund earned an interest rate of 5.11 percent.

16. For the year ending December 31, 2006, the Earnings Enhancements Fund earned an interest rate of 4.67 percent.

C. - S.2. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038

(October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:

George Badge Eldredge
General Counsel

0705#054

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Expedited Permit Processing Program
(LAC 33:I.Chapter 18)(OS073E3)

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 implement the expedited permit processing program.

This is a renewal of Emergency Rule OS073E2, which was effective on January 9, 2007, and published in the *Louisiana Register* on January 20, 2007.

This Emergency Rule provides a program for expedited permit processing and implementation of the associated expedited permit processing fees authorized by Acts 586 and 779 of the 2006 Regular Legislative Session. These Acts allow for expedited processing of a permit at no additional cost to the department for overtime pay. This Emergency Rule will allow the department to conduct a pilot program to gather the information needed to develop a final rule. Specifically, the department will be able to evaluate the environmental and public health benefits and the social and economic costs of expedited permit processing and the associated fees. Moreover, rapid implementation of Acts 586 and 779 will allow the expedited permit processing program to begin immediately, enhancing economic growth. Many companies consider environmental permitting timelines in determining where to locate a proposed facility. Expedited permit processing allows companies to act more quickly in response to market demands and conditions. The department has proposed a Rule to promulgate these regulations.

This Emergency Rule is effective on May 9, 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 OS073E3 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, 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 I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures Chapter 18. Expedited Permit Processing Program §1801. Scope

A. This Chapter establishes a program to expedite the processing of permits, modifications, licenses, registrations, or variances for environmental permit applicants who may request such services. Expedited processing of a permit, modification, license, registration, or variance is an exercise of the discretion of the administrative authority and is subject to the availability of resources needed in order to process the permit, modification, license, registration, or variance.

B. Eligibility

1. An application for an initial permit or permit modification necessary for new construction as required by the Environmental Quality Act or regulation is eligible for expedited permit processing.

2. An application for permit renewal and/or reconciliation is not eligible for expedited processing pursuant to the provisions of this Chapter unless it is associated with new construction; results in new permanent jobs; includes increases in production which benefit the national, state, or local economy; or provides a direct benefit to the environment.

3. The applicant's failure to pay any outstanding fees owed to the department may be considered grounds for denial of a request for expedited permit processing.

C. To the extent practicable, requests proposing new construction or requests that will result in the creation of new permanent jobs will be given highest consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

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

§1803. Procedures

A. Requests for expedited permit processing shall be submitted using the approved form. The approved form is available on the official website for the department. Hard copies may be obtained from the Office of Environmental Services, Environmental Assistance Division, Box 4313, Baton Rouge, LA 70821-4313.

B. Within 10 working days after receipt of a request for expedited processing of any permit, modification, license, registration, or variance, the administrative authority shall issue a decision to grant or deny the expedited processing request.

C. Requests for Additional Information

1. If at any time during the review process of an application the administrative authority determines that additional information is necessary, the administrative authority shall notify the applicant and require a response from the applicant within a reasonable, specified time.

2. The applicant shall respond to the request for additional information within the time specified by the administrative authority. Such a response shall contain all information required by the administrative authority.

3. The administrative authority reserves the right to cease expedited processing of the permit, modification, license, registration, or variance in accordance with the provisions of this Chapter if the applicant fails to supply the requested additional information by the specified time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

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

§1805. Fees

A. In addition to the fees charged pursuant to R.S. 30:2014, a fee shall be charged for each permit, modification, license, registration, or variance that is processed on an expedited basis in accordance with the provisions of this Chapter.

1. An appropriate fee shall be computed based on the maximum per hour overtime salary, including associated related benefits, of the civil service employee of the department who performs the work.

2. The fee shall be computed by multiplying the salary figure from Paragraph A.1 of this Section by every overtime hour or portion thereof that a department employee or contractor works on expedited processing of the permit, modification, license, registration, or variance.

3. The applicant may request that the expedited permit processing fee not exceed a maximum amount. If such a maximum amount is established, the number of overtime hours a department employee or contractor works processing the permit, modification, license, registration, or variance shall be limited accordingly. If further processing of the application is required, the department's continued review will not follow the provisions of this Chapter, and the request will no longer be handled on an expedited basis.

B. In the event that the administrative authority ceases processing a permit, modification, license, registration, or variance in accordance with LAC 33:I.1803.C.3 or Paragraph A.3 of this Section, a fee will be charged for every overtime hour or portion thereof that a department employee or contractor worked on expedited processing of the subject permit, modification, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

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

§1807. Invoicing and Failure to Pay

A. An invoice for the expedited permit processing fee shall be transmitted to the applicant after the administrative authority has made a decision to grant or deny the permit, modification, license, registration, or variance.

B. Failure to pay the expedited permit processing fee by the due date specified on the invoice will constitute a violation of these regulations and shall subject the applicant to relevant enforcement action under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the permit, modification, license, registration, or variance.

C. A permit appeal, whether by the applicant or a third party, shall not stay the requirement to pay the expedited permit processing fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

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

§1809. Public Notice and Availability of Records

A. Requirement to Provide Public Notice. The department shall provide notice of each permit, modification, license, registration, or variance that is processed pursuant to the provisions of this Chapter.

1. The notice of expedited permit processing shall be provided on the official website for the department.

2. For draft or proposed permit actions subject to public notice requirements under other regulations or program requirements, such public notice shall indicate that the draft or proposed permit was processed under the expedited permit processing provisions of this Chapter.

B. Contents of the Notice. The notice shall contain the name of the applicant/permittee, the agency interest number, the parish in which the facility is physically located, the environmental media involved, the date the request for expedited processing was received, and the date of the decision to approve or deny the request for expedited processing.

C. Availability of Records. All recorded information (completed permit application form, fact sheet or statement of basis, draft and proposed permits, or any public document) not classified as confidential information under R.S. 30:2030(A) or 30:2074(D) and designated as such in accordance with applicable regulations shall be made available to the public for inspection and copying in accordance with the Public Records Act, R.S. 44:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

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

Mike D. McDaniel, Ph.D.
Secretary

0705#038

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,
6901-6913, and 7135)(OS066E6)

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 OS066E5, which was effective on January 27, 2007, and published in the *Louisiana Register* on February 20, 2007. 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 the transporter of sewage sludge and the vehicle used to transport the 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. This permitting process has resulted in inadequately permitted and/or designed facilities to accept the waste. 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 May 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 OS066E6 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 applicers of sewage sludge and a material derived from sewage sludge; and the standards for

transporters of sewage sludge and for vehicles of transporters of sewage sludge.

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

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

d. ...

2. Applicability

a. This Chapter applies to:

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

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

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

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

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

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

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

c. ...

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

B. Compliance Period

1. - 3.a. ...

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

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

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

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

C. Permits and Permitting Requirements

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

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

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

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

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

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

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

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

iii. All treatment facilities that prepare sewage sludge for the use of land application and all land appliers 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 applier 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 applicers 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 applicer 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

Table 1 of LAC 33:IX.6901.F
Materials Prohibited from Feedstock or Supplements That Are Blended, Composted, or Mixed with Sewage Sludge
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 applicers 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). ...

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. ...

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.

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.

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	
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.

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

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

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.

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

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

2. Facility Characteristics

a. Perimeter Barriers, Security, and Signs

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

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

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

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

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

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

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

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

3. Facility Surface Hydrology

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

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

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

4. Facility Geology

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

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

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

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

6. Facility Administrative Procedures

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

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

C. Operations

1. Composters, Mixers, Blenders, and Preparers

a. Facility Operations and Maintenance Manual

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

0705#037

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).

The bureau by Emergency Rule amended 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 Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. 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.

Effective June 10, 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. ...

* * *

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. Non compliance 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;

(b). per diem rates for recipients residing in 9-16 bed facilities will increase \$15; and

(c). per diem rates for recipients residing in 16+ bed facilities will increase \$8.

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

0705#093

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). The bureau by Emergency Rule amended 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 (*Louisiana Register*, Volume 33, Number 2). It is the intent that this wage enhancement be paid to the direct care staff. This Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. 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.

Effective June 10, 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

0705#094

DECLARATION OF EMERGENCY

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

State Children's Health Insurance Program Coverage of Prenatal Care Services (LAC 50:III.Chapter 201)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:III.Chapter 201 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XXI 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 implemented a Medicaid expansion program under the provisions of Title XXI of the Social Security Act called the Louisiana Children's Health Insurance Program (LaCHIP) (*Louisiana Register*, Volume 24, Number 10). LaCHIP provided health

care coverage to uninsured children up to age 19 with family income below 133 percent of the federal poverty level (FPL). The October 20, 1998 Rule was subsequently amended to: 1) implement the second phase of LaCHIP which expanded coverage to uninsured children with family income up to 150 percent of the FPL (*Louisiana Register*, Volume 25, Number 9); and 2) implement the third phase which expanded coverage to uninsured children with family income up to 200 percent of the FPL (*Louisiana Register*, Volume 26, Number 12).

The bureau now proposes to expand coverage to children under Title XXI of the Social Security Act by implementing a stand-alone State Children's Health Insurance Program (SCHIP) to provide coverage of prenatal care services to low income, non-citizen women. This action is being taken to promote the health and well-being of children by increasing access to prenatal care services in order to reduce the occurrence of premature deliveries and costly emergency care for drop-in deliveries. It is estimated that the implementation of this Emergency Rule will increase expenditures in the SCHIP Program by approximately \$1,601,810 for fiscal year 2006-07.

Effective May 1, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts provisions to establish State Children's Health Insurance Program coverage of prenatal care services as an expansion of coverage for children under the provisions of Title XXI of the Social Security Act.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 11. State Children's Health Insurance Program

Chapter 201. Prenatal Care Services

§20101. General Provisions

A. Effective May 1, 2007, the Department of Health and Hospitals will provide State Children's Health Insurance Program (SCHIP) coverage of prenatal care services to low income, non-citizen women as an expansion of coverage for children under Title XXI of the Social Security Act. SCHIP coverage of prenatal care services will be an expansion of coverage for children, from conception to birth, with income from 0 percent through 200 percent of the federal poverty level (FPL).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XXI 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:

§20103. Eligibility Criteria

A. An applicant must be a Louisiana resident and cannot be eligible for Medicaid benefits under the provisions of Title XIX of the Social Security Act.

B. Applicants must be uninsured at the time of application.

1. Applicants are considered to be uninsured if they do not have creditable health insurance that provides coverage of prenatal care services.

C. Recipients must have family income at or below 200 percent of the FPL.

D. Recipients cannot be covered under a group health insurance plan or have creditable health insurance coverage and cannot have access to a state employee health benefits plan.

1. A state employee health benefits plan is a plan that is offered or organized by the state government, or on behalf of state employees, or other public agency for employees within the state.

E. Recipients shall be eligible to receive SCHIP coverage of prenatal care services from the month of conception or the first month of eligibility following conception, whichever is later, through the month of birth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XXI 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:

§20105. Services

A. Covered Services. Recipients shall receive coverage of pregnancy-related health care services and associated medically necessary services for conditions that, if not treated, would complicate the pregnancy. Pregnancy-related health care services which may be covered include:

1. inpatient and outpatient health care services;
2. physician services;
3. surgical services;
4. clinic and other ambulatory health care services;
5. prescription and over-the-counter medications;
6. laboratory and radiological services;
7. pre-natal care and pre-pregnancy family services and supplies;
8. inpatient and outpatient mental health services other than those services relative to substance abuse treatment;
9. durable medical equipment and other medically-related or remedial devices;
10. disposable medical supplies;
11. nursing care services;
12. extended dental services for pregnant women;
13. case management services;
14. physical therapy, occupational therapy and services for individuals with speech, hearing and language disorders;
15. medical transportation services; and
16. any other medically necessary medical, diagnostic, screening, preventive, restorative, remedial, therapeutic or rehabilitative services.

B. Service Limits. Sterilization procedures are not a covered service in this program. Other Medicaid-specific benefit limits, age limits and prior authorization requirements may be applicable to the services covered in this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XXI 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, 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

0705#050

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

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). The bureau promulgated an Emergency Rule 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 (*Louisiana Register*, Volume 33, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. 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.

Effective June 10, 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, Louisiana 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

0705#090

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
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). The department, by Emergency Rule, amended 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 (*Louisiana Register*, Volume 33, Number 2). It is the intent that the wage enhancement be paid to the direct care staff. This Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. 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.

Effective June 10, 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

§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, Louisiana 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

0705#091

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 Enhancement
(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 promulgated an Emergency Rule which amended 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. The department now proposes to amend the provisions of the February 9, 2007 Emergency Rule to also include a wage pass-through, hereafter referred to as a wage enhancement, payment for direct support professionals who provide Center-Based Respite services to Children's Choice recipients. 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 \$2,530 for state fiscal year 2006-2007.

Effective May 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with

Developmental Disabilities amends the provisions of the February 9, 2007 Emergency Rule governing the reimbursement methodology for the Children's Choice Waiver.

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 Enhancement

a. Effective February 9, 2007, an hourly wage enhancement 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 Children's Choice recipients.

b. Effective May 20, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide Center-Based Respite services to Children's Choice recipients.

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

d. The minimum hourly rate paid to direct support professionals shall be the current minimum wage plus 75 percent of the wage enhancement.

e. 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.

