

# Notices of Intent

## NOTICE OF INTENT

**Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences  
Boll Weevil Eradication Commission**

Boll Weevil Eradication (LAC 7:XV.321)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry and the Louisiana Boll Weevil Eradication Commission propose to amend regulations under the authority of R.S. 3:1609 and R.S. 3:1613, for the purpose of creating the Louisiana Eradication Zone and fee payment in the Boll Weevil Eradication Program.

No preamble concerning the proposed rules is available.

### **Title 7**

### **AGRICULTURE AND ANIMALS**

### **Part XV. Plant Protection and Quarantine**

### **Chapter 3. Boll Weevil**

### **§321. Program Participation, Fee Payment and Penalties**

A. - A.3. ...

4. Cotton producers who request waiver of the assessment on any acre planted in cotton for a crop year may obtain such waiver by destroying all living cotton plants, to the satisfaction of the Boll Weevil Commission, on any such acre prior to July 15 of the crop year for which the assessment is due. All acres on which cotton is destroyed for purposes of obtaining a waiver of the assessment shall remain void of all living cotton plants through December 31 of the same year. Any cotton producer who fails to destroy and maintain such destruction of living cotton plants to the satisfaction of the Boll Weevil Commission shall be liable for the assessment for that crop year.

5. The Commission has the authority to inspect any cotton field in which a cotton producer has claimed to have destroyed their cotton crop. Failure of the cotton producer to allow inspection shall be a violation of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1609, 1612, 1613.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:17 (January 1995), amended LR 21:669 (July 1995), LR 23:195 (February 1997), amended LR 25:

All interested persons may submit written comments on the proposed amendments by the end of business on February 25, 1999 to the Louisiana Department of Agriculture and Forestry and the Louisiana Boll Weevil Eradication Commission at 5825 Florida Boulevard, Baton Rouge, Louisiana 70806.

Bob Odom  
Commissioner

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Boll Weevil Eradication

### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no additional costs or savings to State or Local Governmental Units. The amendment provides clarification to existing rules concerning assessments due on certified cotton acres. Boll Weevil Eradication Assessments will not be due on those acres of cotton that are destroyed prior to Final Certification. However, if any living cotton plants remain on these acres, then boll weevil eradication operations must continue to ensure the integrity of the Boll Weevil Eradication Program.

### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that there will be no effect on revenue collections of state or local governmental units. This rule change requires that cotton growers must fully destroy (no living cotton plants remaining) any cotton acres that are not certified with the Farm Service Agency prior to Final Certification Date (July 15). If the above criteria is not met, the grower will be liable for Boll Weevil Eradication Assessments on these acres.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs and/or benefits to directly affected persons or non-governmental groups. This rule change will affect any cotton grower in either the Red River Eradication Zone or the Louisiana Eradication Zone who destroys cotton prior to Final Certification (July 15). There will be no increase in cost or workload to the growers.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Skip R. Rhorer  
Assistant Commissioner  
9901#027

Robert Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### **Department of Civil Service Board of Ethics**

Lobbyist Disclosure Act  
(LAC 52:I.1901-1905)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Louisiana Board of Ethics, has initiated rulemaking procedures to promulgate amendments and changes to the Rules for the Board of Ethics regarding the administration and enforcement of the provisions of the Lobbyist Disclosure Act as authorized by Louisiana Revised Statute 42:1132D.

No preamble to the proposed rule changes has been prepared.

**Title 52  
ETHICS**

**Part I. Board of Ethics**

**Chapter 19. Lobbyist Disclosure Act**

**§1901. In General**

The Lobbyist Disclosure Act provides that the Board of Ethics shall administer and enforce the provision of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 25:

**§1902. Filing Fees**

A. A fee of \$10 shall be remitted to the board with each registration or supplemental registration required to be filed by a lobbyist.

B. All fees paid in compliance with this Chapter shall be by check or money order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 25:

**§1903. Registration and Reporting; Forms**

A. The staff shall prepare and provide upon request, forms for the registration and reporting of lobbyists. The forms may be provided on paper or in electronic format.

B. No registration or report filed by a lobbyist will be dated and filed with the board unless the registration or report is on the proper form as provided by the staff.

C. The method of signature and notarization shall be as provided in §1803.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 25:

**§1904. Registration and Reporting; Dating, Numbering and Filing**

The staff shall establish a procedure for the dating, indexing, and filing of all Lobbyist registration and Lobbyist Disclosure reports received by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 25:

**§1905. Automatic Termination of Registration for Failure to Renew; Retroactivity**

If a registered lobbyist fails to renew his registration by January 31 of the applicable year, then his registration shall be terminated retroactively as of December 31 of the previous year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 25:

Interested persons may direct their comments to R. Gray Sexton, Board of Ethics, 8401 United Plaza Boulevard, Suite 200, Baton Rouge, LA 70809-7017, telephone (225) 922-1400, until February 9, 1999.

If necessary, a public hearing will be held by the Board of Ethics at 8401 United Plaza Boulevard, Baton Rouge,

Louisiana, 70809-7017 between February 24, 1999 and March 1, 1999.

R. Gray Sexton  
Ethics Administrator

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Lobbyist Disclosure Act**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Implementation of the amendments to the Rules for the Board of Ethics will increase expenditures by \$140 for publishing the rules in the *Louisiana Register*. The costs will be absorbed in the Board's existing budget.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The amendments to the Rules for the Board of Ethics are not expected to have any additional fiscal impact on revenue collections of state and local government units. A \$10 registration and/or renewal fee is currently assessed for each form filed. This is expected to generate \$10,000 in revenues for FY 98-99 which are used to administer this activity.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There will be no costs nor economic benefits to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no effect on competition or employment.

Maris L. McCrory

Deputy General Counsel  
9901#053

Robert E. Hosse

General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Economic Development  
Office of the Secretary  
Division of Economically Disadvantaged  
Business Development**

Economically Disadvantaged Business Development  
Program—Eligibility Requirements and Mentor Protégé  
(LAC 19:II.107, 501-515)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, hereby proposes for the following amendments to its rules relative to the Economically Disadvantaged Business Development Program.

**Title 19**

**CORPORATIONS AND BUSINESS  
Part II. Economically Disadvantaged  
Business Development Program**

**Chapter I. General Provisions**

**§107. Eligibility Requirements for Certification**

A. - B. ...

1. - 2. ...

3. Net Worth. Each individual owner's net worth may not exceed \$200,000. The market value of individual owner's personal residence will be excluded from the networth calculation.

4. ...

C.1 - 6. ...

7. Diminished Capital and Credit

a. A firm will be considered to have diminished capital and credit if its ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to other firms in the same or similar line of business, and whose diminished opportunities have precluded, or are likely to preclude, such firm from successfully competing in the open market. Examples of diminished capital and credit are lack of access to long-term financing or credit, working capital financing, equipment trade credit, raw materials, supplier trade credit, and bonding. The applicant must furnish documentation that credit was denied. An applicant firm that scores poorly on all financial measurements published by the Robert Morris Associates for liquidity, leverage, operating efficiency, and profitability is considered to be economically disadvantaged. Factors to be considered are:

7.a.i. - iv. ...

7.b. - D.6 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1751,1752, and 1754.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), LR 25:

## Chapter 5. Mentor-Protégé Program

### §501. General Policy

A. The policy of the State is to implement a Mentor/Protégé program that breaks down barriers and builds capacity of economically disadvantaged businesses, through internal and external practices which include:

*Accountability*—responsibility of each cabinet member and policy administrator to produce self-imposed and specific outcomes within a specified period of time;

*Capacity Building*—enhancing the capability of economically disadvantaged businesses to compete for public and private sector contracting and purchasing opportunities;

*Continuous Improvement*—approach to improving the performance of the Mentor/protégé operation which promotes frequent, regular and possible small incremental improvement steps on an ongoing basis;

*Education*—sharing instruction on intent, purpose, scope and procedures of the Mentor/Protégé program with both government personnel at all levels of administration as well as the business community and the general citizenry;

*Flexibility*—promoting relationships based on need, relative strengths, capability and agreement of the parties within the boundaries of the program objectives of inclusion, impartiality and mutual understanding;

*Monitoring*—requiring the routine measurement and reporting of important indicators of (or related to) outcome oriented results which stems from the continuing quest for accountability of Louisiana State government;

*Partnering*—teaming of Economically Disadvantaged Businesses with businesses who have the capability of providing managerial and technical skills, transfer of competence, competitive position and shared opportunity toward the creation of a mutually beneficial relationship with advantages which accrue to all parties;

*Reporting*—informing the Governor's office of self-imposed outcomes via written and quarterly reports as to the progress of intra-departmental efforts by having the secretary of the department and her/his subordinates assist in the accomplishment of the initiative keep records, and coordinate and link with representatives of the Department of Commerce; and

*Tone Setting*—intense and deliberate reinforcement by the Governor's office of the State's provision for substantial inclusion of economically disadvantaged businesses in all aspects of purchasing, procurement and contracting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), LR 25:

### §503. Incentives for Mentor Participation

A. Businesses participating as Mentors in the Mentor/Protégé Program will be motivated for program participation via program features incorporated in the bid process as well as contracts and or purchase agreements negotiated with the firm. The following features will be instituted by the State of Louisiana to motivate Mentor participation:

1. Preferential Contract Award. The State of Louisiana will institute a system for awarding points to Mentor participants which will confer advantages in the bid or selection process for contracting or purchasing. The evaluation points granted a Mentor/Protégé Program participant will be proportionate to the amount of protégé participation in the project. Evaluation points will be weighted with the same standards as points awarded for quality for product or service; or

2. Performance Bonus. Contracts for goods or services will include a factor for evaluation of performance for the purpose of providing bonuses for work performed or deliveries completed ahead of schedule or consistently on schedule. The bonus for contractors and suppliers who are Mentor/Protégé Program participants will be 5 percent greater than bonuses awarded to firms who are not program participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 25:

### §505. Incentives for Protégé Participation

A. Businesses participating as protégés will be eligible for the following program benefits:

1. Subcontracting Opportunities. Protégé firms may be eligible for non-competitive subcontracting opportunities with the state and private sector industries;

2. Technical and Developmental Assistance. Protégé

firms will be provided technical and developmental assistance provided by Mentors which is expected to build the capacity of the protégé firm to compete successfully for public and private sector opportunities;

3. **Networking.** The Department of Economic Development will institute a system of networking protégé firms with potential mentors for the purposes of facilitating successful Mentor/Protégé partnerships. EDB firms participating in the program will be included in the Department of Economic Development's protégé source guide, which lists the firm and its capabilities as a sources of information for mentors in the program. Additionally, networking seminars for the purposes of introducing potential mentors and protégé will be held annually.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51: 1753.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 25:

### **§507. Guidelines for Participation**

A. The Mentor/Protégé Program will be open to participation by any business entity which meets the criteria for participation as outlined below.

1. **Mentor Firms:**

a. must be capable of contracting with the state;  
b. must demonstrate their capability to provide managerial or technical skills transfer or capacity building; and  
c. must remain in the program for the period of the developmental assistance as defined in the Mentor/Protégé plan.

2. **Protégé Firms:**

a. must be a certified Economically Disadvantaged Business with the State of Louisiana Department of Economic Development;  
b. must be eligible for receipt of government and private contracts;  
c. must graduate from the program within a period not to exceed 7 years or until the firm reaches the threshold of \$750,000.00 net worth as defined by the EDB certification guidelines.

3. **Mentor/Protégé Plan**

a. A Mentor/Protégé Plan signed by the respective firms shall be submitted to the Department of Economic Development, Division of Economically Disadvantaged Business Development for approval. The plan shall contain a description of the developmental assistance that is mutually agreed upon and in the best developmental interest of the Protégé firm.

b. The Mentor/Protégé plan shall also include information on the mentor's ability to provide developmental assistance, schedule for providing such assistance, and criteria for evaluating the Protégé's developmental success. The Plan shall include termination provisions complying with Notice and due process rights of both parties and a statement agreeing to submit periodic report reviews and cooperate in any studies or surveys as may be required by the Department in order to determine the extent of compliance with the terms of the agreement.

c. The submitted Mentor/Protégé Agreement shall be

reviewed by an Economic Development Small Business Advisor. The Small Business Advisor may recommend to the Executive Director of the Division of Economically Disadvantaged Business Development acceptance of the submitted Agreement if the Agreement is in compliance with the Division's Mentor/Protégé guidelines.

4. **Protégé Selection.** Selection of the protégé is the responsibility and at the discretion of the mentor. Protégés may be selected from the listing of EDB's provided by the Department of Economic Development, Division of Economically Disadvantaged Businesses. A protégé selected from another source or reference must be referred to the Department of Economic Development for certification as an EDB. The protégé must meet the Department's guidelines for EDB certification as a condition of the Mentor/Protégé Plan acceptance.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51: 1753.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 25:

### **§509. Measurement of Program Success**

A. The overall success of the Mentor/Protégé program will be measured by the extent to which it results in:

1. an increase in the Protégé firm's technical and business capability, industrial competitiveness, client base expansion and improved financial stability;  
2. an increase in the number and value of contracts, subcontracts and supplier agreements by economically disadvantaged businesses; and  
3. the overall enhancement and development of Protégé firms as a competitive contractor, subcontractor, or supplier to local, state, federal agencies or commercial markets.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51: 1753.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 25:

### **§511. Internal Controls**

A. The Division of Economically Disadvantaged Business Development will manage the program and establish internal controls to achieve the stated program objectives. Controls will include:

1. reviewing and evaluating Mentor/Protégé agreements for goals and objective;  
2. reviewing semi-annual progress reports submitted by mentors and proteges on Protégé development to measure Protégé progress against the approved agreement;  
3. requesting and reviewing periodic reports and any studies or surveys as may be required by the Division to determine program effectiveness and impact on the growth, stability and competitive position of Economically Disadvantaged Businesses in the State of Louisiana; and  
4. continuous improvement of the program via ongoing and systematic research and development of program features, guidelines and operations.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51: 1753.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 25:

**§513. Non-Performance**

A. The Mentor/Protégé Agreement is considered a binding agreement between the parties and the State. Mentors who compete for contract award or purchasing activity and receive evaluation points as program participants are bound, in accordance with the terms of the State contract or purchase order, to fulfill the responsibilities outlined in the approved Mentor/Protégé Agreement as a condition of successful contracting or purchase activity. Protégés who are selected for program participation are bound, in accordance with the terms of their Agreement with the Department of Economic Development for continued participation in the program. Failure of the parties to meet the terms of the agreement are considered a violation of contract with liabilities as outlined below:

- 1. failure of the Mentor to meet the terms of the Mentor/Protégé Agreement will be considered a default of State contract or purchasing agreement; and
- 3. failure of the Protégé to meet the terms of the Mentor/Protégé Agreement will result in exclusion from future participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 25:

**§515. Conflict Resolution**

The State will institute a system for independent arbitration for the resolution of conflicts between mentors and protégés as program participants and/or between program participants and the State.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 25:

Copies of the draft of these rules are available from the Division of Economically Disadvantaged Business Development office and may be obtained through telephone request by calling (225) 342 - 5373 or by written request to 339 Florida Blvd., Suite 212, Baton Rouge, LA 70804.

All interested persons are invited to submit written comments on the proposed amendments to the rules and regulations. Such comments should be submitted to no later than 5 p.m. on February 26, 1999, to Henry J. Stamper, Executive Director, Division of Economically Disadvantaged Business Development, P.O. Box 44153, Baton Rouge, LA 70804 - 4153 or to 339 Florida, Suite 212, Baton Rouge, LA 70804.

Henry J. Stamper  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Economically Disadvantaged Business Development Program—Eligibility Requirements and Mentor Protégé**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no additional cost to the state in the implementation of the proposed amendments to the rules of the

Economically Disadvantaged Business Development program. The workload or additional paperwork will be shared by the current professional staff, that consist of the Executive Director, the Deputy Assistant Secretary, and five small business advisors. The cost will be absorbed within the present budget allocation.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state and local governmental units.

- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The Economically Disadvantaged Businesses will be the direct beneficiaries of the mentor/protégé program, which will provide managerial and technical assistance to the protégé firms. The mentor firms will also benefit to the extent that resourceful vendors will be produced through the process.

The mentor/protégé relationship will likely increase EDB firms' revenue by providing subcontracting opportunities. However, no historical data exist to estimate the impact and no method is available to make a reliable projection until the program develops a track record.

- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The enhanced abilities of EDB firms will likely increase competition and employment in the Louisiana economy. No data exist to estimate the impact or to make a reliable projection until experiential data have been collected.

Henry J. Stamper  
Executive Director  
9901#031

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School Administrators—Louisiana School and District Accountability System (LAC 28:I.901)

In accordance with R.S. 49-950 et seq., the Administrative Procedures Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, an amendment to Bulletin 741, referenced in LAC 28:I.901A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November, 1975). The proposed amendment adds the Louisiana School and District Accountability system as a part of Bulletin 741.

**Title 28**

**EDUCATION**

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

**Subchapter A. Bulletins and Regulations**

**§ 901. School Approval Standards and Regulations**

- A. Bulletin 741

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1541.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR

24:1085 (June 1998), LR 25:000 (January 1999).

**The Louisiana School and District Accountability System**

**2.006.00** Every school shall participate in a school accountability system based on student achievement as approved by the State Board of Elementary and Secondary Education.

Refer to R.S. 17:10.1

**Indicators for School Performance Scores**

**2.006.01** A School Performance Score shall be determined using a weighted composite index derived from three or four indicators: criterion-referenced tests, norm-referenced tests, and student attendance for grades K-12, and dropout rates for grades 7 - 12.

**Louisiana's 10- and 20-Year Education Goals**

**2.006.02** Each school shall be expected to reach 10- and 20-year goals that depict minimum educational performances.

INDICATORS	GRADES ADMINISTERED	10-YEAR GOAL	20-YEAR GOAL
CRT- LEAP Tests (60 percent K-12)	Grades 4, 8, 10, 11	Average student score at BASIC	Average student score at PROFICIENT
NRT - Iowa Tests (30 percent K-12)	Grades 3, 5, 6, 7, 9	Average composite standard score corresponding to the 55 <sup>th</sup> percentile rank in the tested grade level	Average composite standard score corresponding to the 75 <sup>th</sup> percentile rank in the tested grade level
Attendance (10 percent, K-6; 5 percent, 7--12)		95 percent (grades K-8) 93 percent (grades 9-12)	98 percent (grades K-8) 96 percent (grades 9-12)
Dropout Rate (5 percent, 7-12)		4 percent (grades 7-8) 8 percent (grades 9-12)	2 percent (grades 7-8) 4 percent (grades 9-12)

**School Performance Scores**

**2.006.03** A School Performance Score (SPS) shall be calculated for each school. This score shall range from 0 to 100 and beyond, with a score of 100 indicating a school has reached the 10-year Goal and a score of 150 indicating a school has reached the 20-year Goal. The lowest score that a

given school can receive for each individual indicator index and/or for the SPS as a whole is "0".

Every year of student data shall be used as part of a school's SPS. The initial school's SPS shall be calculated using the most recent year's NRT and CRT test data and the prior year's attendance and dropout rates. Subsequent calculations of the SPS shall use the most recent two years' test data and prior two years' attendance and dropout rates.

A baseline School Performance Score shall be calculated in Spring 1999 for Grades K-8 and in Spring 2001 for Grades 9-12.

Formula for Calculating an SPS

The SPS for a sample school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example, [(66.0 \* 60%) + (75.0 \* 30%) + (50.0 \* 10%)] = 67.1

Indicator	Index Value	Weight	Indicator Score
CRT	66.0	60%	39.6
NRT	75.0	30%	22.5
Attendance	50.0	10%	5.0
Dropout	NA	0%	0
			SPS = 67.1

**A school with an SPS of 30 or below shall be identified as an Academically Unacceptable School.** This school immediately enters Corrective Action.

**Criterion-Referenced Tests (CRT) Index Calculations**

A school's CRT Index score equals the sum of the student totals divided by the number of students eligible to participate in state assessments. For the CRT Index, each student who scores within one of the following five levels will receive the number of points indicated.

Advanced =	200 points
Proficient =	150 points
Basic =	100 points
Approaching Basic =	50 points
Unsatisfactory =	0 points

Formula for Calculating a CRT Index for a School

- Calculate the total number of points by multiplying the number of students at each performance level times the points for those respective performance levels, for all content areas.
- Divide by the total number of students eligible to be tested times the number of content area tests.

**Initial Transition Years**

In order to accommodate the phase-in of Social Studies and Science tests, the following CRT scores shall be used for each year:

1999 Baseline CRT Score =	1999 Math and 1999 English Language Arts (Grades 4 and 8)
2001 Comparison CRT Score =	2000 and 2001 Math and 2000 and 2001 English Arts (both years averaged for each subject and each grade)
2001 <i>New</i> Baseline CRT Score =	2000 and 2001 Math and 2000 and 2001 English and 2000 and 2001 Social Studies and 2000 and 2001 Science (both years averaged for each subject and each grade)
2003 Comparison CRT Score =	2002 and 2003 Math and 2002 and 2003 English 2002 and 2003 Social Studies and 2002 and 2003 Science (both years averaged for each subject and each grade)
This re-averaging will result in a re-calculated baseline to include science and social studies for K-8 schools in 2001. A similar schedule will be used for 9-12 schools to begin with a 2001 baseline year.	

<b>Norm-Referenced Tests (NRT) Index Calculations</b>						
For the NRT Index, standard scores supplied by Iowa Test of Basic Skills reflecting current norms shall be used for computing the SPS. Index scores for each student will be calculated, scores totaled, and then averaged together to get a school's NRT Index score.						
<i>NRT Goals and Equivalent Standard Scores</i>						
Iowa Tests Composite Standard Scores Equivalent to Louisiana's 10- and 20-Year Goals, by Grade Level *						
				Grade		
Goals	Percentile Rank	3	5	6	7	9
10-year Goal	55 <sup>th</sup>	189	220	232	245	266
20-year Goal	75 <sup>th</sup>	201	237	253	268	290
*Source of percentile rank-to-standard score conversion: <i>Iowa Test of Basic Skills, Norms and Score Conversions, Form M (1996) and Iowa Test of Educational Development, Norms and Score Conversions, with Technical Information, Form M (1996), Chicago Il: Riverside Publishing Company</i>						

<b>NRT Formulas Relating Standard Scores to NRT Index</b>	
Where the 10-year and 20-year goals are the 55 <sup>th</sup> and 75 <sup>th</sup> percentile ranks respectively and where SS = the average standard score, the following formulas use the current ITBS standard scores. As each ITBS is renormed, the standard scores for SPS calculations shall change accordingly.	
Grade 3	Index 3rd grade = (4.167 * SS) / 687.5 SS = (Index 3 <sup>rd</sup> grade + 687.5) / 4.167
Grade 5	Index 5 <sup>th</sup> grade = (2.941 * SS) / 547.1 SS = (Index 5 <sup>th</sup> grade + 547.1) / 2.941
Grade 6	Index 6 <sup>th</sup> grade = (2.381 * SS) / 452.4 SS = (Index 6 <sup>th</sup> grade + 452.4) / 2.381
Grade 7	Index 7 <sup>th</sup> grade = (2.174 * SS) / 432.6 SS = (Index 7 <sup>th</sup> grade + 432.6) / 2.174
Grade 9	Index 9 <sup>th</sup> grade = (2.083 * SS) / 454.2 SS = (Index 9 <sup>th</sup> grade + 454.2) / 2.083

<b>Formula for Calculating a School's NRT Index for Multiple Grades</b>
1. Calculate the index for each grade, using the grade-appropriate formula relating standard score to NRT index.
2. Average the grade indices across all students in all grades in the school.

<b>Attendance Index Calculations</b>		
An Attendance Index score for each school shall be calculated. The initial year's index shall be calculated from the prior year's attendance rates. Subsequent years' indices shall be calculated using the prior two years' average attendance rates as compared to the state goals.		
Attendance Goals		
	10-Year Goal	20-Year Goal
Grades K-8	95 percent	98 percent
Grades 9-12	93 percent	96 percent

<b>Attendance Index Formulas</b>	
Grades K-8	Indicator (ATT K-8) = (16.667 * ATT) ? 1483.3
Grades 9-12	Indicator (ATT 9-12) = (16.667 * ATT) ? 1450.0
Where ATT is the attendance percentage, using the definition of attendance established by the Department of Education	
<b>Lowest Attendance Index Score</b>	
Zero shall be the lowest Attendance Index score for accountability calculations.	



A school with an SPS of 100.0 - 124.9 shall be labeled a *School of Academic Achievement*.

A school with an SPS of 125.0 - 149.9 shall be labeled a *School of Academic Distinction*.

A school with an SPS of 150.0 or above shall be labeled a *School of Academic Excellence* and shall have no more Growth Targets.

A school with these labels shall no longer be subject to Corrective Actions. This school shall continue to meet or exceed Growth Targets in order to obtain "positive" growth labels, recognition, and possible rewards. This school shall not receive "negative" growth labels, i.e., School in Decline and Minimal Academic Growth.

### Rewards/Recognition

**2.006.08** A school shall receive recognition and possible monetary awards when it meets or surpasses its Growth Targets and when it shows growth in the performance of students who are classified as high poverty.

School personnel shall decide how any monetary awards will be spent; however, possible monetary rewards shall not be used for salary or stipends. Other forms of recognition shall also be provided for a school that meets or exceeds its Growth Targets.

### Corrective Actions

**2.006.09** A school that does not meet its Growth Target shall enter into Corrective Actions. A school that enters Corrective Actions shall receive additional support and assistance, with the expectation that extensive efforts shall be made by students, parents, teachers, principals, administrators, and the school board to improve student achievement at the school. There shall be three levels of Corrective Actions.

Corrective Actions Level I: Working with District Assistance Teams, a school shall utilize a state diagnostic process to identify school needs, redevelop school improvement plans, and examine the use of school resources.

Corrective Actions Level II: A highly trained Distinguished Educator (DE) shall be assigned to a school by the state. The DE shall work in an advisory capacity to help the school improve student performance. The DE shall make a public report to the school board of recommendations for school improvement. Districts shall then publicly respond to these recommendations. If a school is labeled as Academically Unacceptable, parents shall have the right to transfer their child to a higher performing public school. (See Transfer Policy Standard Number 2.006.10.)

Correction Actions Level III: The DE will continue to serve the school in an advisory capacity. Parents shall have the right to transfer their child to a higher performing public school. (See Transfer Policy, Standard Number 2.006.10) A district must develop a Reconstitution Plan for the school at the beginning of the first year in this level and submit the plan to SBESE for approval.

If a Corrective Actions Level III school has grown at least 40 percent of its Growth Target or 5 points, whichever is greater, during its first year, then that school may proceed to a second year in Level III. If such minimum growth is not achieved during the first year of Level III, but SBESE has approved its Reconstitution Plan, then the school shall implement the Reconstitution Plan during the beginning of the next school year. If SBESE does not approve the Reconstitution Plan AND a given school does not meet the required minimum growth, it shall lose state approval and all state funds.

Any reconstituted School's SPS and Growth Target shall be recalculated utilizing data from the end of its previous year. SBESE will monitor the implementation of the Reconstitution Plan.

A school INITIALLY ENTERS Corrective Actions Level I if it has an SPS of 30 or less or if it has an SPS of less than 100 and fails to reach its Growth Target.

A school MOVES INTO A MORE INTENSIVE LEVEL of Corrective Actions when adequate growth is not demonstrated during each 2-year cycle.

A school with an SPS of 30 or less (i.e., Academically Unacceptable School) shall move to the next level of Corrective Actions as long as its score is 30 or less.

A school with an SPS of 30.1 to 50.0 shall move to the next level of Corrective Actions if it grows fewer than 5 points. If it grows 5 points or more each cycle, but less than its Growth Target, a school may remain in Corrective Actions Level I for two cycles and Corrective Actions Level II for one cycle.

A school with an SPS of 50.1 to 99.9 shall remain in Corrective Actions Level I as long as its growth is at least its Growth Target minus 5 points, but not less than 0.1 points. During the first 10-year cycle, there is no maximum number of cycles that such a school can stay in Level I as long as this minimum growth is shown each cycle.

A school EXITS Corrective Actions if its School Performance Score is above 30 and the school achieves its Growth Target.

### Corrective Actions Summary Chart

	Level I	Level II	Level III	Reconstitution or No State Approval/Funding
School Level Tasks	Utilize state diagnostic process to identify needs Develop/implement consolidated improvement plan including an integrated budget; process must include: a) opportunities for significant parent and community involvement; b) public hearings; c) at least two-thirds teacher approval	Work with advisory Distinguished Educators, teachers, parents, and others to implement revised School Improvement Plan Distinguished Educators help principals develop capacity to change	1) Distinguished Educator continues to assist with improvement efforts.	If Reconstitution Plan approved by SBESE: a) implement Reconstitution Plan and b) utilize data from the end of the previous year to recalculate school performance goals and Growth Targets. If Reconstitution Plan not approved, no state approval/no state funding
District Level Tasks	Create District Assistance Teams to assist schools Publicly identify existing and additional assistance being provided by districts (such as funding, policy changes, greater flexibility) As allowed by law, local boards reassign or remove school personnel as necessary For Academically Unacceptable Schools only-ensure schools receive at least their proportional share of applicable state, local, and federal funding.	District Assistance Teams continue to help schools Hold public hearing and respond to Distinguished Educators' written recommendations As allowed by law, local boards reassign or remove personnel as necessary For Academically Unacceptable Schools only-authorize parents to send their children to other public schools	District Assistance Teams will continue to help schools Authorize parents to send their children to other public schools At end of year one, one of the following must occur: a) schools make adequate growth (at least 40 percent of target or 5 points, whichever is greater); b) Reconstitution Plan approved by SBESE; c) non-school approval status from SBESE	If Reconstitution Plan approved by SBESE, provide implementation support. If Reconstitution Plan not approved, no state approval/no state funding.

#### Reconstitution Plan

**2.006.10** Districts shall develop and submit a Reconstitution Plan to SBESE for approval for any school in Correction Actions Level III during the first year in that level. This Reconstitution Plan indicates how the district shall remedy the school's inadequate growth in student performance. The plan shall specify how and what reorganization shall occur and how/why these proposed changes shall lead to improved student performance.

If a Corrective Actions Level III school has grown at least 40 percent of its Growth Target or 5 points, whichever is greater, during its first year, then that school may continue another year in Level III. If such minimum growth is not achieved during the first year, but SBESE has approved its Reconstitution Plan, then the school shall implement the Reconstitution Plan during the beginning of the next school year. If SBESE does not approve the Reconstitution Plan AND a given school does not meet the required minimum growth, it shall lose state approval and all state funds.

For example, districts may choose to vacate a school and establish specific criteria for the rehiring of existing staff and/or the hiring of new staff.

#### Transfer Policy

**2.006.11** Parents shall have the right to transfer their child to another public school when an Academically Unacceptable School begins Correction Actions Level II or any other school begins Correction Actions Level III.

Transfers shall not be made to Academically Unacceptable Schools undergoing Corrective Actions Level II or Level III.

Upon parental request, districts shall transfer the child to the nearest acceptable school prior to the October 1 student membership count.

If no academically acceptable school in the district is available, the student may transfer to a neighboring district. Parents shall provide the transportation to the school. State dollars shall follow the child when such a transfer occurs.

Schools and districts may refuse to accept a student if there is insufficient space, if a desegregation order prevents such a transfer, or if the student has been subjected to disciplinary actions for behavioral problems.

### Additional Resources

**2.006.12** The State Department of Education shall provide support to the school through one or more of the following: District Assistance Teams, Distinguished Educators (DEs), a School Improvement Fund, and a Best Practices Resource Guide.

State, regional, and local personnel, as appropriate, shall be trained to become members of District Assistance Teams.

A DE shall be a highly effective educator selected and trained by the State Department of Education to take two or more years of leaves-of-absence to advise and assist a school in Corrective Actions Level II and Level III.