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

g. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

h. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

i. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

j. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

i. forfeiture of eligibility for wage enhancement payments;

ii. recoupment of previous wage enhancement payments;

iii. Medicaid fraud charges; and

iv. disenrollment in the Medicaid Program.

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

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

0705#084

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—Service Cap Increase

(LAC 50:XXI.11301)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.11301 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 repromulgated all of the rules governing the Children's Choice Waiver under the Louisiana Administrative Code (*Louisiana Register*, Volume 28, Number 9). The Children's Choice Waiver provides services with greater flexibility which is appropriate to families who care for children with disabilities. The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities proposes to amend the provisions governing the Children's Choice Waiver to increase the service cap.

This action is being taken to promote the health and safety of waiver recipients by assuring that they receive adequate services and supports. It is estimated that implementation of this Emergency Rule will increase expenditures in the Children's Choice Waiver Program by approximately \$1,600,000 for state fiscal year 2006-2007.

Effective May 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends the provisions governing the Children's Choice Waiver to increase the service cap.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services
Waivers

Subpart 9. Children's Choice

Chapter 113. Service

§11301. Service Cap

A. Children's Choice services are capped at \$17,000 per individual per plan of care year.

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 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, 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

0705#086

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 Enhancement
(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 new home and community based services waiver, the New Opportunities Waiver (NOW), designed 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 promulgated an Emergency Rule to amend the provisions of the June 20, 2004 Rule governing the reimbursement methodology for the New Opportunities

Waiver to implement a wage pass-through payment for direct support professionals who provide Individual and Family Support Services to NOW recipients (*Louisiana Register*, Volume 33, Number 2). The department now proposes to amend the provisions of the February 9, 2007 Emergency Rule to also include a wage pass-through, hereafter referred to as a wage enhancement, payment for direct support professionals who provide Day Habilitation, Supported Employment, Employment-Related Training and Center-Based Respite services to NOW recipients.

This action is being taken to promote the health and well-being of waiver recipients by assisting providers to recruit and retain sufficient direct care staff to assure continued access to services. It is estimated that implementation of this Emergency Rule will increase expenditures in the New Opportunities Waiver Program by approximately \$79,171 for state fiscal year 2006-2007.

Effective May 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends the provisions of the February 9, 2007 Emergency Rule governing the reimbursement methodology for the New Opportunities Waiver.

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 Enhancement

1. Effective February 9, 2007, an hourly wage enhancement 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 New Opportunities Waiver recipients.

2. Effective May 20, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide the following services to New Opportunities Waiver recipients:

- a. Day Habilitation;
- b. Supported Employment;
- c. Employment-Related Training; and
- d. Center-Based Respite.

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

4. The minimum hourly rate paid to direct support professionals shall be the current minimum wage plus 75 percent of the wage enhancement.

5. 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.
6. A separate report shall be submitted for paid overtime.
7. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.
8. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.
9. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.
10. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

- a. forfeiture of eligibility for wage enhancement payments;
- b. recoupment of previous wage enhancement payments;
- c. Medicaid fraud charges; and
- d. disenrollment in the Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, 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

0705#088

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers Supports Waiver Direct Support Professionals Wage Enhancement (LAC 50:XXI.Chapter 61)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.Chapter 61 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the

Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities implemented a home and community-based services waiver, the SUPPORTS WAIVER, to promote the independence of individuals with developmental disabilities by creating vocational and community inclusion options to enhance their lives (*Louisiana Register*, Volume 32, Number 9). This Emergency Rule is being promulgated to amend the provisions of the September 20, 2006 Rule governing the reimbursement methodology for the supports waiver to implement a wage enhancement payment to providers for direct support professionals.

This action is being taken to promote the health and well-being of waiver recipients by assisting providers to recruit and retain sufficient direct care staff to assure continued access to services. It is estimated that implementation of this Emergency Rule will increase expenditures in the Supports Waiver Program by approximately \$151,586 for state fiscal year 2006-2007.

Effective May 20, 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 supports waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services

Waivers

Subpart 5. Supports Waiver

Chapter 61. Reimbursement

§6101. Reimbursement Methodology

A. - H. ...

I. Direct Support Professionals Wage Enhancement

1. Effective May 20, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide the following services to support waiver recipients:

- a. Habilitation;
- b. Supported Employment;
- c. Day Habilitation;
- d. Center-Based Respite; and
- e. Prevocational Services.

2. At least 75 percent of the wage enhancement shall be paid to the direct support professional as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent, shall be used to pay employer-related taxes, insurance and employee benefits.

3. The minimum hourly rate paid to direct support professionals shall be the current minimum wage plus 75 percent of the wage enhancement.

4. Providers shall be required to submit a certified wage register to the Department verifying the direct support professionals' gross wages for the quarter ending March 31, 2007. 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.

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

6. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

7. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

8. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

9. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

a. forfeiture of eligibility for wage enhancement payments;

b. recoupment of previous wage enhancement payments;

c. Medicaid fraud charges; and

d. disenrollment from the Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), 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

0705#089

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Office of Aging and Adult Services**

Home and Community Based Services Waivers
Adult Day Health Care
(LAC 50:XXI.Chapters 21, 23, and 27)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services proposes to amend LAC 50:XXI.2101, 2103, 2107, 2109, 2313 and Chapter 27, and to adopt §2317 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing home and community-based waiver

services for adult day health care (*Louisiana Register*, Volume 30, Number 9). The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amended the provisions governing the Adult Day Health Care (ADHC) Waiver Request for Services Registry to: 1) clarify procedures for the allocation of ADHC waiver opportunities; 2) amend the provisions governing the medical certification process to remove preadmission screening and annual resident review requirements; and 3) eliminate the use of the Title XIX Medical-Social Information Form (Form 90-L) (*Louisiana Register*, Volume 32, Number 12). The department promulgated an Emergency Rule to amend the September 20, 2004 Rule to: 1) redefine the target population; 2) establish provisions governing placement on the request for services registry; 3) clarify the comprehensive plan of care requirements; and 4) establish provider reporting requirements and admission and discharge criteria for the ADHC Waiver (*Louisiana Register*, Volume 33, Number 3). The department now proposes to amend the September 20, 2004 Rule to more precisely define the target population, establish explicit provisions governing placement on the request for services registry and admission and discharge criteria for the ADHC Waiver.

This action is being taken to avoid federal sanctions which may result from not having provisions to clearly define the ADHC target population and admission and discharge criteria. It is anticipated that implementation of this Emergency Rule will not have a fiscal impact in the Medicaid Program for state fiscal year 2006-2007.

Effective May 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amends the provisions of the September 20, 2004 Rule governing the Adult Day Health Care Waiver program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers

Subpart 3. Adult Day Health Care

Chapter 21. General Provisions

§2101. Introduction

A. These standards for participation specify the requirements of the Adult Day Health Care (ADHC) Waiver Program. The program is funded as a waiver service under the provisions of Title XIX of the Social Security Act and is administered by the Department of Health and Hospitals (DHH).

B. Waiver services are provided under the provisions of the approved waiver agreement between the Centers for Medicare and Medicaid Services (CMS) and the Louisiana Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

§2103. Program Description

A. An Adult Day Health Care (ADHC) Waiver program provides direct care for five or more hours in a 24-hour weekday to individuals who are physically and/or mentally impaired.

B. The target population for the ADHC Waiver Program is individuals who meet Medicaid financial eligibility requirements and nursing facility level of care requirements, and who are either receiving Medicaid-funded services in a nursing facility or at imminent risk of nursing facility placement.

1. A person is considered to be at imminent risk of nursing facility placement when he:

- a. is likely to require admission to a nursing facility within the next 120 days;
- b. faces a substantial possibility of deterioration in mental condition, physical condition or functioning if either home and community-based services or nursing facility services are not provided in within 120 days; or
- c. has a primary caregiver who has a disability or is over the age of 70.

2. These individuals must be 65 years old or older, or 22 to 64 years old and disabled according to Medicaid standards or the Social Security Administration's disability criteria.

C. This program expands the array of services available to functionally-impaired individuals and helps bridge the gap between independence and institutional care, allowing them to remain in their own homes and communities.

D. Goals

1. Adult Day Health Care programs work to:
 - a. promote the individual's maximum level of independence;
 - b. maintain the individual's present level of functioning as long as possible, preventing or delaying further deterioration;
 - c. restore and rehabilitate the individual to the highest possible level of functioning;
 - d. provide support and education for families and other caregivers;
 - e. foster socialization and peer interaction; and
 - f. serve as an integral part of the community services network and the long-term care continuum of services.

2. The long-range goal for all adult day health care participants is the delay or prevention of 24-hour care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

§2107. Request for Services Registry

A. The Department of Health and Hospitals is responsible for the Request for Services Registry, hereafter referred to as "the registry," for the Adult Day Health Care Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll-free telephone number which shall be maintained by the department.

B. Individuals who desire their name to be placed on the ADHC Waiver registry shall be screened to determine whether they meet nursing facility level of care and are at imminent risk of nursing facility placement. Only individuals who meet these criteria will be added to the registry.

C. Individuals currently on the ADHC Waiver registry will be screened to determine whether they meet nursing

facility level of care and are at imminent risk of nursing facility placement.

D. An individual who does not meet the criteria for placement on the registry may appeal the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to 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 30:2035 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:2256 (December 2006), LR 33:

§2109. Programmatic Allocation of Waiver Opportunities

A. When funding is appropriated for a new ADHC Waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible ADHC Waiver opportunity assignment.

B. Adult Day Health Care Waiver opportunities shall be offered based upon the date of first request for services, with priority given to individuals who are in nursing facilities but could return to their home if ADHC Waiver services are provided. Priority shall also be given to those individuals who are at imminent risk of nursing facility placement.

1. Remaining waiver opportunities, if any, shall be offered on a first-come, first-serve basis to individuals who qualify for nursing facility level of care, but who are not at imminent risk of nursing facility placement.

C. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified and the process continues until an individual is determined eligible. An ADHC Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to 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:

Chapter 23. Provider Participation

§2313. Comprehensive Plan of Care (CPOC)

- A. ...
- B. Reimbursement shall not be made for ADHC Waiver services provided prior to the department's approval of the CPOC. Comprehensive plans of care must be completed and submitted timely in accordance with DHH policy and procedures.

C. The ADHC provider shall complete a CPOC which shall contain the type and number of services, including waiver and all other services, necessary to maintain the waiver recipient safely in the community.

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 30:2040 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

§2317. Reporting Requirements

A. ADHC facilities are obligated to report changes to the department that could affect the waiver recipient's eligibility including, but not limited to, those changes cited in the denial or discharge criteria.

B. ADHC facilities are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and welfare of the recipient and completing an incident report. The incident report shall be submitted to the department with the specified requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to 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:

Chapter 27. Admission and Discharge Criteria

§2701. Admission Criteria

A. Admission to the ADHC Waiver Program shall be determined in accordance with the following criteria:

1. initial and continued Medicaid financial eligibility;
2. initial and continued eligibility for a nursing facility level of care;
3. justification, as documented in the approved CPOC, that the ADHC Waiver services are appropriate, cost-effective and represent the least restrictive environment for the individual;
4. assurance that the health, safety and welfare of the individual can be maintained in the community with the provision of ADHC Waiver services; and
5. the individual is either in a nursing facility or is at imminent risk of nursing facility placement.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria in §2701.A. above will result in denial of admission to the ADHC Waiver.

C. - G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2041 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

§2703. Discharge Criteria

A. The recipient shall be discharged from the ADHC Waiver Program if any of the following conditions are determined.

1. The individual does not meet the criteria for Medicaid financial eligibility.
2. The individual does not meet the criteria for a nursing facility level of care.
3. The recipient resides in another state or has a change of residence to another state.
4. The individual is admitted to an acute care hospital, rehabilitation hospital or a nursing facility with the intent to stay, or a stay that is longer than 90 consecutive days.
5. Continuity of services is interrupted as a result of the recipient not receiving and/or refusing ADHC Waiver services during a period of 30 consecutive days.
6. The health, safety and welfare of the individual cannot be assured through the provision of ADHC Waiver services.
7. The individual fails to cooperate in the eligibility determination process or in the performance of the CPOC.
8. It is not cost effective to serve the individual in the ADHC Waiver.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to 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

0705#085

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 Adult Waiver
(LAC 50:XXI.Chapters 81 and 85)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services proposes to amend LAC 50:XXI.Chapters 81 and 85 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing home and community-based waiver services for elderly and disabled adults in LAC 50:XXI.Chapters 81-89 (*Louisiana Register*, Volume 30, Number 8). The Division of Long Term Supports and Services amended the provisions governing the Elderly and Disabled Adult (EDA) Waiver to: 1) eliminate the duplication of like services currently provided in the waiver and as a Medicaid State Plan service; 2) define the existing service package and establish new services; and 3) revise the methodology for allocation of waiver opportunities (*Louisiana Register*, Volume 32, Number 7). The department promulgated an Emergency Rule to amend the August 20, 2004 Rule to establish provisions governing placement on the request for services registry (*Louisiana Register*, Volume 33, Number 3). The department now proposes to amend the August 20, 2004 Rule to further clarify the provisions governing the EDA Waiver, including the provisions governing placement on the request for services registry, allocation of waiver opportunities and admission and discharge criteria.

This action is being taken to promote the well-being of Louisiana citizens by facilitating access to home and community-based services through the adoption of clear and precise provisions for the EDA Waiver request for services

registry and the allocation of waiver opportunities. It is anticipated that implementation of this Emergency Rule will not have a fiscal impact in the Medicaid Program for state fiscal year 2006-2007.

Effective May 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amends the provisions of the August 20, 2004 Rule governing the Elderly and Disabled Adult Waiver program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services Waiver

Subpart 7. Elderly and Disabled Adults Waiver

Chapter 81. General Provisions

§8101. Introduction

A. The target population for the Elderly and Disabled Adult (EDA) Waiver Program is individuals who meet Medicaid financial eligibility requirements and nursing facility level of care requirements, and who are either receiving Medicaid-funded services in a nursing facility or at imminent risk of nursing facility placement.

1. A person is considered to be at imminent risk of nursing facility placement when he:

- a. is likely to require admission to a nursing facility within the next 120 days;
- b. faces a substantial possibility of deterioration in mental or physical condition or functioning if either home and community-based services or nursing facility services are not provided within 120 days; or
- c. has a primary caregiver who has a disability or is over the age of 70.

2. These individuals must be 65 years old or older, or 21 to 64 years old and disabled according to Medicaid standards or the Social Security Administration's disability criteria.

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 30:1698 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

§8103. Request for Services Registry

A. The Department of Health and Hospitals (DHH) is responsible for the Request for Services Registry, hereafter referred to as "the registry," for the Elderly and Disabled Adult Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll-free telephone number which shall be maintained by the department.

B. Individuals who desire their name to be placed on the EDA Waiver registry shall be screened to determine whether they meet nursing facility level of care and are at imminent risk of nursing facility placement. Only individuals who meet these criteria will be added to the registry.

C. Individuals currently on the EDA Waiver registry will be screened to determine whether they meet nursing facility level of care and are at imminent risk of nursing facility placement.

D. An individual who does not meet the criteria for placement on the registry may appeal the decision.

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 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

§8105. Programmatic Allocation of Waiver Opportunities

A. When funding is appropriated for a new EDA Waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible EDA Waiver opportunity assignment.

B. EDA Waiver opportunities are offered based on the date of first request for services, with priority given to individuals who are in a nursing facility, but could return to their home if EDA Waiver services are provided. Priority shall also be given to those individuals who are at imminent risk of nursing facility placement.

1. Remaining waiver opportunities, if any, shall be offered on a first-come, first-serve basis to individuals who qualify for nursing facility level of care, but who are not at imminent risk of nursing facility placement.

C. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified as stated above and the process continues until an individual is determined eligible. An EDA Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

D. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

Chapter 85. Admission and Discharge Criteria

§8501. Admission Criteria

A. - A.5. ...

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria in §8501.A. will result in denial of admission to the EDA Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

§8503. Discharge Criteria

A. The recipient shall be discharged from the EDA Waiver Program if any of the following conditions are determined.

1. The individual does not meet the criteria for Medicaid financial eligibility.
2. The individual does not meet the criteria for a nursing facility level of care.
3. The recipient resides in another state or has a change of residence to another state.
4. The individual is admitted to an acute care hospital, rehabilitation hospital or a nursing facility with the intent to stay, or a stay that is longer than 90 consecutive days.
5. Continuity of services is interrupted as a result of the recipient not receiving and/or refusing EDA Waiver services during a period of 30 consecutive days.
6. The health, safety and welfare of the individual cannot be assured through the provision of EDA Waiver services within the individual's cost effectiveness.
7. The individual fails to cooperate in the eligibility determination process or in the performance of the CPOC.
8. Failure on behalf of the individual to maintain a safe and legal home environment.
9. It is not cost effective to serve the individual in the EDA Waiver.
10. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), 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, Louisiana 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

0705#087

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 Support 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). The bureau by Emergency Rule adopted a reimbursement methodology for the EDA Waiver and provisions to implement an hourly wage pass-through payment to providers for direct care staff (*Louisiana Register*, Volume 33, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. 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.

Effective June 10, 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, Louisiana 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

0705#092

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 by Emergency Rule amended 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 Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. 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.

Effective June 10, 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:

- a. gross wage paid to the personal care worker(s);
- b. total number of personal care 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 29:913 (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, 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

0705#095

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Rule 22—Alternative Procedures for the Resolution of Disputed Residential Insurance Claims Arising from Hurricane Damage (LAC 37:XI.Chapter 41)

The Department of Insurance (department) hereby states that the following circumstances continue to constitute an immediate danger to the public health, safety, or welfare. The 2005 hurricane season was particularly destructive for Louisiana. Hurricane Katrina caused catastrophic damage in southeast and central Louisiana; particularly hard were Plaquemines, St. Bernard and Orleans Parishes. Katrina caused widespread major damage to homes, loss of personal belongings and corresponding temporary loss of employment.

On September 24, 2005, Hurricane Rita hit the Cameron Parish area of Louisiana's southwest coast causing extensive and wide spread damage. The Governor of Louisiana declared a state of emergency (Proclamation No. 48 KBB 2005 and Proclamation No. 53 KBB 2005) due to the effects of Hurricanes Katrina and Rita, respectively. The President of the United States declared designated parishes of Louisiana a federal disaster area by issuing FEMA-1603-DR and FEMA-1607-DR for Katrina and Rita, respectively.

The total cost of property losses resulting from the combination of storms has been estimated to be in the tens of billions of dollars. The initial issuance of this Emergency Rule, in January 2006 (*Louisiana Register*, January 2006, Volume 32, page 60) complied with Code Title XIX—Alternative Dispute Resolution, particularly Chapter 1, The Louisiana Mediation Act, R.S. 9:4101 et seq., and implemented a non-adversarial alternative dispute resolution procedure. The facilitated claim resolution conference was prompted by the critical need for effective, fair, and timely handling of personal lines insurance claims arising out of damage to residential property caused by these two hurricanes.

Since the program's inception more than 10,800 Louisiana homeowners have requested to have their property claim mediated, with an overall settlement rate in excess of 75 percent. Despite this success, now almost 20 months after the hurricanes it is estimated that several thousands of residential property claims remain unresolved and repairs to damaged property has not been completed. Many of these claims remain unresolved as a result of disputes regarding costs of labor and materials needed to effectuate repairs. Due to the unprecedented extent of damage, in many instances materials and labor necessary to effectuate repairs have not been readily available and there have been disparities between the estimates of insurers and repair contractors.

Insureds with unresolved claims and un-repaired residences continue to be exposed to emotional, physical and economic hardship and remain at risk. Insureds are at risk of

receiving sub-quality work, or being faced with a substantial disparity between repair estimates and customary costs in the area. This condition erodes the ability of insureds to realize the benefit of their insurance coverage. This Rule establishes a procedure to determine a construction pricing guideline to be used in mediation proceedings to determine reasonable payments for repair and replacement costs arising from damage caused by hurricanes Katrina and Rita.

Due to decisive action by the Louisiana Legislature, the apparent one year prescriptive period for claims of these types (R.S. 22:691) has been extended to two years. Continuation of the program at this time will provide homeowners the opportunity and a forum to resolve their claims without having to file suit.

Based upon the forgoing, the department has determined that an emergency continues to exist and continuation of the claims mediation program and the availability of guidelines for construction pricing are essential to the resolution of insurance claims and the effectuation of repairs of damage covered by insurance policies.

Summary of the Rule: this Emergency Rule establishes a special mediation program for personal lines residential insurance claims resulting from Hurricanes Katrina and Rita. The rule, effective April 25, 2007, creates procedures for notice of the right to mediation, request for mediation, assignment of mediators, payment for mediation, conduct of mediation, and guidelines for the quality repair of residential property damage.

The person to be contacted regarding the Emergency Rule is Barry E. Ward, Senior Attorney, Division of Legal Services, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9412; 225-219-4750.

Title 37

INSURANCE

Part XI. Rules

Chapter 41. Rule 22—Alternative Procedures for the Resolution of Disputed Residential Insurance Claims Arising from Hurricane Damage: Specific Reasons for Finding an Immediate Danger to the Public Health, Safety or Welfare

§4101. Authority

A. This Emergency Rule is promulgated by the Commissioner of Insurance pursuant to authority granted under the Louisiana Insurance Code, Title 22; R.S. 22:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4103. Purpose and Scope

A. This Emergency Rule in compliance with the Louisiana Mediation Act, R.S. 9:4101 et seq., sets forth a non-adversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of personal lines insurance claims arising out of damages to residential property caused by Hurricanes Katrina and Rita.

B. This Emergency Rule also addresses guidelines for the quality repair of residential property damaged by Hurricanes Katrina and Rita at reasonable and fair prices.

C. Before resorting to these procedures, insureds and insurers are encouraged to resolve claims as quickly and fairly as possible.

D. The procedure established by this Emergency Rule is available to all first party claimants who have personal lines claims resulting from damage to residential property occurring in the state of Louisiana. This rule does not apply to commercial insurance, private passenger motor vehicle insurance or to liability coverage contained in property insurance policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4105. Definitions

A. The following definitions apply to the terms of this rule as used herein.

Administrator—the department or its designee (American Arbitration Association) and the term is used interchangeably with regard to the department's duties under this rule.

Claim—any matter on which there is a dispute or for which the insurer has denied payment pursuant to claims arising from Hurricanes Katrina and Rita only. Unless the parties agree to mediate a claim involving a lesser amount, a "claim" involves the insured requesting \$500 or more to settle the dispute, or the difference between the positions of the parties is \$500 or more. "Claim" does not include a dispute with respect to which the insurer has reported allegations of fraud, based on an investigation by the insurer's special investigative unit, to the department's Division of Insurance Fraud.

Department—the Department of Insurance or its designee. Reporting to the department shall be directed to: Department of Insurance, Mediation Section, P.O. Box 94214, Baton Rouge, LA, 70804-9214; or by facsimile to (225) 342-1632.

Mediator—an individual approved by the administrator to mediate disputes pursuant to this rule. In order to be approved, mediators must appear on the "approved register" of mediators maintained by the Alternative Dispute Resolution (ADR) section of the Louisiana State Bar Association pursuant to R.S. 9:4105, or provide sufficient evidence of having completed the mandatory qualifications set forth in R.S. 9:4106.

Party or Parties—the insured and his or her insurer, including Citizens Property Insurance Corporation, when applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4107. Notification of Right to Mediate

A. Insurers shall notify each of their insureds in this state, who has claimed damage to their residential property as a result of either Hurricane Katrina or Hurricane Rita, of their right to mediate the claim settlement. This requirement applies to all claims including any and all instances where checks have been issued by the insurer to the homeowner.

B. The insurer shall mail a notice of the right to mediate disputed claims to the insured within five days of the time

the policyholder or the administrator notifies an insurer of a dispute regarding the policyholder's claim. The following shall apply.

1. If the insurer has not been notified of a disputed claim prior to the time an insurer notifies the insured that a claim has been denied in whole or in part, the insurer shall mail a notice of the right to mediate disputed claims to the insured in the same mailing as a notice of denial.

2. The insurer is not required to send a notice of the right to mediate disputed claims if a claim is denied because the amount of the claim is less than the policyholder's deductible.

3. The mailing that contains the notice of the right to mediate may include the department's consumer brochure on mediation.

4. Notification shall be in writing and shall be legible, conspicuous, and printed in at least 12-point type.

5. The first paragraph of the notice shall contain the following statement:

"James J. Donelon, Commissioner of Insurance for the State of Louisiana, has adopted an Emergency Rule to facilitate fair and timely handling of residential property insurance claims arising out of Hurricanes Katrina and Rita that recently devastated so many homes in Louisiana. The Emergency Rule gives you the right to attend a mediation conference with your insurer in order to settle any dispute you have with your insurer about your claim. You can start the mediation process by calling the mediation administrator, the American Arbitration Association (AAA), at 1-800-426-8792. An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference."

C. The notice shall also:

1. include detailed instructions on how the insured is to request mediation, including name, address, and phone and fax numbers for requesting mediation through the administrator;

2. include the insurer's address and phone number for requesting additional information; and

3. state that the administrator will select the mediator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4109. Request for Mediation

A. An insured may request mediation by contacting the insurer or by writing to the American Arbitration Association, Mediation Section, 1100 Poydras Street, Suite 2725, New Orleans, LA 70163; by calling the administrator at 1-800-426-8792; or by faxing a request to the administrator at (504) 561-8041.

B. If an insured requests mediation prior to receipt of the notice of the right to mediation or if the date of the notice cannot be established, the insurer shall be notified by the administrator of the existence of the dispute prior to the administrator processing the insured's request for mediation.

C. If an insurer receives a request for mediation, the insurer shall fax the request to the mediation administrator within three business days of receipt of the request. Should the department receive any requests, it will forward those requests to the administrator within three business days following the receipt. The administrator shall notify the insurer within 48 hours of receipt of requests filed with the department. The insured should provide the following information if known:

1. name, address, and daytime telephone number of the insured and location of the property if different from the address given;

2. the claim and policy number for the insured;

3. a brief description of the nature of the dispute;

4. the name of the insurer and the name, address, and phone number of the contact person for scheduling mediation;

5. information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood or windstorm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4111. Mediation Costs

A. All mediation costs shall be borne by the insurer shall be \$350 regardless of where the property is located.

B. Within five days of receipt of the request for mediation from the insured or receipt of notice of the request from the department or immediately after receipt of notice from the administrator pursuant to §4109 that mediation has been requested, whichever occurs first, the insurer shall pay a non-refundable administrative fee, not to exceed \$100 as determined by the department, to the administrator to defer the expenses of the administrator and the department.