A DE's responsibilities may include assisting a school in the development of improvement plans, facilitating the development of a school curriculum that aligns with state content standards, working with the school to involve parents and community members, and assisting with the professional development of school personnel.

The selection of outstanding teachers, principals, and administrators to serve as a DE shall be based upon the assumption that these educators will possess an authentic understanding of problems faced by the schools and possess a capacity to engage in solutions to these problems. Additionally, a DE shall be allowed to return to his/her district/university with special capabilities that would be of value to those schools and districts.

The State Department of Education shall identify Best School Improvement Practices and disseminate the information to schools and districts through a published report.

### Progress Report

**2.006.13** The SBESE shall report annually on the state's progress in reaching its 10- and 20-Year Goals. The State Department of Education shall publish an individual School Report Card to provide information on every school's performance. The School Report Card shall include the following information: School Performance Scores, school progress in reaching Growth Targets, school performance when compared to similar (like) schools, and subgroup performances.

### Appeals Procedures

**2.006.14** The State Department of Education shall define "appeal," what part of the State Accountability System may be appealed, and the process that the appeal will take.

### Student Mobility

**2.006.15** As a general rule, the test score of every eligible student who takes a test at a given school shall be included in that school's performance score regardless of how long that

student has been enrolled in that school. A school that has at least 10 percent of its students transferring from outside the district and enrolled in the school after October 1 may request that the State Department of Education calculate what its SPS would have been if such out-of-district enrollees had not been included. If there is at least a 5-point difference between the two School Performance Scores, then the school may appeal any negative accountability action taken by the state (e.g., movement into Corrective Actions, application of growth labels).

### Pairing/Sharing of Schools with Insufficient Test Data

**2.006.16** In order to receive an SPS, a given school must have at least one grade level of LEAP 21 testing and at least one grade level of Iowa testing. A school that does not meet this requirement must either be "paired or shared" with another school in the district as described below. For the purposes of the State Accountability System, such a school shall be defined as a "non-standard school."

A school with a grade-level configuration preventing it from participating in LEAP 21 or the Iowa Tests (e.g., a K, K-1, K-2 school) must be "paired" with another school that has at least one grade level of LEAP 21 testing and one grade level of Iowa testing. This "pairing" means that a single SPS shall be calculated for both schools by averaging both schools' attendance and/or dropout data and using the test score data derived from the school that has at least two grade levels of testing.

A school with a grade-level configuration that contains only one grade level where students participate in LEAP 21 or Iowa testing (e.g., a K-3, 5-6 school) must "share" with another school that has at least one grade level of the type of testing missing. Both schools shall "share" the missing grade level of test data. This shared test data must come from the grade level closest to the last grade level in the non-standard school. The non-standard school's SPS will be calculated by using the school's own attendance, dropout, and testing data AND the test scores for just one grade from the other school.

A district must identify the school where each of its non-standard schools shall be either "paired or shared." The "paired or shared" school must be the one that receives by promotion the largest percentage of students from the non-standard school. In other words, the "paired or shared" school must be the school into which the largest percentage of students "feed." If two schools receive an identical percentage of students from a non-standard school, the district shall select the "paired or shared" school.

Once the identification of "paired or shared" schools has been made, this decision is binding for 10 years. An appeal to SBESE may be made to change this decision prior to the end of 10 years only if a re-districting or other significant attendance change occurs.

### New Schools and/or Significantly Reconfigured Schools

**2.006.17** For a newly formed school, the school district may petition SBESE, following existing procedures, to have a new site code assigned to that school. Once the site code is

assigned, the school shall receive its initial baseline SPS the summer following its second year of operation, since it will need two years of testing data and one year of attendance and/or dropout data.

The district may also petition SBESE for a new SPS for a school with significant reconfiguration from the previous year, where such significant reconfiguration varies at least 50 percent from the previous year's grade structure and/or size. For example, a K-4 school changes to a K-8 school, or a given school's population decreases in half or doubles in size from one year to the next. If SBESE grants a new SPS and agrees that this is a significant reconfiguration, this school would receive a new baseline SPS during the summer following its second year of operation under the new site code.

A school that has population and/or grade configuration change from the previous year of less than 50 percent, but more than 25 percent, is not eligible for a new SPS. Instead, such school may appeal any state accountability decisions made as a result of not meeting its Growth Targets (e.g., movement into Corrective Actions, applying of growth labels, receiving rewards).

### Inclusion of Alternative Education Students

**2.006.18** Each superintendent, in conjunction with the alternative school director, shall choose from one of two options for including alternative education students in the State Accountability System for EACH of the system's alternative education schools:

*Option I* - The score for EVERY alternative education student at a given alternative school shall be returned to ("sent back") and included in the home-based school's SPS. The alternative school itself shall receive a "diagnostic" SPS (not to be used for rewards or Corrective Actions) if a statistically valid number of students were enrolled in the school at the time of testing.

*Option II* - The score for EVERY alternative education student shall remain at the alternative school. The alternative school shall be given its own SPS and Growth Target, which makes the alternative school eligible for rewards and Corrective Actions.

In order to be eligible for Option II, an alternative school shall meet ALL of the following requirements.

The alternative school must have its own site code and operate as a school.

The alternative school must have a statistically significant number of students in the tested grade levels. The definition of "statistically significant" is to be determined.

Fifty percent (50 percent) of the total school population must have been enrolled in the school for the entire school year (October 1-May 1).

Once an option is selected for an alternative school, it shall remain in that option for at least 10 years. An appeal to SBESE may be made to change the option status prior to the end of 10 years if a school's purpose and/or student eligibility changes.

An alternative school that chooses Option II shall receive an initial baseline SPS during summer of 1999 if the majority of its students are in grades K-8. If the majority of its students are in grades 9-12, an alternative school shall receive its baseline SPS during the summer of 2001.

All students pursuing a regular high school diploma (working in curriculum developed from Louisiana Content Standards) shall be included in the state-testing program, with those scores included in an SPS.

Students 16 years of age and older who are enrolled in a Pre-GED program (not pursuing a regular high school diploma), shall not be included in the state-testing program nor in an SPS. Information on these students (e.g. number receiving a G.E.D.) shall be reported in the school's report card as a sub-report.

An alternative school in Corrective Actions II may request some flexibility in obtaining assistance from either a Distinguished Educator (DE) or a team designed to address the needs of the special alternative school population, as long as the total costs for the team do not exceed that for the DE. Sample team members could include the following: social workers, psychologists, educational diagnosticians, and counselors, etc.

### Inclusion of Lab Schools and Charter Schools

Such schools shall be included in the State Accountability System following the same rules that apply to traditional and/or alternative schools. The only exceptions are that Lab Schools and Type 1, 2, and 3 Charter Schools are "independent" schools and cannot be "paired" or "shared" with another school if they don't have at least one CRT and one NRT grade level, and/or there is no "home-based" district school to which a given student's scores can be returned if all three conditions for Option II cannot be met. Therefore, if they do not have the required grade levels and/or statistically significant number of students, such schools cannot receive an SPS. Instead, the state shall publish the results from pre- and post-test student achievement results, as well as other relevant accountability data, as part of that school's report card. This policy is to be revisited during the year 2001.

For the 1999-2000 academic school year, detention and Department of Corrections facilities will NOT receive an SPS. The future inclusion of either set of facilities requires further study and any decisions should be deferred for another year.

### Inclusion of Students with Disabilities

**2006.19** All students, including those with disabilities, will participate in Louisiana's new testing program. Most students with disabilities, approximately 80 percent, will take the LEAP 21 and the Iowa Test with accommodations, if required by their Individualized Education Plan, IEP. A small percentage of students, approximately 20 percent, with very significant disabilities will take an alternate assessment, as required by their IEP. The scores of all students who are eligible to take the LEAP 21 and the Iowa Tests will be included in the calculation of the SPS.

During the summer of 1999 for K-8 schools and summer of 2001 for 9-12 schools, each school shall receive two School Performance Scores as follows:

a score including only regular education students (including gifted, talented, speech- or language-impaired only, and 504 students).

a score including regular education students AND students with disabilities (only those students with disabilities participating in LEAP 21 and the Iowa Tests).

Within the State Accountability System, the terms "students with disabilities" or "special education students" shall not include gifted, talented, speech- or language-impaired only, or 504 students. "Regular education" students, therefore, include all regular education, gifted, talented speech- or language-impaired only, and 504 students.

For all other purposes, including establishing each school's Growth Target, the SPS inclusive of students with disabilities shall be used as the baseline. However, with the acknowledgment that the percentage of students with disabilities among schools varies significantly and that the rate of growth for such students, when compared to regular education students, may be different, two weighted factors shall be used within the calculation of each school's Growth Target:

*the percentage of students with disabilities* at that school eligible to participate in LEAP 21 and the Iowa Tests as compared to the *percentage of regular education students* eligible to participate in LEAP 21 and the Iowa Tests; and

*the number of accountability cycles required for students with disabilities* to master the same content as compared to the *number of accountability cycles required for students without disabilities*.

During the first ten years, a school's Growth Target will be calculated as follows:

$[\text{Prop RE} * (100 - \text{SPS}) / N] + [\text{Prop SE} * (100 - \text{SPS}) / 2N]$  or 5 points, *whichever is greater*

where Prop RE = the proportion of regular education students in the school (including gifted, talented speech- and language-impaired only, and students);

SPS = School Performance Score

N = Number of remaining accountability cycles

Prop SE = the proportion of special education students eligible to participate in LEAP 21 and the Iowa Tests

During the second ten years, the formula is:

$[\text{PropRE} * (150 - \text{SPS}) / N] + [\text{PropSE} * (150 - \text{SPS}) / 2N]$ , or 5 points, *whichever is greater*

Interested persons may submit written comments until 4:30 p.m., March 10, 1999, to Jeannie Stokes, Board of Elementary and Secondary Education, Box 94064, Capitol station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Louisiana Handbook for School Administrators—Louisiana School and District Accountability System

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The estimated implementation costs to state governmental units will be \$12,240,682 (See Department of Education Budget Spread). Local school systems may also incur additional costs for the following items: costs not funded by the state for teacher staff development and inservice training, collection and analysis of data for the state's diagnostic process, personnel assigned to the District Assistance Teams, development and implementation of consolidated improvement plans, and transportation costs for students who choose to attend another school within the district as part of Corrective Actions Level II or Level III.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections by state/local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The School and District Accountability System is based on the concept of continuous growth: every school can improve and is expected to show academic growth. Economic benefits may be realized as K-12 students acquire knowledge and skills to become more productive citizens in the workforce. Parents who choose to send their children to a school in another district as part of Corrective Actions Level II or III may incur additional transportation costs for such students since the policy specifies that such transportation costs are the responsibility of parents.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

More rigorous academic standards and higher student performance may improve school districts' ability to recruit and retain qualified teachers. School districts may have to improve compensation and/or working conditions to recruit qualified teachers if the diagnostic process concludes that poor teacher quality is negatively affecting student performance. School districts will need to hire qualified replacements for personnel who take temporary positions as Distinguished Educators. Schools in Corrective Actions may find it difficult to recruit and retain qualified teachers. School districts may have to improve

teacher compensation and/or working conditions to recruit and retain qualified teachers for such schools.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
9901#079

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School Administrators—Minimum Time Requirements (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedures Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, an amendment to Bulletin 741, referenced in LAC 28:I.901A, promulgated by the Board of Elementary and Secondary Education in LR 1:483(November, 1975). The proposed rule changes require implementation timelines for LEA's to adopt and implement local curricula for grades K-12, which align with state content standards; require teachers of state required subjects to provide instruction that includes those skills and competencies designated by their local curricula which are based upon state content standards; require that teacher planning for content, classroom instruction, and local assessment reflect the use of local curricula and state content standards; and, eliminate the requirement that state performance standards in individual courses and grade levels be established.

**Title 28  
EDUCATION**

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

**§ 901. School Approval Standards and Regulations**

A. Bulletin 741—Louisiana Handbook for School Administrators

\* \* \*

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November, 1975), amended LR 25:

**1.087.02** The school system shall adopt and implement local curricula which align with state content standards according to the following timelines:

Grade Level	Content Area	Implementation Timeline
K-8	English Language Arts Math	1998-1999
K-8	Science Social Studies	1999-2000

9-12	English Language Arts Math Science Social Studies	1999-2000
------	--	-----------

As standards are approved in content areas not mentioned above, each school system shall adopt a schedule for the implementation of curricula aligned with those standards.

**2.087.02** Each teacher of state-required subjects shall provide instruction that includes those skills and competencies designated by local curricula which are based upon state content standards.

**2.087.03** Planning by teachers for content, classroom instruction, and local assessment shall reflect the use of local curricula and state content standards.

Interested persons may submit written comments until 4:30 p.m., March 10, 1999, to Jeannie Stokes, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Minimum Time Requirements**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

BESE's estimated cost for printing this policy change and first page of the fiscal and economic impact statement in the Louisiana Register is approximately \$60.

The implementation of changes required in the regulations may impact local governmental units in the cost incurred to convene educators to develop curricula, to print documents, or to provide professional development relating to the implementation of the new curricula. This cost will vary significantly among systems depending upon the methods determined to develop and/or implement curricula; therefore, a single estimate of cost would not be appropriate.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no effects on costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no effects on competition and employment.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
9901#080

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Student Financial Assistance Commission Bylaws  
(LAC 28:V.113)**

The Louisiana Student Financial Assistance Commission (LASFAC), the statutory body created by R.S. 17:3021 et seq., in compliance with R.S. 49:952 of the Administrative Procedure Act, hereby announces its intention to revise its governing bylaws, as follows:

**Title 28**

**EDUCATION**

**Part V. Student Financial Assistance—Higher  
Education Loan Program**

**Chapter 1. Student Financial Assistance Commission  
Bylaws**

**§113. Rights, Duties and Responsibilities of the  
Executive Staff of the Commission**

A. - F. ...

G. Recording Secretary. The executive director shall appoint a recording secretary whose duties shall include giving or causing to be given notice of all meetings of the commission and its committees as required by the Administrative Procedures Act or these Bylaws, to record and prepare the minutes of all commission meetings and meetings of its committees and to maintain and provide for the safekeeping of all minutes and other official documents of the commission. The recording secretary shall have the authority to provide copies of the official records of the commission as required by the public records laws of the State of Louisiana or as otherwise directed by the commission or the executive director and to certify the authenticity of such records and the signatures of members of the commission, the executive director or others acting in their official capacity on behalf of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:321.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), amended LR 24:1265 (July 1998), LR 25:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., February 20, 1999, to Jack L. Guinn, Executive Director, Office of Student Finance Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Student Financial Assistance  
Commission Bylaws**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The implementation cost associated with publishing the Bylaws in the *Louisiana Register* is approximately \$120. The rule provides for the formal appointment of a Recording Secretary, but does not require the hiring of additional staff nor adjustment of salaries for existing personnel.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No impact on revenue collections is anticipated to result from this rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No impact on non-governmental groups is anticipated to result from this action.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this rule.

Mark S. Riley  
General Counsel  
9901#066

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Tuition Opportunity Program for Students (TOPS)  
(LAC 28:IV.301, 503, 703, 705)**

The Louisiana Student Financial Assistance Commission (LASFAC) advertises its intention to revise the provisions of the Tuition Opportunity Program for Students (TOPS).

The full text of these proposed rules may be viewed in the emergency rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., February 20, 1999, to Jack L. Guinn, Executive Director, Office of the Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Tuition Opportunity Program  
for Students (TOPS)**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Estimated costs to implement these rule changes include the routine charges from the *Louisiana Register* of \$660 to publish the Declaration of Emergency, the Notice of Intent and the Final Rule. Additional costs for awards are not anticipated to result

from these changes. While some decrease in costs is anticipated to result from calculating the cumulative grade point average from only core courses, the exact amount of decrease is uncertain at this time.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No impact on revenue collections is anticipated to result from this rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The economic costs would directly affect TOPS award applicants who fail to meet program deadlines or other requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this rule.

Jack L. Guinn  
Executive Director  
9901#065

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

### NOTICE OF INTENT

**Department of Environmental Quality  
Office of Air Quality and Radiation Protection  
Air Quality Division**

Chemical Accident Prevention  
(LAC 33:III.5901)(AQ187\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.5901 (AQ187\*).

This proposed rule is identical to a federal regulation found in 64 FR 979-980, Number 3, January 6, 1999, which is applicable in Louisiana. For more information regarding the federal requirement, contact the Investigations and Regulation Development Division at the address or phone number given below. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

The proposed rule amends the Chemical Accident Prevention rule to include the recently adopted revisions to EPA's Risk Management Rule (40 CFR 68). These revisions replace SIC codes with NAICS codes; make minor changes to the Compliance Audit Section; establish items that may not be considered confidential; and add additional information required for registration, off-site consequence analysis, prevention program for Program 2 and 3, and emergency response program. Without this rule subject facilities would be required to comply with different sets of rules promulgated by the state and EPA and also would be required to submit different information in the Risk Management Plan. The basis

and rationale for this rule are to make those provisions of the Chemical Accident Prevention Program rule that adopts the federal rules by reference identical to the revised federal rule.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

### Title 33

### ENVIRONMENTAL QUALITY

### Part III. Air

### Chapter 59. Chemical Accident Prevention and Minimization of Consequences

### Subchapter A. General Provisions

### §5901. Incorporation by Reference of Federal Regulations

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR Part 68 (July 1, 1997), and as amended in 62 FR 45129-45132 (August 25, 1997), 63 FR 639-645 (January 6, 1998), and 64 FR 979-980 (January 6, 1999).

\* \* \*

[See Prior Text in B-C.5]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:

A public hearing will be held on February 24, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ187\*. Such comments must be received no later than February 24, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. The comment period for this rule ends on the same date as the public hearing.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olaie/irdd/olaieregs.htm>.

Gus Von Bodungen, P.E.  
Assistant Secretary

9901#056

## NOTICE OF INTENT

### Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

#### Limiting Volatile Organic Compound Emissions from Industrial Wastewater (LAC 33:III.2153)(AQ184)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.2153 (AQ184).

The required control efficiency for a biotreatment unit is increased from 85 percent to 90 percent. Methods are specified to demonstrate control efficiency and proper operation of the biotreatment unit. Junction boxes that have a pump or significant fluctuations in liquid level are now required to be controlled to 90 percent VOC (Volatile Organic Compound) removal. The phrase "point of generation" is replaced with "point of determination." Revisions to this rule are required so that it may be approved by EPA as part of the VOC RACT (Reasonably Available Control Technology) State Implementation Plan. The basis and rationale for this proposed rule are to increase the stringency of the rule for EPA approval.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

#### Title 33

### ENVIRONMENTAL QUALITY

#### Part III. Air

#### Chapter 21. Control of Emission of Organic Compounds

#### Subchapter M. Limiting Volatile Organic Compound Emissions from Industrial Wastewater

#### §2153. Limiting Volatile Organic Compound Emissions from Industrial Wastewater

A. Definitions. Unless specifically defined in LAC 33:III.111, the terms in this Chapter shall have the meanings normally used in the field of air pollution control. Additionally the following meanings apply, unless the context clearly indicates otherwise.

\* \* \*

[See Prior Text]

*Chemical Manufacturing Process Unit*—the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product. A chemical manufacturing process unit consists of more than one unit operation. For the purpose of this Section, chemical manufacturing process unit includes air oxidation reactors and their associated product separators and recovery devices; reactors and their associated product separators and recovery devices; distillation units and their associated distillate receivers and recovery devices; associated unit operations; associated recovery devices; and any feed, intermediate and

product storage vessels, product transfer racks, and connected ducts and piping. A chemical manufacturing process unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems. A chemical manufacturing process unit is identified by its primary product.

\* \* \*

[See Prior Text]

*Plant*—all facilities located within a contiguous area, under common control, and identified by the Plant ID number as assigned by the department, within the parish in which the plant is primarily located, for inclusion in the emission inventory system (EIS).

*Point of Determination*—each exit point where process wastewater exits the chemical manufacturing process unit.

*Properly Operated Biotreatment Unit*—a suspended growth process that generates and recycles biomass to maintain biomass concentrations in the treatment unit. The average concentration of suspended biomass maintained in the aeration basin of a properly operated biotreatment unit shall equal or exceed 1.0 kilogram per cubic meter (kg/m<sup>3</sup>), measured as total suspended solids.

\* \* \*

[See Prior Text]

B. Control Requirements. Any person who is the owner or operator of an affected source category within a plant shall comply with the following control requirements. Any component of the wastewater storage, handling, transfer, or treatment facility, if the component contains an affected VOC wastewater stream, shall be controlled in accordance with Subsection B.1, 2, or 3 of this Section. The control requirements shall apply from the point of determination of an affected VOC wastewater stream until the affected VOC wastewater stream is either returned to a process unit, disposed of in an underground injection well, incinerated, or treated to reduce the VOC content of the wastewater stream by 90 percent and also reduce the VOC content of the same wastewater stream to less than 1000 ppm by weight. For wastewater streams that are combined and then treated to remove VOC, the amount of VOC to be removed from the combined wastewater stream shall be at least equal to the total amount of VOC that would be removed from each individual stream so that they meet the reduction criteria mentioned above in this Subsection.

\* \* \*

[See Prior Text in B.1-B.1.c]

d. for junction boxes and vented covers the following apply:

i. if any cover or junction box cover, except for junction boxes described in Subsection B.1.d.ii of this Section, is equipped with a vent, the vent shall be equipped with either a control device or a vapor recovery system that maintains a minimum control efficiency of 90 percent VOC removal or a VOC concentration of less than or equal to 50 parts per million by volume (ppmv) (whichever is less stringent) or a closed system which prevents the flow of VOC vapors from the vent during normal operation.

ii. any junction box that is filled and emptied by gravity flow (i.e., there is no pump) or is operated with no

more than slight fluctuations in the liquid level may be vented to the atmosphere, provided it is equipped with a vent pipe at least 90 centimeters (cm) (36 inches) in length and no more than 10.2 cm (4.0 inches) in diameter;

\* \* \*

[See Prior Text in B.1.e-B.2.g]

3. A properly operated biotreatment unit and wet weather retention basin shall meet the following requirements:

a. the VOC content of the wastewater shall be reduced by 90 percent; and

b. the average concentration of suspended biomass maintained in the aeration basin of the biotreatment unit shall equal or exceed 1.0 kilogram per cubic meter (kg/m<sup>3</sup>), measured as total suspended solids, or an alternate parameter, as approved by the administrative authority, may be measured to ensure proper operation of the biotreatment unit.

4. Any wastewater component that becomes subject to this Section by exceeding the provisions of Subsection G of this Section, or becoming an affected VOC wastewater stream as defined in Subsection A of this Section, will remain subject to the requirements of this Section. This will be the case even if the component later falls below the above-mentioned provisions unless and until emissions are reduced to a level at or below the controlled emissions level existing prior to the implementation of the project by which throughput or emission rate was reduced and less than the applicable exemption levels in Subsection G of this Section, and if the following conditions are met:

a. the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or standard exemption required by LAC 33:III.501.B. If a standard exemption is available for the project, compliance with this Subsection must be maintained for 30 days after the filing of documentation of compliance with that standard exemption; or

b. if authorization by permit or standard exemption is not required for this project, the owner or operator has given the department 30 days notice of the project in writing.

\* \* \*

[See Prior Text in C-D.2.b]

c. all secondary seals shall be visually inspected semiannually to ensure compliance with Subsection B.2.e of this Section;

\* \* \*

[See Prior Text in D.3-D.3.h.iii.(a)]

(b). has certified compliance with the interim status requirements of 40 CFR part 266 subpart H; and

4. biological treatment units used to comply with Subsection B.3 of this Section shall:

a. initially demonstrate 90 percent reduction in VOCs by using methods found in Subsection E of this Section. For existing units, this shall be done as soon as practicable, but no later than May 15, 2000; and

b. measure the total suspended solids (or approved alternate parameter) in the aeration basin of the biotreatment unit weekly.

\* \* \*

[See Prior Text in E-E.6]

7. for determination of true vapor pressure - American Society for Testing and Materials Test Methods D323-89,

D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with American Petroleum Institute Publication 2517, Third Edition, 1989. In lieu of testing, vapor pressure data or Henry's Law Constants published in standard reference texts or by the U.S. EPA may be used;

8. for determination of total suspended solids - Method 160.2 (Methods for Chemical Analysis of Water and Wastes, EPA-600/4-79-020) or Method 2540D (Standard Methods for the Examination of Water and Wastewater, 18th edition, American Public Health Association);

9. for determination of biotreatment unit efficiency - Methods found in 40 CFR 63 Appendix C or 40 CFR 63.145. A stream-specific list of VOCs shall be used and is determined as follows:

a. compounds with concentrations below one ppm or below the lower detection limit may be excluded;

b. for the owner or operator that can identify at least 90 percent, by mass, of the VOCs in the wastewater stream or aqueous in-process stream, the individual VOCs that are five percent, by mass, or greater are required to be included on the list. If less than half of the total VOCs in the wastewater are represented by the compounds with a mass of five percent or greater, the owner or operator shall include those individual VOCs with the greatest mass on the stream-specific list of VOCs until 75 compounds or every compound, whichever is fewer, is included on the list, except as provided by Subsection E.9.a of this Section. The owner or operator shall document that the site-specific list of VOCs is representative of the process wastewater stream and forms the basis of a good compliance demonstration; and

c. for the owner or operator that can identify at least 50 percent, by mass, of the VOCs in the wastewater stream, the individual VOCs with the greatest mass on the stream-specific list of VOCs up to 75 compounds or every compound, whichever is fewer, are to be included on the list, except as provided by Subsection E.9.a of this Section. The owner or operator shall document that the site-specific list of VOCs is representative of the process wastewater stream and forms the basis of a good compliance demonstration; and

10. alternative test methods or minor modifications to these test methods as approved by the administrative authority\*.

\* \* \*

[See Prior Text in F-F.4]

5. all records shall be maintained at the plant for at least five years and be made available upon request to representatives of the department, U.S. Environmental Protection Agency, or any local air pollution control agency having jurisdiction in the area.

\* \* \*

[See Prior Text in G-H]

1. The characteristics shall be determined at a location between the point of determination and the point before which the wastewater stream is exposed to the atmosphere, treated for VOC removal, or mixed with another wastewater stream. For wastewater streams that, prior to November 15, 1993, were either actually being mixed or construction had commenced that would result in the wastewater streams being

mixed, this mixing shall not establish a limit on where the characteristics may be determined.

\* \* \*

[See Prior Text in H.2-1]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:936 (September 1995), amended LR 22:1212 (December 1996), LR 24:26 (January 1998), LR 25:

A public hearing will be held on February 24, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. This hearing will also be for a revision to the State Implementation Plan (SIP) to incorporate this proposed rule. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ184. Such comments must be received no later than March 3, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

Gus Von Bodungen, P.E.  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Limiting Volatile Organic Compound  
Emissions from Industrial Wastewater**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no costs or savings to state or local governmental units from this proposal.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenue collections of state or local governmental units as a result of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There will be no significant economic impact on directly affected persons or nongovernmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposal will not have any known effect on competition or employment.

Gus Von Bodungen  
Assistant Secretary  
9901#054

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Air Quality and Radiation Protection  
Air Quality Division**

Storage of Volatile Organic Compounds; Housekeeping  
(LAC 33:III.2103 and 2113)(AQ186)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.2103.A and B, and 2113.A.4 (AQ186).

The wording in LAC 33:III.2103.A and B will be changed from "true vapor pressure" to "maximum true vapor pressure." This will correspond with federal NSPS and NESHAP regulations for volatile organic compound storage vessels. The requirement in LAC 33:III.2113.A.4 that the facility submit the housekeeping plan for the reduction or prevention of volatile organic compound emissions as part of the permit application will be omitted. The plan shall be kept on site, if practical, and shall be submitted to the Air Quality Division upon request. Federal regulations do not require that a housekeeping plan for volatile organic compounds be part of the permit application. It is adequate that the plan be onsite and available to the Air Quality Division upon request. The basis and rationale for this proposed rule are to mirror federal regulations.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 21. Control of Emission of Organic Compounds**

**Subchapter A. General**

**§2103. Storage of Volatile Organic Compounds**

A. No person shall place, store, or hold in any stationary tank, reservoir, or other container of more than 250 gallons (950 liters) and up to 40,000 gallons (151,400 liters) nominal capacity any volatile organic compound, having a maximum true vapor pressure of 1.5 psia or greater at storage conditions, unless such tank, reservoir, or other container is designed and

equipped with a submerged fill pipe or a vapor loss control system, as defined in Subsection E of this Section, or is a pressure tank capable of maintaining working pressures sufficient at all times under normal operating conditions to prevent vapor or gas loss to the atmosphere.

B. No person shall place, store, or hold in any stationary tank, reservoir, or other container of more than 40,000 gallons (151,400 liters) nominal capacity any volatile organic compound having a maximum true vapor pressure of 1.5 psia or greater at storage conditions unless such tank, reservoir, or other container is a pressure tank capable of maintaining working pressures sufficient at all times under normal operating conditions to prevent vapor or gas loss to the atmosphere or is designed and equipped with a submerged fill pipe and one or more of the vapor loss control devices described in Subsections C, D, and E of this Section.

\* \* \*

[See Prior Text in C-1.5]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 15:1065 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:27 (January 1990), LR 17:360 (April 1991), LR 18:1121 (October 1992), LR 20:1376 (December 1994), LR 21:1223 (November 1995), repromulgated LR 21:1333 (December 1995), amended LR 22:453 (June 1996), LR 22:1212 (December 1996), LR 24:20 (January 1998), LR 25:

### §2113. Housekeeping

A. Best practical housekeeping and maintenance practices must be maintained at the highest possible standards to reduce the quantity of organic compounds emissions. Emission of organic compounds must be reduced wherever feasible. Good housekeeping shall include, but not be limited to, the following practices:

\* \* \*

[See Prior Text in A.1-3]

4. Each facility shall develop a written plan for housekeeping and maintenance that places emphasis on the prevention or reduction of volatile organic compound emissions from the facility. This plan shall be submitted to the Air Quality Division upon request. A copy shall be kept at the facility, if practical, or at an alternate site approved by the Air Quality Division.

\* \* \*

[See Prior Text in A.5]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:118 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:361 (April 1991), LR 25:

A public hearing will be held on February 24, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy

Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ186. Such comments must be received no later than March 3, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

Gus Von Bodungen, P.E.  
Assistant Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Storage of Volatile Organic Compounds; Housekeeping

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no costs or savings to state or local governmental units for this proposal.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenue collections of state or local governmental units as a result of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There will be no costs or economic benefits to persons or non-governmental groups as a result of this rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This proposal will have no effect on competition or employment.

Gus Von Bodungen  
Assistant Secretary  
9901#055

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Environmental Quality Office of Waste Services Hazardous Waste Division

EPA Authorization Package—RCRA VII, VIII and IX  
(LAC 33:V.Chapters 1, 3, 5, 11, 15, 17, 22, 31, 33,  
35, 37, 40, 41, 43 and 49)(HW066\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the

Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste Division regulations, LAC 33:V.Chapters 1, 3, 5, 11, 15, 17, 22, 31, 33, 35, 37, 40, 41, 43, and 49 (Log Number HW066\*).

The regulations in this proposed rule are adopted from federal regulations and promulgated with the intent of maintaining equivalency with the federal regulations located in the CFR and obtaining authorization from the EPA for RCRA programs. These federal regulations correspond to the checklists that are being used for the development of this regulatory package. This proposed rule is identical to federal regulations found in 59 FR 62896-62953; 62 FR 32974-32980, 37694-37699, 45568-45573, 64504-64509, 64636-64671; 63 FR 18504-18751, 24596-24628, 24963-24969, 28556-28753, 33782-33829, 35147-35150, 42110-42189, 46332-46334, 47409-47418, 48124-48127, 51254-51267, 56709-56735, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Investigations and Regulation Development Division at the address or phone number given below. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This proposed rule encompasses the adoption of rules required for the EPA RCRA VII, VIII, and IX authorization packages. The adoption of the federal rules will impact LAC 33:V.Chapters 1, 3, 5, 11, 15, 17, 22, 31, 33, 35, 37, 40, 41, 43, and 49, making them equivalent to the federal regulations. The basis and rationale for this rule are to make the state regulations equivalent to the federal regulations and to obtain authorization.