1. The insurer shall pay \$250 to the administrator for the mediator's fee not later than five days prior to the date scheduled for the mediation conference.

2. If the mediation is cancelled for any reason more than 72 hours prior to the scheduled mediation time and date, the insurer shall pay \$75 to the administrator for the mediator's fee instead of \$250.

3. No part of the fee for the mediator shall be refunded to the insurer if the conference is cancelled within 72 hours of the scheduled time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4113. Scheduling of Mediation

A. The administrator will select a mediator and schedule the mediation conference. The administrator will attempt to facilitate reduced travel and expense to the parties and the mediator when selecting a mediator and scheduling the mediation conference. The administrator shall confer with the mediator and all parties prior to scheduling a mediation conference. The administrator shall notify each party in writing of the date, time and place of the mediation conference at least 10 days prior to the date of the conference and concurrently send a copy of the notice to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4115. Conduct of the Mediation Conference

A. R.S. 9:4101.C.(4) provides *mediation* is a procedure in which a mediator facilitates communication between the parties concerning the matters in dispute and explores possible solutions to promote reconciliation, understanding, and settlement. As such, it is not necessary to involve a

private attorney and participation by private attorneys is discouraged by the department. However:

1. if the insured elects to have an attorney participate in the conference, the insured shall provide the name of the attorney to the administrator at least six days before the date of the conference;

2. parties and their representatives must conduct themselves in the cooperative spirit of the intent of the law and this rule;

3. parties and their representatives must refrain from turning the conference into an adversarial process;

4. both parties must negotiate in good faith. A decision by an insurer to stand by a coverage determination shall not be considered a failure to negotiate in good faith. A party will be determined to have not negotiated in good faith if the party or a person participating on the party's behalf, continuously disrupts, becomes unduly argumentative or adversarial, or otherwise inhibits the negotiations as determined by the mediator;

5. the mediator shall terminate the conference if the mediator determines that either party is not negotiating in good faith, either party is unable or unwilling to participate meaningfully in the process, or upon mutual agreement of the parties;

6. the party responsible for causing termination shall be responsible for paying the mediator's fee and the administrative fee for any rescheduled mediation.

B. Upon request of the insured or the mediator, an attorney will be available to help insureds prepare for the mediation conferences. A representative of the department will be present at and participate in the conference if requested at least five days prior to the scheduled mediation by a party or the mediator to offer guidance and assistance to the parties. The department will attempt to have a representative at the conference if the request is received less than five days prior to the scheduled mediation. Representatives of the department that participate in the conference will not be there to represent the insured. They shall not assume an advocacy role but shall be available to provide legal and technical insurance information.

C. The representative of the insurer attending the conference must bring a copy of the policy and the entire claims file to the conference.

1. The representative of the insurer attending the conference must know the facts and circumstances of the claim and be knowledgeable of the provisions of the policy.

2. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full amount of the claim or lacks the ability to disburse the settlement amount at the conclusion of the conference.

D. The mediator will be in charge of the conference and will establish and describe the procedures to be followed. Per R.S. 9:4107, mediators shall conduct the conference in accordance with the standards of professional conduct for mediation adopted by the American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution.

1. Each party will be given an opportunity to present their side of the controversy. In so doing, parties may utilize any relevant documents and may bring any individuals with knowledge of the issues, such as adjusters, appraisers, or contractors, to address the mediator.

2. The mediator may meet with the parties separately, encourage meaningful communications and negotiations, and otherwise assist the parties to arrive at a settlement.

3. All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation. The provisions of R.S. 9:4112 apply.

E. A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the administrator if the grounds are known prior to the mediation conference. Good cause consists of conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference.

F. If the insured fails to appear, without good cause as determined by the administrator, the insured may have the conference rescheduled only upon the insured's payment of the mediation fees for the rescheduled conference. If the insurer fails to appear at the conference, without good cause as determined by the administrator, the insurer shall pay the insured's actual expenses incurred in attending the conference and shall pay the mediator's fee whether or not good cause exists.

1. Failure of a party to arrive at the mediation conference within 30 minutes of the conference's starting time shall be considered a failure to appear.

2. Good cause shall consist of severe illness, injury, or other emergency which could not be controlled by the insured or the insurer and, with respect to an insurer, could not reasonably be remedied prior to the conference by providing a replacement representative or otherwise.

3. If an insurer fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the insurer shall be subject to penalty, including suspension, revocation, or fine for violating R.S. 22:1214(14)(b), (c), (f), et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4117. Guidelines for the Quality Repair of Residential Property at a Reasonable and Fair Price

A. The provisions of insurance policies and applicable statutes require claims payments made by insurers to be sufficient to effectuate required repairs at the property site. Further, misrepresentation by any person regarding the cost of repairs is prohibited.

B. Based upon information provided by the construction industry, the insurance industry and nationally recognized sources, companies such as Simsol, Inc. and Xactware, Inc., compile construction pricing guidelines used in adjusting property losses. These guidelines reflect data from both the construction and insurance industries and the ranges take into consideration price differentials between geographic areas of the state. The parties shall use the current construction pricing guidelines compiled by these or similar reputable sources as the starting point in the dispute resolution process.

C. The guidelines referred to herein do not apply to any portion of repairs necessary to fulfill the insurer's contractual obligation to restore the insured residence to pre-hurricane

condition where, as of the effective date of this rule, there is an executed repair contract to effectuate such repairs for an agreed price and the insurer has tendered full payment for the repair contract amount for those repairs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4119. Post Mediation

A. Within five days of the conclusion of the conference the mediator shall file with the administrator a mediator's status report on Form DOI-HM-1 which is entitled *Disposition of Property Insurance Mediation Conference*, indicating whether or not the parties reached a settlement. Form DOI-HM-1 will be available from the administrator and is hereby incorporated in this rule by reference.

1. Mediation is non-binding unless all the parties specifically agree otherwise in writing.

2. If the parties reached a settlement, the mediator shall include a copy of the settlement agreement with the status report.

3. However, if a settlement is reached, the insured shall have three business days within which he or she may rescind any settlement agreement provided that the insured has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the conference.

B. If a settlement agreement is reached and is not rescinded, it shall act as a release of all specific claims that were presented in the conference. Any additional claims under the policy shall be presented a separate claim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4121. Non-Participation in Mediation Program

A. If the insured decides not to participate in this claim resolution process or if the parties are unsuccessful at resolving the claim, the insured may choose to proceed under the appraisal process set forth in the insured's insurance policy, by litigation, or by any other dispute resolution procedure available under Louisiana law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4123. Departmental Authority to Designate

A. The department is authorized to designate an entity or person as its administrator to carry out any of the department's duties under this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4125. Severability

A. If a court holds any Section or portion of a Section of this Emergency Rule or the applicability thereof to any person or circumstance invalid, the remainder of the Emergency Rule shall not be affected thereby.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4127. Applicable Provisions

A. The applicable provisions of Title 49, Louisiana Administrative Procedure Act, shall govern issues relating to mediation that are not addressed in this rule. The provisions of this Emergency Rule shall govern in the event of any conflict with the provisions of Title 49, Louisiana Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

James J. Donelon
Commissioner

0705#012

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections State Uniform Construction Code Council

Classifications and Required Certifications for Municipal or Parish Building Code Enforcement Officers
(LAC 55.VI.703)

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 by the authorized representative of the Louisiana State Uniform Construction Council, April 10, 2007, 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 qualifications of such individuals. The council instituted, in the regular rulemaking process, a Rule pertaining to the qualifications for building code enforcement officers to register with the council on a provisional basis. However, it has since been discovered that there are additional certifications that individuals may hold but were not included in the original Rule. Immediately adopting this Rule will greatly improve the facilitation of the intent of this legislation in mandating a statewide uniform construction code in allowing building code enforcement officers to obtain their certificate of registration from the council.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

Chapter 7. Certificates of Registration

§703. Classifications and Required Certifications for Municipal or Parish Building Code Enforcement Officers

A. - B. ...

C. BCEO Registration Classifications/Requirements.

1. - 1.a. ...

2. Specialty Classifications

a. Commercial Inspectors

i. Commercial Building Inspector

Requirements—possess a current ICC Commercial Building Inspector, ICC Building Inspector, or ICC Commercial Combination Inspector certificate.

ii. Commercial Electrical Inspector

Requirements—possess a current ICC Commercial Electrical Inspector, ICC Electrical Inspector, or ICC Commercial Combination Inspector certificate.

iii. Commercial Mechanical Inspector

Requirements—possess a current ICC Commercial Mechanical Inspector, ICC Mechanical Inspector, or ICC Commercial Combination Inspector certificate.

iv. Commercial Plumbing Inspector

Requirement—possess a current ICC Commercial Plumbing Inspector, ICC Plumbing Inspector, or ICC Commercial Combination Inspector certificate.

b. - b.v. ...

c. Residential Inspectors

i. Residential Building Inspector

Requirements—possess a current ICC Residential Inspector, ICC Building Inspector, or ICC Residential Combination Inspector certificate.

ii. Residential Electrical Inspector

Requirements—possess a current ICC Residential Electrical Inspector, ICC Electrical Inspector, or ICC Residential Combination Inspector certificate.

iii. Residential Mechanical Inspector

Requirements—possess a current ICC Residential Mechanical Inspector, ICC Mechanical Inspector, or ICC Residential Combination Inspector certificate.

iv. Residential Plumbing Inspector

Requirements—possess a current ICC Residential Plumbing Inspector, ICC Plumbing Inspector, or ICC Residential Combination Inspector certificate.

v ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.34(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:292 (February 2007), amended LR 33:

Jill P Boudreaux
Undersecretary

0705#002

DECLARATION OF EMERGENCY

**Department of Public Safety and Corrections
State Uniform Construction Code Council**

Commercial Plan Review
(LAC 55:VI.505)

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, April 12, 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 qualifications of code enforcement officers and who can obtain code enforcement by a third party provider. The council instituted, in the regular rulemaking process, a rule pertaining to who can provide code enforcement services. Currently the jurisdiction must provide code enforcement services or contract with a third party to provide these services. Another option allows licensed contractors to obtain third party provider review. Immediately adopting this Rule will greatly improve the facilitation of the intent of this legislation in mandating a statewide uniform construction code in allowing the Office of the State Fire Marshal to provide architects, engineers, owners, parishes or municipalities with commercial plan review.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

Chapter 5. Enforcement of the Louisiana State Uniform Construction Code

§505. Commercial Plan Review

A. Until December 31, 2007, where a parish or municipality is not providing plan review, then architects, engineers, owners, parishes or municipalities on commercial projects may request International Building Code plan review by the Office of the State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Uniform Construction Code Council LR 33:

Jill Boudreaux
Acting Undersecretary

0705#006

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections State Uniform Construction Council

Third Party Providers (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 by the authorized representative of the Louisiana State Uniform Construction Council, April 10, 2007, 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. Furthermore, the council previously enacted an Emergency Rule on this particular issue, however it was subsequently discovered that the previous Emergency Rule caused undue hardship on certain jurisdictions. 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. This Emergency Rule will supercede the previous Emergency Rule.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

Chapter 9. Temporary Exemption to Certification Requirement

§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. 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 and Corrections, State Uniform Construction Code Council, LR 33:

Jill P. Boudreaux
Undersecretary

0705#003

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Child Care Quality Rating System (LAC 67:III.Chapter 59)

Editor's Note: This Emergency Rule is being printed according to R.S. 49:954.1(C) which directs the Office of the State Register to publish documents submitted by a rulemaking agency without regard to validity. This Emergency Rule was not submitted in accordance with R.S. 49:950 et seq.

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 18, Chapter 59, Child Care Quality Rating System effective January 1, 2007, pursuant to the authority granted to the department by the Child Care and Development Fund (CCDF). This Rule shall remain in effect for a period of 120 days.

As a result of the devastation resulting from Hurricanes Katrina and Rita, child care centers in Louisiana have struggled to rebuild in affected areas and in other parts of the state have expanded their capacity to serve displaced families. In an effort to guide these centers as they restore much critically needed child care services, the agency has established a quality rating system for child care centers which uses licensing as a foundation and sets a continuum of quality indicators focused on the social-emotional needs of children. The Quality Rating System provides a mechanism by which child care centers can be assessed regarding the level of quality care given. The agency is strongly focused on providing quality child care and plans to implement the Quality Rating System through the emergency rulemaking process. The implementation of a Quality Rating System will provide a guide for parents to choose higher settings of child care beyond basic licensure and offers a structure for child care centers to communicate the level of quality offered in their center.

Subpart 18, Chapter 59 is being adopted to address the Child Care Quality Rating System which will assess, improve, and communicate the level of quality in early care and education settings.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 18. Child Care Quality Rating System

Chapter 59. Child Care Quality Rating System

Subchapter A. Authority

§5901. Authority

A. Child Care Quality Rating System is established effective January 1, 2007, and administered under the authority of state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5903. Definitions

Assistant Directors—must be on site for a minimum of 20 hours per week for centers with an enrollment of 101 or more.