Some of the changes in this rule include:

1. extending the national capacity variance for spent potliners from primary aluminum production (K088);
2. excluding from RCRA condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e);
3. clarifying rules related to used oil contaminated with PCBs;
4. addressing five interrelated areas associated with Phase IV Land Disposal Restrictions (LDR);
5. adding new RCRA permit modification provision intended to make it easier for facilities to make changes to their existing RCRA permits;
6. listing of four petroleum refining process wastes as hazardous K169-K172;
7. amending LDR treatment standards for metal bearing waste which exhibit the characteristic of toxicity;
8. revising the waste treatment standards applicable to 40 waste constituents associated with the production of carbamate wastes;
9. including interim replacement standards for spent potliners from primary aluminum reduction (K088) under the LDR Program;
10. modifying the requirement for a post-closure permit, to allow EPA and the authorized States to use a variety of authorities to impose requirements on non-permitted land disposal units requiring post-closure care; and

11. amending the regulations governing closure of land-based units that have released hazardous constituents, to allow certain units to be addressed through the corrective action program.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

A public hearing will be held on February 24, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by HW066\*. Such comments must be received no later than February 24, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of HW066\*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

The full text of this Notice of Intent may be obtained from the Department of Environmental Quality, Office of Waste Services, P.O. Box 82231, Baton Rouge, LA 70884-2231, or from the Office of the State Register, 1051 North Third Street, Baton Rouge, LA 70802.

L. Hall Bohlinger  
Deputy Secretary

9901#068

## NOTICE OF INTENT

### Department of Environmental Quality Office of Waste Services Inactive and Abandoned Sites Division

Inactive and Abandoned Sites and Voluntary Cleanup  
Program (LAC 33:VI.Chapters 1-9)(IA002)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the

secretary gives notice that rulemaking procedures have been initiated to adopt the Inactive and Abandoned Sites Division regulations, LAC 33:VI.Chapters 1-9 (IA002).

This proposed rule provides the framework for the discovery, investigation, and remediation of inactive and abandoned hazardous waste or hazardous substance contaminated sites. It also provides for the limitation of liability to prospective landowners of contaminated sites. R.S. 30:2226(H)(1), R.S. 30:2271 et seq., and R.S. 30:2285 et seq., require the department to promulgate regulations for notification to the department of hazardous substance discharge and disposals, to identify locations at which a discharge or disposal of a hazardous substance has occurred in the past, to provide a mechanism to the department to insure that the costs of remedial actions are borne by those who contributed to the discharge or disposal, to allow the department to respond as quickly as possible to discharges while retaining the right to institute legal actions against those responsible for remedial costs, to provide for the opportunity for public meeting and, if requested, a public comment period, and to provide for the return of commercial and industrial sites to productive use after remediation by the limitation of liability to landowners who voluntarily clean up contaminated sites. The basis and rationale for this proposed rule are to comply with R.S. 30:2226(H)(1), R.S. 30:2271 et seq., and R.S. 30:2285 et seq.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

### **Title 33**

## **ENVIRONMENTAL QUALITY**

### **Part VI. Inactive and Abandoned Sites**

#### **Chapter 1. General Provisions and Definitions**

##### **§101. Purpose and Objectives**

A. These regulations establish uniform administrative procedures for the regulated community for the identification, investigation, and remediation of inactive and abandoned hazardous waste or hazardous substance sites in accordance with the mandates of R.S. 30:2226(H)(1), 2274(C), and 2280.

B. These regulations provide for effective and expeditious site remediation activities that protect human health and the environment.

C. These regulations establish administrative procedures for site remediation actions by potentially responsible parties (PRPs) and for recovering remedial costs incurred by the department.

D. These regulations provide the opportunity for public participation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

##### **§103. Regulatory Overview**

A. Purpose. This Section provides an overview of identification, investigation, and remediation activities for sites where hazardous substances may have been disposed of and from which such hazardous substances may be discharged. This Section is a summary only; if there are any inconsistencies

between this Section and the remainder of these regulations, the regulations shall govern.

#### **B. Site Discovery and Assessment**

1. Site Discovery Reporting. These regulations establish a reporting program as required by the Louisiana Environmental Quality Act to help identify inactive or uncontrolled sites where hazardous substances may have been disposed of or discharged. Owners, lessees, and other persons who know or discover that hazardous substances have been discharged or disposed of at such a site must report this information to the Inactive and Abandoned Sites Division of the department within the specified time. The division may also discover sites through its own investigations, referrals from other agencies, or other means.

2. Louisiana Site Remediation Information System. Sites reported are placed in the Louisiana Site Remediation Information System (LASRIS) database. This database provides the division with an accurate inventory of all potential and confirmed sites in the state. All sites in the LASRIS database may not be remediated under the authority of the division; some sites may be referred to other federal and/or state programs, and some sites may not require remediation.

3. Site Assessment. A site assessment is conducted to determine if a discharge or disposal of hazardous substances has occurred at a site. The division may conduct limited sampling to determine if hazardous substances are present and/or migrating from a site. If no hazardous substances are present, the division may make a determination that No Further Action (NFA) is necessary. A NFA determination also may be made if the site falls under the jurisdiction of other state or federal agencies or if inadequate information is available to determine if the site exists. The information collected during a site assessment may be used to determine whether or not a remedial action is necessary at the site.

C. Remedial Action. The department has responsibility for determining the need for and appropriateness of remedial actions at hazardous substance sites and responsibility for implementing or authorizing such actions at any time after site discovery. The goal of the remedial action is to achieve minimum remediation standards.

1. A Remedial Investigation (RI) shall be performed by PRPs or the department. During this investigation, site conditions and contaminants will be characterized, the extent of risk to human health and the environment will be determined, preliminary remedial goals will be developed, and data for a feasibility study will be collected.

2. A Feasibility Study (FS) shall be performed to develop appropriate remedial alternatives for achieving the preliminary goals identified in the RI report and to provide performance and cost data for use in evaluating these alternatives and selecting a remedy.

3. The department shall evaluate the RI and FS and select a remedy that will protect human health and the environment.

4. When the appropriate remedy has been selected for the site, the remedy shall be implemented. The remedy may include post-remedial management.

#### **D. Enforcement and Potentially Responsible Party**

Participation. It is the policy of the department that, where possible, the cost of actions taken in accordance with the act and these regulations shall be borne by potentially responsible parties. In furtherance of that policy, the department shall invite PRPs to participate in the investigation and remediation process. The department shall impose a limited moratorium on its own site work and enforcement action while it negotiates good faith offer(s) received from one or more PRPs. The department retains the right to fully exercise all other enforcement authorities granted it by law, including administrative and judicial orders.

E. Public Information and Participation. The department shall provide public access to site-related information and shall provide opportunities for public participation in site-related decisions in accordance with the act.

F. Voluntary Cleanup Program. The department will afford limitations of liability to eligible parties for the voluntary cleanup of contaminated sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§105. Compliance With Other Laws**

A. Nothing herein shall be construed to diminish the department's authority to address the presence at any site of any hazardous substance, hazardous waste, hazardous waste constituent, or other pollutant or contaminant under other applicable laws or regulations. The remediation and enforcement processes and procedures under these regulations and under other laws may be combined. The department may initiate a remedial action under these regulations and may, upon further analysis, determine that another law is more appropriate or vice versa.

B. If a hazardous substance, hazardous waste, hazardous waste constituent, or other pollutant or contaminant remains at a site after actions have been completed under other applicable laws or regulations, the department may apply these regulations to protect human health or the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§107. Authority**

These rules and regulations are established by the Department of Environmental Quality in accordance with R.S. 30:2001 et seq. and, in particular, 2221 et seq. and 2271 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2226(H)(1), 2274(C), and 2280 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§109. Enforcement**

Failure to comply with the provisions of these regulations or with the terms and conditions of any permit granted or order issued hereunder constitutes a violation of the act and these regulations. Such violations shall be subject to any

enforcement action including penalties in accordance with R.S. 30:2025.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(d)(6), 2203(B), 2204(B), and 2274(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§111. Construction of Rules**

A. Words in the singular also include the plural, and words in the masculine gender also include the feminine, and vice versa, as the case may require.

B. The terms *applicable*, *appropriate*, *relevant*, and similar terms implying discretion mean as determined by the department, with the burden of proof on other persons to demonstrate that the requirements are or are not necessary.

C. *Approved* or *authorized* actions mean department-conducted or ordered remedial actions or cleanups agreed to by the department in an agreed order or cooperative agreement governing remedial actions at the site.

D. *Include* means included, but not limited to.

E. *May* means the provision is optional and permissive and does not impose a requirement.

F. *Shall* means the provision is mandatory.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§113. Severability**

The provisions of these regulations are severable, and if any provision or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or their applications, which can be given effect without the invalid provision or application.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§115. Computation of Time**

A. The day of the event from which the designated period begins to run shall not be included in the computation of a period of time allowed or prescribed in these regulations.

B. The last day of the period is to be included in the computation of a period of time allowed or prescribed in these regulations, unless it is a legal holiday, in which event the period runs until the end of the next day that is not a legal holiday.

C. A legal holiday is to be included in the computation of a period of time allowed or prescribed in these regulations, except when:

1. it is expressly excluded;
2. it would otherwise be the last day of the period; or
3. the period is less than seven calendar days.

D. A half-holiday shall be considered a legal holiday.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

## §117. Definitions

A. For all purposes of these rules and regulations, the terms used in this Chapter shall have the meanings given below unless specified otherwise or unless the context or use clearly indicates otherwise.

*Abandoned Hazardous Waste Site*—a site that has been declared abandoned in accordance with R.S. 30:2225 and LAC 33:VI.Chapter 3.

*Act*—the Louisiana Environmental Quality Act, R.S. 30:2001 et seq.

*Administrative Authority*—the secretary of the Department of Environmental Quality or his authorized designee.

*Agent In Charge*—the person who represents a site at the time of sampling. This can be a representative of the owner or operator, a PRP or group of PRPs, a bankruptcy trustee, the executor of an estate, an attorney representing any of these parties, or any other person with similar responsibilities.

*Applicable Requirements*—those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental laws, state environmental laws, or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a hazardous substance site, an inactive and abandoned hazardous waste site, or a CERCLA site.

*Background Concentration*—the natural ambient concentration of a hazardous substance, including both naturally occurring concentrations and concentrations from human-made sources other than the site being evaluated.

*CERCLA*—the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq.

*Closure Plan*—a plan that identifies the steps necessary to perform the final closure of a facility. For the purposes of these regulations, a closure plan may be a remedial action work plan or removal work plan as described in LAC 33:VI.Chapter 5.

*Confirmed Site*—a site where the disposal or discharge of a hazardous substance has been confirmed by the department.

*Contaminant*—any hazardous substance that does not occur naturally or occurs at greater than natural background levels.

*Cooperative Agreement*—a legally enforceable contract between the department and a Potentially Responsible Party.

*Department*—Louisiana Department of Environmental Quality.

*Direct Hours*—time expended by employees of the department with regard to a specific site.

*Discharge*—the placing, releasing, spilling, percolating, draining, pumping, leaking, seeping, emitting, or other escaping of hazardous substances into the air, surface waters, subsurface or groundwater, soil, or sediments as the result of a prior act or omission, or the placing of hazardous substances into natural or manmade pits, drums, barrels, or similar containers under such conditions and circumstances that leaking, seeping, draining, or escaping of hazardous substances can be reasonably anticipated.

*Disposal*—the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous substances into or on any land or water such that hazardous substances may enter the environment, be emitted into the air, or be discharged into any water.

*Division*—the Inactive and Abandoned Sites Division of the Office of Waste Services of the Louisiana Department of Environmental Quality.

*Environmentally Sensitive Area*—an area needing an increased level of environmental protection, such as areas near schools and within wellhead protection areas; or an area having a terrestrial or aquatic resource, fragile natural setting, or other highly-valued environmental or cultural features such as wetlands, endangered or threatened species habitat or breeding areas, national or state parks, wildlife refuges or management areas, areas near scenic or wild rivers or streams, or national or state forests.

*EPA*—the United States Environmental Protection Agency.

*Facility*—any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or any site or area where a hazardous substance has been deposited or may have been deposited, stored, disposed of, placed, or otherwise come to be located, not including any consumer product in consumer use.

*Feasibility Study* or *FS*—a process performed interdependently with the remedial investigation (RI) process whereby data generated from the RI are used to develop alternative remedial actions. These alternative remedial actions are then evaluated in terms of criteria established by these regulations to select an appropriate remedial action.

*Financially Responsible*—able, through the use of insurance, bonds, or other assets, to take action as necessary or as ordered by the secretary in accordance with these regulations.

*Groundwater*—water in the saturated zone beneath the land surface.

*Hazardous Substance*—any gaseous, liquid, or solid material that, because of its quantity, concentration, or physical, chemical, or biological composition when released into the environment, poses a substantial present or potential hazard to human health, the environment, or property, regardless of whether it is intended for use, reuse, or is to be discarded. This term includes all hazardous waste, hazardous constituents, hazardous materials, and pollutants. The term *hazardous substance* does not include petroleum, including crude oil or any fraction thereof, that is not otherwise specifically listed or designated as a hazardous substance under this Section, and does not include natural gas, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). The term does include petroleum products that contain hazardous waste, hazardous substances, or hazardous waste constituents, except where the nature of such hazardous waste, substances, or constituents and the concentrations in which they are found in the petroleum products indicate that the contaminant is an

indigenous component of the petroleum product. Notwithstanding the foregoing, the term *hazardous substance* does not include compressed air, firecrackers, carbon paper, coal briquettes, dry ice, fish meal, flares, electric wheel chairs, motor vehicles, and tear gas devices. The following substances have been designated as hazardous by regulation:

- a. hazardous waste as defined by R.S. 30:2173 and the hazardous waste regulations, LAC 33:V.Subpart 1;
- b. pollutants listed in LAC 33:I.3931;
- c. toxic air pollutants listed in LAC 33:III.5112; and
- d. hazardous materials listed in LAC 33:V.Subpart 2.

*Hazardous Substance Site*—any place where hazardous substances have come to be located, including without limitation, any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or any other place or area where a hazardous substance has been deposited, stored, disposed of or placed, or otherwise come to be located. A hazardous substance site may extend beyond a facility's boundary.

*Hazardous Waste*—those wastes identified and designated as such by the department, consistent with applicable federal laws and regulations, and any waste or combination of wastes that, because of its quantity, concentration, physical, or chemical characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. The definition of hazardous waste does not include radioactive products and byproducts regulated by the United States Nuclear Regulatory Commission or any successor thereto.

*Hazardous Waste Constituent*—any fraction or residue of a hazardous waste.

*Hazardous Waste Site*—any place where hazardous wastes have come to be located, including without limitation, any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or any other place or area where hazardous waste has been deposited, stored, disposed of or placed, or otherwise come to be located. A hazardous waste site may extend beyond a facility's boundary.

*Inactive or Uncontrolled Site*—a site or a portion of a site that is no longer in operation.

*Institutional Control*—a measure undertaken to limit or prohibit certain activities that may interfere with the integrity of a remedial action or result in exposure to hazardous substances at a site.

*Louisiana Site Remediation Information System or LASRIS*—a list of potential and confirmed sites maintained by the Inactive and Abandoned Sites Division of the Louisiana Department of Environmental Quality.

*Leachate*—liquid, including any suspended components in the liquid, that has percolated through or drained from a hazardous substance or soil contaminated with a hazardous substance.

*Minimum Remediation Standards*—the levels of hazardous substances in media that are considered by the department to be acceptable according to risk-based standards established by the department or are derived by the department from published guidelines or those issued by other agencies.

*No Further Action or NFA*—a determination that further assessment or remedial actions by the division are not warranted at a particular site.

*Nonparticipating Party*—a person who refuses to comply with any demand by the department in accordance with LAC 33:VI, R.S. 30:2275, or with any administrative order, a person who fails to respond to any such demand or order, or a person against whom a suit has been filed by the department.

*Operation and Maintenance or O and M*—activities conducted at a site after a remedial action is completed to ensure that the action is effective and operating properly.

*Owner*—a person that owns a site, facility, or pollution source.

*Operator*—a person that is in control of or responsible for the operation of a site, facility, or pollution source.

*Oversight*—all activities performed by the department to ensure that the activities of PRPs in conducting site investigations or remedial actions relative to a site are performed in compliance with Louisiana statutes, applicable state and federal regulations, work plans approved by the department, and accepted practices and procedures. Oversight activities by the department include, but are not limited to, site inspections; the review and approval of work plans, submittals, and reports; confirmatory sampling and analysis; the evaluation and interpretation of data, plans, and reports as submitted by PRPs; and public participation activities.

*Oversight Costs*—costs incurred by the department associated with oversight.

*Participating Party*—a person who undertakes a remedial action, as approved by the department, after receiving a demand from the secretary.

*Person*—any individual, municipality, public or private corporation, partnership, firm, the United States government and any agent or subdivision thereof, or any other juridical person, which shall include, but not be limited to, trusts, joint stock companies, associations, the state of Louisiana, political subdivisions of the state of Louisiana, commissions, and interstate bodies.

*Pollutant*—those elements or compounds defined or identified as hazardous, toxic, noxious, or as hazardous, solid, or radioactive wastes under the act and regulations, or by the secretary or commission, consistent with applicable laws and regulations.

*Pollution Source*—the immediate site or location of a discharge or potential discharge, including such surrounding property necessary to secure or quarantine the area from access by the general public.

*Post-Remedial Management*—activities conducted at a site following the completion of a final remedy when remedial goals have not been met and, in the judgment of the department, cannot feasibly be met.

*Potential Site*—a site at which a discharge or disposal of a hazardous substance is suspected by the department.

*Potentially Responsible Party or PRP*—any person who is potentially liable for a remedial action or remedial costs under state or federal law, including but not limited to, site owners and operators, and the generators, transporters, and disposers of hazardous substances.

*Preliminary Remedial Action Level*—the level of hazardous substances proposed to remain in the media after the successful completion of a final remedy.

*RCRA*—Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq.

*Relevant and Appropriate Requirements*—those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that, while not applicable to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a hazardous substance site, an inactive and abandoned hazardous waste site, or a CERCLA site, address problems or situations sufficiently similar to those encountered at the hazardous substance site, inactive and abandoned hazardous substance site, or CERCLA site that their use is well suited to the particular site.

*Remedial Action*—the removal, confinement, or storage of any hazardous substance, including constructing barriers, securing the site, encapsulating in clay or other impermeable material, or otherwise containing or isolating the hazardous substance; cleaning up contamination; recycling or reusing of hazardous substances; diverting, destroying, or segregating reactive or other wastes; dredging or excavating a site; repairing or replacing leaking containers; collecting leachate and runoff; on-site treatment or incinerating of a substance; providing alternative water supplies; monitoring, testing, or analyzing; employing legal, engineering, chemical, biological, architectural, or other professional consultants or personnel; investigating, initiating, or prosecuting of administrative proceedings or lawsuits to final judgment; transporting and disposing of waste from a site; and any other action the department deems necessary to restore the site or remove the hazardous substance. The definition of *remedial action* shall include all types of action referred to as response actions in CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (*Federal Register* 55(46): 8666, March 8, 1990), and includes any action referred to as a remedy in these regulations.

*Remedial Cost*—all reasonable costs associated with site discovery, investigation, and assessment; administrative costs of the division; costs associated with public participation; oversight costs and remedial costs including, but not limited, to removing, confining, or storing any hazardous substance; constructing barriers, securing the site, and encapsulating in clay or other impermeable material; cleaning up of contamination; recycling or reusing of a hazardous substance; diverting, destroying, or segregating reactive or other wastes; dredging or excavating a site; repairing or replacing leaking containers; collecting leachate and runoff; on-site treatment or incinerating of a substance; providing alternative water

supplies; monitoring, testing, or analyzing; employing legal, engineering, chemical, biological, architectural, or other professional consultants or personnel; investigating, initiating, or prosecuting lawsuits to final judgement; transporting and disposing of waste from the site; or any other action the secretary determines necessary to restore the site or remove the hazardous substance.

*Remedial Design or RD*—plans, including construction plans and specifications, necessary for implementation of the final remedy.

*Remedial Goals*—the concentration of a hazardous substance remaining in media at a site that is protective of human health and the environment, that has been approved and accepted by the department.

*Remedial Investigation or RI*—an in-depth study designed to gather the data necessary to determine the nature and extent of contamination at a contaminated site and establish criteria for cleaning up the site.

*Remedial Investigation Work Plan*—a plan defining the process to be followed by one or more PRPs or the department to conduct an RI.

*Remedy or Final Remedy*—remedial actions that result in achieving remedial goals at a site. Remedies are distinguished from other types of actions considered remedial under the act and these regulations, including without limitation, investigation, monitoring, and enforcement activities.

*Removal Action*—a remedial action performed by the department, or by one or more PRPs as directed by the department, wherein hazardous substances, contaminated soils, and/or other contaminated media are taken from the site to a permitted facility for treatment, storage, or disposal.

*Risk*—the probability that a hazardous substance, when released into the environment, will adversely affect exposed humans, other living organisms, or the environment.

*Secretary*—the secretary of the Louisiana Department of Environmental Quality.

*Site*—a hazardous substance site or a hazardous waste site.

*Treatability Study*—the process of conducting bench scale and/or pilot scale studies to gather data to adequately evaluate the suitability of remedial technology on specific site wastes and conditions.

*Treatment*—any method, technique, or process designed to change the physical, chemical, or biological character or composition of any hazardous substance so as to neutralize such substance or render it nonhazardous, safer for transport, amenable for recovery or storage, or reduced in volume. The term includes any activity or processing designed to change the physical form or chemical composition of a hazardous substance to render it nonhazardous or significantly less hazardous.

*Wetlands*—those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

## **Chapter 2. Site Discovery and Assessment**

### **§201. Site Discovery**

A. Site Discovery Reporting Requirements. As part of a program to identify inactive or uncontrolled contaminated sites, the owner, operator, or other responsible person shall report to the Inactive and Abandoned Sites Division of the department any sites where hazardous substances have been, or may have been, disposed of or discharged. This Section sets forth the requirements for reporting such sites.

#### **B. Mandatory Reporting**

1. The following persons are required to notify the division of the discharge, emission, or disposal of any hazardous substance at an inactive or uncontrolled site:

- a. the owner, operator, or lessee of the site;
- b. any person who has directly contracted for the transportation of any hazardous substance to the site;
- c. any person who generated any hazardous substance that was discharged or disposed of at the site; or
- d. any person who discharged or disposed of any hazardous substance at a site.

2. The Inactive and Abandoned Sites Division must be notified regardless of whether the contaminants were discovered before or after the effective date of these regulations.

3. The division shall be notified in writing within 30 calendar days of the discovery of the discharge or disposal of any hazardous substance at an inactive or uncontrolled site. A written report shall be prepared and sent to Louisiana Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, Box 82178, Baton Rouge, LA 70884-2178. The date that the division was officially notified shall be determined as follows:

- a. if the report was sent by U.S. mail or other courier service (e.g., Federal Express, United Parcel Service), the notification date shall be the date of the postmark on the envelope containing the written report; or
- b. if the report was delivered by other means (e.g., hand-delivered, telefaxed), the notification date shall be the date of receipt of the report by the division.

4. Persons making written notification shall provide the following information, if known:

- a. the location of the inactive or uncontrolled site;
- b. the types of hazardous substances disposed of or discharged at the site;
- c. the amounts of such hazardous substances;
- d. other names the plant, facility, or site operated under in the past; and
- e. the history of operations at the site.

5. The following discharges or disposals are exempt from these notification requirements; however, such exemption does not imply a release from liability in future actions by the division:

- a. application of pesticides and other agricultural chemicals;
- b. use of hazardous substances for domestic purposes;

c. a discharge or disposal in accordance with a permit or license issued by the department;

d. a discharge or disposal previously reported to the department in fulfillment of a reporting requirement in these regulations or in another law or regulation;

e. a discharge or disposal from the primary production or distribution of petroleum or natural gas that would be regulated by the Louisiana Department of Natural Resources; or

f. a discharge or disposal of pesticides or agricultural chemicals that would be regulated by the Louisiana Department of Agriculture and Forestry.

C. Voluntary Reporting. In addition to the mandatory reporting by those persons listed under Subsection B of this Section, all members of the public are encouraged to report to the division any suspected discharge, disposal, or presence of any hazardous substance at any inactive or uncontrolled site. This voluntary reporting can be made in writing to the address given in Subsection B.3 of this Section or by telephone by calling (225) 765-0487.

D. Other Site Discovery Mechanisms. The division may take any other actions it determines appropriate to identify inactive or uncontrolled sites where the department suspects hazardous substances have been discharged or disposed or are currently present.

1. Potentially contaminated sites may be discovered by the division using:

a. information from or investigations by other governmental agencies or offices including, without limitation, local governmental departments, the Louisiana Department of Health and Hospitals, the United States Environmental Protection Agency, and any offices or divisions within the department;

b. information available in any permit or license application, hazardous substance or hazardous material release report, or other submittals to any state, federal, or local agency or office; or

c. bankruptcy notices.

2. Without limiting the foregoing, the division may investigate any facilities or sites that belong to certain classes of government or industrial activities or any activities conducted in environmentally sensitive areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§203. The Louisiana Site Remediation Information System (LASRIS) Database**

A. Each site reported to or discovered by the division in accordance with this Chapter will be placed in the Louisiana Site Remediation Information System (LASRIS) database. This database includes lists of both potential and confirmed sites.

B. Sites can be removed by the division from the potential or confirmed lists within the LASRIS database by means of a no further action (NFA) determination. A NFA determination is usually made after assessment or remedial actions are completed. This determination may be made if:

1. no evidence of contamination by hazardous substance(s) was observed at the site;
  2. the site does not fall under the jurisdiction of the division due to statutory, regulatory, or legal requirements;
  3. remedial actions were successfully completed at the site;
  4. any and all hazardous substances on site do not pose or present an imminent and substantial endangerment to health or the environment;
  5. the site does not exist based on current information;
- or
6. adequate information is not available to determine whether or not the site does exist.

C. A NFA designation for a site by the division is based on current information and does not preclude other applicable responses taken by another regulatory program or agency. A NFA designation may be reversed if site conditions change or if new information becomes available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§205. Site Assessment**

A. The division may conduct a site assessment at any time after a site has been placed in the LASRIS database. The order in which sites are selected for assessment shall be determined by the division, at its sole discretion, based upon available information and case assignment strategy.

B. The purpose of a site assessment is to provide sufficient information to make a determination for the disposition of the site by the division. To determine the disposition of a site the division may:

1. determine whether the site could best be handled under the authority of the United States Environmental Protection Agency or by state regulatory authority;
2. for sites under state authority, determine which state regulatory authority has jurisdiction over the site;
3. determine whether there is adequate evidence that hazardous substances have been discharged or disposed of at a site;
4. identify the hazardous substances (if present) and collect information regarding the extent and concentration of such substances;
5. identify site characteristics that could result in movement of the hazardous substances present at the site into or through the environment;
6. perform an initial evaluation of the potential risk to human health or the environment posed by the site; or
7. determine whether further investigation or action is necessary.

C. The owners, lessees, or agents in charge of sites undergoing assessment shall:

1. provide the department, when applicable, with access to the site and to any buildings or structures on the site in accordance with R.S. 30:2012; and
2. allow the department to collect environmental samples at the site. If sampling is necessary, the division will make a reasonable attempt to notify the owner, lessee, or agent

in charge in advance of the sampling date. If requested and if practical, the owner, lessee, or agent in charge will be allowed a split of any samples taken by the division. However, it is the responsibility of the owner, lessee, or agent in charge to obtain proper sample containers to receive the split samples and to provide for analysis at a laboratory. A copy of the chain of custody for the samples will be given to the owner, lessee, agent in charge, or their representative if present at the site at the time of sampling. A copy of the analytical results obtained by the division will be provided to the owner, lessee, or agent in charge.

D. If the department assesses a site and assigns it confirmed site status, costs incurred by the department for that assessment shall be recoverable as described in these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **Chapter 3. Administrative Processes**

#### **§301. Assignment of Inactive and Abandoned Hazardous Waste Sites Program**

In accordance with R.S. 30:2222 the Office of Waste Services is assigned the duties, responsibilities, and authority of administering the Inactive and Abandoned Hazardous Waste Sites Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§303. Declaration That a Site Is Abandoned**

A. Authorization. The department is authorized by chapter 10 of the act to declare a site abandoned after appropriate procedures are followed, to impose liens on such property, and to take investigation and remediation actions at such property as the department determines necessary. The department may declare a site to be abandoned upon a finding that the site:

1. has received for storage, treatment, or disposal or now contains or emits wastes that are identified, classified, or defined to be hazardous wastes in accordance with these regulations;
2. was not closed in accordance with the requirements of the act, as defined in these regulations, and other regulations adopted thereunder;
3. constitutes or may constitute a danger or potential danger to human health and the environment; and
4. has no financially responsible owner or operator who can be located by the department or has one or more financially responsible owners or operators who have failed or refused to undertake actions ordered by the administrative authority in accordance with R.S. 30:2204(A) or (B).

B. Site Owner(s) Notice and Response

1. Prior to declaring a site to be an abandoned hazardous waste site, the administrative authority shall seek to notify each person who the department reasonably believes may own a current interest in the site that:

- a. the site is to be declared abandoned;
- b. the owner is liable for the costs of the investigation and remediation of the site;
- c. the declaration of abandonment and/or use of the property for disposal of hazardous wastes may be recorded in the mortgage records of the parish where the property is located in accordance with R.S. 30:2039; and
- d. a lien may be imposed on the property in accordance with R.S. 30:2225(F)(1).

2. In accordance with R.S. 30:2225(C), notice shall be published on three consecutive occasions in the official journal of the parish where the site to be declared abandoned is located.

3. Within 10 calendar days of the publication of the last official journal notice, any owner may request a hearing regarding the declaration of abandonment. If a request for a hearing is received, the department shall hold a hearing in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

**C. Effect of a Declaration of Abandonment**

1. Upon declaration that a site is abandoned, the secretary shall notify the attorney general of such declaration and request that the attorney general take such specific legal actions as requested by the department, including:

- a. acquiring emergency easements and rights of way;
- b. conducting negotiations for property acquisition; and
- c. exercising the right of eminent domain, as provided by R.S. 30:2036, to secure the site or compel cleanup or containment of hazardous substances consistent with these and other regulations and guidelines established by the administrative authority.

2. No declaration of abandonment or other action by the department in accordance with this Section shall be construed to result in any transfer of liability to the state.

3. The administrative authority may record the declaration of abandonment in the mortgage records of the parish where the property is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

**§305. Property Liens**

**A. Liens Against Property Declared Abandoned By the Department**

1. In accordance with R.S. 30:2225(F)(1) the administrative authority, by recording the declaration of abandonment in the mortgage records of the parish where the property is located, may create a lien against the property declared to be abandoned for the lesser of:

- a. the extent of the expenditures by the state necessary to remedy the problem; or
- b. the extent of the property's appraised value after said expenditures.

2. The administrative authority may state in the declaration that the lien is limited to certain portions of the property declared to be abandoned.

3. The department may file a lien on property that has been declared abandoned prior to incurring any remedial action costs. The filing of a sworn statement of the amount expended perfects the lien retroactively to the date that the declaration of abandonment was recorded.

4. Liens on property that has been declared abandoned in accordance with this Chapter may be removed by the owner of the property as follows:

- a. the person requesting removal of a recorded lien on a site that has been declared abandoned may file a sworn statement with the department setting forth his or her ownership or other financial interest in the property;

- b. the owner may apply to the administrative authority or file an action in the district court seeking to require the clerk to erase the lien from the records. If the administrative authority or the court finds that the property owner has demonstrated, by a preponderance of the evidence, that the discharge was in no way caused by any action or negligence on the part of the owner, the administrative authority or the court may authorize the clerk to release the lien; or

- c. in the alternative the administrative authority or court may authorize the clerk to reduce the value of the lien to have the debt so recorded be reduced to the appraised value of the property.

**B. Liens Against Property Where the Department Has Taken Remedial Action Under Chapter 12 of the Act**

1. In accordance with R.S. 30:2281, to assist in his recovery of remedial costs, the administrative authority may impose a lien on any immovable property within the state of Louisiana belonging to any PRP where the department has incurred remedial costs related to said property. The administrative authority may file this lien at any time after the department incurs remedial costs for which the owner of the immovable property is potentially liable. These costs may include all remedial costs.

2. Properly recorded liens filed by the department shall have priority in rank over all other privileges, liens, encumbrances, or other security interests affecting the property. Privileges, liens, encumbrances, or other security interests affecting the property that are filed or otherwise perfected before the filing of the notice of lien of the state authorized by these regulations shall remain as prior recorded security interests only to the extent of the fair market value of the property prior to all remedial actions by the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

**Chapter 4. PRP Search, Notification, and Demand for Remediation**

**§401. PRP Search**

**A. Purpose**

1. The purpose of this Chapter is to provide a mechanism for the department to ensure that the costs of remedial actions are borne by the potentially responsible parties for each site where hazardous substances are present,

while at the same time reserving for the department the right to respond as quickly as possible to sites where hazardous substances may be present and the right to institute legal actions against those parties potentially responsible for remedial costs.

2. The department shall seek to identify potentially responsible parties (PRPs) and shall notify them that they are required to provide information to the department. The determination of who will be required to provide information shall be made at the sole discretion of the department. The department's failure to notify any particular PRP to submit information shall not preclude enforcement action by the department against that PRP or any other PRP, including actions for the recovery of remedial costs by the department, nor shall it preclude the department from taking any other action in accordance with the act, these regulations, or any other law.

B. Role of PRPs in Remedial Actions. The department may, at its sole discretion, direct PRPs to perform any site investigation, remedial investigation, feasibility study, and/or remedial action in accordance with the following:

1. the site investigation, remedial investigation, feasibility study, and/or remedial action shall be performed subject to a work plan approved by the department or performed subject to an enforceable cooperative agreement or judicial or administrative order;

2. the site investigation, remedial investigation, feasibility study, and/or remedial action shall be properly and promptly performed by the PRPs within statutory, regulatory, and administrative deadlines and in accordance with technical and procedural requirements set forth in these regulations and any other applicable laws, regulations, guidance documents, or policy statements;

3. the PRPs performing the site investigation, remedial investigation, feasibility study, and/or remedial action shall participate in any public participation activities determined by the department to be appropriate;

4. the PRPs must have and maintain a satisfactory record of compliance with statutes and requirements enforced by the department; and

5. the PRPs must reimburse the department for all remedial costs as defined in these regulations.

#### C. Preliminary PRP List

1. The department may develop an initial list of PRPs if:

a. there is an actual or potential discharge or disposal that may present an imminent and substantial endangerment to human health or the environment at a pollution source or facility; and

b. if the department finds that any of the parties:

i. generated a hazardous substance that was disposed of or discharged at the pollution source or facility;

ii. transported a hazardous substance that was disposed of or discharged at the pollution source or facility;

iii. disposed of or discharged a hazardous substance at the pollution source or facility;

iv. contracted with a person for transportation or disposal of a hazardous substance at the pollution source or facility; or

v. owns or owned or operates or operated the

pollution source or facility subsequent to the disposal of a hazardous substance.

2. Additional PRPs may be added to the preliminary list at any time if the administrative authority determines that other parties fit within the categories of persons potentially responsible for the site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### §403. Notification to Provide Information

A. The administrative authority shall send a written notification to provide information to all PRPs identified during its preliminary PRP investigation. The administrative authority may, at its discretion, send supplemental or additional notifications to any PRP identified by the administrative authority at any time during the remedial action process.

B. The notification to provide information shall require each recipient to provide all available information regarding the specified site, including without limitation:

1. the types of hazardous substances and their chemical name or makeup, if known;

2. the quantities of hazardous substances disposed of or discharged;

3. the location(s) of disposal or discharge from any known pollution source or facility;

4. dates of disposal of hazardous substances and quantities disposed of on each date;

5. names of persons providing transportation of hazardous substances; and

6. names of owners or operators of the site at the time of disposal or discharge of hazardous substances.

C. PRPs must respond to the administrative authority within 45 calendar days of receipt of the notification to provide information. The administrative authority may grant reasonable extensions to the 45-day period upon written request submitted by a PRP prior to the expiration of the initial period.

D. Any PRP who willfully fails to provide the information required by the administrative authority in accordance with this Section shall be liable for a penalty of up to \$25,000 for each day of violation in accordance with R.S. 30:2274(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### §405. Demand for Remediation to PRPs

A. Upon its determination that a discharge or disposal of a hazardous substance has occurred, or is about to occur, that may present an imminent and substantial endangerment to human health or the environment, the administrative authority shall issue a written demand for remediation to PRPs that have been identified by the administrative authority at the time the determination is made. This demand shall be made in accordance with R.S. 30:2275 and sent by certified mail.

B. Upon receipt of a demand for remediation, a PRP must respond to the administrative authority within 60 calendar days

with a good faith proposal to undertake the remedial actions approved by the administrative authority in accordance with LAC 33:VI.705.B. The administrative authority may grant reasonable extensions to the 60-day period upon written request submitted by a PRP prior to the expiration of the initial period.

C. If any PRP fails to respond to a demand for remediation sent in accordance with this Section, the administrative authority may take all actions authorized under the act.

D. If, after investigation, the administrative authority determines that it is not feasible to make demand on every known PRP for a particular site in accordance with R.S. 30:2275(D) and these regulations, then such demand may be limited to those parties determined most responsible by the administrative authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

## **Chapter 5. Site Remediation**

### **§501. Remedial Actions**

A. A remedial action is an action that reduces a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance at a site or corrects a threat to human health or the environment that may become substantially worse or cost substantially more to address if the action is delayed.

B. The department shall consider the following factors in determining the need for or the appropriateness of a remedial action consistent with Subsection A of this Section:

1. actual or potential exposure from hazardous substances to nearby human populations, animals, or the food chain;
2. actual or potential contamination of drinking water supplies or sensitive ecosystems by hazardous substances;
3. the threat of release of hazardous substances in drums, barrels, tanks, or other bulk storage containers;
4. the threat of migration of hazardous substances from the site;
5. the threat of release or migration of hazardous substances or pollutants or contaminants caused by weather conditions;
6. the threat of fire or explosion;
7. the availability of other federal or state remedial mechanisms to respond to the release; or
8. the presence of other situations or factors that may pose threats to human health or the environment.

C. Remedial actions may occur at any time after site discovery. However, if the remedial action is performed prior to or in conjunction with a state site assessment, sufficient technical information regarding the site must be available to ensure that the remedial action is warranted and appropriate.

D. Remedial actions shall be implemented until the Risk Evaluation/Corrective Action Program (RECAP) standards developed in accordance with LAC 33:I.Chapter 13 have been attained. Remedial actions shall not be used to delay or supplant other remedial actions.

E. The PRP must record a notation on the conveyance to the site property, or on some other instrument that is normally examined during a title search, that will in perpetuity notify any potential buyer of the property that the site has hazardous substances remaining at levels above department RECAP standards for residential use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2171 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§503. Minimum Remediation Standards and Risk Evaluation/Corrective Action Program Standards**

The goal of site remediation activities is to achieve the minimum remediation standards defined in the RECAP standards in accordance with LAC 33:I.Chapter 13. The standards shall be used in determining the remedial goals at the site. Remedial goals are the concentration of hazardous substances remaining in media at a site that are protective of human health and the environment and that have been approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§505. Removal Action**

A removal action is a remedial action performed by the department, or by PRPs as approved by the department, wherein hazardous substances, contaminated soils, and/or other contaminated media are taken from the site to a permitted facility for treatment, storage, or disposal.

1. Removal actions may:
  - a. achieve the RECAP standards for the site as a whole;
  - b. achieve the RECAP standards for a part of the site;or
  - c. provide a partial remedy (i.e., provide a remedy for some of the hazardous substances from all or part of the site, but not completely achieve the RECAP standards).
2. Removal actions shall be consistent with the final remedy (defined in LAC 33:VI.511) if the final remedy is known.
3. The success of the removal action shall be verified by the department, or PRPs as directed by the department, using confirmation sampling.
4. If the removal action results in achievement of the RECAP standards established by the department, the department may determine that no further action is required. The department may then issue a decision document stating that the removal action is the final remedy and no further action is required.

5. If the removal action does not result in the achievement of the RECAP standards, as established by the department for the site as a whole, additional remedial actions (LAC 33:VI.507-515) shall be taken by the department, or by PRPs as directed by the department.

B. A removal action work plan shall be prepared by the department, or by PRPs as directed by the department. Any plan prepared by PRPs shall be reviewed and approved by the

department prior to the commencement of the removal action. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' plan. The minimum requirements for a removal action work plan include:

1. a description of existing site conditions and a summary of all available data relevant to the removal action at the site;

2. a description of the intended removal action activities;

3. a sampling and analysis plan; and

4. a site-specific health and safety plan.

C. Opportunities for public participation may be provided by the department, or PRPs as directed by the department, in accordance with LAC 33:VI.Chapter 8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### §507. Remedial Investigation

A. A Remedial Investigation (RI) includes:

1. the determination of the nature and extent of potential threats to human health and the environment through data collection and site characterization;

2. the performance of a risk assessment; and

3. the development of preliminary RECAP standards.

B. A RI shall be performed at all sites where a removal action is not performed or does not achieve the RECAP standards.

C. To complete a RI the department, or PRPs as directed by the department, shall provide the following:

1. Remedial Investigation Work Plan. A remedial investigation work plan shall be prepared by the department, or by PRPs as directed by the department. Any plan prepared by PRPs shall be reviewed and approved by the department. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' plan. The remedial investigation work plan will conform with the site investigation requirements of RECAP and, at a minimum, include the following:

a. identification of all data needs following the review of existing site assessment reports and other existing data;

b. identification of all potential exposure pathways/receptors and associated data needs;

c. identification of any existing or potential natural resource damages and associated data needs and notification of the appropriate state and federal trustees;

d. identification of all potentially applicable, relevant, and appropriate state and federal requirements and associated data needs;

e. identification of preliminary RECAP standards to be used in the evaluation of potentially applicable remedial alternatives and associated data needs;

f. a site-specific health and safety plan including necessary training, procedures, and requirements;

g. a site-specific sampling and analysis plan that includes the number, type, and location of all samples to be taken and the types of analyses to be conducted during required

site characterization activities; and

h. a quality assurance/quality control plan that identifies the quality assurance objectives and the quality control procedures necessary to obtain data of sufficient quality for the RI.

2. Field Investigations. In order to characterize the nature and extent of any threats to human health and the environment posed by the site, the department, or PRPs as directed by the department, shall conduct field investigations. These field investigations shall provide data sufficient to support the development of preliminary RECAP standards and the evaluation of remedial alternatives. Investigations may be conducted in multiple phases in order to focus sampling efforts and increase the efficiency of the investigation. Field investigations shall address the following, as applicable to the site:

a. physical characteristics of the site, including important surface features, soils, geology, hydrogeology, ecology, and meteorology;

b. characteristics or classifications of the air, surface water, and groundwater at the site;

c. characteristics of all contaminated media at the site;

d. characteristics of each contaminant at the site, including concentration, species (when applicable), toxicity, susceptibility to bioaccumulation, persistence, and mobility;

e. extent of the contamination at the site;

f. actual and potential exposure pathways through environmental media;

g. actual and potential receptors;

h. natural resources and sensitive populations or habitats that may be injured; and

i. other factors that impact the remedial alternatives investigated.

3. Establishment of Preliminary RECAP Standards. Preliminary RECAP standards shall be established in accordance with LAC 33:I.Chapter 13.

4. Remedial Investigation Report. Following the completion of the RI, a remedial investigation report shall be prepared by the department, or by PRPs as directed by the department. Any RI report prepared by PRPs shall be reviewed and approved by the department. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' report. At a minimum, this report shall include:

a. a scope and description of the investigation;

b. a site background summary;

c. sampling and analysis results;

d. identification of the sources of release;

e. identification of the horizontal and vertical extent of contamination;

f. a risk assessment;

g. proposed preliminary RECAP standards; and

h. conclusions and recommendations for further action.

D. The department shall provide, or shall direct PRPs to provide, opportunities for public participation and comment as required in LAC 33:VI.Chapter 8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§509. Corrective Action Study**

A. A Corrective Action Study (CAS) includes:

1. the development of appropriate remedial alternatives for achieving the preliminary RECAP standards identified in the RI report; and

2. the provision of performance and cost data for use in evaluating these alternatives and selecting a remedy.

B. The CAS shall be used by the department or by PRPs to demonstrate that one or more remedial alternatives will meet the preliminary RECAP standards. Alternatively, PRPs may demonstrate in the CAS that compliance with the preliminary RECAP standards is technically infeasible and may propose alternative preliminary RECAP standards. The development and evaluation of alternatives in the CAS shall reflect the scope and complexity of the site problems being addressed.

C. Corrective Action Study Activities

1. Identification of RECAP Standards. Following approval of the RI report and the identification of the preliminary RECAP standards, the department, or PRPs as directed by the department, shall identify potential remedial alternatives for the site. Remedial alternatives identified and examined in the CAS should include a no further action (NFA) alternative and at least one treatment-based alternative. 2

Screening of Remedial Alternatives. Potential remedial alternatives shall be screened based upon the following criteria:

a. Effectiveness. The primary criterion for screening the alternatives is whether or not an alternative can effectively achieve the preliminary RECAP standards determined for the site as follows:

i. alternatives that have been proven capable of achieving the preliminary RECAP standard for contaminants and environmental media of concern shall be retained for further evaluation;

ii. alternatives that have been proven incapable of achieving the preliminary RECAP standards shall be eliminated from further consideration unless it is successfully demonstrated to the department that no known remedial alternative can achieve the preliminary RECAP standard; and

iii. alternatives that are unproven and are innovative technologies or approaches may be retained for further evaluation when it is successfully demonstrated to the department through treatability studies that the preliminary RECAP standards will be achieved;

b. Implementability. This criterion focuses on the technical and administrative ability of the department, or PRPs as directed by the department, to implement an alternative as follows:

i. technical implementability is determined by the availability of full-scale equipment, demonstrated processes, and remediation services to the department or the PRPs; and

ii. administrative implementability is determined by the ability of the department or PRPs to obtain all required permits or waivers;

c. Infeasible Alternatives. Alternatives that may ultimately prove to be technically or administratively infeasible to implement shall be eliminated from further consideration;

d. Relative Cost. Alternatives that offer technical applicability and implementability similar to that of other alternatives but at grossly higher construction, operation, and maintenance costs shall be identified and eliminated if lower-cost alternatives are available that can meet the preliminary RECAP standards; and

e. Regulatory Requirements. Remedial actions must meet all state and federal Applicable, Relevant, and Appropriate Requirements (ARARs) for the location or for specific remedies. Alternatives that fail to meet all ARARs shall be eliminated.

3. Performance of Treatability Studies. Treatability studies may be conducted to:

a. generate the critical performance and cost data needed to evaluate and select remedial alternatives;

b. provide quantitative data for use in determining whether an alternative can achieve the preliminary RECAP standards; or

c. determine whether additional more detailed treatability testing is required.

4. Evaluation of the Alternatives. Analysis of the remedial alternatives shall consist of a detailed assessment of the individual alternatives using the evaluation criteria described below, followed by a comparison of the relative performance of each alternative. Individual alternatives shall be evaluated using the following criteria:

a. ability of the alternative to achieve the preliminary RECAP standards and other applicable requirements;

b. long-term effectiveness and permanence of the alternative, considering the magnitude of residual risk after implementation of the remedy, adequacy and reliability of engineering or institutional controls, and degree to which treatment is irreversible;

c. reduction of toxicity, mobility, or volume through treatment, considering:

i. the treatment process used and materials treated;

ii. the amount of hazardous materials destroyed or treated;

iii. the degree of expected reductions in toxicity, mobility, and volume; and

iv. the type and quantity of residuals remaining after treatment;

d. short-term effectiveness, considering:

i. the protection of community and workers during implementation of the alternative;

ii. the environmental impacts during implementation of the alternative; and

iii. the time required until preliminary RECAP standards are achieved;

- e. implementability, considering:
  - i. the ability to construct and operate the technology at the site;
  - ii. the reliability of the technology;
  - iii. the cost of undertaking additional remedial actions (if necessary);
  - iv. the ability to monitor effectiveness of the remedy;
  - v. the ability to obtain approvals from other agencies;
  - vi. coordination with other agencies;
  - vii. the availability of off-site treatment, storage, and disposal services, and capacity for disposal of residuals;
  - viii. the availability of necessary equipment and specialists; and
  - ix. the availability of prospective technologies;
- f. cost effectiveness, considering capital costs and operating and maintenance costs; and
- g. compliance with all state and federal ARARs.

5. Evaluation of the Impact of Remedial Alternatives on Natural Resources. If natural resources will be or may be injured by the release of hazardous substances, steps shall be taken by the department, or by PRPs as directed by the department, to ensure that state and federal trustees of the affected natural resources are notified. The department shall seek to coordinate necessary assessments, evaluations, investigations, and plans with such state and federal trustees. The department shall give priority to remedies that mitigate actual or potential threats to natural resources or restore those natural resources that have been injured.

6. Preparation of a Corrective Action Study Report. Following the completion of the corrective action study activities in this Subsection, a CAS report describing the results of all required CAS activities shall be prepared by the department, or by PRPs as directed by the department. Any CAS report prepared by PRPs shall be reviewed and approved by the department prior to the approval of the CAS. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### §511. Selection of the Final Remedy

- A. The final remedy shall:
- 1. protect human health and the environment;
  - 2. comply with the RECAP standards determined in accordance with these regulations; and
  - 3. comply with federal and state ARARs. An alternative remedy that does not meet an ARAR under federal environmental or state environmental or facility siting laws may be selected under the following circumstances:
    - a. the alternative is an interim measure and will become part of a total remedial action that will attain the ARAR;
    - b. compliance with the requirement will result in greater risk to human health and the environment than other alternatives;

- c. compliance with the requirement is technically impracticable from an engineering perspective;
- d. the alternative will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, or limitation through use of another method or approach; or
- e. for a remedial action funded by the department only, an alternative that attains the ARAR will not provide a balance between the need for protection of human health and the environment at the site and the availability of monies to other sites that may present a threat to human health and the environment.

B. To select the final remedy for remedial actions other than removal actions, the department shall:

- 1. assess the remedial alternatives described in the CAS report, considering:
  - a. the goals, objectives, and requirements of the act and these regulations;
  - b. state and federal ARARs;
  - c. the current and expected uses of the site property;
  - d. the effectiveness of the remedy in significantly reducing the volume, toxicity, or mobility of the hazardous substances at the site;
  - e. the effectiveness of the remedy in permanently reducing the volume, toxicity, or mobility of the hazardous substances at the site (permanent remedies shall be preferred);
  - f. the reliability of the remedial alternatives, and the potential for future remedial costs if an alternative does not achieve the desired RECAP standard;
  - g. the ability to monitor remedial performance;
  - h. the cost effectiveness of a final remedy (cost effectiveness shall be considered only in choosing between alternatives that each adequately meet the requirements in this Section); and
  - i. other factors determined appropriate by the department;
- 2. finalize the RECAP standards;
- 3. prepare a decision document stating the final remedy that includes:
  - a. the final RECAP standards for the site and a brief discussion of how these were determined;
  - b. a brief description of each remedial alternative evaluated;
  - c. the results of the evaluation of the alternatives and identification of the alternative selected by the department;
  - d. a brief discussion of the strengths and weaknesses of the selected alternative relative to the site, contaminated media, and contaminants;
  - e. a discussion of the results of the risk assessment if the preferred alternative would result in hazardous substances, contaminants, or pollutants remaining at the site in concentrations above the RECAP standards; and
  - f. an explanation of any waivers of state or federal ARARs;
- 4. present the preferred alternative to the public in a draft decision document in accordance with the public participation procedures described in LAC 33:VI.Chapter 8; and

5. consider the comments and information submitted during a public comment period if held in accordance with LAC 33:VI.Chapter 8 and revise the draft decision document as necessary.

C. The administrative authority shall issue a final decision document based upon Subsection B.1-4 of this Section.

D. If a removal action was performed at the site and the RECAP standards established by the department were achieved, then the removal action may be considered a final remedy. The department may determine that no further action is required and issue a decision document stating that the removal action is the final remedy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§513. Design and Implementation of the Final Remedy**

A. Remedial Design. The department, or PRPs as directed by the department, shall develop a Remedial Design (RD) that will successfully implement the remedy defined by the decision document approved by the administrative authority for that site. Any remedial design prepared by PRPs shall be reviewed and approved by the department. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' design.

B. Remedial Project Plan. The remedial project plan shall include all tasks, specifications, and subplans necessary for the implementation of the remedial design, including construction and operation of the final remedy. The remedial project plan shall be prepared by the department, or by PRPs as directed by the department. Any plan prepared by PRPs shall be reviewed and approved by the department prior to implementation of the final remedy. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' plan. The minimum requirements for the remedial project plan include:

1. a work plan, including:
  - a. a general description of the work to be performed and a summary of the engineering design criteria;
  - b. maps showing the general location of the site and the existing conditions of the facility;
  - c. a copy of any required permits and approvals;
  - d. detailed plans and procedural material specifications necessary for construction of the remedy;
  - e. specific quality control tests to be performed to document the construction, including:
    - i. specifications for the testing or reference to specific testing methods;
    - ii. frequency of testing;
    - iii. acceptable results; and
    - iv. other documentation methods as required at the discretion of the department;
  - f. start-up procedures and criteria to demonstrate the remedy is prepared for routine operation; and
  - g. additional information to address state, federal, and local ARARs;
2. a sampling and analysis plan;
3. a quality assurance/quality control plan;

4. a site-specific health and safety plan;
5. a project implementation schedule; and
6. other information required at the discretion of the department. The department may allow information to be incorporated by reference to avoid unnecessary duplication.

C. Design or Plan Modifications. Any and all changes in the remedial design or remedial project plan shall be approved by the department before implementation.

D. Implementation of the Remedy. All implementation activities shall be:

1. performed in compliance with the remedial design and the remedial project plan, as approved by the department; and
2. consistent with intent of the act and these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§515. Revisions to the Final Remedy**

A. Information may become available during the remedial design process or during the implementation of the final remedy that requires a modification to the final remedy for the site.

B. If such information is discovered by a PRP, the PRP shall:

1. notify the department that a modification is necessary;
2. submit the relevant information to the department with an explanation of the proposed change; and
3. where appropriate and at the department's discretion, meet with the department to discuss the submitted information and the proposed modification to the final remedy.

C. If the department determines that a modification is necessary (whether proposed by a PRP or by the department) and if the modification changes the final remedy in the final decision document, then the administrative authority shall:

1. issue a revised final remedy decision document;
2. direct corresponding revision of the remedial design and remedial project plan; and
3. comply with the public notification requirements set forth in LAC 33:VI. Chapter 8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§517. Inspections by the Department**

A. The department reserves the right to perform site and/or construction inspections at all sites where remedial work is being performed.

B. The department may require that any and all activities be halted at a site if the activity:

1. is not consistent with approved plans;
  2. is not in compliance with accepted construction procedures;
  3. is not in compliance with environmental regulations;
- or
4. endangers human health or the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2012 et seq., 2171 et seq., 2221 et seq., and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§519. Completion of the Final Remedy**

A. Following completion of the implementation of the remedial design, the success of the remedial action in achieving the remedial goals shall be assessed by the department.

B. Departmental assessment may result in:

1. No Further Action (NFA). Remedial actions that result in the successful achievement of the remedial goals established by the department shall be judged completed, and the site shall be assigned NFA status; or

2. Post-Remedial Management. Sites not eligible for NFA status shall be placed under post-remedial management as described in LAC 33:VI.521. These sites shall include:

a. sites where leaving hazardous substances at the site with post-remedial management was part of the approved remedy; or

b. sites where the approved remedy was unsuccessful, the remedial goals approved by the department were not met and, in the judgement of the department, cannot feasibly be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§521. Post-Remedial Management**

A. General

1. Sites shall be placed under post-remedial management performed by the department, or by PRPs as directed by the department, where:

a. hazardous substances remain on-site at levels above remedial goals; or

b. post-remedial management is part of the approved remedy.

2. Management activities shall include the continued operation of long term remedies, the maintenance of the site and its facilities, and continued monitoring of site conditions.

B. Operation and Maintenance. An operation and maintenance (O and M) plan shall be prepared for all sites assigned post-remedial management because hazardous substances remain at the site at levels above remedial goals or where O and M is part of the approved remedy. O and M plans prepared by PRPs shall be submitted to the department for review and approval. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' plan. O and M plans prepared by PRPs for a site where leaving hazardous substances at the site is part of the approved and completed remedy shall be submitted to the department for review and approval at least six months prior to completion of the remedy. Each O and M plan shall include, but not be limited to:

1. the name, telephone number, and address of the person responsible for the operation and maintenance of the site;

2. a description of all operation and maintenance tasks and specifications;

3. all design and construction plans;

4. any applicable equipment diagrams, specifications, and manufacturer's guidelines;

5. an operation and maintenance schedule;

6. a list of spare parts available at the site for repairs;

7. a site-specific health and safety plan; and

8. other information as requested by the department.

C. Monitoring. If required by the department, a monitoring plan shall be developed by the department, or by PRPs as directed by the department. A monitoring plan prepared by PRPs shall be submitted to the department for review and approval. The department shall provide comments to the PRPs and require revisions as necessary before approving the PRPs' plan. This plan shall include a description of provisions for monitoring of site conditions during the post-remedial management period to prevent further endangerment to human health and the environment, including:

1. the location of monitoring points;

2. the environmental media to be monitored;

3. the hazardous substances to be monitored and the basis for their selection;

4. a monitoring schedule;

5. monitoring methodologies to be used (including sample collection procedures and laboratory methodology);

6. provisions for quality assurance and quality control;

7. data presentation and evaluation methods;

8. a contingency plan to address ineffective monitoring; and

9. provisions for reporting to the department on a semiannual basis including, at a minimum:

a. the findings from the previous six months;

b. an explanation of any anomalous or unexpected results;

c. an explanation of any results that are not in compliance with the RECAP standards; and

d. proposals for corrective action.

D. Periodic Review By the Department. The department shall review the status of sites assigned to post-remedial management a minimum of every five years to determine whether or not any hazardous substances remaining at the site are endangering human health and the environment. During this review, the department shall periodically assess, through site visits, review of O and M reporting, and review of monitoring reports, the adequacy of various aspects of the post-remedial management activities at the site. These aspects include, but are not limited to:

1. compliance with the O and M schedule;

2. determination of whether or not the implementation of the O and M plan is proceeding as designed to maintain the intended level of protection to human health and the environment;

3. compliance with monitoring data reporting requirements;

4. completion of any necessary repairs;

5. compliance with and effectiveness of institutional controls (if any were implemented as part of the remedy);

6. determination of whether or not any newly enacted laws or regulations promulgated are applicable to the site and require additional action; and

7. post-remedial management costs incurred.

E. Discontinuation of Post-Remedial Management. The department may discontinue post-remedial management activities based upon its periodic review, as described in Subsection D of this Section. Discontinuation of post-remedial management will result in a determination of no further action by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§523. Oversight of Potentially Responsible Parties by the Department**

A. All remedial actions and post-remedial management activities performed by PRPs shall be subject to oversight by the department or the department's authorized representative. Nothing in this Section shall affect the responsibility or liability of any PRP.

B. The department's objective in oversight of PRP-conducted remedial actions is to verify that the work complies with:

1. the governing legal document or settlement agreement (e.g., cooperative agreement or judicial or administrative order);

2. any statement of work, project plan (work plan, sampling and analysis plan, quality assurance/quality control plan, health and safety plan), or other plan developed and approved for the remedial action;

3. generally accepted scientific and engineering methods; and

4. all federal, state, and local ARARs, as appropriate.

C. The level of oversight provided by the department shall be:

1. determined by the department;

2. site-specific; and

3. dependent on the nature and complexity of the remedial action.

D. All costs incurred by the department in providing oversight of remedial actions performed by PRPs shall be fully recoverable by the department in accordance with LAC 33:VI. Chapter 6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

## **Chapter 6. Cost Recovery**

### **§601. Purpose and Scope**

A. This Chapter shall govern the recovery of remedial costs incurred on or after the effective date of these regulations. Nothing herein shall prevent the department from recovering remedial costs incurred prior to the effective date of these regulations.

B. As stated in R.S. 30:2271, all remedial costs incurred shall be borne by PRPs wherever possible.

C. The department may elect not to pursue cost recovery where, based on information gathered by the department, it reasonably has determined that:

1. no PRPs can be identified;

2. no identified PRP is financially viable;

3. the PRP identified is a parish, state or political subdivision of the state, or federal entity;

4. the department may be unable to meet its burden of proof on one or more elements of its case;

5. the time and expense of the department's effort to recover costs exceed the amount to be recovered;

6. a legal action, settlement, or agreement between the PRP(s) and the department or state precludes past, present, and/or future cost recovery; or

7. the department meets unforeseen legal, administrative, or programmatic constraints that preclude further attempts at recovering costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§603. Calculation and Invoicing of Remedial Costs**

A. Remedial costs shall be calculated to reflect the actual cost of remedial actions to the department, including but not limited to, all costs of investigation, remediation, enforcement, oversight, and cost recovery. Such costs shall be calculated as the sum of:

1. direct personnel costs—the total of the number of direct hours expended by all department employees with regard to a specific site multiplied by the employee's hourly rate at the time the expense was incurred;

2. fringe benefits—the total of all personnel fringe benefits based on the categories and their respective rates for hours expended by each employee at the site;

3. department's direct costs—the total of direct costs to the department, including without limitation, personnel, operating services, equipment, supplies, travel, sampling, and contractual charges; and

4. payments made by the department to its contractors—the total of all payments made by the department to its contractors, grantees, or agents for planning, management, direction, or performance of remedial and oversight actions for a specific site.

B. The department will invoice PRPs according to the cost recovery provisions defined in a legal agreement and/or R.S. 30:2271 et seq. and/or as determined necessary by the department.

C. The department may establish by rule an indirect rate and may recover indirect costs, such as office space, file storage space, utilities, insurance, equipment usage, administrative overhead, operating services, and other overhead costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§605. Documentation of Remedial Costs**

A. The department shall document all remedial costs. This documentation shall be the basis for recovery of remedial costs.

B. The department shall compile and retain supporting documentation for costs for which it may seek reimbursement. This documentation may include, but is not limited to:

1. time and attendance records;
2. records of the cost of site-specific travel including, but not limited to, travel reimbursement forms, requisitions, invoices, or memoranda;
3. invoices from the purchase of supplies, services, or equipment for a specific site;
4. contractor invoices;
5. cooperative agreements or other legal action documents;
6. records of site-specific direct costs, such as laboratory sampling and analytical costs, equipment rentals, copying service, or other services; and
7. records reflecting the costs of bringing an enforcement action, including without limitation, staff time, equipment use, hearing records, expert assistance, and such other items as the department determines to be a cost of the action. Contractor quarterly reports or pre-award documents that may contain confidential information concerning contractor overhead and labor rates shall not be included.

C. Unless required for a longer period of time, documents shall be retained at the offices of the department for a period of at least three years from completion of the remedial action or until the time that the department determines that no further action is required at a site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§607. Determination of Remedial Costs; Demand to PRPs**

A. Timing. The department may at any time prepare a written determination of the cost of partial or complete remediation of a site. The department may revise its determination in writing at any time thereafter.