Assistant Teachers—care for children at least 16 or more hours per week and must meet assistant teacher qualifications.

Child Care Center—licensed day care center.

Child Care Resource and Referral (CCR and R)—local agencies providing services to families, early childhood professionals and communities statewide.

Child Development Associate (CDA) Credential—a nationally recognized credential which can be used to meet staff qualification requirements.

College Transcripts—official record of coursework issued by institutions of higher learning.

Director—an administrator who meets the director qualifications and is on-site a minimum of 30 hours per week. This requirement can be met by having one or more persons on site who meet these qualifications.

Early Childhood Degree—may include human ecology, child development, or family studies.

Early Childhood Environment Rating Scale (revised ECERS-R)—a research-based assessment tool that measures environment indicators of quality in preschool classrooms.

Environment Rating Scales (ERS)—the assessment tools that measure environmental indicators of quality. They include the Infant Toddler Environment Rating Scale-Revised and ECERS-R, as well as the School Age Child Care Environment Rating Scale (SACCERS) for school age programs, and the Family Day Care Environment Rating Scale (FDCERS) for family child care homes.

Group—those children who are assigned for most of the day to a specific teacher and who occupy an individual classroom or well defined space that prevents intermingling of children from different groups within a larger group or area.

Infant Toddler Environment Rating Scale-Revised (ITERS-R)—a research-based assessment tool that measures environment indicators of quality in preschool classrooms.

Lead Teacher—a teacher who has primary responsibility for a designated classroom, planning and supervision and spends at least 25 hours a week in that classroom. All classrooms must have a lead teacher.

Quality Rating System (QRS) Points—points given in the Program and Staff Qualifications areas and all items within a point must be verified to receive credit. The total points earned determine the star award.

Social Emotional Subscales of the Environment Rating Scales—subscales used to determine the ERS score for Points 1-4. In the ECERS, the Language-Reasoning, Interaction and Program Structure are used and in the ITERS, the Listening and Talking, Interaction and Program Structure.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5905. Quality Rating System Requirements

A. The Child Care Quality Rating System (QRS) is designed to assess levels of child care, support improvements of child care programs, and communicate the level of quality in early care and education programs. The QRS consists of five star rating levels that can be earned by a licensed child care center, uses licensing as the foundation and has 4 star levels above Louisiana's licensing standards. The system components (Administrative Practices, Family and Community Involvement, Program and Staff Qualifications) have indicators that must be achieved to earn the star level.

1. Foundation One Star Level. A child care center shall have a license to operate and comply with standards as defined in Louisiana Administrative Code, Title 48, Chapter 53, Sections 5301-5354 and meet all the requirements in each of the four component areas, a selection of which is listed below.

a. Administration Practices—written center policies and procedures including:

- i. center's policies and practices;
- ii. emergency and evacuation procedures;
- iii. admission policy;
- iv. daily schedule;
- v. complaint procedure;
- vi. open door policy;
- vii. non-discrimination policy;
- viii. abuse/neglect policy;
- ix. discipline policy;
- x. job description;
- xi. quarterly staff session/meeting.

b. Family and Community Involvement—parent consultation prior to enrollment.

- i. Director makes the center's policies and procedures available to the parent.
- ii. Parent permitted to visit the center anytime during regular hours as long as child is enrolled.

c. Program Ratios

0-12 months	1:5
1 yr	1:7
2 yrs	1:11
3 yrs	1:13
4 yrs	1:15
5 yrs	1:19
6 yrs up	1:23
Other requirements in regulations.	

d. Staff Qualifications

- i. Director—
 - (a). on-site full-time director who is 21 yrs old;
 - (b). meet director qualifications in Louisiana Administrative Code, Title 48, Chapter 53.
- ii. Teacher—
 - (a). 18 yrs or older;
 - (b). within 1 week of employment, staff receive orientation with content as specified, followed by 4 days of supervised work with children;
 - (c). complete required annual clock hours of approved training;
 - (d). meet staff qualifications as identified in LAC 48:Chapter 53.

2. Foundation Two Star Level. A child care center must meet all the standards for a Foundation Star One, have been in operation for six months, and meet the following.

- a. Administrative Practices—
 - i. written personnel policies including operational hours, dress code, use of telephone, and schedule;
 - ii. job descriptions that include list of qualifications on file and provided to all staff;
 - iii. provide 1 staff benefit from the list of options below for all full time staff. Staff benefits options:
 - (a). employee health insurance or comparable health benefits;
 - (b). paid annual leave;
 - (c). paid sick leave;
 - (d). paid holidays, child care benefit/discount;
 - (e). bonus based on merit/achievement or education;
 - (f). retirement compensation;
 - (g). annual increments based on merit;
 - (h). tuition reimbursement and other related educational expenses such as books, travel, fees, substitutes;
 - (i). differential shift pay, flextime, pay professional association fee.
- b. Family and Community Involvement—
 - i. parent provided pre-enrollment visit and center tour;
 - ii. give every parent enrolling a child, a list of community resources including, but not limited to, LaCHIP, Medicaid, child care assistance, housing assistance, food stamps and information on a child's medical home.
- c. Program—
 - i. make 4 of the following activity areas available daily:
 - (a). art and creative play;
 - (b). children's books;
 - (c). blocks and block building;
 - (d). manipulatives; and
 - (e). family living and dramatic play;
 - ii. complete a self assessment of program and develop an improvement plan.
- d.i. Staff Qualifications—directors and teachers join the Louisiana Pathways Child Care Career Development System Registry. Director attends 3 hours of ERS training.
 - (a). Director (on-site)—
 - (i). three semester hour credits in care of young children or child development²; and
 - (ii). three semester hour credits in administration³; and
 - (iii). one year experience in teaching young children in an early childhood program.
 - (b). Assistant Director—three semester hour credits in care of young children or child development².
 - (c). Teacher—75 percent of lead teachers must meet one of the following:
 - (i). complete a three semester hour credits course in care of young children or child development² from a list of approved courses or enroll in the course and complete within 1 year of employment.

ii. Staff Qualifications

- (a). Director. An administrator who meets the director qualifications and is on-site a minimum of 30 hours per week. This requirement can be met by having one or more persons on site who meet these qualifications.
- (b). Assistant Directors. For centers with an enrollment of 101 or more, there must be a second director on site for a minimum of 20 hours per week.
- (c). Teacher. A Lead Teacher is a teacher who has primary responsibility for a designated classroom, planning and supervision and spends at least 25 hours a week in that classroom. All classrooms must have a lead teacher. All other staff who care for children at least 16 or more hours per week are designated as Assistant Teachers and must meet assistant teacher staff qualifications.

²The following may be substituted to meet this requirement of 3 semester hour credits in the care of young children or child development: a CDA or have approved high school child development courses or have 5 years full-time experience in an early childhood program or have completed a Level V LA Pathways Child Care Classroom Certificate. The following may be used to meet the requirement of up to 6 semester hour credits in the care of young children or child development: CDA or have completed a Level VI LA Pathways Child Care Classroom Certificate. An individual may use the above substitutions to meet the requirements for a maximum of 6 semester hour credits.

³The following may be substituted to meet the requirement for 3 semester hour credits in administration: LA Pathways Administrator Certificate or National Administrator Credential (NAC) or 3 years experience in administration or a combination of 1 year in administration experience and 4 years in teaching young children in an early childhood program.

NOTE: For Director Qualification: Experience in teaching young children or administration may only be substituted one time. At the next QRS review, the necessary educational requirement (credits in the care of young children or child development or credits in administration) must be met.

3. Point Standards for child care centers seeking Three Star Level, Four Star Level, and Five Star Level Ratings. To achieve a higher level of rating, a program must maintain all requirements at the Foundation Two Star level and earn points in the Program and Staff Qualifications component areas by meeting the requirements listed below. At least one point must be earned in each component area, Staff Qualifications and Program. The Quality Point referenced in Subparagraph 3.c may also be earned. The total number of points will determine the Star Level rating awarded to the center.

Total Number of Points	Star Level Rating
3-5 points	Three Stars
6-9 points	Four Stars
10-11 points	Five Stars

a. Program Standards

Points	Criteria
1	An average of 3.75 on the designated social-emotional subscale of the Environment Rating Scales (ERS) 4, with no one classroom score lower than 3.0 on the subscale.
2	An average of 4.0 on the designated social-emotional subscale of the ERS, with no one classroom score lower than 3.0 on the subscale.

Points	Criteria
3	<ol style="list-style-type: none"> An average of 4.25 on the designated social-emotional subscale of the ERS, with no one classroom score lower than 3.25 on the subscale. Staff: Child Ratio and Group Size <ul style="list-style-type: none"> 0-12 months 1:4,8 13-24 months 1:6,12 25-36 months 1:3, 16 3 yrs 1:10, 20 5 yrs 1:15, 30 4 yrs 1:12, 24 6 yrs and up 1:20, 30 Written transition procedures for children moving within a program or to other programs or beginning school.
4	<ol style="list-style-type: none"> An average of 4.5 on the designated social-emotional subscale of the ERS, with no one classroom score lower than 3.5 on the overall ERS. Complete screening for social-emotional development with instrument from recommended list for all children (0-5 yrs.) within 45 calendar days of enrollment and annually thereafter. Conference with parents to review results and provide a list of community resources. Staff : Child Ratio and Group Size <ul style="list-style-type: none"> 0-12 months 1:4, 8 13-24 months 1:6, 12 25-26 months 1:8, 16 3 yrs 1:10, 20 4 yrs 1:12, 24 5 yrs 1:15, 20 6 yrs and up 1:20, 30 Written transition procedures for children moving within a program or to other programs or beginning school.
5	<ol style="list-style-type: none"> An average of 5.0 on the overall ERS, with no one classroom score lower than 4.0. Complete screening for social-emotional development with instrument from recommended list for all children (0-5 yrs.) within 45 calendar days of enrollment and annually thereafter. Conference with parents to review results and provide a list of community resources. Provide a plan for continuity of care for all children 0-36 months of age. Implementation of LA Early Learning Guidelines and Program Standards; Birth through 3,(DSS 2005) and the LA Standards for Programs Serving 4 year old children (DOE 2003). Staff: Child Ratio and Group Size <ul style="list-style-type: none"> 0-24 months 1:4, 8 2 yrs 1:6, 12 3 yrs 1:8, 16 4 yrs 1:10, 20 5 yrs a:10, 20 6 yrs and up 1:12, 24

⁴For the purpose of this document, the designated social-emotional subscale of the ERS is defined as consisting of the following subscales: ITERS-R—Listening and Talking, Interaction and Program Structure; ECERS-R Language-Reasoning, Interaction and Program Structure.

b. Staff Qualification Standards

Points	Criteria
1	<p>All teachers and directors complete 3 hours of ERS training.</p> <p>Director (on-site)</p> <ol style="list-style-type: none"> Six semester hour credits in care of young children or child development 2, and Three semester hour credits in administrative coursework 3, and One year experience teaching young children in an early childhood program. <p>Assistant Director</p> <p>Three semester hour credits in care of young children or child development 2</p>

Points	Criteria
	<p>Lead Teacher</p> <p>All of Lead Teachers must complete 3 semester hour credits in care of young children or child development from a list of approved courses 2 or enroll in the course and complete within 1 year of employment</p> <p>Assistant Teacher</p> <p>50 percent of Assistant Teachers must have completed or be enrolled in 3 semester hour credits in the care of young children or child development 2 and complete the course within 1 year of employment.</p>
2	<p>All teachers and directors complete 3 hours of ERS training.</p> <p>Director</p> <ol style="list-style-type: none"> Nine semester hour credits in care of young children or child development 2, and Three semester hour credits in administrative coursework 3, and One year of teaching experience and one year teaching or administrative experience in an early childhood program. <p>Assistant Director</p> <ol style="list-style-type: none"> Three semester hour credits in care of young children or child development 2, and Three semester hour credits in administrative coursework 3, and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> 75 percent of Lead Teachers must have completed 6 semester hour credits in the care of young children or child development from a list of approved courses or have completed 3 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment, and One year full-time experience in an early childhood setting. <p>Assistant Teacher</p> <p>50 percent of Assistant Teachers must have completed or be enrolled in 3 semester hour credits in the care of young children or child development 2 and complete the course within 1 year of employment.</p>
3	<p>All teachers and directors complete 6 hours of ERS training. Director and lead teachers complete training in social-emotional screening of children. Director completes training in Louisiana's Early Learning Guidelines and Program Standards Birth through 3,(DSS 2005)and the LA Standards for Programs Serving 4 year old children (DOE 2003).</p> <p>Director</p> <ol style="list-style-type: none"> Twelve semester hours in care of young children or child development 2, and Six semester hours of administrative coursework 3, and One year teaching experience and 1 year administrative experience and 1 year teaching or administrative experience in an early childhood setting for a total of 3 years experience. <p>Assistant Director</p> <ol style="list-style-type: none"> Three semester hour credits in care of young children or child development 2, and Three semester hour credits in administrative coursework 3, and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> 75 percent of Lead Teachers must have completed 9 semester hour credits in the care of young children or child development from a list of approved courses or have completed 6 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 3 and complete within a year of employment, and One year full-time experience in an early childhood setting.