B. Demand to PRPs. The department may seek to recover its remedial costs using any of the means described in the act and these regulations.

#### **C. Treble Liability**

1. PRPs who fail to comply with demand letters, administrative orders, or court orders concerning the site without sufficient cause are potentially liable for three times the total remedial costs.

2. In the event the court finds any PRP liable for three times the value of the remedial costs allocated by the court to that PRP, this finding shall not be used to mitigate the allocated share of other PRPs also found liable for the site.

#### **D. Review of Cost Documentation**

1. The department will provide an opportunity for review of the cost documentation for a particular site to any person who has received a demand for payment of remedial costs from the department. The department may accept written factual information to support any dispute concerning the

calculation of the demand. The department may take such further action as it determines necessary regarding review.

2. Neither the department's cost determination nor any administrative review in accordance with Subsection D.1 of this Section shall be considered to be an adjudication in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

## **Chapter 7. Settlement and Negotiations**

### **§701. Purpose**

A. The goal of the department in all settlement negotiations with PRPs is to obtain complete site remedial actions by the PRPs and/or to collect 100 percent of the department's costs for site remediation.

B. The liability of PRPs to the department is absolute and presumed in solido.

C. Where the department finds that PRP involvement will further the department's goals, the department may enter into negotiations with the PRPs, subject to the limitations and procedures set forth in this Section. With the concurrence of the attorney general where required by law, the department may settle or resolve, as deemed advantageous to the state, any suits, disputes, or claims for any penalty under the act or these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§703. Cooperative Agreements**

A. Cooperative agreements may be used to reflect agreements by PRPs to conduct any remedial action at a site or to reimburse the department for remedial costs. This does not preclude the use of enforcement action, if necessary.

B. The department may enter into cooperative agreements with any person for the purpose of conducting any remedial action measures in accordance with these regulations.

C. The department may enter into a cooperative agreement with one or more PRPs as a result of negotiations.

D. Each cooperative agreement shall address the following provisions:

1. a statement of jurisdiction;
2. a description of parties bound;
3. a description of work to be performed or of costs to be paid and a schedule for such work or payment;
4. oversight by the department;
5. access;
6. reporting requirements;
7. project deliverables, including a schedule for submission and revisions;
8. project coordinators;
9. a requirement for certification upon completion of work;
10. reimbursement of remedial costs, if applicable;
11. force majeure;

12. retention of records;
13. notices and submissions;
14. effective date; and
15. appendices.

E. Each cooperative agreement may contain the following provisions:

1. indemnification of the department and insurance;
2. stipulated penalties;
3. covenants not to sue;
4. quality assurance/quality control and sampling and data analysis;
5. assurance of financial ability to complete work;
6. emergency response procedures;
7. dispute resolution procedures;
8. information to be provided to the department; and
9. public participation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§705. Negotiations**

A. Purpose. The department's goal in negotiating PRP participation in remedial actions and reimbursement of the costs incurred by the department is to obtain complete remediation by the PRPs and/or to collect 100 percent of the department's remedial costs.

B. Good Faith Proposal

1. Upon receipt of the demand letter in accordance with LAC 33:VI.405.B or at any other time, PRPs who wish to pay for the department to conduct a remedial action or who wish to conduct the action themselves shall respond in writing within 60 days or such other time that the department may specify and make a good faith offer concerning the implementation of the remedial action or payment of the department's costs. The department will negotiate with PRPs only if the initial proposal from the PRPs constitutes a substantial portion of the remedial action or a good faith proposal. The department has sole discretion to determine whether to start negotiations after receipt of a proposal from PRPs.

2. In making its decision, the department shall weigh factors it deems appropriate, including the potential resource demands for conducting the negotiations against the likelihood of getting 100 percent of the department's costs or a complete remedial action.

3. The department may elect to negotiate for less than 100 percent when it deems that the circumstances of the case warrant such action.

4. When there are five or more PRPs interested in negotiating, the department may request that the PRPs select a representative to negotiate with the department.

C. Negotiations After Issuance of Administrative Orders. PRPs who have received unilateral administrative orders may negotiate with the department for dismissal of the administrative order upon execution of a cooperative agreement unless an emergency situation has been declared or the department determines that a stay of remedial actions or of enforcement will be detrimental to the public health, welfare,

or the environment. The department has sole discretion in determining whether to enter into negotiations after issuance of a unilateral administrative order. Except by written determination of the department, no request for or conduct of negotiations in accordance with this Section shall serve to stay or modify the terms of any such unilateral administrative order.

D. Notice to Fewer Than All PRPs. Nothing in these regulations shall be construed to require the department to send a notification and a demand for information in accordance with R.S. 30:2274 or a demand for remedial action or costs in accordance with R.S. 30:2275 when the department determines that it is not feasible to make a demand on every PRP. PRPs who do not receive such notifications or demands remain subject to later notification letters, demand letters in accordance with LAC 33:VI.403 and 405, unilateral administrative orders, or other enforcement actions. PRPs who did not receive a notification or a demand but who are interested in responding with a good faith offer may participate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§707. Contribution Protection**

A. Any responsible party that has resolved its liability to the department in an administrative or judicially approved settlement shall be considered to be a participating party within the meaning of R.S. 30:2276(G) and as defined in these regulations and shall not be liable for claims by any other parties regarding matters addressed in the settlement.

B. Settlement between the department and any party does not discharge any other PRPs unless the terms of the settlement documents so provide, but such settlement shall reduce the potential in solido liability of the others by the amount of the settlement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§709. De Minimis Settlements**

A. If practicable and in the public interest, as determined by the administrative authority, the department may settle with any PRP whose waste contribution to a site is minimal in terms of amount and toxicity in comparison to other hazardous substances or hazardous wastes or hazardous waste constituents at the site.

B. The department may consider a de minimis settlement offer when it has sufficient information about all identified PRPs, including financial information, to determine each PRP's waste contribution to the site and information about the costs of remedial action at the site.

C. The goal of negotiations with de minimis parties is to achieve quick and standardized agreements through the expenditure of minimal enforcement resources and transaction costs. Where feasible the department may require de minimis parties to negotiate collectively at multi-party sites.

D. To attain the goal set forth in Subsection C of this Section, the de minimis settlement should ordinarily involve a cash payment to the department by the settling party or parties, rather than a commitment to perform work. Where a remedial action is being conducted in whole or in part by PRPs, it may be appropriate for settling de minimis parties to deposit the amount paid in accordance with the de minimis settlement into a site-specific trust fund to be administered by a third party trustee and used for remedial action for that site.

E. In evaluating a de minimis settlement offer the department may consider any factors and information it deems appropriate, including:

1. amount of waste contributed;
2. toxicity of potential settling party's waste;
3. costs of litigation;
4. public interest considerations;
5. value to the department of a present sum certain; and
6. nature and strength of the case against nonsettling

PRPs.

F. De minimis agreements shall be entered into as cooperative agreements or judicial orders, in accordance with these regulations. Any de minimis settlement shall contain, in addition to other standard provisions, the following terms:

1. requirement that the settling party be responsible for a percentage of site remedial costs in excess of that amount the department and the party agree may be allocated to the settling party for purposes of settlement (premium payment);
2. reservation of natural resource damage recovery, except where expressly waived by the natural resource trustee(s); and
3. reopener clauses allowing the department to pursue the settling de minimis parties if information not known to the department at the time of settlement indicates that the volume and toxicity criteria for settlement is no longer satisfied with respect to the settling party or parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§711. Mixed Funding**

A. PRP Lead Site. The department may provide funds from the Hazardous Waste Site Cleanup Fund, as defined in R.S. 30:2205, to a responsible party for the purpose of assisting with the cost of remediation incurred by the responsible party. This assistance may be provided through cooperative agreements in accordance with R.S. 30:2032.

B. Department Lead Site. The department may accept funds from PRPs for the purpose of assisting with the payment of remedial costs incurred by the department, regardless of when those costs are incurred. This assistance may be provided solely in the form of cash contributions, which may go to either the Hazardous Waste Site Cleanup Fund or to the Environmental Trust Fund, as defined in R.S. 30:2015, at the department's discretion.

C. Eligibility and Mixed Funding Criteria. The administrative authority shall make a determination whether a proposal is eligible for funding. The only circumstances under which mixed funding can be approved by the department are

when the funding will achieve both:

1. substantially more expeditious or enhanced remediation than would otherwise occur; and
2. the prevention or mitigation of unfair economic hardship. In considering this criterion the department shall consider the extent to which mixed funding will either prevent or mitigate unfair economic hardship faced by the PRP, if the remedial action were to be implemented without public funding, or achieve greater fairness with respect to the payment of remedial costs between the PRP entering into a cooperative agreement with the department and any nonsettling PRPs.

D. Funding Decision. The department may hold informal discussions on mixed funding with PRPs for a particular site. If a responsible party is found to be eligible for mixed funding, the administrative authority shall make a determination regarding the amount of funding to be provided, if any. This shall be determined at the discretion of the administrative authority and is not subject to review. A determination of eligibility is not a funding commitment. Actual funding will depend on the availability of funds.

E. Remedial Costs. The department may recover the amount of public funding spent on remedial actions from the nonparticipating PRPs. For purposes of such cost recovery action, the amount in mixed funding attributed to the site shall be considered as remedial costs paid by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§713. Availability of Facilitation/Mediation**

The department, at its sole discretion, will entertain PRP requests to participate in alternative dispute resolution procedures such as mediation, nonbinding arbitration, and facilitation at the PRP's expense. The department must agree upon the selection of any facilitator or mediator engaged to conduct the dispute resolution procedure.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

## **Chapter 8. Public Information and Participation**

### **§801. Public Information**

A. The department shall ensure that site-related information is available to the public by providing access to all public records and information obtained by the department unless such information has been designated confidential by the secretary, as authorized in R.S. 30:2030 and/or LAC 33:I.501.

B. As appropriate, the department, or PRPs as directed by the department, shall actively disseminate information to the public concerning site remedial activities. All information dissemination activities undertaken by PRPs shall be performed under the direction and approval of the department. Methods for disseminating site information include, but are not limited to, the methods listed in Subsection B.1-3 of this Section.

1. Information Repositories. The department may establish and maintain an information repository in a public location near the site. If a repository is established, PRPs shall provide the department with copies of all necessary documents.

2. Fact Sheets or Newsletters. The department, or PRPs as directed by the department, may draft and distribute fact sheets or newsletters concerning site activities. If directed by the department, PRPs shall provide for the drafting, printing, and distribution of the fact sheets or newsletters.

3. Informational Open Houses. The department may hold informational open houses to discuss site activities with interested citizens. If directed by the department, the PRPs shall assume all costs of these informational meetings and shall provide materials as directed by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§803. Public Participation**

A. In order to ensure that the public has an opportunity to comment on site-related decisions, the department, or PRPs as directed by the department, shall provide opportunities for public participation as listed in this Section. All public participation activities undertaken by PRPs shall be performed under the direction and approval of the department.

1. For sites that have been declared abandoned in accordance with R.S. 30:2225, an opportunity for public comment shall be provided for any site closure plan in which the department proposes to treat, store, or dispose of hazardous wastes at the site.

a. Notice of the public comment period and any public hearing on the closure plan shall be placed in the newspaper of general circulation in the parish where the site is located. The contents and format of the notice shall follow guidelines established by the department.

b. Prior to the commencement of the public comment period, the department, or PRPs as directed by the department, shall place a copy of the site closure plan in a public location near the site.

2. For sites where the secretary has made a demand for remedial action in accordance with R.S. 30:2275, the department shall, upon written request, provide an opportunity for a public meeting prior to approval of a site remedial investigation plan and selection of a remedy. Additionally, if a written request is received, the department shall hold a public comment period of not more than 60 calendar days duration prior to approval of a site remedial investigation plan and selection of a site remedy. Written requests shall be mailed to Louisiana Department of Environmental Quality, Inactive and Abandoned Sites Division, Box 82178, Baton Rouge, LA 70884-2178, ATTENTION: Administrator.

a. Notice of the public comment period and public meeting should be placed in the newspaper of general circulation in the parish where the site is located. The contents and format of the notice shall follow guidelines established by the department.

b. Prior to any public comment period, the department, or PRPs as directed by the department, shall place a copy of the document being reviewed in a public location near the site.

B. The department shall, as appropriate, provide or direct PRPs to provide additional opportunities for public participation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

## **Chapter 9. Voluntary Cleanup Program**

### **§901. Authority**

These regulations are established by the Department of Environmental Quality in accordance with R.S. 30:2001 et seq. and, in particular, R.S. 30:2285 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§903. Purpose**

The purpose of these regulations is to protect, conserve, and replenish the environment by affording limitations of liability to eligible parties for the voluntary cleanup of contaminated sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

### **§905. Definitions**

*Responsible Person or Responsible Landowner*—a person who is responsible under the provisions of this Chapter for the discharge or disposal or threatened discharge or disposal of a hazardous substance or hazardous waste on or in immovable property. However, an owner of immovable property or a person who has an interest therein is not a responsible person for the purposes of this Chapter only, unless that person:

1. was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance or hazardous waste on or in the property or knowingly permitted others to engage in such a business on the property;

2. knowingly permitted any person to make regular use of the property for disposal of waste;

3. knowingly permitted any person to use the property for disposal of a hazardous substance;

4. knew or reasonably should have known that a hazardous substance was located in or on the property at the time right, title, or interest in the property was first acquired by the person and engaged in conduct associating that person with the discharge or disposal; or

5. took action that significantly contributed to the discharge or disposal after that person knew or reasonably should have known that a hazardous substance was located in or on the property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§907. Eligibility for Voluntary Cleanup Program**

Parties not eligible for liability limitation under the voluntary cleanup regulations are sites where ranking packages have been submitted to the U.S. Environmental Protection Agency headquarters proposing their inclusion on the National Priorities List (NPL) or sites listed on the NPL.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§909. Remedial Investigation Review and Oversight**

A. All voluntary cleanup plans submitted for approval of the secretary shall include an approved remedial investigation report that describes the methods and results of an investigation of the discharges or disposals and threatened discharges or disposals at the identified area of immovable property.

B. The secretary may, upon request, assist a person in determining whether immovable property has been the site of a discharge or disposal or a threatened discharge or disposal of a hazardous substance or hazardous waste. The secretary may also assist in, or supervise, the development and implementation of reasonable and necessary remedial actions. Assistance may include review of department records and files and review and approval of a requestor's investigation plans and reports and remedial action plans and implementation. The review of department records and files are not construed to mean that the secretary will develop or implement any remedial action or investigation plan and report or remedial action plan.

C. Persons requesting review and oversight of remedial investigation plans shall submit an application to the department. The application form is available from the Inactive and Abandoned Sites Division. The person requesting review and oversight of a remedial investigation shall pay the department's cost, as determined by the secretary, of providing assistance.

D. The remedial investigation shall be conducted in accordance with LAC 33:VI.507.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§911. Voluntary Remedial Action Plan Review and Oversight**

A. Voluntary remedial action plans shall be submitted to the secretary for those sites for which the owner or potential purchaser wishes to receive limitation of future liability and a certificate of completion. The secretary may provide assistance to review voluntary remedial action plans or supervise remedial action implementation in accordance with R.S. 30:2289.1.

B. Persons requesting review and oversight of voluntary

remedial action plans shall submit an application to the department. The application form is available from the Inactive and Abandoned Sites Division. The person requesting review and oversight of a voluntary remedial action shall pay the department's cost, as determined by the secretary, of providing assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§913. Partial Remedial Actions**

A. The secretary may approve a voluntary remedial action plan submitted under these regulations that does not require the removal or remedy of all discharges or disposals and threatened discharges or disposals of hazardous substances and hazardous wastes at an identified area of immovable property, if the secretary determines that all of the following criteria have been met:

1. if reuse or development of the property is proposed, the voluntary remedial action plan provides for all remedial actions necessary to allow for the proposed reuse or development of the immovable property in a manner that does not pose a significant threat to public health, safety, and welfare and the environment;

2. the remedial actions and the activities associated with any reuse or development proposed for the property will not aggravate or contribute to discharges or disposals or threatened discharges or disposals that are not required to be removed or remedied under the voluntary remedial action plan and will not interfere with or substantially increase the cost of future remedial actions to address the remaining discharges or disposals or threatened discharges or disposals; and

3. the owner of the property agrees to cooperate with the secretary, or other persons acting at the direction of the secretary, in taking remedial actions necessary to investigate or address remaining discharges or disposals or threatened discharges or disposals and to avoid any action that interferes with the remedial actions.

B. An owner shall be required to agree to any or all of the following terms necessary to carry out remedial actions to address remaining discharges or disposals or threatened discharges or disposals:

1. to provide access to the property to the secretary and the secretary's authorized representatives;

2. to allow the secretary, or persons acting at the direction of the secretary, to undertake activities at the property, including placement of borings, wells, equipment, and structures on the property; and

3. to grant rights-of-way, servitudes, or other interests in the property to the department for any of the purposes provided in Subsection B.1 and 2 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§915. Land Use Restrictions**

A. Owners of land subject to a partial remediation where discharges or disposals or threatened discharges or disposals

of hazardous substances or hazardous wastes remain on the property shall impose use restrictions on the future use of the property, as may be determined by the secretary to be necessary to prevent a significant threat to public health, safety, and welfare and to the environment. No land may be partially remediated under this Section unless such restrictions are imposed and recorded as follows:

1. the secretary shall determine the use restrictions and may conduct public hearings for the purpose of determining the reasonableness and appropriateness of such restrictions in the parish where the land is located. The use restrictions, or notice thereof, shall be recorded with the clerk of court in the official records of each parish where the land is located. The use restrictions may not be modified or canceled or removed from the official records unless so authorized by the secretary; and

2. the secretary shall not authorize such modification, cancellation, or removal unless the land is further remediated to remove or remedy the remaining discharges or disposals and the remaining threatened discharges or disposals of hazardous substances and wastes in accordance with the requirements of the secretary. In order to determine whether to authorize such modification, cancellation, or removal, the secretary shall conduct at least one public hearing in the parish in which the property is located at least 30 days, and not more than 60 days, prior to making the determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

#### **§917. Certificate of Completion**

A. Any remedial action taken under an approved voluntary remedial action plan is not completed until the secretary certifies completion in writing. If remedial action reports acceptable to the secretary submitted under this Chapter demonstrate that no further action is required to protect human health and the environment, the secretary shall certify such facts by issuing the person a final certificate of completion. If the applicant is satisfactorily maintaining the engineering controls, remediation systems, or post-closure care, or if non-permanent institutional controls are utilized pursuant to an agreement, the secretary shall certify such facts by issuing the applicant a conditional certificate of completion.

B. For partial remedial actions the certificate of completion shall pertain only to the partial response action area and shall include a legal description of that area.

C. For sites approved prior to the effective date of these regulations, the secretary shall issue a certificate of completion only if currently appropriate remedial actions for all contaminants within the area described in the certificate of completion have been completed.

D. The secretary may allow the applicant to file the copy of the certificate of completion into the site deed record on the secretary's behalf if the applicant provides subsequent documentation of the filing. The applicant must file the copy of the certificate of completion prior to the sale or transfer of the property, but not later than 60 days after the date of issuance of

the certificate of completion.

E. The secretary may allow the applicant to file a statement in the deed records stating that the certificate of completion supersedes prior deed certification requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Inactive and Abandoned Sites Division, LR 25:

A public hearing will be held on February 24, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by IA002. Such comments must be received no later than March 3, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

L. Hall Bohlinger  
Deputy Secretary

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Inactive and Abandoned Sites and Voluntary Cleanup Program**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Existing staff and facilities will be used to implement Chapters 1 through 8 of this rule. Additional costs for the implementation of Chapter 9 are estimated to be \$255,626 per year.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
State revenue collection will be increased an estimated \$256,626 by the collection of fees from participating parties for review and oversight of remedial investigations and remedial actions under the voluntary cleanup program. An increase in local revenue collections will be realized by the addition of idled properties being placed back on the tax rolls and an increase in employment.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Implementation of this rule should result in a net economic benefit to affected persons or non-governmental groups by

bringing underutilized properties back into commerce with the limitation of liability for future remedial costs.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is expected that an increase in needed environmental consulting and contracting will correspond with the expected increase in the number of voluntary cleanup program sites addressed under this rule.

L. Hall Bohlinger  
Deputy Secretary  
9901#060

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Office of the Governor Commission on Law Enforcement and Administration of Criminal Justice

Peace Officers—Standards and Training  
(LAC 22:III.Chapter 47)

In accordance with the provision of R.S. 40:2401 et seq., the Peace Officer Standards and Training Act, and R.S 49:950 et seq., the Administrative Procedure Act, the Commission on Law Enforcement and Administration of Criminal Justice hereby gives notice of its intent to promulgate rules and regulations relative to the training of peace officers.

#### Title 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part III. Commission on Law Enforcement and Administration of Criminal Justice

#### Subpart 4. Peace Officers

#### Chapter 47. Standards and Training

#### §4701. Definitions

A. The following terms, as used in these regulations, shall have the following meanings:

*Law Enforcement Training Course*—a basic or advanced course of study certified by the Council on Peace Officer Standards and Training (POST), for the purpose of educating and training persons in the skills and techniques of a peace officer in the discharge of his duties.

*Peace Officer*—any full-time employee of the state, a municipality, a sheriff or other public agency, whose permanent duties actually include the making of arrests, the performing of searches and seizures, or the execution of criminal warrants, and is responsible for the prevention or detection of crime or for the enforcement of the penal, traffic, highway laws of this state, but not including any elected or appointed head of a law enforcement department. Peace officer also includes those sheriff's deputies whose duties include the care, custody and control of inmates.

*Training Center*—any POST accredited school, academy, institute, or any place of learning whatsoever, which offers or conducts a law enforcement or corrections training course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:

#### §4703. Basic Certification

A. All full-time peace officers, as defined in R.S. 40:2402, shall complete a basic training course as prescribed and certified by the Council on Peace Officers Standards and Training (POST Council). Reserve or part-time officers or military police officers stationed in Louisiana may be eligible for certification if they successfully complete a basic training course prescribed for full-time peace officers and pass the POST statewide examination. There are three levels of POST certification:

1. Level 1 Certification for Basic Law Enforcement Peace Officers

a. The student will complete a training course with a minimum of 320 hours for full certification. Level 1 certification requires that the student meet the POST requirements for firearm certification.

2. Level 2 Certification for Basic Correctional Peace Officer

a. The student will complete a training course with a minimum of 218 hours and is limited to those peace officers whose duties are the care, custody, and control of inmates. The training course consists of the ACA core curriculum plus a sufficient number of hours to obtain POST certification. POST Firearm certification for Level 2 students is optional.

3. Level 3 Certification for Jailer Training Officers

a. The student will complete a training course with a minimum of 90 hours and is limited to those correctional officers whose duties are the care, custody, and control of inmates. This course consists of the ACA core correctional officer curriculum. POST Firearm certification for Level 3 students is not required.

B. Students shall adhere to all standards, rules and regulations established by the accredited training center. Certification will not be awarded to students who are physically unable to complete every aspect of the basic training course. A student may not be certified for successful completion if:

1. the student's excused absences exceed 10 percent of the total hours of instruction;

2. the student fails to achieve a passing grade of 70 percent or higher on each block of instruction;

3. the student fails to achieve a grade of 80 percent or higher on the requirements for firearm certification;

4. all aspects of the training course have not been successfully completed.

C. Students shall be required to pass the POST statewide written examination for peace officers as prescribed by state law. Seventy percent shall constitute a passing score. In the event a student fails the examination, one retest may be administered if the agency head so desires. The student must wait a minimum of fifteen working days before the retest can be administered with a maximum time limit of thirty working days. If said student fails the retest, the student shall be required to complete another basic training course and satisfy all POST requirements to obtain certification. Oral testing on the statewide examination is prohibited.

D. To maintain firearm certification, an officer shall be required to requalify yearly on the POST firearms qualification course, demonstrating at least 80 percent proficiency. Scores shall be computed and verified by a firearms instructor certified by the POST Council. If the period between qualifying exceeds 18 months for any reason, the officer will be required to complete a basic firearms course at an accredited training center, unless the officer had been in the military for more than three years and was exercising his veteran reemployment rights.

E. When a basic student injures themselves during a basic training course, the student must have the nature of the injury immediately documented. Should the injury later prevent the student from being tested on a basic training course requirement, then upon written request of the agency head, the student will have eight weeks from the time of the medical release to take and pass those course requirements, unless the time between the academy graduation and medical release exceeds a one year period. In that case, the student will be required to complete another basic training course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:

#### **§4705. Registration of Officers**

A. Registration may be granted in lieu of certification to those officers who were hired prior to January 1, 1986, who did not attend POST-certified basic training.

B. Officers hired prior to January 1, 1986, may be eligible to receive POST registration by completing the following requirements.

1. A letter from the agency head shall be submitted to the POST Council indicating a desire to have the officer registered with the state;

2. Documentation shall accompany the letter regarding initial employment date and continuous law enforcement service on a form prescribed by POST.

3. POST registration shall not apply to reserve/auxiliary officers.

4. Registration is granted in lieu of certification to full-time officers, and shall not apply to reserve or part time officers. POST certification is only granted to those individuals who successfully meet all requirements of POST:

- a. completion of a basic training course, examination, etc.;

- b. registration simply means that the full-time officer is *registered* with POST and he/she is not required to comply with the mandates for basic POST certification;

- c. they are exempt from basic training course (i.e., *grandfathered in*), but must comply with all other POST mandates to maintain grandfathership;

- d. grandfathership/registration shall become invalid if officer experiences a three-year break in full-time law enforcement service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:

#### **§4707. Out-of-State Transfers**

A. Out-of-state-transfers shall be eligible for certification by meeting the following criteria at an accredited training center:

1. present a currently valid out-of-state POST certificate. Training applicants transferring from out-of-state who are not certified will not be recognized by POST;

2. must be a full-time employed peace officer and not a part-time, reserve, or auxiliary officer;

3. successfully complete "Legal Aspects" Section of the *Louisiana Law Enforcement Basic Training Manual*, (40 minimum hours);

4. successfully complete "Firearms" Section of the *Louisiana Law Enforcement Training Manual*, (40 minimum hours);

5. pass the statewide examination for peace officers with a minimum score of 70 percent; if failed, the student must complete a full basic training course.

B. Out-of-state transfers with less than a 320 hour basic training course are required to complete an entire POST basic training course.

C. Out-of-state transfers who have attended "pre-service" training in another state shall be required to meet the same POST requirements as basic recruit officers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:

#### **§4709. Interruption of Full-Time Service**

A. Any peace officer hired prior to January 1, 1986 who interrupts his full-time law enforcement service for a period in excess of three years and is thereafter rehired, shall be required to meet the basic training requirements for new peace officers. However, if such officer has already completed a POST certified basic training course, he shall be required to complete the Legal Aspects and firearms portion of the course, qualify on the POST firearms qualification course, and pass the statewide examination, all at an accredited training center. Proof of basic training will be required. If the student fails the statewide examination, the student must complete a full basic training course.

B. Any officer hired after January, 1986 who interrupts his full-time law enforcement service for a period in excess of three years and is thereafter rehired, shall be required to meet the requirements outlined in §4709.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:

#### **§4715. Instructor Qualifications**

A. Full-time academy instructors must meet the following qualifications:

1. shall possess two years college and/or practical experience in law enforcement or corrections;

2. each two years experience may be substituted for one year of college. Any combination of above will be acceptable;

3. shall have completed the instructor development course conducted by the Federal Bureau of Investigation. If the

course is not available within Louisiana within one year, POST may waive this requirement until such time as a course becomes available.

4. shall have completed two years practical experience in law enforcement or corrections field.

B. Specialized instructors for defensive tactics, firearms, and corrections shall meet the following qualifications:

1. shall be a full-time employee of a public criminal justice agency with at least two years full-time continuous, practical law enforcement experience, and pertain to firearms, defensive tactics, and corrections instructors;

2. shall have recommendation of an academy director or agency head;

3. shall successfully complete all aspects of specialized instructor school as presented by POST and the Federal Bureau of Investigation (FBI) (except for Defensive Tactics Instructors);

4. shall attend POST-sponsored instructor retrainers as required by POST.

C. Special guest instructors shall meet the following qualifications:

1. shall have advanced knowledge or expertise in the area in which they are instructing;

2. shall not certify students in defensive tactics, firearms or corrections fields.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:

#### **§4721. Firearms Qualification**

##### **A. Pre-Academy Firearms Training**

1. Any person employed or commissioned as a peace officer, or reserve or part-time peace officer must successfully complete a pre-academy firearms training program as prescribed by the council within 30 days from the date of initial employment if that person will be performing the duties of a peace officer before attending a basic law enforcement training course.

##### **B. Pre-Academy and Basic Firearms Qualification**

1. Students shall qualify with an approved service weapon on the POST-approved Firearms Qualification Course and all scoring will be computed and recorded by a firearms instructor certified by the POST Council.

a. During a pre-academy training program, a student who fails may be given retests. Any person who fails shall be prohibited from exercising the authority of a peace officer until they have successfully completed the course. However, such persons shall not be prohibited from performing administrative duties.

b. During a basic law enforcement training course, it shall be left to the discretion of the training center director whether a student who fails to qualify on the POST Qualification Course will be given retests. However, if retests are given, the scores will be averaged in accordance with POST regulations and must be completed before the academy class graduates.

2. On a twenty-five (25) yard range equipped with POST-approved P-1 targets, the student, given a pistol or revolver, holster and 240 rounds of ammunition, will fire the POST firearms qualification at least four (4) times. Scores must be averaged and the student must:

a. fire all courses in the required stage time;

b. use the correct body position for each course of fire;

c. fire the entire course using double action only, except in the case of single action only semi-automatic pistols;

d. fire no more than the specified number of rounds per stage;

e. fire each course at a distance no appreciably less nor greater than that specified.

f. achieve an average score of not less than 96 out of a possible 120 which is 80 percent or above. The score shall be computed as follows: Score 1 + Score 2 + Score 3 + Score 4 = Qualifying Score (divided by) the number of attempts.

g. all stages of fire must be fired in the manner specified.

3. All targets will be graded and final scores computed by a POST-certified Firearms Instructor.

##### **C. Annual Requalification**

1. The POST firearms requirements for annual requalification are the same as for basic qualification with one exception. If the POST Fire-arms qualification course must be fired more than once, the scores shall be averaged as designated in basic firearms qualification.

2. All targets will be graded and final scores computed by a POST-certified Firearms Instructor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:343 (August 1987), amended LR 25:

#### **§4723. POST Firearms Qualification Course**

##### **A. Stage One**

1. At the 25-yard line, the student will fire six rounds strong hand barricade standing, six rounds, strong hand, barricade kneeling, and six rounds, strong hand or off hand barricade, standing, offside, barricade in ninety seconds. Movement to the barricade is required to a maximum distance of 5 yards.

##### **B. Stage Two**

1. At the seven-yard line, the student will fire 12 rounds, standing in 25 seconds, with mandatory reloading for all weapons after first six rounds; 6 rounds kneeling in 10 seconds, and 6 rounds off-hand only in 8 seconds.

##### **C. Stage Three**

1. At the four-yard line, student will fire three rounds, one-or two-hands, instinct shooting position from holster, in three seconds, and three rounds, one-or two hands, instinct shooting position from ready-gun position, in three seconds. This is repeated once.

##### **D. Stage Four**

1. At the two-yard line, one or two hands close quarter shooting position from holster, the student will fire two

rounds in two seconds. This is repeated twice. During the shooting, the student is required to move one step to the rear.

E. The entire POST firearms qualification course is fired with a hot line, meaning the officer shall automatically reload as soon as his weapon is empty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:

#### **§4731. Revocation of Certification**

A. All law enforcement agencies and correctional agencies and institutions within the State of Louisiana shall immediately report the conviction of any POST certified full-time, reserve, or part-time peace officer to the council.