Points	Criteria
	Assistant Teacher 50 percent Assistant Teachers must have completed 3 semester hour credits in the care of young children or child development 2.
4	All teachers and directors complete 6 hours of ERS training. Director and all teachers complete training in social-emotional screening of children and developing individual instructional plans for children based on specific developmental needs. Director and lead teachers complete training in Louisiana's Early Learning Guidelines and Program Standards Birth through 3, (DSS 2005) and the LA Standards for Programs Serving 4 year old children (DOE 2003). Director 1. Fifteen semester hour credits in the care of young children or child development 2, and 2. Six semester hour credits of administrative coursework 3, and 3. One year teaching experience and 1 year administrative experience and 2 years teaching and/or administrative experience in an early childhood setting for a total of 4 years experience. Assistant Director 1. Three semester hour credits in care of young children or child development2, and 2. Three semester hour credits in administrative coursework3, and 3. One year experience in teaching young children in an early childhood program. Lead Teacher 1. 75 percent of Lead Teachers must completed 12 semester hour credits in the care of young children or child development from a list of approved courses or have completed 9 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment, and 2. Two years full-time experience in an early childhood setting. Assistant Teacher All Assistant Teachers must have completed 3 semester hour credits in the care of young children or child development 2.
5	All teachers and directors complete 6 hours of ERS training. Director and all teachers complete training in social-emotional screening of children and developing individual instructional plans for children based on specific developmental needs. Director and all teachers complete training in Louisiana's Early Learning Guidelines and Program Standards Birth through 3, (DSS 2005) and the LA Standards for Programs Serving 4 year old children (DOE 2003). Director 1. Associate's degree in the care of young children, child development or related field, with specific coursework in infant-toddler care, care of exceptional children and care of school age children or equivalent such as Director III Pathways and/or including 2. Six semester hour credits or 75 hrs of administrative training 3, and 3. One year teaching experience and 1 year administrative experience and 3 years teaching and/or administrative experience in an early childhood setting for a total of 5 years experience. Assistant Director 1. Six semester hour credits in care of young children or child development 2, and 2. Three semester hour credits in administration 3, and 3. 1 year experience in teaching young children in an early childhood program. Lead Teacher 1. All Lead Teachers must have 6 semester hour credits in the care of young children or child development2 from a list of approved courses, and 2. 75 percent of Lead Teachers must have completed 15 semester hour credits in the care of young children or

Points	Criteria
	child development 2 from a list of approved courses or have completed 12 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment, and 3. Two years full-time experience in an early childhood setting for all teachers. Assistant Teacher All Assistant Teachers must have completed 6 semester hour credits in the care of young children or child development or have completed 3 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment.
	² The following may be substituted to meet this requirement of 3 semester hour credits in the care of young children or child development: • a CDA or • have approved high school child development courses or • have 5 years full-time experience in an early childhood program or • have completed a Level V LA Pathways Child Care Classroom Certificate. The following may be used to meet the requirement of up to 6 semester hour credits in the care of young children or child development: • a CDA or • have completed a Level VI LA Pathways Child Care Classroom Certificate. An individual may use the above substitutions to meet the requirements for a maximum of 6 semester hour credits. The following may be substituted to meet the requirement for 3 semester hour credits in administration: • LA Pathways Administrator Certificate or • National Administrator Credential (NAC) or • 3 years experience in administration or • a combination of 1 year in administration experience and 4 years in teaching young children in an early childhood program NOTE: For Director's Qualification: Experience in teaching young children or administration may only be substituted one time. At the next QRS review, the necessary educational requirement (credits in the care of young children or child development or administration) must be met.

c. An additional Quality Point can be earned by meeting additional requirements in both the Administrative Practices and the Family/Community Involvement areas.

Quality Point	
Points	Criteria
1	Administrative Practices—meet 3 requirements below 2. Provide 4 of the benefits from the list* of options below for all full time staff. 2. Include grievance procedure and a professional conduct code for staff in written personnel policies. 3. Pay scale based on education, experience, responsibilities and merit. 4. Provide training to staff on cultural sensitivity. 5. Written parent and staff confidentiality policy and provide training to staff and Family/Community Involvement - meet 4 requirements below 1. Participate in meetings for directors provided by Resource and Referral agency at least quarterly, with the director or assistant director attending 50% of the meetings. 2. Provide a complaint process for parents. 3. Offer opportunity for a formal parent/teacher conference meeting annually. 4. Provide an expanded list of local community resources to parents annually including, but not limited to, LaCHIP, Medicaid, child care assistance, 5. housing assistance, food stamps and information on a child's medical home

Quality Point	
Points	Criteria
	6. Parent Advisory Council meets annually to review policies, procedures and parent handbook 7. one group meeting per year offered to all families 8. one parent education workshop offered per year by center or other agency.

*Staff benefits options: employee health insurance or comparable health benefits; paid annual leave; paid sick leave; paid holiday; child care benefit/discount; bonus based on merit/achievement or education; retirement compensation; annual increments based on merit; tuition reimbursement and other related educational expenses such as books, travel, fees, substitutes; differential shift pay, flextime, pay professional association fee.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5907. Participation

A. A child care center will complete the application for participation and a quality rating verification visit will be conducted by the division staff.

B. Quality ratings will be valid for one year from the date of the star rating award letter. A child care center can apply for a rating review six months after the date of their current rating award.

C. Centers that have achieved a Star Rating will have their rating revoked if the child care license is revoked or if the child care center is referred to the Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies for revocation.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5909. Quality Rating System Awards

A. Bonus payments will be issued after the end of each calendar quarter to Class A child care centers that care for children receiving assistance from the Child Care Assistance Program in accordance with the Star Level rating for that quarter. The payment is equal to the percentages of all CCAP payments received by the Class A center during the prior calendar quarter as defined below.

1. One Star Level—0 percent.
2. Two Star Level—3 percent.
3. Three Star Level—8 percent.
4. Four Star Level—13.5 percent.
5. Five Star Level—20 percent

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Ann S. Williamson
Secretary

0705#018

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Child Care Quality Rating System (LAC 67:III.Chapter 59)

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.Chapter 59, Child Care Quality Rating System effective May 1, 2007, pursuant to the authority granted to the department by the Child Care and Development Fund (CCDF). This Rule shall remain in effect for a period of 120 days.

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Subpart 18, Chapter 59 is being adopted to address the Child Care Quality Rating System which will assess, improve, and communicate the level of quality in early care and education settings.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 18. Child Care Quality Rating System

Chapter 59. Child Care Quality Rating System

Subchapter A. Authority

§5901. Authority

A. The Child Care Quality Rating System is established and administered under the authority of state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

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AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5905. Quality Rating System Requirements

A. The Child Care Quality Rating System (QRS) is designed to assess levels of child care, support improvements of child care programs, and communicate the level of quality in early care and education programs. The QRS consists of five star rating levels that can be earned by a licensed child care center, uses licensing as the foundation and has 4 star levels above Louisiana's licensing standards. The system components (Administrative Practices, Family and Community Involvement, Program and Staff Qualifications) have indicators that must be achieved to earn the star level.

1. Foundation One Star Level. A child care center shall have a license to operate and comply with standards as defined in Louisiana Administrative Code, Title 48, Chapter 53, Sections 5301-5354 and meet all the requirements in each of the four component areas, a selection of which is listed below.

- a. Administration Practices—written center policies and procedures including:
 - i. center's policies and practices;
 - ii. emergency and evacuation procedures;
 - iii. admission policy;
 - iv. daily schedule;

- v. complaint procedure;
- vi. open door policy;
- vii. non-discrimination policy;
- viii. abuse/neglect policy;
- ix. discipline policy;
- x. job description;
- xi. quarterly staff session/meeting.
- b. Family and Community Involvement—parent consultation prior to enrollment.
 - i. Director makes the center's policies and procedures available to the parent.
 - ii. Parent permitted to visit the center anytime during regular hours as long as child is enrolled.
- c. Program Ratios

0-12 months	1:5
1 yr	1:7
2 yrs	1:11
3 yrs	1:13
4 yrs	1:15
5 yrs	1:19
6 yrs up	1:23
Other requirements in regulations.	

- d. Staff Qualifications
 - i. Director—
 - (a). on-site full-time director who is 21 yrs old;
 - (b). meet director qualifications in Louisiana Administrative Code, Title 48, Chapter 53.
 - ii. Teacher—
 - (a). 18 yrs or older;
 - (b). within 1 week of employment, staff receive orientation with content as specified, followed by 4 days of supervised work with children;
 - (c). complete required annual clock hours of approved training;
 - (d). meet staff qualifications as identified in LAC 48:Chapter 53.
- 2. Foundation Two Star Level. A child care center must meet all the standards for a Foundation Star One, have been in operation for six months, and meet the following.
 - a. Administrative Practices—
 - i. written personnel policies including operational hours, dress code, use of telephone, and schedule;
 - ii. job descriptions that include list of qualifications on file and provided to all staff;
 - iii. provide 1 staff benefit from the list of options below for all full time staff. Staff benefits options:
 - (a). employee health insurance or comparable health benefits;
 - (b). paid annual leave;
 - (c). paid sick leave;
 - (d). paid holidays, child care benefit/discount;
 - (e). bonus based on merit/achievement or education;
 - (f). retirement compensation;
 - (g). annual increments based on merit;
 - (h). tuition reimbursement and other related educational expenses such as books, travel, fees, substitutes;
 - (i). differential shift pay, flextime, pay professional association fee.

- b. Family and Community Involvement—
 - i. parent provided pre-enrollment visit and center tour;
 - ii. give every parent enrolling a child, a list of community resources including, but not limited to, LaCHIP, Medicaid, child care assistance, housing assistance, food stamps and information on a child's medical home.

- c. Program—
 - i. make 4 of the following activity areas available daily:
 - (a). art and creative play;
 - (b). children's books;
 - (c). blocks and block building;
 - (d). manipulatives; and
 - (e). family living and dramatic play;
 - ii. complete a self assessment of program and develop an improvement plan.

d.i. Staff Qualifications—directors and teachers join the Louisiana Pathways Child Care Career Development System Registry. Director attends 3 hours of ERS training.

- (a). Director (on-site)—
 - (i). three semester hour credits in care of young children or child development²; and
 - (ii). three semester hour credits in administration³; and
 - (iii). one year experience in teaching young children in an early childhood program.

(b). Assistant Director—three semester hour credits in care of young children or child development².

(c). Teacher—75 percent of lead teachers must meet one of the following:

- (i). complete a three semester hour credits course in care of young children or child development² from a list of approved courses or enroll in the course and complete within 1 year of employment.

ii. Staff Qualifications

(a). Director. An administrator who meets the director qualifications and is on-site a minimum of 30 hours per week. This requirement can be met by having one or more persons on site who meet these qualifications.

(b). Assistant Directors. For centers with an enrollment of 101 or more, there must be a second director on site for a minimum of 20 hours per week.

(c). Teacher. A Lead Teacher is a teacher who has primary responsibility for a designated classroom, planning and supervision and spends at least 25 hours a week in that classroom. All classrooms must have a lead teacher. All other staff who care for children at least 16 or more hours per week are designated as Assistant Teachers and must meet assistant teacher staff qualifications.

²The following may be substituted to meet this requirement of 3 semester hour credits in the care of young children or child development: a CDA or have approved high school child development courses or have 5 years full-time experience in an early childhood program or have completed a Level V LA Pathways Child Care Classroom Certificate. The following may be used to meet the requirement of up to 6 semester hour credits in the care of young children or child development: CDA or have completed a Level VI LA Pathways Child Care Classroom Certificate. An individual may use the above substitutions to meet the requirements for a maximum of 6 semester hour credits.

³The following may be substituted to meet the requirement for 3 semester hour credits in administration: LA Pathways Administrator Certificate or National Administrator Credential (NAC) or 3 years experience in administration or

a combination of 1 year in administration experience and 4 years in teaching young children in an early childhood program.

NOTE: For Director Qualification: Experience in teaching young children or administration may only be substituted one time. At the next QRS review, the necessary educational requirement (credits in the care of young children or child development or credits in administration) must be met.

3. Point Standards for Child Care Centers Seeking Three Star Level, Four Star Level, and Five Star Level Ratings. To achieve a higher level of rating, a program must maintain all requirements at the Foundation Two Star level and earn points in the Program and Staff Qualifications component areas by meeting the requirements listed below. At least one point must be earned in each component area, Staff Qualifications and Program. The Quality Point referenced in Subparagraph 3.c may also be earned. The total number of points will determine the Star Level rating awarded to the center.