B. Any offense which results in the individual peace officer's restriction of his/her constitutional right to bear arms shall be grounds for immediate revocation. The revocation of any certification is effective immediately when the council receives a certified copy of a court's judgment and issues notice to the peace officer. Notice of the revocation shall be sent via certified US mail to the peace officer and the officer's employing agency.

C. All criminal convictions involving a peace officer shall be directed to the council's attention for potential revocation hearings. The council shall review each criminal conviction and conduct hearings on each reported conviction.

D. The chairman of the council shall designate a revocation committee to review potential peace officer revocations and report any findings to the next council meeting. The revocation committee shall consist of:

1. a police chief;
2. a sheriff;
3. a district attorney;
4. the Superintendent of State Police; and
5. the Attorney General or his designee.

E. Any hearings conducted by the council or the revocation committee shall be conducted according to guidelines established by the council.

F. Any peace officer whose certification has been revoked by the Council may file an appeal under the provisions of the Administrative Procedures Act under R.S. 49:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, amended LR 25:

#### **§4741. Training Centers**

A. Each training center will be subject to a comprehensive performance review by the council once every four years.

B. Each training center will be monitored at least annually to ensure compliance with the council's training standards. C

Each training center shall transmit to the POST Council a schedule of POST certifiable training being conducted. The

training schedule shall be submitted no later than the Friday preceding the date on which the training is to be conducted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, amended LR 25:

Michael A. Ranatza  
Executive Director

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Peace Officers—Training and Standards**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is estimated that implementation of the proposed rules will increase annual expenditures by approximately \$260,000. The La. Commission on Law Enforcement was appropriated \$260,000 in FY99 to implement Act 108 relative to requirements for standards and training of peace officers. The proposed rules increase the number of basic training hours for peace officers, add procedures for pre-academy training and provide for performance monitoring of accredited training centers. Approximately \$127,000 will be used to acquire two additional FTE to monitor the training centers and one additional FTE to coordinate curriculum development relative to the number of basic training hours. This amount includes related equipment and operating expenses. The agency estimates that \$133,000 will be used to reimburse local law enforcement agencies for updated firearms training.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is estimated that implementation of the proposed rules will have little of no effect on revenue collections of state or local governmental units.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed amendments will raise the minimum standards for peace officer training in Louisiana. There are no estimated costs or economic benefits to directly affected persons or non-governmental groups.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no effect on competition as a result of these proposed amendments. These rules may affect employment of peace officers in the public sector. These peace officers will now be required to receive additional training hours in order to be certified. The minimum training hours for basic peace officers will be raised to 320 hours. The minimum number of hours for POST certified correctional officers will be reduced to 230 hours. There will be no effect on peace officers (private security officers) in the private sector.

Michael A. Ranatza  
Executive Director  
9901#47

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor Office of Elderly Affairs

FY 1998-99 State Plan on Aging  
(LAC 4:VII.1307)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to amend LAC 4:VII.1307, the FY 1998-1999 Louisiana State Plan on Aging. This rule change is in accordance with the *Code of Federal Regulation*, 45 CFR 1321.19 "Amendments to the State Plan." The purpose of this rule change is to change LAC 4:VII.1307.E.1.g, Special Provisions, from "The state Long Term Care Ombudsman Program will be supplemented with Title III-B funds and disbursement of funds to local entities will follow the same method of allocation used since FY 1990." to "The state Long Term Care Ombudsman Program will disburse program funds in an equitable manner", becoming effective April 20, 1999.

The FY 1998-1999 Louisiana State Plan on Aging was adopted and published by reference in the September 20, 1997 issue of the Louisiana Register, Volume 23, Number 9. The full text of the State Plan may be obtained by contacting the GOEA at the address below or the Office of the State Register at 1051 North Third Street, Room 512, Baton Rouge, LA 70802, telephone (504) 342-5015.

#### Title 4

#### ADMINISTRATION

#### PART VII. Governor's Office

#### Chapter 13. State Plan on Aging

#### §1307. Special Provision

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

g. The state Long Term Care Ombudsman Program will disburse program funds in an equitable manner.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:932(8)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 19:1307 (October 1993), repealed and promulgated LR23:1146 (September 1997), amended LR 25:

Inquires concerning the proposed amendment to the State Plan on Aging may be directed in writing to the Governor's Office of Elderly Affairs, Attention Karen J. Ryder, P.O. Box 80374, Baton Rouge, LA 70898-0374.

The Governor's Office of Elderly Affairs will conduct a public hearing to receive comments on the proposed amendment to the State Plan on Thursday February 25, 1999, at the Office of Elderly Affairs Conference Room, 412 North Fourth Street, Baton Rouge, LA 70802, at 1:30 p.m. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. The GOEA will receive written comments until 4:00 p.m. February 25, 1999.

Paul F. "Pete" Arceneaux, Jr.  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: FY 1998 -99 State Plan on Aging

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will not result in additional costs or savings to state or local governmental units. The proposed rule updates language in the Governor's Office of Elderly Affairs State Plan relative to the Long Term Care Ombudsman Program. The State Plan currently contains language pertaining to the distribution of funds to local entities utilizing 1990 methodology which is no longer consistent with current policies of the agency. The proposed rule replaces this language with updated language specifying that the Long Term Care Ombudsman Program will disburse funds in an equitable manner which is consistent with current practice. The proposed rule will not affect the total amount of funds to be disbursed by the Long Term Care Ombudsman Program.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will not affect revenue collections of local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will not result in additional cost or economic benefits to directly affected persons or non-governmental groups.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is not expected to affect competition and employment.

Paul F. "Pete" Arceneaux  
Executive Director  
9901#032

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor Office of Elderly Affairs

FY 1998-99 State Plan on Aging  
(LAC 4:VII.1317)

In accordance with Louisiana Revised Statutes 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to amend LAC 4:VII.1317, the FY 1998-1999 Louisiana State Plan on Aging, effective April 20, 1999. This rule change is in accordance with the Code of Federal Regulation, 45 CFR 1321.19 "Amendments to the State Plan," and 45 CFR 1321.35 "Withdrawal of area agency designation" (Vol. 53. Number 169 pages 33769 and 33770). The purposes of this rule change are: (1) to reverse the designation of the Governor's Office of Elderly Affairs as the Area Agency on Aging for the Planning and Service Area (PSA) of Calcasieu parish; (2) to designate Calcasieu parish as the Planning and Service Area; and (3) to designate Calcasieu Council on Aging, Inc. as the Area Agency on Aging for the Calcasieu PSA.

The FY 1998-1999 Louisiana State Plan on Aging was adopted and published by reference in the September 20, 1997 issue of the *Louisiana Register*, Volume 23, Number 9. The full text of the State Plan may be obtained by contacting the GOEA at the address below or the Office of the State Register at 1051 North Third Street, Room 512, Baton Rouge, LA 70802, telephone (504) 342-5015.

**Title 4**

**ADMINISTRATION**

**Part VII. Governor's Office**

**Chapter 13. State Plan on Aging**

**§1317. Area Agencies on Aging**

Area Agency on Aging	Planning and Service Area (Parishes Served)
Allen COA	Allen
Beauregard COA	Beauregard
Bienville COA	Bienville
Bossier COA	Bossier
Caddo COA	Caddo
CAJUN Area Agency on Aging (AAA)	Acadia, Evangeline, Iberia, Lafayette, St. Landry, St. Martin, St. Mary, Vermilion
Calcasieu COA	Calcasieu
Caldwell COA	Caldwell
Cameron COA	Cameron
Capital Area Agency on Aging (AAA)	Ascension, Assumption, East Feliciana, Iberville, Pointe Coupee, St. Helena, Tangipahoa, Washington, West Baton Rouge, West Feliciana
CENLA Area Agency on Aging (AAA)	Avoyelles, Catahoula, Concordia, Grant, LaSalle, Rapides, Winn
Claiborne COA	Claiborne
DeSota COA	DeSota
East Baton Rouge COA	East Baton Rouge
Jefferson COA	Jefferson
Jefferson Davis COA	Jefferson Davis
Lafourche COA	Lafourche
Lincoln COA	Lincoln
Livingston COA	Livingston
Madison COA	Madison
Morehouse COA	Morehouse
Natchitoches COA	Natchitoches
North Delta (AAA)	East Carroll, Franklin, Jackson, Richland, Tensas, Union
New Orleans COA	Orleans
Ouachita COA	Ouachita
Plaquemines COA	Plaquemines
Red River COA	Red River

Sabine COA	Sabine
St. Bernard COA	St. Bernard
St. Charles COA	St. Charles
St. James AAA	St. James
St. John COA	St. John
St. Tammany COA	St. Tammany
Terrebonne COA	Terrebonne
Vernon COA	Vernon
Webster COA	Webster
West Carroll COA	West Carroll

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:932(8).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 19:1317 (October 1993), repealed and promulgated LR 23:1146 (September 1997), amended LR 24:1110 (June 1998), LR 25:

Inquires concerning the proposed amendment to the State Plan on Aging may be directed in writing to the Governor's Office of Elderly Affairs, Attn: Ms. Karen J. Ryder, Box 80374, Baton Rouge, LA 70898-0374.

The Governor's Office of Elderly Affairs will conduct a public hearing to receive comments on the proposed amendment to the State Plan on Friday February 26, 1999, at the Office of Elderly Affairs Conference Room, 412 North Fourth Street, Baton Rouge, LA 70802, at 1:30 p.m.. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. The GOEA will receive written comments until 4 p.m. February 26, 1999.

Paul F. "Pete" Arceneaux, Jr.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: State Plan on Aging**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will not result in additional costs or savings to state or local governmental units. The proposed rule redesignates the Governor's Office of Elderly Affairs as the Area Agency on Aging (AAA) for Calcasieu parish and designates the Calcasieu Council on Aging, Inc. as the AAA for Calcasieu parish PSA.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will not affect revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The AAA's receive Title III funds to cover the additional cost to develop and administer an area plan on aging. The Calcasieu Council on Aging has been contracting with the Governor's Office of Elderly Affairs to administer services in Calcasieu parish PSA. The Calcasieu Council on Aging will directly receive these administrative funds as the designated AAA.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is not expected to affect competition and employment. The Calcasieu Council on Aging will Administer the Title III funds through the area plan.

Paul F. "Pete" Arceneaux     Robert E. Hosse  
Executive Director             General Government Section Director  
9901#051                         Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Office of Elderly Affairs**

GOEA Policy Manual Revision  
(LAC 4:VII.1171-1199, 1215-1221,  
1225, 1227, 1233 and 1237)

In accordance with Revised Statutes 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to amend the GOEA Policy Manual effective April 20, 1999. The purpose of the proposed rule change is to update existing policies. The policies are used by decision makers responsible for administering programs and services for the elderly. This rule complies with the Older Americans Act (Public Law 89-73), 45 CFR Part 1321, and LA R.S. 40:2802, 46:932 and 46:1608.

**Preamble**

Forty-five CFR 1231.11 requires GOEA to develop and enforce policies governing all aspects of programs operated under the Older Americans Act, whether operated directly by the State agency or under contract. LA R.S. 46:932 (8) requires GOEA to adopt and promulgate rules and regulations deemed necessary to implement the provisions of Chapter 7 of the Louisiana Revised Statutes. The policies, rules and regulations must be developed in consultation with other appropriate parties in the State. Accordingly, GOEA convened an ad hoc task force in October 1997. The task force is composed of individuals from throughout the State, representing area agencies on aging, parish councils on aging and other service providers. The task force's mission is to review proposed rule changes and recommend additional/alternative rules to enhance the development of service delivery systems for older Louisianans. To date, the Task Force has completed twenty-eight Sections of the GOEA Policy Manual.

Final rules concerning §1237, Long Term Care Assistance Program, §1231, Senior Community Service Employment Program, and §1239, Elderly Protective Services Program were published in September 1998. Final rules concerning §1229, Long Term Care Ombudsman Program and §1223, Older Americans Act Title III-C Nutrition Program, were published in October 1998. The proposed rule changes cover Sections 1171-1199, 1215-1221, 1225, 1227, 1233 and 1237. The Louisiana Executive Board on Aging has had an opportunity to review and comment on these changes.

**Title 4**

**ADMINISTRATION**

**Part VII. Governor's Office**

**Chapter 11. Elderly Affairs**

**§1171. Scope of Requirements**

A. This Subchapter outlines the requirements that full service providers must meet to receive federal and/or state funds through the Governor's Office of Elderly Affairs (GOEA). These requirements will serve as the basis for proposal/program evaluation by the State and area agencies on aging and for the monitoring and assessment of full service supportive and/or nutrition services providers and state-funded senior center operators, including Parish Councils on Aging.

B. A "full service provider" is one that administers a service in its entirety. A full service provider may either:

1. perform all functions necessary to deliver a service using its own staff; or

2. subcontract with one or more separate entities to perform a single function or a combination of related functions that are essential to service delivery (e.g., assessment and screening of participants, client tracking, vehicle maintenance, food preparation, meals delivery, etc.). The entity with whom the full service provider subcontracts is considered a "component service provider."

C. The term "full service provider" also applies to area agencies on aging authorized to deliver services directly as set forth in Subsection 1143 (B) of this manual.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 1321.17 and CFR 1321.11.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

**§1173. Advisory Role of Older Persons to Full Service Providers**

A. Full service providers shall have written policies aimed at achieving participation by older adults who will:

1. inform and advise the governing body and program administrator about participant and community needs;

2. advise the governing body by making recommendations about agency operations and program;

3. represent the participants to inform and advise the governing body and staff on specific issues and problems; and/or

4. provide feedback about participant satisfaction with current services and activities.

B. Full service providers may have advisory committees for a variety of special or ongoing purposes, such as fund raising, designing of facilities or program planning. The relationship of such committees to the staff and governing body should be clearly explained.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 1321.17 and CFR 1321.11.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

**§1175. Administrative and Personnel Responsibilities**

A. Administrative Responsibilities

1. The governing body of a full service provider shall designate a chief administrator/director and delegate to him or her responsibility for the overall management of the service or program. A full service provider's administrative roles and responsibilities shall be clearly defined.

a. The chief administrator/director is responsible for:

- i. development of a work plan;
- ii. planning and program development;
- iii. evaluation of program and operation;
- iv. resource development and fund raising;
- v. fiscal management and budgeting;
- vi. supervision of day-to-day operation;
- vii. community relations;
- viii. involvement of older adults in planning and operation;
- ix. personnel management;
- x. training and staff development; and
- xi. reviewing and reporting to governing body and others, as appropriate, on program, operation, facility, and equipment emergency arrangements.

b. These responsibilities may be delegated and shared as appropriate.

c. When a full service provider is part of a larger agency, the chief administrator/director shall have a defined relationship with:

- i. the larger agency's governing body;
- ii. the larger agency's administrative staff;
- iii. any relevant advisory committee of the larger agency or governing body; and
- iv. any other entity within the larger agency or governing body with responsibility for the full service provider.

4. In a multi-site operation, there shall be a manager on site (site manager) with clearly defined responsibilities for the program, day-to-day operation and other duties as delegated. The relationship of the site manager to the chief administrator/director and the governing body shall be clearly defined.

## B. Personnel Responsibilities

### 1. Staffing

a. There shall be a sufficient number of personnel to implement the activities and services planned to meet the full service provider's goals and objectives, and to ensure adequate staffing for the number of persons served and the frequency of service provided.

b. A full service provider shall have a staffing pattern that clearly defines the positions necessary to implement the full service provider's goals and objectives and specifies appropriate relationships among all levels of administration and supervision.

c. A full service provider shall make use of human resources in the community to supplement its personnel by making written agreements with other agencies for mutual referrals, shared staff, and collocation of services.

d. Ethnic and racial makeup of full service providers' staff should reflect the ethnic and racial makeup of the community's older adults in order to encourage their participation.

e. Staff shall be competent to meet job description requirements and provide quality services.

f. Full service provider staffs shall create an atmosphere that acknowledges the value of human life, affirms the dignity and self-worth of the older adult, and maintains a climate of respect, trust, and support. Within this atmosphere, staff creates opportunities for older adults to apply their wisdom, experience, and insight, and to exercise their skills.

g. Full service providers staff shall encourage participants' personal growth by:

- i. developing warm, friendly relationships;
- ii. respecting individual needs, interests, rights, and values;
- iii. encouraging responsible assumption of obligations;
- iv. assisting with personal problems and coping skills; and
- v. supporting participant involvement in decision making.

### 2. Staff Supervision and Training

a. A full service provider shall have a formal system of staff supervision for paid and volunteer personnel to help improve their performance, develop their abilities, and ensure staff-participant relationships. Supervision shall include regular individual conferences and staff meetings.

b. A full service provider shall have a development program for paid and volunteer staff to encourage participation in educational and training opportunities that will enhance their skills and job performance.

### 3. Personnel Policies, Practices and Procedures

a. Policies governing personnel administration, rights, and responsibilities shall be established by the governing body and maintained as a matter of record.

b. Personnel policies shall be written in a handbook or other suitable form and provided to staff, governing body, and, as appropriate, other agencies. Procedures and criteria in at least the following areas should be included:

- i. recruitment, hiring, probation, dismissal;
- ii. insurance;
- iii. leave, vacation, holidays, other benefits;
- iv. retirement;
- v. grievances and disciplinary actions;
- vi. performance appraisal and promotion;
- vii. salary ranges and increases;
- viii. staff development and training;
- ix. channels for staff communication with management;
- x. family leave, if agency meets Family Medical Leave Act (FMLA) requirements;
- xi. protection from discrimination based on age, race, sex, sexual preference, disability, and religious preference; and
- xii. protection from sexual harassment.

c. Hiring practices shall be consistent with requirements of funders and of government laws and regulations.

d. Each employee's performance shall be evaluated regularly, according to an established procedure. Performance appraisals should include:

- i. a written performance appraisal based on objective and job-related criteria;
- ii. review of the appraisal in a face-to-face interview; and
- iii. opportunity for written dissent to be part of the personnel record.

#### 4. Volunteers

a. A full service provider should attempt to recruit and involve volunteers of all ages from service, civic, and religious organizations and from the general community.

b. The relationship between paid and volunteer workers shall be clearly defined and understood by all staff.

c. Written policies governing volunteers should include:

- i. a system of recruitment;
- ii. clear definition of volunteer responsibilities;
- iii. orientation, training, opportunities for sharing skills, learning new skills, and for accepting new responsibility;
- iv. a channel for volunteer input into program implementation, development, and planning;
- vi. opportunity for public recognition of volunteer contributions;
- vii. ongoing formal and informal performance appraisal; and
- viii. a formal method of termination and grievance procedures.

#### 5. Job Descriptions

a. There shall be a written job description for each staff and volunteer position.

b. Each job description shall state at a minimum:

- i. position title;
- ii. qualifications;
- iii. duties and responsibilities;
- iv. scope of authority; and
- v. lines of communication for supervision and reporting.

c. Each staff member and volunteer shall be given a copy of his or her job description, and it must be discussed at the time of employment or job assignment.

d. Management shall annually review each job description with staff and revise it as appropriate.

#### 6. Emergency Arrangements

a. Emergency arrangements shall be made by the administrator, in consultation with the fire department and other relevant agencies, for dealing with personal emergencies at the service delivery site and on trips, such as:

- i. serious illness or injury that occurs at the service delivery site;
- ii. fire;
- iii. power failure; and
- iv. natural disaster.

b. A written record of any emergency shall be filed with the administrator/director, whether or not there is apparent injury or property damage.

c. Written emergency plans shall be posted in conspicuous places throughout the service delivery site. Plans shall include:

- i. telephone numbers for fire department, police, ambulance, hospital emergency room, local civil defense or disaster office;
- ii. steps to be taken in case of an emergency;
- iii. location of first aid and other supplies; and
- iv. evacuation instructions.

d. Periodic drills shall be scheduled and carried out:

- i. fire drills shall be held at least four times a year; and

ii. first aid training and drills, including such techniques as cardiopulmonary resuscitation and the Heimlich maneuver, shall be held regularly.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 1321.17 and CFR 1321.11.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

### **§1177. Fiscal Responsibility**

#### A. Fiscal Planning

1. A full service provider's financial operation shall be based on sound planning and prudent management of all resources.

2. Budget preparation shall be a part of the annual planning process and shall anticipate the resources needed to fulfill the full service provider's goals, and objectives.

3. The budget shall be prepared by administrative staff or governing body, as appropriate, with input from program staff and participants, and be approved by governing body.

4. The budget shall be based on a thorough consideration of the resources required to carry out each of the full service provider's activities and services.

5. The budget shall specify and allocate all anticipated income, from all sources, and all projected expenditures related to services regardless of the funding source.

6. The budget shall be used as a fiscal control tool to monitor income and use of resources.

7. Procedures shall be established and records kept so that a cost analysis of services and activities can be made and the results used in the planning process and in evaluation.

#### B. Accountability and Reporting

1. Regular fiscal reports disclosing the full service provider's full financial condition shall be prepared. These reports shall include balance sheets, statements of income and expense, and cumulative and comparative budgets.

2. Fiscal reports shall be submitted to the governing body or its designated authority and made available to participants, funders, and the public on request.

3. The audit required by GOEA shall be performed annually by an independent accountant.

4. The audit report shall be submitted to the governing body and the administrator and made available to funders, participants, and the public on request.

5. Reports related to income provided for special purposes (grants, contracts, special projects, etc.) shall be prepared and submitted to funding sources as required.

6. In-kind contributions shall be recorded and documented in conformance with income source regulations.

C. Legal and Administrative Requirements

1. A full service provider's financial operation shall conform to all applicable legal and administrative requirements.

2. Budgeting, accounting, and financial reporting practices shall conform to generally accepted accounting principles.

3. Budgeting, accounting, and financial reporting practices shall conform to requirements of a full service provider's funding agencies.

D. Management Procedures

1. Accurate and complete bookkeeping records shall be maintained.

2. A full service provider or its governing body shall have an internal control system consisting of written procedures for:

a. centralized cash control, including recording cash receipts and expenditures, depositing cash, separation of cash handling from record-keeping, and periodic checks of petty cash and other cash funds;

b. purchasing, including an approval system for all purchases, names of persons authorized to contract or purchase for the full service provider, obtaining competitive price quotes or bids, and separation of ordering and receiving functions;

c. storage and inventory control;

d. bonding of persons who handle the full service provider's funds.

E. Risk Protection

1. A full service provider shall have a risk protection program (insurance coverage) that:

a. meets legal requirements;

b. is adequate to preserve the full service provider's assets;

c. compensate claimants for reasonable claims.

2. Administrative staff or governing body shall procure information on insurance needs and available types of protection. Such information should be reviewed by the governing body or its designated authority at least annually.

3. A full service provider shall have insurance policies covering:

a. loss from fire, theft, vandalism, and natural disasters;

b. general liability;

c. vehicle insurance;

d. liability for use of private automobiles by paid or volunteer staff on official business;

e. liability for acts of volunteers;

f. workers' compensation.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 307(a)(7) and CFR 1321.11.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

**§1179. Target Groups**

A. Preference shall be given to providing services to older individuals with greatest economic and older individuals with greatest social need, with particular attention to low-income minority individuals.

1. The term *greatest economic need* is defined as the need resulting from an income level at or below the poverty threshold established by the Bureau of the Census.

2. The term *greatest social need* means the need caused by non-economic factors, which include physical and mental disabilities, language barriers, cultural or social isolation including that caused by racial or ethnic status, which restrict an individual's ability to perform normal daily tasks or threaten his capacity to live independently.

B. Full service providers shall attempt to provide services to low-income minority individuals at least in proportion to the number of low-income minority older persons in the population services by the provider.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 305(a)(2)(E), CFR 1321.11 and 45 CFR 1321.65.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

**§1181. Facility Standards**

A. Visibility

1. Full service providers shall make use of facilities that are visible and easily recognized. The facility's external appearance should be attractive and appropriate to its use.

2. Identification signs shall be attractive, and in large lettering, shall make clear the purpose of the facility.

B. Location

1. Full service providers shall make use of facilities that promote effective program operation and that provide for the health, safety, and comfort of participants, staff and community. The following factors should be given consideration in choosing a service delivery site:

a. accessibility to the maximum number of people;

b. proximity to other services and facilities ;

c. convenience to public or private transportation, or location within comfortable walking distance for participants;

d. parking space;

e. avoidance of structural barriers and difficult terrain;

f. safety and security of participants and staff.

2. When appropriate, a full service provider shall make arrangements to offer activities and services at various locations in its service area.

C. Accessibility

1. Access to and movement within the facility shall be barrier-free for handicapped older adults, in conformance with the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and other applicable law.

2. There should be adequate parking space available to accommodate participants and staff. Parking areas shall be clearly marked with space reserved for handicapped vehicles and multi-passenger vehicles.

#### D. Design

1. The facility should be comfortable and conducive to participant use.

a. Heating, cooling, and ventilation system(s) should permit comfortable conditions without excessive fan noise and drafts.

b. Illumination levels in all areas should be adequate, and to the extent possible, shall compensate for visual losses through use of natural light, window location, and higher levels of illumination.

c. Transmission of sound should be controlled through acoustical ceiling surfaces, partitions between activity areas, and isolation of noisy rooms such as the kitchen.

d. If smoking is permitted, space shall be provided for smokers that does not interfere with the comfort of nonsmokers.

2. The facility should be adequate in size and designed to house contract/subcontract related activities and services, in accordance with applicable laws and regulations.

a. Spaces for group activities should be large enough to avoid crowding and shall be located and designed so that meetings and other programs may be conducted without undue interruption.

b. Areas for counseling and other individual services should be designed to provide privacy.

c. There should be sufficient private office space to permit staff and volunteers to work effectively and without undue interruption.

d. There should be adequate storage space for program and operating supplies.

e. There shall be sufficient toilet facilities, equipped for use by mobility-limited persons.

f. The design should ease participants' movement throughout the facility and encourage involvement in activities and services.

#### E. Equipment and Furnishings

1. Equipment to be used by participants should be selected for comfort and safety and shall compensate for visual and mobility limitations and other physical disabilities. For example, when possible, the facility shall be equipped with the following:

a. extra wide, lightweight, automatic doors;

b. hallways wide enough for wheel chairs;

c. handrails in hallways;

d. ramps; and

e. bathrooms designed for frail or disabled individuals (easily used: sinks, soap dispensers, toilet flush controls, toilet paper dispensers, grab bars, door hardware not requiring tight grasping or twisting).

2. Furniture arrangement shall promote interaction, permit private conversation and facilitate observation of activities by participants.

3. The facility should be decorated and furnished in an appealing manner.

#### F. Responsibility

1. A full service provider's governing body shall have full responsibility for full service provider's facilities, grounds, and equipment. This responsibility may be delegated to a committee or to a designated staff member.

2. Participants should be involved in the design of facilities and selection of equipment and furniture.

3. The governing body or its designee, should seek advice from individuals with expertise in designing facilities and selecting equipment for use by older people and from full service providers with experience in these areas.

4. When a facility is rented or shared, when space in several facilities is used, or when a full service provider rents its own space, the governing body shall have written agreements with all relevant parties, concerning: time of use, maintenance and repairs, equipment use, security and safety, liability, and insurance. Such facilities shall conform to all requirements of these standards.

#### G. Safety

1. The facility shall be designed, constructed, and maintained in compliance with all applicable federal, state, and local building safety and fire codes, including the Occupational Safety and Health Act.

2. The full service provider shall make arrangements, as necessary, for the security of participants in the facility.

3. The facility shall be free of hazards, such as high steps and steep grades. Where necessary, arrangements shall be made with local authorities to provide safety zones for those arriving by motor vehicle and adequate traffic signals for pedestrian crossings.

4. The exterior and interior of the facility shall be safe and secure, with adequate lighting, paved exterior walkways, all stairs and ramps equipped with handrails.

5. Bathrooms and kitchens shall include safety features appropriate to their special uses (such as nonskid floors, bacteria-free carpets, kitchen fire extinguishers).

6. Procedures for fire safety shall be adopted and shall include provision for fire drills, inspection and maintenance of fire extinguishers and smoke detectors, periodic inspection, and training by fire department personnel.

#### H. Maintenance and Upkeep

1. There shall be sufficient maintenance and housekeeping personnel to assure that the facility is clean, sanitary, and safe at all times.

2. The full service provider should contract for repair, maintenance, regular painting, and redecorating services as appropriate.

3. Maintenance and housekeeping shall be carried out on a regular schedule and in conformity with generally accepted standards, without interfering with programs.

4. Provision shall be made for frequent, safe, sanitary disposal of trash and garbage. The full service provider shall adhere to local laws regarding recycling.

5. Provision shall be made for regular pest control.

6. Sufficient budget shall be provided for equipment maintenance, repair, and replacement.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 1321.5(e) and CFR 1321.11.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

#### §1183. Civil Rights

##### A. Civil Rights Act of 1964

1. All full service providers shall provide written

assurance of compliance with Title VI and VII of the Civil Rights Act of 1964. Public agencies must have an affirmative action program that complies with federal regulations containing required standards for a merit system of personnel administration.

2. Participants (Title VI). Full service providers shall ensure that no distinction is made on the grounds of race, color, sex or national origin in providing to individuals any services, financial and/or other benefits financed in whole or part using federal and/or state funds.

3. Employees (Title VII). Full service providers shall not discriminate against employees or applicants due to age, race, color, religion, sex or national origin.

B. Rehabilitation Act of 1973, as Amended

1. All full service providers shall take affirmative action pursuant to Executive Order 11246 and the Rehabilitation Act of 1973, as amended, to provide for a positive posture in employing and upgrading persons without regard to race, color, religion, sex, age, national origin or handicap. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer; recruitment; layoff or termination; compensation; and selection for training.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 1321.5(c) and CFR 1321.11.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

**§1185. Political Activity**

Full service providers shall not use federal and/or state funds to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the legislature or any parish or municipal governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the legislature or any parish or municipal governing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:932 and CFR 1321.11.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

**§1187. Outreach and Coordination Requirements**

A. Outreach

1. Each full service provider shall conduct outreach activities that assure that the maximum number of eligible individuals may have an opportunity to receive services.

B. Coordination

1. Each full service provider shall ensure that services funded through GOEA are coordinated with other appropriate services in the community, and that these services do not constitute an unnecessary duplication of services provided by other sources.

2. Each full service provider shall assist participants in taking advantage of benefits under other programs.

3. With the consent of the older person, or his or her representative, each full service provider shall bring to the attention of appropriate officials for follow-up, conditions that place the older person, or the household of the older person, in

imminent danger.

4. Where feasible and appropriate, each full service provider shall arrange for the availability of services to older persons in weather related emergencies.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 306(a)(5)(B), Section 307(a)(13)(E), Section 307(a)(20)(A), Section 307(a)(17), Section 306(a)(6)(H), and Section 306(a)(6)(K), CFR 1321.11 and 45 CFR 1321.65.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

**§1189. Records and Reports**

A. Participant Records and Reports

1. Full service providers shall establish and maintain appropriate participant records, using standardized forms to obtain information about the participants and record the participants' involvement in activities conducted under the contract/subcontract. These records may include:

- a. background (general) information (for example: name, address, sex, birth date, emergency phone numbers);
- b. interests and skills;
- c. attendance information;
- d. volunteer activities; and
- e. case reports, including referral and follow-up instructions.

2. These records shall be used to:

- a. help serve individual participants appropriately;
  - b. prepare reports;
  - c. meet planning, evaluation, and legal requirements;
- and
- d. maintain accountability to GOEA.

3. Participant records and reports shall be reviewed periodically by appropriate staff, to evaluate their adequacy and continued usefulness and to assure that they protect the confidentiality of participants.

B. Program Records and Reports

1. Full service providers shall maintain a system of records on activities conducted under the contract/subcontract in order to document current operations, meet funding requirements, promote community support, and guide planning. These records shall include at least the following:

- a. descriptions of services and activities provided;
- b. unduplicated rosters of persons served;
- c. number of persons served, by type of service and activity;
- d. number of units (for example, units of referrals, meals served, interview hours, socialization hours) of each type of service and activity; and
- e. participant assessment of services and activities.

2. Program reports shall be submitted to the funding agency in the form prescribed.

3. Full service providers should prepare an annual report providing an overview of the full service provider's program and operation, and shall distribute it or make it available to governing body, staff, volunteers, funders, public officials, and the general public.

4. Program records and reports shall be reviewed periodically by appropriate staff, to evaluate the records' adequacy and continued usefulness.

### C. Administrative Records and Reports

1. Administrative records and reports shall be established and maintained on the full service provider's total operation to satisfy legal requirements and for use as a management tool. These shall include:

- a. written records of all policies set forth by the governing body;
- b. minutes of governing body meetings;
- c. minutes of advisory committee meetings, including records of major decisions;
- d. personnel records;
- e. fiscal records;
- f. correspondence;
- g. safety, fire inspection, public health inspection, and related reports;
- h. accident reports and procedures;
- i. statistical information;
- j. annual reports, reflecting fiscal and program activity of the center; and
- k. historical records, clippings, and other documents.

2. An employee record shall be maintained, and should contain at least the following:

- a. application for employment, including a résumé;
- b. letters of reference;
- c. job description;
- d. letters of employment;
- e. record of compensation, promotion, and salary adjustments;
- f. evaluation and commendations;
- g. disciplinary actions; and
- h. correspondence on personnel matters.

3. Administrative records and reports shall be reviewed periodically by appropriate staff to evaluate their adequacy and continued usefulness.

4. An appropriate policy, consistent with administrative and legal requirements, should be established for retaining records and reports.

### D. Confidentiality

1. All records and reports that contain personal or other sensitive information about participants, staff, and volunteers shall be kept confidential.

2. Procedures to ensure confidentiality shall include:

- a. provision for secure storage of confidential records, whether in paper or computer files;
- b. limiting access to confidential records to persons with a demonstrable need to know the information they contain;
- c. protecting the identity of individuals in reports or other documents through use of such devices as coding or generalization of information;
- d. obtaining permission of the individual through a release of information form before data contained in confidential records is released to persons or agencies outside the full service provider.

### E. Staff Training

1. Full service providers shall provide training for staff and volunteers who are assigned to record keeping that includes:

a. information about the full service provider's system of record keeping (for example, types of records and reports and how they are used);

b. training for computer-based information systems, if used by the full service provider; and

c. instruction about procedures to ensure confidentiality of participants and staff.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 307(a)(4) and CFR 1321.11.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

### §1191. Confidentiality and Disclosure of Information

A. No information about an older person, or obtained from an older person by a full service provider or the state or area agencies, shall be disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State, or local monitoring agencies. Such consent must be in writing and shall be dated within one year of the release of information.

B. Nothing in this Section shall preclude the reporting of suspected abuse or neglect under the Louisiana Adult Protective Services Law.

C. The confidentiality protections concerning any complainant or resident of a long term care facility as prescribed in Section 712 of the Older Americans Act and §1229 of this Manual shall be strictly adhered to.

D. A legal assistance provider is not required to reveal any information that is protected by attorney client privilege.

E. All information containing client information no longer needed for record keeping purposes shall be shredded, burned or disposed of in a form in which identifying information cannot be extracted.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 1321.11 and CFR 1321.51.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

### §1193. Financial Resource Development

A. A full service provider's administrative staff and governing body shall seek additional resources to increase program support and ensure program funding.

B. Fund-raising activities conducted by contractor/subcontractor-sponsored groups (for example, advisory committees, RSVP, etc.) shall be approved by the governing body.

C. If any fees for services, supplies, and activities are charged, the fees shall be reasonable and equitable.

D. Membership dues shall not be allowed.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 307(a)(7) and CFR 1321.11.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

### §1195. Contributions for Older Americans Act Title III Services

A. Opportunity to Contribute

1. Each Older Americans Act Title III service provider shall:

- a. provide each participant an opportunity to voluntarily contribute to the cost of the service;
- b. protect the privacy of each older person with respect to his or her contributions;
- c. establish appropriate procedures to safeguard and account for all contributions; and
- d. use all supportive and nutrition services contributions collected in each parish to expand supportive and nutrition services respectively in that parish.

**B. Contribution Schedules**

1. Older Americans Act Title III service providers may develop a suggested contribution schedule for services provided. In developing a contribution schedule, the provider shall consider the income ranges of older persons in the community and the provider's other sources of income.

**C. Failure to Contribute**

1. Means tests may not be used for any service supported with Older Americans Act funds. A service provider shall not deny any older person a service because the older person will not or cannot contribute to the cost of the service.

**D. Contributions as Program Income**

1. Contributions made by Older Americans Act Title III participants are considered program income. Such funds shall be used in accordance with §1197.C of this manual.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 307(a)(13)(C), and 45 CFR 1321.67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

**§1197. Program Income**

**A. General**

1. GOEA contractors and subcontractors are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with contract funds, from the sale of merchandise or items fabricated under the contract, and from payments of principal and interest on loans made with contract funds. Program income does not include interest on contract funds, rebates, credits, discounts, refunds, etc. and interest earned on any item.

**B. Definition of Program Income**

1. *Program Income* refers to gross income received by the contractor or subcontractor directly generated by a contract supported activity, or earned only as a result of the contract agreement during the contract period. "During the contract period" is the time between the effective date of the contract and the ending date of the contract reflected in the final financial report. Costs incidental to the generation of program income may be deducted from gross income to determine program income.

2. Voluntary contributions made by Older Americans Act Title III participants and state funded senior participants are considered program income.

3. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a contractor or

subcontractor is program income only if the revenue is specifically identified in the contract agreement as program income.

**C. Use of Program Income**

**1. Older Americans Act Title III Program Income**

a. Each service provider shall use program income to expand supportive and nutrition services respectively.

**2. Senior Center Program Income**

a. All state funded senior center program income other than that which is designated for Older Americans Act services shall be used to expand senior center activities.

3. Service providers shall follow the addition alternative in 45 CFR 92.25(g)(3). Program Income shall be added to the Federal and State funds committed to the contract agreement. However, state and federal funds can only be applied to net expenditures. Net expenditures are calculated by subtracting all program income collected from total allowable costs.

4. All program income collected must be used for current period expenses unless GOEA authorizes deferral to a later period.

5. Proceeds from the sale of real property purchased using program income will be handled in accordance with the provisions of 45 CFR 92.31 and 92.32 as provided in §1199 of this Manual.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 307(a)(7), 45 CFR 1321.67, 45 CFR 1321.73 and 45 CFR 92.25.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 12:366 (June 1986), amended LR 25:

**§1199. Property Control and Disposition**

**A. Applicability**

1. This Section applies to all property, as defined below, purchased wholly or partially with Governor's Office of Elderly Affairs (GOEA) funds. In instances where GOEA policy is more restrictive than Federal Regulations, Title 45, Part 74, Subpart O, GOEA policy supersedes. Any provision of this Section which conflicts with above federal regulations is void. This Section is intended to provide guidance for the most common property situations and to specify areas where GOEA policy is more restrictive than Title 45, Part 74, Subpart O. Any property definitions or situations not covered by this Section are subject to Title 45, Part 74, Subpart O.

**B. Definitions**

*Equipment*—tangible personal property with an acquisition cost equal to or greater than \$250 and a useful life of more than one year. All such property must be tagged.

*Personal Property*—property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence such as patents, copyrights, etc.).

*Property*—real property, personal property, equipment, and supplies.

*Real Property*—land, including improvements, structures, and appurtenances thereto.

*Recipient*—all recipients, including sub-recipients, of GOEA funds.

*Supplies*—tangible personal property other than equipment.

C. Required Records and Reporting for Property Inventory

1. All recipients are required to maintain and update property records which include the following information on all tangible property which meets the definition of equipment in Subsection B of this Section:

- a. identification or tag number;
- b. manufacturer's serial or model number;
- c. description of property;
- d. location of property;
- e. acquisition cost and date;
- f. source of funds or program(s); and
- g. information on replacement, transfer, or disposition.

2. The updated inventory must be submitted annually to GOEA with final fiscal reports of the contract/grant period. This inventory must reflect all property purchased with GOEA funds under the current or previous contract(s). If property was disposed of during the current period, such property and related disposition information must be included on this inventory. Subsequent inventories will exclude such property.

D. ...

E. Disposition or Transfer of Property/Equipment for Continuing Grants/Programs

1. Request for Instructions

a. Real Property

i. When real property is no longer needed for the originally authorized purpose, the recipient will request disposition instructions from GOEA as stated in Paragraph 2 of this Subsection.

b. Equipment

i. Equipment with a unit acquisition cost of less than \$5,000 may be retained, sold, or otherwise disposed of without prior approval from GOEA. Any proceeds from the sale of such equipment must be properly documented, accounted for, and applied as other revenue for GOEA funded or supported programs.

ii. Equipment with a unit acquisition cost equal to or greater than \$5,000 or real property can be disposed of only with prior approval from GOEA. When such property becomes surplus to the recipient's need or is no longer to be used for GOEA funded or supported programs, the recipient must submit a written request for disposition instructions as stated in Paragraph 2 of this Subsection.

2. Disposition Instructions

a. The written request for disposition instructions must include the following information:

- i. property description (tag number, acquisition cost and date, source of funds used to purchase, check number and date, etc.);
- ii. condition of property (odometer reading, repairs needed, working order, etc.); and
- iii. reason for disposal.

b. Disposition instructions from GOEA will provide for one of the following alternatives.

i. Transfer of Title. Recipient will transfer title and property to GOEA or designee. Recipient will be paid for any transfer fees or related costs. If property was not purchased wholly with GOEA funds, recipient will be paid for the

non-GOEA share based on current market value. AAA's may transfer equipment covered by this part within their PSA provided the above transfer guidelines are followed.

ii. Sale of Property. Recipient will sell property in a manner which provides for competition to the extent practicable and which maximizes the return, and proceeds (or GOEA share) will be remitted to GOEA. Recipient may retain the greater of \$100 or 10 percent of proceeds from the sale of equipment to cover disposition costs. Recipient may retain a portion of proceeds from sale of real property to pay for actual and reasonable selling expenses. Recipient may request permission to retain net proceeds from the sale of equipment and to apply such proceeds toward allowable costs of GOEA funded or supported programs.

iii. Retention of Title. Recipient may retain the property after remitting to GOEA an amount equal to the current market value of the property GOEA share of such value if property was not purchased wholly with GOEA funds.

F. Disposition of Property Upon Expiration or Termination of Grant/Program

1. Specific disposition instructions for all property other than supplies must be obtained from GOEA.

2. The following guidelines apply for unused supplies exceeding \$5,000 in total aggregate fair market value and not needed for any program currently funded by GOEA.

a. Recipient may retain such supplies and remit to GOEA its share of the market value.

b. Recipient may sell such supplies and remit to GOEA its share of proceeds from the sale.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 307(a)(7), 45 CFR Subtitle A, Part 92.31 and 92.32 and 45 CFR Part 74 Subpart O.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 18:610 (June 1992), amended LR 25:

**§1215. Service Recipient Priorities and Eligibility Requirements**

A. Persons who are 60 years of age or older and their spouses may receive services provided using Older Americans Act and state senior center funds. No one is entitled to services by virtue of age alone. GOEA's Uniform Intake and Assessment Instrument shall be used to determine the order in which older individuals will be served. Persons age 60 and over who are frail, homebound by reason of illness or incapacitating disability, or otherwise isolated, shall be given priority in the delivery of services.

B. As stated in §1179 of this manual, preference shall be given to providing services to older individuals with greatest economic and older individuals with greatest social need, with particular attention to low-income minority individuals. Service providers shall attempt to provide services to low-income minority individuals at least in proportion to the number of low-income minority older persons in the population services by the provider.

C. Means tests shall not be used for any service supported with Older Americans Act Title III funds or state senior center funds. Moreover, service providers shall not deny any older

person a service because the older person will not or cannot contribute to the cost of the service.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 102(29), Section 102(30), Section 305(a)(2)(E), Section 306(a)(1), Section 307(a)(24), and 45 CFR 1321.65 and 1321.69.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

#### **§1217. Uniform Definitions of Services for the Aging**

A. Uniform definitions of supportive and nutrition services issued by the Governor's Office of Elderly Affairs GOEA shall be employed by all providers.

B. These definitions shall be used for record keeping, accounting and reporting purposes, as prescribed in this manual and through other requirements issued by GOEA.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 211 and Section 307(a).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), Amended LR 11:1078 (November 1985), amended LR 25:

#### **§1219. Title III-B Supportive Services and Senior Centers**

A. Part B of Title III of the Older Americans Act authorizes the distribution of federal funds to the State Agency on Aging by formula for supportive services and senior centers. Funds authorized under Title III-B are for the purpose of assisting the State and its area agencies to develop or enhance for older persons comprehensive and coordinated community based systems as described in 45 CFR 1321.53(b) throughout the State.

B. GOEA shall award Title III-B funds to designated area agencies according to the formula determined by the State Agency. All funds awarded to area agencies under Title III-B are for the purpose of assisting area agencies to develop or enhance comprehensive and coordinated community based systems for older persons in, or serving, communities throughout the planning and service area. Except where a waiver is granted by the State agency, area agencies shall award these funds by contract to community services provider agencies and organizations.

C. The term "supportive services" refers to those services listed in Sec. 321(a) of the Older Americans Act.

D. Title III-B funds may be used for the acquisition, alteration, or renovation of existing facilities, including mobile units, and, where appropriate, construction of facilities to serve as multipurpose senior centers.

E. Title III-B funds may be used for the purpose of assisting in the operation of multipurpose senior centers and meeting all or part of the costs of compensating professional and technical personnel required for the operation of multipurpose senior centers.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 321 and 45 CFR 1321.63.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

#### **§1221. Contributions for Supportive Services**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), repealed LR 25:

#### **§1225. Legal Assistance Program**

A. Purpose

1. The purpose of Legal Assistance is to assist older individuals in securing their rights, benefits and entitlements. To the extent practicable, legal assistance provided under Title III must be in addition to any legal assistance already being provided to older persons in the planning and service area.

B. ...

C. Eligibility Requirements for Providers

1. An area agency must contract with a provider which is either:

a. an organization which receives funds under the Legal Services Corporation Act; or

b. an organization which has a legal services program or the capacity to develop one.

2. An area agency may award funds to the legal assistance provider(s) who most fully meets the following standards:

a. has staff with expertise in specific areas of law affecting older persons, such as public benefit, institutionalization and alternatives to institutionalization;

b. - d. ...

e. demonstrates the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language;

f. has offices and/or outreach sites which are convenient and accessible to older persons in the community or has the capacity to develop such sites;

g. demonstrates the capacity to provide legal assistance in a cost effective manner; and

h. demonstrates the capacity to obtain other resources to provide legal assistance to older persons.

D. Provider Objectives

1. - 2. ...

3. if not a Legal Services Corporation project grantee, to coordinate its services with existing Legal Service Corporation projects in the PSA in order to concentrate the use of funds provided under Title III on individuals with the greatest social or economic need. In carrying out this requirement, legal assistance providers may not use a means test or require older persons to apply first for services through a Legal Services Corporation project; and

D.4. - E.2. ...

F. Case Priorities

1. An area agency on aging may set priorities for the categories of cases in order to concentrate on older persons in greatest economic or social need. Such cases should be related to income, health care, long term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect, and age discrimination.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with OAA Section 307(a)(15), Section 307(a)(18), and Section 731.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

**§1227. Information and Assistance Service Requirements**

A. The purpose of information and assistance is to encourage and assist older individuals to use the facilities and services available to them.

B. Definition of Information and Assistance

*Information and Assistance Service*—a service for older individuals that:

a. provides the individuals with current information on opportunities and services available to the individuals within their communities, including information relating to assistive technology;

b. assesses the problems and capacities of the individuals;

c. links the individuals to the opportunities and services that are available;

d. to the maximum extent practicable, ensures that the individuals receive the services needed by the individuals, and are aware of the opportunities available to the individuals, by establishing adequate follow up procedures; and

e. serves the entire community of older individuals, particularly older individuals with greatest social need, and older individuals with greatest economic need.

C. Each area agency on aging shall provide for information and referral assistance services in sufficient numbers to ensure that all older persons within the planning and service area covered by the area plan have reasonably convenient access to the service.

D. The Governor's Office of Elderly Affairs shall establish and maintain information and assistance services in sufficient numbers to assure that all older individuals in the State who are not furnished adequate information and assistance services under Subsection C of this Section will have reasonably convenient access to such services.

E. Information and assistance services providers shall:

1. maintain current information with respect to the opportunities and services available to older persons;

2. develop current lists of older persons in need of services and opportunities;

3. employ, where feasible, a specially trained staff to assess the needs and capacities of older individuals, to inform older persons of opportunities and services which are available, and assist older persons in taking advantage of opportunities and services; and

4. develop and maintain records of its transactions for the purpose of:

a. measuring utilization and effectiveness of its efforts;

b. identifying gaps in the service structure; and

c. assisting in state and parish planning.

F. Information and assistance service providers shall place particular emphasis on linking services available to older individuals with Alzheimer's disease or related disorders with neurological and organic brain dysfunction, and the caretakers of individuals with such disease or disorders.

G. In areas in which a significant number of older persons do not speak English as their principal language, service

providers shall provide information and assistance services in the language spoken by the older persons.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 307(a)(9), and Section 306(a)(4) .

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:

**§1233. State Funded Senior Center Operation**

A. Definitions

1. A senior center is a community focal point where older adults come together for services and activities that reflect their experience and skills, respond to their diverse needs and interests, enhance their dignity, support their independence, and encourage their involvement in and with the center and the community. Senior centers offer services and activities within the center and link participants with resources offered by other agencies. Senior center programs consist of a variety of individual and group services and activities. Senior centers also serve as a resource for the entire community for information on aging, support for family care givers, training professional and lay leaders and students, and for development of innovative approaches to addressing aging issues.

2. A senior center satellite is an activity site which meets less than minimum standards required for a senior center and is under the direction of a Governor's Office of Elderly Affairs (GOEA) Contractor/Subcontractor.

B. Mission of a Senior Center

1. The mission of a Senior Center is to promote the physical, emotional, and economic well-being of older adults and to promote their participation in all aspects of community life.

C. Participant Eligibility

1. All Louisiana residents who are at least 60 years old, and their spouses are eligible to receive services through state funded senior centers.

D. Minimum Requirements for State Funded Senior Center

1. A state funded senior center shall serve as a focal point for older adults in the community. It shall be a source of public information, community education, advocacy, and opportunities for older adults.

2. A state funded senior center shall be staffed by qualified personnel, paid and volunteer, capable of implementing its program.

3. A state funded senior center must have or provide access to the following services:

a. nutrition services;

b. transportation;

c. information and assistance;

d. education and enrichment; and

e. wellness.

4. A state funded senior center shall serve an average of at least 20 participants per day or a lesser number that is determined to be cost effective and is approved by the State Agency.

5. A state funded senior center shall operate at least four hours a day, four days a week (except in sites located in rural areas where such frequency is not feasible and a lesser frequency is approved by the State Agency).

#### E. State Funded Senior Center Standards

1. A state funded senior center shall have written goals, objectives and action plans for each contract period. Goals and objectives must be based on the senior center mission and on the needs and interests of older adults in its community or service area. These statements shall be used to guide the character and direction of the senior center's operation and program.

2. A state funded senior center shall participate in cooperative community planning and establish service delivery arrangements with other community agencies and organizations.

3. A state funded senior center shall have clear administrative and personnel policies and procedures that contribute to the effective management of the senior center's operation.

4. A state funded senior center shall provide a broad range of group and individual activities and services to respond to the needs and interests of older adults in its community or service area.

5. A state funded senior center shall have appropriate and adequate arrangements to evaluate and report on its operation and program.

6. A state funded senior center shall practice sound fiscal planning and management, financial record keeping, and reporting as required by GOEA.

7. A state funded senior center shall keep complete records required to plan, operate, and review its program.

8. A state funded senior center shall use facilities that promote effective program operation and that provides for the health, safety, and comfort of participants, staff and community.

9. A state funded senior center shall provide a written description of available services and activities for distribution to potential participants.

#### F. Distribution of State Funds for Senior Centers

1. Funds appropriated by the state legislature for the operation of senior centers will be included in the total budget of the Governor's Office of Elderly Affairs (GOEA) and allocated to the designated recipients for distribution. Designated recipients may request GOEA to channel their state funds for senior centers through the area agency on aging. Such requests must be accompanied by a resolution adopted by the recipient's governing body.

2. Each Parish Council on Aging Board of Directors shall review and provide a written resolution recommending approval/disapproval of each request for state funding for the operation of new senior centers within their respective parishes. In reviewing requests for state funding, PCOAs shall follow the guidance issued by GOEA.

3. GOEA shall provide an opportunity for a hearing and issue a written decision to any applicant for state senior center funding whose request is not recommended by the Parish Council on Aging Board of Directors within their respective parishes. Hearings will be conducted in accordance with GOEA hearing procedures. GOEA shall be alert to conflicts of interest or noncompetitive practices that may restrict or eliminate competition among state funded senior center operators. GOEA shall approve requests for funding

whenever, in the judgement of GOEA, the applicant demonstrates that a new facility is needed and that the proposed facility meets the criteria in Subsection (G) of this Section.

4. GOEA shall incorporate all new senior centers recommended for state funding in the State agency's annual budget request. Funding must be appropriated by the State Legislature.

#### G. Criteria for State Funded Senior Center Providers

1. - 4. ...

5. capacity for securing additional community resources, whether cash or in kind, to increase program support and to assure ongoing program funding;

6. - 7. ...

#### H. Limitation on Use of Facilities

1. State funded senior centers may not be used for sectarian worship. This does not preclude counseling by ordained ministers or fellowship meetings for those who would voluntarily participate. No participant may be forced to participate in any religious activity or denied the benefit of services due to his personal beliefs.

#### I. Nepotism

##### 1. Staff Relationships

a. State funded senior centers may not employ immediate family members in direct supervisory relationships. Immediate family is defined as follows: Husband, Wife, Father, Father-in-law, Mother, Mother-in-law, Brother, Brother-in-law, Sister, Sister-in-law, Son, Son-in-law, Daughter, Daughter-in-law, Grandfather, Grandmother.

##### 2. Purchases

a. State funded senior centers may neither obligate nor expend funds administered by the Governor's Office of Elderly Affairs for the purchase or rental of goods, space, or services if any of the following persons has a substantial interest in the purchase or rental unless it is documented that it is the cheapest or sole source, and the person who has an interest plays no part in making the decision:

i. a member of the governing body;

ii. the director or assistant director;

iii. any employee who has responsibilities for the procurement of goods, space or services; or

iv. anyone who is a member of the immediate family of a board member or employee referred to above.

#### J. Senior Center Program Income

1. State funded senior center program income shall be used in accordance with Paragraph (2) of Subsection (C) of §1197 of this manual.

#### K. Monitoring and Assessment of State Funded Senior Centers

1. GOEA shall monitor all state funded senior centers through on-site visits and/or review of program and financial reports.

2. GOEA shall conduct annual assessments of all state funded senior centers operated by parish councils on aging that are designated area agencies on aging.

3. GOEA Contractors shall conduct annual assessments of each senior center operated by one of its Subcontractors. Reports of these assessments shall be submitted to GOEA annually in the form prescribed by GOEA.

4. When a state senior center funds recipient elects to contract its state senior center funds through the designated area agency on aging, the area agency shall conduct annual reviews of senior center activities and services. Reports of the annual reviews shall be submitted to GOEA in the form prescribed by GOEA.

L. Evaluations of State Funded Senior Centers

1. GOEA shall conduct an annual evaluation of state funded senior center activities and services. Results of this evaluation shall be used in the budget planning process for the next program year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:932 and R.S. 43:1119.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 15:384 (May 1989), amended LR 25:

**§1237. Long-Term Care Assistance Program**

A. - F. ...

G. Eligibility Determinations

1. The agency shall provide written notification to each applicant found to be ineligible within thirty (30) days of receipt of application.

2. Those applicants found to be eligible will begin receiving reimbursements within thirty (30) days of receipt of application.

3. Reimbursements shall be retroactive for a maximum time period of six months prior to the date the completed application is received by the Office of Elderly Affairs.

4. Prior to making a final determination, the agency shall return applications which are incomplete or questionable (e.g., expenses reported exceed all income) for additional information.

5. Redetermination of Eligibility

a. If an applicant is determined ineligible for benefits under this program because (s)he does not meet the requirements in §1237.D.1, and the applicant's circumstances change, the applicant may reapply in accordance with §1237.F.

b. A redetermination of eligibility for this program shall be made based upon the current financial status of the applicant.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2802(D).

HISTORICAL NOTE: Adopted by the Office of the Governor, Office of Elderly Affairs, LR 18:1257 (November, 1992), amended LR 19:627 (May, 1993), amended LR 25:

Written comments may be addressed to Betty N. Johnson, HCBS Director, Governor's Office of Elderly Affairs, Box 80374, Baton Rouge, LA 70898-0374. A public hearing on this proposed rule will be held on February 24, 1999 at 412 North Fourth Street, Baton Rouge, LA 70802 at 10 a.m. All interested parties will be afforded an opportunity to submit

data, views, or arguments, orally or in writing, at said hearing. Written comments will be accepted until 5 p.m. February 26, 1999.

P.F. "Pete" Arceneaux, Jr.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: GOEA Policy Manual Revision**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the proposed rule change will not result in costs or savings to state or local governmental units.

The proposed rule change amends Subchapter D and Subchapter E of the GOEA Policy Manual. It updates policies that govern services provided using federal and state funds awarded through the Governor's Office of Elderly Affairs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Service providers funded under Title III of the Older Americans Act and State funded senior center operators are required to comply with all rules promulgated by GOEA. No additional costs or economic benefits are anticipated since proposed changes would make rules consistent with current practice.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will not affect competition or employment.

P.F. "Pete" Arceneaux, Jr.     Robert E. Hosse  
Executive Director             General Government Section Director  
9901#049                             Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Medical Examiners**

Chelation Therapy  
(LAC 46:XLV.6925-6933)

Notice is hereby given, in accordance with R.S. 49:953, that the Louisiana State Board of Medical Examiners (Board), pursuant to the authority vested in the Board by the Louisiana Medical Practice Act, R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B), and the provisions of the Administrative Procedure Act, intends to adopt rules and regulations governing the use

of Chelation Therapy, LAC 46:XLV.6925-6933. The proposed rules are set forth below. Inquiries concerning the proposed rules may be directed in writing to Delmar Rorison, Executive Director, Louisiana State Board of Medical Examiners, at the address set forth below.

LAC 46:XLV.6925-6933 shall be adopted, so that, as adopted, said Sections shall read and provide as follows:

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XLV. Medical Professions**

##### **Subpart 3. Practice**

#### **Chapter 69. Prescription, Dispensation and Administration of Medications**

##### **Subchapter C. Chelation Therapy**

##### **§6925. Scope of Subchapter**

The rules provided by §§6925-6933 govern physician prescription, dispensation, administration or other use of chelating therapy for the treatment of any medical condition.

**AUTHORITY NOTE:** Promulgated in accordance with RS 37:1270(A)(1), 1270(B)(6) and 1285(B).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:

##### **§6927. Definitions**

A. As used in §§6925-6933, unless the content clearly states otherwise, the following terms and phrases shall have the meanings specified.

*Administer*—with respect to a medication provided or supplied by a physician for use by a patient, the term *administer* means directly or through an agent to give, provide or supply for immediate oral ingestion, insertion or application by the patient, or to insert, apply, or inject intravenously, intramuscularly, subcutaneously, intrathecally or extrathecally.

*Board*—the Louisiana State Board of Medical Examiners.

*Chelating Agent*—any medication which is a parenteral or oral metal-binding and bioinorganic agent including, but not limited to, Dimercaprol (dimercaptopropanol), Ethylenediaminetetracetic acid (EDTA or edetate), or its salts, calcium disodium edetate, disodium edetate, calcium disodium versenate, Penicillamine (d-dimethyl cysteine or Cupramine) and Succimer (meso-dimercaptosuccinic acid or DMSA).

*Chelation Therapy*—a therapy to restore cellular homeostasis through the use of a parenteral or oral chelating agent. Chelation therapy is not an experimental therapy when utilized in the treatment of heavy metal intoxication or any other condition for which it is indicated by express approval of the United States Food and Drug Administration (FDA).

*Dispense*—with respect to a drug, chemical or medication, the term *dispense* means to give, provide or supply for later parenteral or oral ingestion, insertion, application, injection, or other use.

*Drug*—is synonymous with, *medication*, as defined in §6927.

*Medication*—any chemical, potion, compound, mixture, suspension, solution or other substance or material, natural or synthetic, recognized and listed in the official United States Pharmacopoeia, which is lawfully produced, manufactured,

sold or provided and intended and approved for medical diagnostic, therapeutic or preventative use in and by humans and which, by provision of state or federal law or regulation, may be dispensed only by, or pursuant to the prescription of, a licensed practitioner.

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

**AUTHORITY NOTE:** Promulgated in accordance with RS 37:1270(A)(1), 1270(B)(6) and 1285(B).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:

##### **§6929. Limitations on Use**

A physician shall not prescribe, dispense, administer, supply, sell, give or otherwise make available to any person, any chelating agent for the treatment or prevention of any medical condition for which it is not indicated by express approval of the FDA.

**AUTHORITY NOTE:** Promulgated in accordance with RS 37:1270(A)(1), 1270(B)(6) and 1285(B).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:

##### **§6931. Exemption of Controlled Scientific Studies**

The prohibition on the use of chelation therapy prescribed by §6929 shall not be applicable to a physician engaged in the conduct of a scientific study of the efficacy of a chelation agent in the treatment of a medical condition for which such agent is not expressly approved by the FDA, provided that such physician is employed by or otherwise officially affiliated with an accredited medical school located in the state of Louisiana, such study is conducted under the auspices of such school and in accordance with all applicable state and federal laws or regulations, including those applicable to an FDA investigational new drug application, and the interim and final results of such study are furnished to the board in writing.

**AUTHORITY NOTE:** Promulgated in accordance with RS 37:1270(A)(1), 1270(B)(6) and 1285(B).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:

##### **§6933. Effect Of Violation**

Any violation of or failure of compliance with the provisions of this Subchapter, §§6925-6931, shall be deemed a violation of R.S. 37:1285(A)(12), (13), (14) and (30), providing cause for the board to suspend or revoke, refuse to issue, or impose probationary or other restrictions on any license or permit held or applied for by a physician to practice medicine in the state of Louisiana culpable of such violation.

**AUTHORITY NOTE:** Promulgated in accordance with RS 37:1270(A)(1), 1270(B)(6) and 1285(B).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:

Interested persons may submit data, views, arguments, information or comments on the proposed rules, in writing, to the Louisiana State Board of Medical Examiners, at P.O. Box 30250, New Orleans, Louisiana, 70190-0250 (630 Camp Street, New Orleans, Louisiana, 70130). Written comments must be submitted to and received by the Board within 60 days from the date of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument or public

hearing must be made in writing and received by the Board within 20 days of the date of this notice.

Delmar Rorison  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Chelation Therapy**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is not anticipated that the proposed rules will result in any additional costs to the Board of Medical Examiners.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is not anticipated that the proposed rules will have any effect on the Board's revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
It is not anticipated that the proposed rules will have a material effect on costs, paperwork or workload of physicians who may employ chelation therapy in a manner affected by the proposed rules.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
It is not anticipated that the proposed rules will have any impact on competition or employment in either the public or private sector.