Total Number of Points	Star Level Rating
3-5 points	Three Stars
6-9 points	Four Stars
10-11 points	Five Stars

a. Program Standards

Points	Criteria
1	An average of 3.75 on the designated social-emotional subscale of the Environment Rating Scales (ERS) 4, with no one classroom score lower than 3.0 on the subscale.
2	An average of 4.0 on the designated social-emotional subscale of the ERS, with no one classroom score lower than 3.0 on the subscale.
3	1. An average of 4.25 on the designated social-emotional subscale of the ERS, with no one classroom score lower than 3.25 on the subscale. 2. Staff: Child Ratio and Group Size 0-12 months 1:4, 8 13-24 months 1:6, 12 25-36 months 1:3, 16 3 yrs 1:10, 20 4 yrs 1:15, 30 5 yrs 1:12, 24 6 yrs and up 1:20, 30 3. Written transition procedures for children moving within a program or to other programs or beginning school.
4	1. An average of 4.5 on the designated social-emotional subscale of the ERS, with no one classroom score lower than 3.5 on the overall ERS. 2. Complete screening for social-emotional development with instrument from recommended list for all children (0-5 yrs.) within 45 calendar days of enrollment and annually thereafter. Conference with parents to review results and provide a list of community resources. 3. Staff: Child Ratio and Group Size 0-12 months 1:4, 8 13-24 months 1:6, 12 25-26 months 1:8, 16 3 yrs 1:10, 20 4 yrs 1:12, 24 5 yrs 1:15, 20 6 yrs and up 1:20, 30 4. Written transition procedures for children moving within a program or to other programs or beginning school.
5	1. An average of 5.0 on the overall ERS, with no one classroom score lower than 4.0. 2. Complete screening for social-emotional development with instrument from recommended list for all children (0-5 yrs.) within 45 calendar days of

Points	Criteria
	<p>enrollment and annually thereafter. Conference with parents to review results and provide a list of community resources.</p> <p>3. Provide a plan for continuity of care for all children 0-36 months of age.</p> <p>4. Implementation of LA Early Learning Guidelines and Program Standards; Birth through 3, (DSS 2005) and the LA Standards for Programs Serving 4 year old children (DOE 2003).</p> <p>5. Staff: Child Ratio and Group Size</p> <p>0-24 months 1:4, 8</p> <p>2 yrs 1:6, 12</p> <p>3 yrs 1:8, 16</p> <p>4 yrs 1:10, 20</p> <p>5 yrs a:10, 20</p> <p>6 yrs and up 1:12, 24</p>

⁴For the purpose of this document, the designated social-emotional subscale of the ERS is defined as consisting of the following subscales: ITERS-R—Listening and Talking, Interaction and Program Structure; ECERS-R Language-Reasoning, Interaction and Program Structure.

b. Staff Qualification Standards

Points	Criteria
1	<p>All teachers and directors complete 3 hours of ERS training.</p> <p>Director (on-site)</p> <ol style="list-style-type: none"> Six semester hour credits in care of young children or child development 2, and Three semester hour credits in administrative coursework 3, and One year experience teaching young children in an early childhood program. <p>Assistant Director</p> <p>Three semester hour credits in care of young children or child development 2</p> <p>Lead Teacher</p> <p>All of Lead Teachers must complete 3 semester hour credits in care of young children or child development from a list of approved courses 2 or enroll in the course and complete within 1 year of employment</p> <p>Assistant Teacher</p> <p>50 percent of Assistant Teachers must have completed or be enrolled in 3 semester hour credits in the care of young children or child development 2 and complete the course within 1 year of employment.</p>
2	<p>All teachers and directors complete 3 hours of ERS training.</p> <p>Director</p> <ol style="list-style-type: none"> Nine semester hour credits in care of young children or child development 2, and Three semester hour credits in administrative coursework 3, and One year of teaching experience and one year teaching or administrative experience in an early childhood program. <p>Assistant Director</p> <ol style="list-style-type: none"> Three semester hour credits in care of young children or child development 2, and Three semester hour credits in administrative coursework 3, and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> 75 percent of Lead Teachers must have completed 6 semester hour credits in the care of young children or child development from a list of approved courses or have completed 3 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment, and One year full-time experience in an early childhood setting.

Points	Criteria
	<p>Assistant Teacher</p> <p>50 percent of Assistant Teachers must have completed or be enrolled in 3 semester hour credits in the care of young children or child development 2 and complete the course within 1 year of employment.</p>
3	<p>All teachers and directors complete 6 hours of ERS training. Director and lead teachers complete training in social-emotional screening of children. Director completes training in Louisiana's Early Learning Guidelines and Program Standards Birth through 3, (DSS 2005) and the LA Standards for Programs Serving 4 year old children (DOE 2003).</p> <p>Director</p> <ol style="list-style-type: none"> Twelve semester hours in care of young children or child development 2, and Six semester hours of administrative coursework 3, and One year teaching experience and 1 year administrative experience and 1 year teaching or administrative experience in an early childhood setting for a total of 3 years experience. <p>Assistant Director</p> <ol style="list-style-type: none"> Three semester hour credits in care of young children or child development 2, and Three semester hour credits in administrative coursework 3, and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> 75 percent of Lead Teachers must have completed 9 semester hour credits in the care of young children or child development from a list of approved courses or have completed 6 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 3 and complete within a year of employment, and One year full-time experience in an early childhood setting. <p>Assistant Teacher</p> <p>50 percent Assistant Teachers must have completed 3 semester hour credits in the care of young children or child development 2.</p>
4	<p>All teachers and directors complete 6 hours of ERS training. Director and all teachers complete training in social-emotional screening of children and developing individual instructional plans for children based on specific developmental needs. Director and lead teachers complete training in Louisiana's Early Learning Guidelines and Program Standards Birth through 3, (DSS 2005) and the LA Standards for Programs Serving 4 year old children (DOE 2003).</p> <p>Director</p> <ol style="list-style-type: none"> Fifteen semester hour credits in the care of young children or child development 2, and Six semester hour credits of administrative coursework 3, and One year teaching experience and 1 year administrative experience and 2 years teaching and/or administrative experience in an early childhood setting for a total of 4 years experience. <p>Assistant Director</p> <ol style="list-style-type: none"> Three semester hour credits in care of young children or child development 2, and Three semester hour credits in administrative coursework 3, and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> 75 percent of Lead Teachers must completed 12 semester hour credits in the care of young children or child development from a list of approved courses or have completed 9 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment, and

Points	Criteria
	<p>2. Two years full-time experience in an early childhood setting. Assistant Teacher All Assistant Teachers must have completed 3 semester hour credits in the care of young children or child development 2.</p>
5	<p>All teachers and directors complete 6 hours of ERS training. Director and all teachers complete training in social-emotional screening of children and developing individual instructional plans for children based on specific developmental needs. Director and all teachers complete training in Louisiana's Early Learning Guidelines and Program Standards Birth through 3, (DSS 2005) and the LA Standards for Programs Serving 4 year old children (DOE 2003).</p> <p>Director</p> <ol style="list-style-type: none"> Associate's degree in the care of young children, child development or related field, with specific coursework in infant-toddler care, care of exceptional children and care of school age children or equivalent such as Director III Pathways and/or including Six semester hour credits or 75 hrs of administrative training 3, and One year teaching experience and 1 year administrative experience and 3 years teaching and/or administrative experience in an early childhood setting for a total of 5 years experience. <p>Assistant Director</p> <ol style="list-style-type: none"> Six semester hour credits in care of young children or child development 2, and Three semester hour credits in administration 3, and 1 year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> All Lead Teachers must have 6 semester hour credits in the care of young children or child development 2 from a list of approved courses, and 75 percent of Lead Teachers must have completed 15 semester hour credits in the care of young children or child development 2 from a list of approved courses or have completed 12 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment, and Two years full-time experience in an early childhood setting for all teachers. <p>Assistant Teacher</p> <p>All Assistant Teachers must have completed 6 semester hour credits in the care of young children or child development or have completed 3 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment.</p>
	<p>²The following may be substituted to meet this requirement of 3 semester hour credits in the care of young children or child development:</p> <ul style="list-style-type: none"> a CDA or have approved high school child development courses or have 5 years full-time experience in an early childhood program or have completed a Level V LA Pathways Child Care Classroom Certificate. <p>The following may be used to meet the requirement of up to 6 semester hour credits in the care of young children or child development:</p> <ul style="list-style-type: none"> a CDA or have completed a Level VI LA Pathways Child Care Classroom Certificate. <p>An individual may use the above substitutions to meet the requirements for a maximum of 6 semester hour credits. The following may be substituted to meet the requirement for 3 semester hour credits in administration:</p> <ul style="list-style-type: none"> LA Pathways Administrator Certificate or National Administrator Credential (NAC) or 3 years experience in administration or a combination of 1 year in administration experience and

Points	Criteria
	<p>4 years in teaching young children in an early childhood program NOTE: For Director's Qualification: Experience in teaching young children or administration may only be substituted one time. At the next QRS review, the necessary educational requirement (credits in the care of young children or child development or administration) must be met.</p>

c. An additional Quality Point can be earned by meeting additional requirements in both the Administrative Practices and the Family/Community Involvement areas.

Quality Point	
Points	Criteria
1	<p>Administrative Practices—meet 3 requirements below</p> <ol style="list-style-type: none"> Provide 4 of the benefits from the list* of options below for all full time staff. Include grievance procedure and a professional conduct code for staff in written personnel policies. Pay scale based on education, experience, responsibilities and merit. Provide training to staff on cultural sensitivity. Written parent and staff confidentiality policy and provide training to staff <p>and</p> <p>Family/Community Involvement - meet 4 requirements below</p> <ol style="list-style-type: none"> Participate in meetings for directors provided by Resource and Referral agency at least quarterly, with the director or assistant director attending 50% of the meetings. Provide a complaint process for parents. Offer opportunity for a formal parent/teacher conference meeting annually. Provide an expanded list of local community resources to parents annually including, but not limited to, LaCHIP, Medicaid, child care assistance, housing assistance, food stamps and information on a child's medical home Parent Advisory Council meets annually to review policies, procedures and parent handbook one group meeting per year offered to all families one parent education workshop offered per year by center or other agency.

*Staff benefits options: employee health insurance or comparable health benefits; paid annual leave; paid sick leave; paid holiday; child care benefit/discount; bonus based on merit/achievement or education; retirement compensation; annual increments based on merit; tuition reimbursement and other related educational expenses such as books, travel, fees, substitutes; differential shift pay, flextime, pay professional association fee.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5907. Participation

A. A child care center will complete the application for participation and a quality rating verification visit will be conducted by the division staff.

B. Quality ratings will be valid for one year from the date of the star rating award letter. A child care center can apply for a rating review six months after the date of their current rating award.

C. Centers that have achieved a Star Rating will have their rating revoked if the child care license is revoked or if the child care center is referred to the Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies for revocation.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5909. Quality Rating System Awards

A. Bonus payments will be issued after the end of each calendar quarter to Class A child care centers that care for children receiving assistance from the Child Care Assistance Program in accordance with the Star Level rating for that quarter. The payment is equal to the percentages of all CCAP payments received by the Class A center during the prior calendar quarter as defined below.

1. One Star Level—0 percent.
2. Two Star Level—3 percent.
3. Three Star Level—8 percent.
4. Four Star Level—13.5 percent.
5. Five Star Level—20 percent

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Ann S. Williamson
Secretary

0705#035

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 June 9, 2007. This declaration is necessary to extend the original Emergency Rule effective February 9, 2007, since it is effective for a maximum of 120 days and will expire before the final Rule takes place. (The final Rule will be published in the August 2007 *Louisiana Register* issue.) This Emergency 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

0705#067

DECLARATION OF EMERGENCY

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

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

Editor's Note: This Emergency Rule is being printed according to R.S. 49:954.1(C) which directs the Office of the State Register to publish documents submitted by a rulemaking

agency without regard to validity. This Emergency Rule was not submitted in accordance with R.S. 49:950 et seq.

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 §5583, Temporary Emergency Disaster Assistance Program (TEDAP) effective January 1, 2007. This Rule shall remain in effect for a period of 120 days.

The agency proposes to expand the income eligibility criteria of the TEDAP Program to 250 percent of the federal poverty level and to expand the list of allowable household establishment funds available to eligible families to include living accommodations, transportation, job skills or employment assistance, child care vouchers, non-medical substance abuse treatment, mental health services, utility assistance, property repair, household items, basic personal items and moving assistance.

Emergency action is necessary due to the extreme demands for social services caused by the hurricanes in the Gulf of Mexico in calendar year 2005. TANF funds may be used for a wide array of human services and this appropriation must be expended by September 30, 2007. 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

§5583. Temporary Emergency Disaster Assistance Program

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

1. Services or Benefits Considered to Meet On-Going Basic Needs. These services shall not be provided for a period (in whole or in part) to exceed four months. Such services and benefits include, but are not limited to the provision of such items as basic personal items, household items, housing and utility assistance, living accommodations, transportation, job skills or employment assistance, child care vouchers, non-medical substance abuse treatment, mental health services, property repair, and moving assistance.

A.2 - B. ...

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

1. ...

2. whose income is at or below 250 percent of the federal poverty level or who are categorically eligible because a member of the family receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program

(LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session, TANF Emergency Response and Recovery Act of 2005.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:32:1617 (September 2006), amended LR 33:

Ann Silverberg Williamson
Secretary

0705#019

DECLARATION OF EMERGENCY

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

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

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to amend §5583, Temporary Emergency Disaster Assistance Program (TEDAP) effective May 1, 2007. This Rule shall remain in effect for a period of 120 days.

The agency proposes to expand the income eligibility criteria of the TEDAP Program to 250 percent of the federal poverty level and to expand the list of allowable household establishment funds available to eligible families to include living accommodations, transportation, job skills or employment assistance, child care vouchers, non-medical substance abuse treatment, mental health services, utility assistance, property repair, household items, basic personal items and moving assistance.

Emergency action is necessary due to the extreme demands for social services caused by the hurricanes in the Gulf of Mexico in calendar year 2005. TANF funds may be used for a wide array of human services and this appropriation must be expended by September 30, 2007. 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

§5583. Temporary Emergency Disaster Assistance Program

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

1. Services or Benefits Considered to Meet On-Going Basic Needs. These services shall not be provided for a period (in whole or in part) to exceed four months. Such services and benefits include, but are not limited to the provision of such items as basic personal items, household items, housing and utility assistance, living

accommodations, transportation, job skills or employment assistance, child care vouchers, non-medical substance abuse treatment, mental health services, property repair, and moving assistance.

A.2 - B. ...

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

1. ...

2. whose income is at or below 250 percent of the federal poverty level or who are categorically eligible because a member of the family receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session, TANF Emergency Response and Recovery Act of 2005.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:32 1617 (September 2006), amended LR 33:

Ann Silverberg Williamson
Secretary

0705#036

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Dove Season

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under authority of R.S. 56:115, the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopts the following Emergency Rule.

For the purposes of this Declaration of Emergency, the term *dove* refers to the following species, and only the following species: mourning doves, white-winged doves, Eurasian collared-doves, and ringed-turtle doves.

The hunting seasons for Doves during the 2007-2008 hunting season shall be as follows:

Split Season, Zoned, 70 days in each zone

South Zone:

September 1 – September 9

October 13 – November 25

December 22 – January 7

North Zone:

September 1 – September 16

October 13 – November 11

December 15 – January 7

Bag Limit

Mourning and white-winged doves and fully dressed Eurasian collared- and ringed turtle-doves: Daily bag limit 12 in aggregate, Possession 24 in aggregate, but note: there is no bag limit on Eurasian collared-doves or ringed turtle-

doves provided that a fully feathered wing and head remain attached to the carcass of the bird. Fully dressed Eurasian-collared doves and ringed-turtle doves (those without a fully feathered wing and head naturally attached to the carcass) shall be included in the aggregate bag.

Dove Hunting Zones:

The state shall be divided into North and South Dove Hunting Zones by the following boundary: Beginning at the Texas-Louisiana border on La. Highway 12; thence east along La. Highway 12 to its intersection with U.S. Highway 190; thence east along U.S. Highway 190 to its intersection with Interstate 12; thence east along Interstate 12 to its intersection with Interstate 10; thence east along Interstate 10 to the Mississippi state line.

Shooting and Hawking Hours:

Dove: One-half hour before sunrise to sunset except 12:00 noon to sunset September 1, 2007.

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 40,000 sportsmen who hunt doves, selection of season dates, bag limits, shooting hours, and zone boundary must be established and presented to the U.S. Fish and Wildlife Service before the rulemaking process can be completed.

The aforementioned season dates, bag limits, and shooting hours will become effective on September 1, 2007 and extend through sunset on February 29, 2008.

Earl P. King, Jr.
Chairman

0705#030

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Oyster Season—Certain Public Seed Grounds

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and R.S. 49:967(D), and under the authority of R.S. 56:433(B)1 which provides that the Wildlife and Fisheries Commission may designate what parts or portions of the natural reefs may be fished for oysters, and a Resolution adopted by the Wildlife and Fisheries Commission on August 3, 2006 which authorized the Secretary of the Department of Wildlife and Fisheries to take emergency action if necessary to reopen areas if substantial oyster resources are located, the secretary hereby declares:

The 2006/2007 oyster season shall reopen at one-half hour before sunrise on Friday, May 4, 2007 and shall close at one-half hour after sunset on Friday, May 18, 2007 in the following public oyster seed grounds.

1. The Little Lake Public Oyster Seed Grounds as described in the Louisiana Administrative Code (LAC) 76:VII.521.

2. That portion of the Vermilion/East and West Cote Blanche/Atchafalaya Bay Seed Grounds as described in LAC 76:VII.507 and 509 located east of South Point of Marsh Island and south of the Department of Health and

Hospitals' May-August 2007 seasonal reclassification line that generally runs from South Point of Marsh Island in Iberia Parish ENE to Point Chevreuil in St. Mary Parish.

Much of the area within these public oyster seed grounds was previously closed to harvest by the Department of Health and Hospitals (DHH) seasonal reclassification lines during the 2006/2007 oyster season (September 2006 to April 2007). However, these areas will be open by the DHH May-August seasonal reclassification lines. Substantial oyster resources continue to exist in these public oyster seed grounds in areas previously closed to harvest. It has been determined by area biologists that the reefs would benefit from limited harvest.

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.

Bryant O. Hammett, Jr.
Secretary

0705#020

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Reef Fish Harvest

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby declares:

Gag, Black and Red Grouper Recreational Seasons: The 2007 seasons for the recreational harvest of gag, black and red grouper in Louisiana state waters are as follows: the recreational fishing season for gag, black and red grouper will close at 12:01 a.m. on February 15, 2007, and remain closed until 12:01 a.m. on March 15.

Recreational Trip and Possession Limits for Groupers: The recreational trip and possession limit for groupers (combined) is as follows: Groupers, combined, excluding goliath grouper and Nassau grouper—five per person per day, but not to exceed one speckled hind or one warsaw grouper per vessel per day or one red grouper per person per day. However, no grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat—their bag limit is zero.

"Groupers, combined" Contains the Following Species: Red hind, rock hind, speckled hind, black grouper, misty grouper, red grouper, snowy grouper, yellowedge grouper, yellowfin grouper, yellowmouth grouper, Warsaw grouper, gag grouper, and scamp. No person shall possess Goliath grouper (formerly known as jewfish) or Nassau grouper

whether taken from within or without Louisiana territorial waters.

Effective with any recreational trip or possession limit under this Emergency Rule, no person shall harvest or possess the affected species or group of species, whether taken from within or without Louisiana territorial waters in excess of such established trip or possession limit.

Commercial Red Snapper Regulations:

1. All persons aboard a vessel for which no commercial vessel permit for Gulf reef fish has been issued by the National Marine Fisheries Service (NMFS) under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to the recreational bag limit for red snapper which may not be bartered or sold. No person aboard any vessel shall commercially possess, sell, barter, trade, exchange or attempt to sell, barter, trade or exchange red snapper unless possessing a federal permit for the harvest of Gulf of Mexico Reef Fish and a federal red snapper Individual Fishing Quota (IFQ) vessel endorsement.

2. **Requirement for IFQ Vessel Endorsement and Allocation:** In addition to the federal commercial vessel permit for Gulf reef fish, in order to fish for, possess, or land Gulf red snapper, regardless of where harvested or possessed, a federal Gulf red snapper IFQ vessel endorsement must have been issued to the vessel and be on board. No person shall commercially harvest or land red snapper without holding or being assigned IFQ allocation at least equal to the pounds of red snapper landed/docked at a shore side location or off loaded. On the last fishing trip of the year a vessel may exceed by 10 percent the remaining IFQ allocation.

3. No person shall purchase, sell, exchange, barter or attempt to purchase, sell, exchange, or barter any red snapper in excess of any possession limit for which a commercial license, permit and appropriate allocation was issued.

4. **Requirement for Federal IFQ Dealer Endorsement:** In addition to the requirement for a federal dealer permit for Gulf reef fish, for a dealer to receive Gulf red snapper from a commercial fishing vessel, he must have a federal red snapper IFQ dealer endorsement. For a person aboard a vessel with a Gulf red snapper IFQ vessel endorsement to sell to anyone other than a permitted dealer, such persons must also have a federal Gulf red snapper IFQ dealer endorsement.

5. **Requirement for Transaction Approval Code:** The owner or operator of a vessel landing red snapper is responsible for calling NMFS Office of Law Enforcement at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Failure to comply with this advance notice of landing requirement will preclude authorization to complete the required NMFS landing transaction report and, thus, will preclude issuance of the required NMFS-issued transaction approval code. Possession of commercial red snapper from the time of transfer from a vessel through possession by a dealer is prohibited unless the red snapper are accompanied by a transaction approval code verifying a legal transaction of the amount of red snapper in possession.

6. **Offloading and Transfer:** No person shall offload from a vessel or receive from a vessel commercially

harvested red snapper during the hours from 6 p.m. until 6 a.m., local time. No person who is in charge of a commercial red snapper fishing vessel shall offload red snapper from the vessel prior to three hours after proper notification is made to National Oceanographic and Atmospheric Administration (NOAA) Fisheries. At-sea or dockside transfer of commercial red snapper from one vessel to another vessel is prohibited.

7. VMS Requirement: No person shall commercially harvest red snapper from a vessel unless that vessel is equipped with a fully operational and approved Vessel Monitoring System (VMS) device. Approved devices are those devices approved by NOAA Fisheries and operating under the requirements mandated by NOAA Fisheries.

The commission authorizes the secretary to set the effective date for the VMS requirements of this Emergency Rule when the effective date is set for the requirement of VMS on reef fish commercial vessels in Federal waters, and when a request is received from the Regional Administrator of NMFS to enact compatible regulations within and without Louisiana state waters. This Emergency Rule is effective on May 3, 2007, and extends the January 4, 2007 Emergency Rule printed on page 32 of the January 2007 *Louisiana Register*.

Bryant O. Hammett, Jr.
Secretary

0705#034

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Shrimp Season—Partial Reopening in State Outside Waters

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close outside waters by zone each year as it deems appropriate upon inspection of and based upon technical and biological data which indicates that marketable shrimp, in sufficient quantities, are available for harvest, and a resolution adopted by the Wildlife and Fisheries Commission on January 4, 2007, which authorizes the Secretary of the Department of Wildlife and Fisheries to reopen any area closed to shrimping when the closure is no longer necessary, the secretary hereby declares:

That State Outside Waters from the eastern shore of the Atchafalaya River Ship Channel at Eugene Island as delineated by the Channel red buoy line to the U.S. Coast Guard navigational light off the northwest shore of Caillou Boca at 29 degrees 03 minutes 10 seconds north latitude and 90 degrees 50 minutes 27 seconds west longitude, shall reopen to shrimping at 6:00 a.m. April 17, 2007.

Recent biological samples taken by department personnel indicate that small white shrimp which have over-wintered

in these waters from January through the present time have reached marketable sizes and the closure is no longer necessary. Significant numbers of small white shrimp still remain in State Outside Waters west of the Atchafalaya River Ship Channel to the western shore of Freshwater Bayou Canal at 92 degrees 18 minutes 33 seconds west longitude, and this area will remain closed to shrimping until further notice.

Bryant O. Hammett, Jr.
Secretary

0705#004

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Shrimp Season—Spring Inshore

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and shall have the authority to open or close outside waters, the Wildlife and Fisheries Commission does hereby set the 2007 Spring Shrimp Season in Louisiana state waters to open as follows:

Shrimp Management Zone 1, that portion of Louisiana's inside waters from the Mississippi/Louisiana State line to the eastern shore of South Pass of the Mississippi River, to open at noon, May 28, 2007, and

Shrimp Management Zone 2, that portion of Louisiana's inside waters from the eastern shore of South Pass of the Mississippi River to the western shore of Vermilion Bay and Southwest Pass at Marsh Island and that portion of the State's Outside Waters south of the Inside/Outside Shrimp Line as described in R.S. 56:495 from the Atchafalaya River Ship Channel at Eugene Island as delineated by the River Channel Buoy Line to the eastern shore of Freshwater Bayou at 92 degrees 18 minutes 33 seconds west longitude to open at noon, May 14, 2007.

Shrimp Management Zone 3, that portion of Louisiana's inside waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island westward to the Louisiana/Texas State Line, to open at noon, May 28, 2007.

The commission also hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to close any portion of the state's inside waters to protect small white shrimp if biological and technical data indicates the need to do so, or enforcement problems develop.

Earl P. King, Jr.
Chairman

0705#031

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Tilefish Season—Commercial

The commercial season for the harvest of tilefishes in Louisiana state waters will close effective 12:01 a.m., April 18, 2007. The tilefish assemblage includes tilefish, goldface tilefish, blackline tilefish, anchor tilefish and blueline tilefish. The secretary has been informed that the commercial season for tilefishes in the federal waters of the Gulf of Mexico off the coast of Louisiana will close at 12:01 a.m., April 18, 2007 and will remain closed until 12:01 a.m., January 1, 2008.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department by the commission in its resolution of January 4, 2007 to modify opening and closing dates of 2007 commercial reef fish seasons in Louisiana state waters when he is informed by the Regional Director of the National Marine Fisheries Service that the seasons have been closed in adjacent federal waters, and that the NMFS

requests that the season be modified in Louisiana State waters, the secretary hereby declares:

The commercial fishery for tilefishes in Louisiana waters will close at 12:01 a.m., April 18, 2007, and remain closed until 12:01 a.m., January 1, 2008. Effective with this closure, no person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell tilefishes whether within or without Louisiana waters. Effective with closure, no person shall possess tilefishes in excess of a daily bag limit, which may only be in possession during the open recreational season. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing tilefish taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The secretary has been notified by National Marine Fisheries Service that the commercial tilefish season in federal waters of the Gulf of Mexico will close at 12:01 a.m., April 18, 2007 and the season will remain closed until 12:01 a.m., January 1, 2008. Having compatible season regulations in state waters is necessary to provide effective rules and efficient enforcement for the fishery, to prevent overfishing of this species in the long term.

Bryant O. Hammett, Jr.
Secretary

0705#005