Delmar Rorison  
Executive Director  
9901#028

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Medical Examiners**

Dispensing of Medications—Prohibitions,  
Sanctions, and Registration  
(LAC 46:XLV.6507 and 6513)

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., that the Louisiana State Board of Medical Examiners (Board), pursuant to the authority vested in the Board by R.S. 37:1261-1292 and R.S. 37:1204, intends to amend LAC 46:XLV.6507 and 6513 of its existing rules governing action against and eligibility for registration as a dispensing physician. The proposed amendments are set forth hereinafter.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLV. Medical Profession  
Subpart 3. Practice**

**Chapter 65. Dispensation of Medications  
Subchapter B. Prohibitions and Sanctions  
§6507. Action Against Medical License**

Violation of the prohibitions set forth in §6505 shall be deemed to constitute just cause for the suspension, revocation,

refusal to issue, or the imposition of probationary or other restrictions on any license or permit to practice medicine in the state of Louisiana held or applied for by a physician culpable of such violation, or for other administrative action as the Board may in its discretion determine to be necessary or appropriate, under R.S. 37:1285(A)(6) and R.S. 1285(A)(30).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, R.S. 37:1204.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 13:570 (October 1987), amended LR 25:

**Subchapter C. Registration**

**§6513. Eligibility for Registration as a Dispensing Physician**

- A. ...
- B. A physician shall be deemed ineligible for registration as a dispensing physician who:
  - 1. has been convicted, whether upon verdict, judgment, or plea of guilty or nolo contendere, of any crime constituting a felony under the laws of the United States or of any state, or who has entered into a diversion program, a deferred prosecution or other agreement in lieu of the institution of criminal charges or prosecution for such crime;
  - 2. has been convicted, whether upon verdict, judgment, or plea of guilty or nolo contendere, of any crime an element of which is the manufacture, production, possession, use, distribution, sale or exchange of any controlled substance or who has entered into a diversion program, a deferred prosecution or other agreement in lieu of the institution of criminal charges or prosecution for such crime;
  - 3. ...
  - 4. has voluntarily surrendered or had suspended, revoked or restricted, his narcotics controlled substance license, permit or registration (state or federal);
  - 5. has had his professional license suspended, revoked or placed on probation or restriction in any manner by the board or by any licensing authority, or who has agreed not to seek re-licensure, voluntarily surrendered, or entered into an agreement with the board or with any licensing authority in lieu of the institution of disciplinary charges or action against such license;
  - 6. has had an application for professional examination or license rejected or denied;
  - 7. has been denied, had suspended, revoked, restricted, or voluntarily relinquished, staff or clinical privileges in any hospital or other health care institution or organization;
  - 8. has been, or is currently in the process of being, denied, terminated, suspended, refused, limited, placed on probation or under other disciplinary action with respect to his participation in any private, state, or federal health insurance program; or
  - 9. has had any court determine that he is currently in violation of a court's judgment or order for the support of dependent children.
- C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, R.S. 37:1204.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 13:570 (October

1987), amended LR 25:

Inquiries concerning the proposed rule amendments may be directed in writing to Delmar Rorison, Executive Director, Louisiana State Board of Medical Examiners, at the address set forth below.

Interested persons may submit data, views, arguments, information or comments on the proposed rule amendments, in writing, to the Louisiana State Board of Medical Examiners, at P.O. Box 30250, New Orleans, LA 70190-0250 (630 Camp Street, New Orleans, LA 70130). Written comments must be submitted to and received by the Board within 60 days from the date of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument or public hearing must be made in writing and received by the Board within 20 days of the date of this notice.

Delmar Rorison  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Dispensing of Medications—Prohibitions,  
Sanctions, and Registration**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is not anticipated the implementation of the proposed rule amendments will result in any costs to the Board or any other state or local governmental unit. The Board does not anticipate that adoption of the proposed rule amendments will result in either an increase or reduction in workload or any additional paperwork.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is not anticipated that the proposed rules amendments will have any material effect on the Board's revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
It is not anticipated that the proposed rule amendments will have any material effect on costs, paperwork or workload of physicians who seek to become, or who may continue to be registered as, dispensing physicians.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
It is not anticipated that the proposed rule amendments will have any impact on competition or employment in either the public or private sector.

Delmar Rorison  
Executive Director  
9901#029

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Board of Veterinary Medicine

Ownership of Records  
(LAC 46:LXXXV.701)

The Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.701 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, R.S. 37:1518 et seq.

The proposed amendment to §701 establishes that the records of a veterinary facility are the sole property of that facility, and when a veterinarian leaves salaried employment therein, the departing veterinarian shall not copy, remove, or make any subsequent use of those records. Language found in §701.B.1 and §701.B.2 exists in current rule. Section 701.B.3 includes the only substantive change to the current rule.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS  
Part LXXXV. Veterinarians**

#### Chapter 7. Veterinary Practice

#### §701. Record Keeping

A. - A.2.e. ...

B. Maintenance, Ownership, and Release of Records

1. Patient records shall be maintained for a period of five years and are the responsibility and property of the veterinarian. The veterinarian shall maintain such records and shall not release the records to any person other than the client or a person authorized to receive the records for the client.

2. The veterinarian shall provide any and all records as requested by the board to the board. Failure to do so shall be considered unprofessional conduct.

3. The records of a veterinary facility are the sole property of that facility, and when a veterinarian leaves salaried employment therein, the departing veterinarian shall not copy, remove, or make any subsequent use of those records. The copying, removal, or any subsequent use of those records by the departing veterinarian shall be considered a violation of the rules of professional conduct within the meaning of R.S. 37:1526.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 6:71 (February 1980), amended LR 16:225 (March 1990), LR 19:1329 (October 1993), LR 20:1381 (December 1994), LR 23:969 (August 1997), LR 24:941 (May 1998), LR 25:

Interested parties may submit written comments to Charles B. Mann, executive director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801. Comments will be accepted through the close of business on February 25, 1999. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on February 25, 1999, at 9 a.m. at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801.

Charles B. Mann  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Ownership of Records**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendment (estimated \$100). The veterinary profession will be informed of this rule change via the board's regular newsletter or other direct mailings, which are already a budgeted cost of the board.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenue collections of state or local governmental units. There will be no revenue impact as no increase in fees will result from the amendment.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no anticipated costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no anticipated effect on employment and competition.

Charles B. Mann  
Executive Director  
9901#023

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary**

Memorandum of Understanding  
Between the Department of Health and Hospitals and  
the Capital Area Human Services District FY 98/99  
(LAC 48:I.Chapter 27)

In accordance with R.S. 46:2661 et seq., as enacted by Act 54 of the first Extraordinary Session of the 1996 Legislature, the Department of Health and Hospitals, Office of the Secretary proposes to adopt the following rule.

**Title 48  
PUBLIC HEALTH—GENERAL  
Part I. General Administration  
Subpart 1. General**

**Chapter 27. Memorandum of Understanding Between  
the Department of Health and Hospitals  
and the Capital Area Human Services  
District**

**§2701. Introduction**

This agreement is entered into by and between Department of Health and Hospitals, hereinafter referred to as DHH, and Capital Area Human Services District, hereinafter referred to as CAHSD, in compliance with LA RS 46:2661 through 46:2666 as well as any subsequent legislation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 25:

**§2703. Purpose and General Agreement**

A. The Department of Health and Hospitals is authorized by law to provide for the direction, operation, development and management of programs of community-based mental health, mental retardation/developmental disabilities, alcohol and substance abuse, public health and related activities for eligible consumers in Louisiana.

B. The legislation authorizes CAHSD to provide services of community-based mental health, developmental disabilities, alcohol and substance abuse, public health and related activities for eligible consumers in the CAHSD, which includes East Baton Rouge, West Baton Rouge, Ascension, Iberville, and Pointe Coupee parishes; and to assure that services meet all relevant federal and state regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 25:

**§2705. Designation of Liaisons**

A. The primary liaison persons under this agreement are:

1.	DHH	Deputy Secretary
2.	CAHSD	Executive Director

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 25:

**§2709. Services To Be Delivered**

A. In order to provide a broad spectrum of coordinated public services to consumers of OMH, OCDD, OADA, OPH and for the District Administration, the CAHSD will assume programmatic, administrative and fiscal responsibilities for including, but not limited to, the following:

- 1. OCDD Community Support;
- 2. Mental Health Services consistent with the State Mental Health Plan, as required under the annual Mental Health Block Grant Plan;

3. Outpatient Treatment (Non-Intensive) OADA;
4. Community Based Residential Services OADA;
5. Intensive Outpatient Treatment/Day Treatment OADA;
6. Non-Medical/Social Detoxification OADA;
7. Primary Prevention;
8. Healthy Community Regional Program OPH;
9. HIV/AIDS Prevention Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 25:

**§2711. Responsibilities of Each Party**

A. CAHSD accepts the following responsibilities:

1. to perform the functions which provide community-based services and continuity of care for the diagnosis, prevention, detection, treatment, rehabilitation and follow-up care of mental and emotional illness.
2. to be responsible for community-based programs and functions relating to the care, diagnosis, eligibility determination, training, treatment, case management of developmentally disabled and autistic persons as defined by the MRDD law.
3. the CAHSD shall work closely with the OCDD in managing the waiver functions, including placement of individuals and maintenance of the waiting list;
4. to promote, support and provide community based planning of broad health issues through the Healthy Communities Strategic Planning model;
5. the CAHSD will provide for the gradual assumption of appropriate community public health functions;
6. to perform community-based functions related to the care, diagnosis, training, treatment, and education of alcohol or drug abusers and primary prevention of alcohol and drug abuse;
7. to perform community-based functions related to the care, diagnosis, training, treatment and education of gambling abuse;
8. to maintain services in community-based mental health, developmental disabilities, and substance abuse at least at the same level as the state maintains similar programs;
9. to ensure that the quality of services delivered is equal to or higher than the quality of services previously delivered by the state;
10. to perform human resources functions necessary for the operation of the CAHSD;
11. to be responsible for the provision of any function/service, reporting or monitoring, mandated by the Block Grant Plan of each respective program office;
12. provide systems management and services data/reports in a format and content as that required of all regions by each DHH program office. Specific content of required information sets will be negotiated and issued annually through program office directives;
13. utilize ARAMIS, MIS, SPOE and any other required DHH/program office systems to meet state and federal reporting requirements;

14. human resource staffing data will be available for on-site review;
  15. maintain and support Single Point of Entry (SPOE) state standard;
  16. provide for successful delivery of services to persons discharged from state facilities into the CAHSD service area by collaborative discharge planning;
  17. provide in-kind or hard match resources as required for acceptance of federal grant or entitlement funds utilized for services in the CAHSD as appropriately and collaboratively applied for;
  18. Make available a list of all social and professional services available to children and adults through contractual agreement with local providers.
  19. CAHSD will work with Office of Alcohol and Drug Abuse to assure that all requirements and set asides of the Substance Abuse Block Grant are adhered to in the delivery of services;
  20. The CAHSD shall develop and utilize a five year strategic plan as required by Act 1465;
  21. The CAHSD will provide HIV/AIDS Prevention Program services.
- B. DHH retains/accepts the following responsibilities:
1. operation and management of any in-patient facility under jurisdiction of the DHH except that the CAHSD shall have authority and responsibility for determination of eligibility for receipt of such inpatient services (single point of entry function) which were determined at the regional level prior to the initiation of this Agreement .
  2. operation, management and performance of functions and services for environmental health;
  3. operation, management and performance of functions related to the Louisiana Vital Records Registry and the collection of vital statistics;
  4. operation, management and performance of functions and services related to laboratory analysis in the area of personal and environmental health;
  5. operation, management and performance of functions and services related to education provided by or authorized by any state or local educational agency;
  6. monitoring this service agreement, assuring corrective action through coordination with CAHSD and reporting failures to comply to the Governor's office;
  7. operation, management and performance of functions for pre-admission screening and resident review process for Nursing Home Reform;
  8. operation, management and performance of functions for enrollment and monitoring of Medicaid targeted case management;
  9. DHH, each quarter, will share with CAHSD information regarding, but not limited to, program data, statistical data, and planning documents that pertain to the CAHSD;
  10. DHH retains all Prior Authorization functions for Mental Health Medicaid Services;
  11. DHH shall be responsible for transferring \$30,000 to CAHSD for the purposes of contract attorney services. DHH

will provide legal support and representation in judicial commitments to the Department.

C. Joint Responsibilities:

1. to determine if community-based mental health, developmental disabilities, substance abuse, and public health services are delivered at least at the same level by CAHSD as the State provides for similar programs in other areas. Performance indicators shall be established. Such indicators will measure extensiveness of services, accessibility of services, availability of services and, most important, quality of services and/or outcome measures. The CAHSD will not be required to meet performance indicators which are not mandated for state-operated programs in these service areas, and which were not previously collected by Region 2.

2. CAHSD's progress toward achieving outcomes which meet or exceed those realized by DHH-operated programs in the affected geographic region shall be measured by comparing the CAHSD data on results to baseline statistics reported by Regional DHH programs for the year prior to July 1, 1997. Specific outcome measurements/performance indicators to be compared will be jointly agreed upon by CAHSD and DHH;

3. the CAHSD shall work closely with the OCDD in transitioning individuals from Pinecrest and Hammond Developmental Centers to the district ensuring individualized planning, the implementation of chosen life activities and needed supports, and the development of circles of support for the individual to ensure relationship building and community participation;

4. CAHSD will work with the Office of Alcohol and Drug Abuse to assure the key performance indicators are the same for CAHSD and Office of Alcohol and Drug Abuse;

5. CAHSD will work with the Office of Alcohol and Drug Abuse to assure there is a clear audit trail for linking alcohol and drug abuse funding and staffing to alcohol and drug abuse services;

6. CAHSD and Region II, OPH managers will collaborate to perform community based functions which provide services and continuity of care for education, prevention, detection, treatment, rehabilitation and follow up care related to personal and community health.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 25:

**§2713. Reallocation of Resources/Staff and Financial Agreements**

A. For FY98-99, DHH agrees to transfer financial resources to the direction and management of the CAHSD.

B. The CAHSD will submit to DHH an annual budget request for funding of the cost for providing the services and programs for which the CAHSD is responsible. The format for such request shall be consistent with that required by the Division of Administration and DHH. The request shall conform with the time frame established by DHH. CAHSD Executive Director will meet with the Office of the Secretary to discuss all new and expanded program request prior to presentation to DOA.

C. The CAHSD shall operate within its budget allocation and for services required by this MOU, report budget expenditures to DHH.

D. Revisions of the budget may be made upon written consent between the CAHSD and DHH and, as appropriate, through the Legislative Budget Committee's BA-7 process. In the event any additional funding is appropriated and received by DHH that affects any budget categories for the direction, operation, and management of the programs of mental health, mental retardation/developmental disabilities, substance abuse services, and public health, and related activities for any other such DHH entities or regions, the CAHSD will receive additional funds on the same basis as other program offices.

E. In the event of a budget reduction, CAHSD will receive a proportionate reduction in its budget.

F. The CAHSD shall assume all financial assets and/or liabilities associated with the programs transferred.

G. CAHSD shall be responsible for repayment of any funds received which are determined ineligible and subsequently disallowed.

H. DHH agrees to maintain the level of support from the Office of the Secretary and from the Office of Management and Finance which is consistent with the current level of support now provided to the regional OCDD, OMH, and OADA and OPH offices. These supports include:

1. Communication and Inquiry;
2. Internal Audit;
3. Environmental Consultant;
4. Fiscal Management;
5. Information Services;
6. Facility Management;
7. Budget, Contract and Lease Management;
8. Research and Development;
9. Materials Management;
10. Appeals, Human Rights, and Staff Development/Training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 25:

**§2715. Joint Training and Meetings**

CAHSD, through its staff, will participate in DHH and other programmatic training, meetings and other activities as agreed upon by CAHSD and DHH. In a reciprocal manner, CAHSD will provide meetings, training sessions, and other activities that will be available for participation by DHH staff as mutually agreed upon by the CAHSD and the DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 25:

**§2717. Special Provisions**

A. The CAHSD agrees to abide by all applicable Federal, State, and Parish law regarding nondiscrimination in service delivery and/or employment of individuals because of race, color, religion, sex, age, national origin, handicap, political beliefs, disabled veteran, veteran status, or any other non-merit factor.

B. The CAHSD shall maintain a property control system of all movable property in the possession of the CAHSD that was formally under the control of DHH, and of all additional property acquired.

C. For purposes of purchasing, travel reimbursement, and securing of social service/professional contracts, the CAHSD shall utilize established written bid/RFP policies and procedures. Such policies and procedures shall be developed in adherence to applicable statutory and administrative requirements. The CAHSD shall provide informational copies of such policies and procedures to DHH as requested until CAHSD develops their own policies and procedures they will use the current DHH policies.

D. The CAHSD shall abide by all court rulings and orders that affect DHH and impact entities under the CAHSD's control, and shall make reports to DHH Bureau of Protective Services all applicable cases of alleged abuse, neglect, exploitation, or extortion of individuals in need of protection in a format prescribed by DHH.

E. CAHSD shall be responsible for providing services to citizens of East & West Feliciana Parishes at a level at least equal to services rendered by DHH Region II prior to July 1, 1997. This will also include any new services provided and funded by CAHSD through DHH subsequent to July 1997.

F. If OADA is successful in establishing an Inpatient Gambling program, this will not be managed by CAHSD since this is a statewide program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 25:

#### §2719. Renewal/Termination

A. This agreement will cover the period of time from July 1, 1998 to June 30, 1999.

B. This agreement will be revised on an annual basis, as required by law, and will be promulgated through the Administrative Procedure Act. The annual agreement shall be published in the state register each year in order for significant changes to be considered in the budget process for the ensuing fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 25:

Comments regarding the proposed rule will be accepted until February 22, 1999 and should be addressed to John Lacour, Deputy Secretary, Department of Health and Hospitals, Box 629, Bin 2, Baton Rouge, LA 70821-0629.

David W. Hood  
Secretary  
Department of Health and Hospitals

Dr. Jan Kasofsky  
Executive Director  
Capital Area Human Services Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Memorandum of Understanding Between the Department of Health and Hospitals and the Capital Area Human Services District FY 98/99

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Administrative cost associated with the Capital Area Human

Services District (CAHSD) will be paid by the Department of Health and Hospitals (DHH) for FY98-99 in accordance with the annual service agreement. Estimated cost of printing the Notice of Intent and the Rule is \$920.00.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenues collections of state or local governmental units.

- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

David W. Hood  
Secretary  
9901#067

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

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

#### CommunityCARE Emergency Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Bureau of Health Services Financing currently operates the primary care case management program for Medicaid recipients known as CommunityCARE, which was originally established by Emergency Rule published in the *Louisiana Register*, Volume 18, Number 10, renewed in Volume 19, Number 2, and adopted as a final rule in Volume 19, Number 5. The Bureau proposes to amend the procedures for emergency care provided to CommunityCARE recipients by adopting the prudent layperson criteria for emergency medical condition and the emergency medical services definition contained in Section 4704 of the Balanced Budget Act of 1997 (BBA '97), in order to comply with increased protections required for Medicaid managed care enrollees.

This rule establishes a definition for emergency medical services that may be provided in a hospital emergency room for defined emergency medical conditions. Reimbursement for emergency room services which meet the definition of emergency medical services below will be made by Medicaid when provided to CommunityCARE recipients whose condition meets the definition of an emergency medical condition below. The primary care physician will approve such services whether the recipient contacted the primary care physician prior to receipt of emergency services or not. Treatment at the emergency room provided to a

CommunityCARE enrollee whose condition does not meet the definition of an emergency medical condition specified below will not be authorized by the primary care physician or reimbursed by Medicaid. Authorization for care subsequent to stabilization requires prior authorization by the CommunityCARE enrollee's primary care physician.

Emergency medical services with respect to a CommunityCARE enrollee are defined as furnished by a provider that is qualified to provide such services under Medicaid and consist of covered inpatient and outpatient services that are needed to evaluate or stabilize an emergency medical condition.

An emergency medical condition is defined as a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

#### **Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the provisions of Section 4704 of the Balanced Budget Act of 1997 concerning provision of emergency medical services to Medicaid recipients enrolled in the Medicaid program known as the CommunityCARE Program.

Emergency medical services with respect to a CommunityCARE enrollee are defined as furnished by a provider that is qualified to provide such services under Medicaid and consist of covered inpatient and outpatient services that are needed to evaluate or stabilize an emergency medical condition. The CommunityCARE enrollees who present themselves for emergency medical services shall receive an appropriate medical screening to determine if an emergency medical condition exists. A triage protocol is not sufficient to be an appropriate medical screening. If the medical screening does not indicate an emergency medical condition exists, the treating hospital/physician shall refer the CommunityCARE enrollee back to his/her primary care physician for treatment.

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on this proposed rule is scheduled for February 26, 1999 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: CommunityCARE Emergency Services**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that implementation of this proposed rule will increase state program costs by approximately \$75,077 for SFY 1998-99, \$112,374 for SFY 1999-2000, and \$112,784 for SFY 2000-2001. Included in SFY 1998-99 is \$60 for the state's administrative expense of promulgating this proposed rule as well as the final rule.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that implementation of this proposed rule will increase federal revenue collections by approximately \$177,539 for 1998-99, \$266,372 for SFY 1999-2000, and \$267,856 for SFY 2000-2001. Included in SFY 1998-99 is \$60 for federal expenditures for promulgating this proposed rule as well as the final rule.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Qualified Medicaid providers and participating Medicaid hospitals rendering emergency room treatment to CommunityCARE recipients for emergency services will be reimbursed by Medicaid in the amounts of approximately \$252,496 for SFY 1998-99, \$378,746 for SFY 1999-2000, and \$380,640 for SFY 2000-2001 if the emergency medical condition meets the criteria as defined by the Balanced Budget Act of 1997 (BBA).

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9901#077

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## **NOTICE OF INTENT**

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

Emergency Medical Services—Emergency Medical  
Response Vehicles Certification (Sprint Vehicles)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule under the Medical Assistance Program as authorized by R.S. 32:1 et seq. This proposed rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 297 of the 1997 Regular Session of the Louisiana Legislature mandates the Department of Health and Hospitals to inspect and certify emergency medical response (EMR) vehicles. In addition, the Department is authorized to deny, probate, suspend, or revoke certifications; to provide for penalties; and to provide for related matters. Therefore, the

Department proposes to adopt the following rule to establish certification requirements for emergency medical response vehicles.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following provisions to establish certification requirements for all emergency medical response vehicles.

An *emergency medical response vehicle* is defined as a marked emergency vehicle with full visual and audible warning signals operated by a certified ambulance service; the primary purpose of which is to respond to the scene of a medical emergency to provide emergency medical stabilization or support, or command control and communication, but which is not an ambulance designed or intended for the purpose of transporting a victim from the scene to a medical facility regardless of its designation. Included, but not limited to are such vehicles designated as “sprint car”, “quick response vehicle”, “special response vehicle”, “triage trucks”, “supervisor units”, and other similar designations. Fire apparatus and law enforcement patrol vehicles that carry first aid or emergency medical supplies and respond to medical emergencies as part of their routine duties shall not be considered emergency medical response vehicles.

A. Qualifications of Vehicle. The vehicle may be on either an automobile or truck chassis, have four or more wheels and must have the following:

1. Emergency Warning Lights. These lights shall be mounted as high and as widely spaced laterally apart as practicable. There must be two alternating flashing red lights on the front of the vehicle mounted at the same level. There must be two alternating flashing red lights on the rear of the vehicle mounted at the same level. These front and rear lights shall have sufficient intensity to be visible at five hundred feet in normal sunlight. Exceptions:

a. Any authorized emergency vehicle may be equipped with a large revolving red light on the roof instead of alternating flashing red lights on the front. This light must be discernible in all directions and have sufficient intensity to be visible at five hundred feet in normal sunlight.

b. Authorized emergency medical response vehicles of organized fire companies may be equipped with a large red and white light on the roof encased in a clear dome, instead of the large red light on the roof. This light must be discernible in all directions and have sufficient intensity to be visible at five hundred feet in normal sunlight.

2. Audible Warning Signals. Each emergency medical response vehicle must have a siren, exhaust whistle, or bell capable of giving an audible signal sufficient to warn motorists of its approach (audible up to five hundred feet).

3. External markings:

a. All numbering and lettering shall be reflective.

b. The unit number shall be displayed in numerals three (3) inches high or greater on the rear and both sides of the vehicle.

c. The agency’s name shall appear on both sides of the vehicle in lettering 3 inches high or greater, or with a logo that is 6 inches or greater in size.

d. The agency’s name or logo shall appear on the trunk or rear door in lettering 3 inches high. Agency logos must be specific to the agency and on file with the Department

of Health and Hospitals.

e. The vehicle’s markings shall indicate its designation as an emergency medical response vehicle such as “Sprint Car, Supervisor, Chief, Special Services”, etc. No markings on the vehicle may imply that it is an ambulance.

B. Equipment and Supplies

1. All vehicle units must have a Federal Communication Commission (FCC) typed acceptable two way radio communication system (day-to-day communications). The emergency medical response vehicle dispatch center(s) and/or point(s) of dispatch must be capable of interactive two-way radio communications within all of the service’s defined area:

a. All dispatch center(s) and/or point(s) of dispatch shall have a proper FCC licensed radio system or an agreement with an FCC licensed communication provider that does not allow for transmission by unauthorized users, but will provide the capability for the dispatcher, with one transmission, to be heard simultaneously by all of its ambulances/emergency medical response units within that defined geographic service area.

b. Services that utilize multiple transmitters/tower sites shall have simultaneous communications capabilities with all units utilizing a specific transmitter/tower site.

c. In addition to the day-to-day communication system a two way radio with disaster communications capability which must be either:

i. VHF Band - Hospital Emergency Activation Radio (HEAR) system 155.340 MHz with carrier squelsh, ENCODER optional; or

ii. 800 Mhz Band - SmartNet or Smart Zone - using the ICALL or ITAC frequencies in both the repeater and simplex modes in accordance with the FCC Region 18 Public Safety Radio Communication Plan.

d. Direct communication with a physician and hospital must be conducted through:

i. HEAR; or

ii. wireless telephone; or

iii. Radio Telephone Switch Station (RTSS); or

iv. Med. System 10, etc.

2. All emergency medical response vehicles must be equipped with the following:

Fire Extinguisher with a minimum of Underwriters Laboratory rating of 10:B,C (1) (no Halon). This device should be properly secured in the vehicle	1
Triangle reflectors	1 set of three triangle
Flashlight, 2 “C” cell or larger	1
Current hazardous materials reference guide U.S. Department Of Transportation or equivalent.	1
Hard Hat and Safety goggles (ANSI Z 37.1) or	1 per crew member
National Fire Protection Association approved fire helmet with face shield; and	1 per crew member
Gloves, leather or Nomex, over-wrist	1 pair per crew member

3. All emergency medical response vehicles must have basic life support medical supplies as follows:

Portable suction unit	1
Appropriate refill canister/liners for suction unit (if required)	1
Suction tubing, wide bore (if required)	1
Rigid pharyngeal/tonsillar wide bore suction	1
Suction catheters 5 or 6 or 5/6 and 14 French (if required)	1 each
Portable oxygen cylinder - full, 2000 + psi size "D" or above	1
Variable flow regulator and an oxygen wrench	1
Adult non-rebreather oxygen masks with tubing	1
Pediatric non-rebreather oxygen masks with tubing	1
Nasal prongs "nasal cannulas", adult with O <sub>2</sub> tubing	1
CPR mask or barrier device with one-way valve or filter	1
Adult bag valve mask devices with oxygen reservoirs and tubing	1 each
Pediatric bag valve mask devices with oxygen reservoirs and tubing, approximately 450 cc.; Note: Recommend no pop-off valve or make the valve inoperable	1
Oral airways - adult, child, and infant	1 each
Cervical collars - extra small/small or equivalent medium/large or equivalent	1 each
Cervical immobilization device - head blocks, other commercial head immobilization device or firm padding to improvise for such a device (such as towels or blankets not used to fulfill any other requirement)	1 set
Extremity splint suitable for upper or lower extremity fracture	1
Long spinal immobilization device may be a scoop stretcher with at least three straps or other clamshell devices Note: Wood acceptable if impervious to body fluids. Disposable cardboard not acceptable	1
Clean burn sheet, individually wrapped	1
Triangular bandages	2
Sterile multi-trauma dressing, 10" x 30"	1
Sterile combine dressings, minimum 5" x 9"	4
Sterile 4" x 4" gauze pads	10 packs minimum 2 per pack

Sterile individually packed occlusive dressings, 3" x 3" or larger	2
Roller gauze, clean, at least 2 inch wide	4 rolls
Normal saline - plastic containers	1 liter
Oral Glucose - based Paste (cake icing acceptable)	Min. 12.5g
Medical adhesive tape, 1" and 2" or wider (paper tape not acceptable)	1 each
OB kit: 2 towels, a 4" x 4" dressing, umbilical tape, sterile cutting instrument, a bulb suction, clamps for the cord, sterile gloves, and a blanket	1
Unopened box aluminum foil or silver swaddler	1
Blood pressure cuff, adult and pediatric, multi-cuff kits are acceptable	1 each
Stethoscope	1 pair
EMT Shears	1
Clean, single use bite stick	1
Blanket	1
Triage Tags	25

4. All emergency medical response vehicles that are not staffed and equipped to the EMT-Paramedic level must carry an automated external defibrillator (either automatic or semi-automatic) with the appropriate lead cables and at least two sets of the appropriate disposable electrodes. If the automated defibrillator is also capable of manual defibrillation, then an appropriate lock out mechanisms (such as an access code, computer chip, or lock and key) to prevent unauthorized use of the device by those persons not authorized to manually defibrillate must be an integral part of the device.

5. All emergency medical response vehicles must carry infection control equipment as follows:

Full Peripheral Glasses (1) or Face Mask, surgical (1 set); or, face shield for splash protection (1)	1
Gloves, Non-sterile	1 box
Handwash, Commercial Antimicrobial	1 bottle or can or 12 towelettes
Sharps container, OSHA approved	1
Readily identifiable trash bags, labeled for contaminated wastes	1
Jumpsuit/gown, impervious to liquid, disposable	1 per crew member
Shoe covers, disposable	1 per crew member
Tuberculosis mask, OSHA approved	1 per crew member

6. The following must be carried by intermediate level and paramedic level emergency medical response vehicles:

All IV fluids must be in plastic bags or jugs, not glass bottles, unless medically indicated otherwise.

Dextrose 5 percent in water - 250 cc or .9 percent NACL normal saline or lactated ringer's contained in not less than 4 approved containers	1000cc plus 1 bags of I.V. fluids
Macro drip Administration Sets	1
Minidrip Administration Sets	2
Venous Tourniquet	1
IV Catheters - 22, 20, 18, 16, and 14 gauge	1 each
Antiseptic Solution pads	6
3-way stop cock	1
Extension tubing	1
Syringe with Luer-lock 30 cc minimum	1

7. The following must be carried by all paramedic level emergency medical response vehicles:

Intra osseous needles of choice	1
1 cc syringe with 1/10 cc graduates	1
3 to 6 cc syringe	1
10 to 12 cc syringe	1
Hypodermic needle, 18 to 20 Ga.	1
Hypodermic needle, 21 to 23 Ga.	1
Hypodermic needle, 25 to 27 Ga.	1
Laryngoscope handle with 1 set extra batteries and bulb or 1 disposable handle unit	1
Laryngoscope blade, Size 0 Straight or 1 each disposable handle unit	1
Laryngoscope blade, Size 1 Straight or 1 each disposable handle unit	1
Laryngoscope blade, Size 2 Straight or 1 each disposable handle unit	1
Laryngoscope blade, Size 3 Straight or Curved or 1 each disposable handle unit	1
Laryngoscope blade, Size 4 Straight or Curved or 1 each disposable handle unit.	1
Endotracheal tubes, Uncuffed, Size 3.0 or 3.5	1
Endotracheal tubes, Uncuffed, Size 4.0 or 4.5	1
Endotracheal tubes, Uncuffed, Size 5.0 or 5.5	1
Endotracheal tubes, cuffed, Size 6.0 or 6.5	1
Endotracheal tubes, cuffed, Size 7.0 or 7.5	1
Endotracheal tubes, cuffed, Size 8.0 or 8.5	1

Stylettes for ET tubes, adult and pediatric	1 each
Magill Forceps, adult and pediatric	1 each
Water soluble lubricating jelly non-cellulose containing	1 pack of 5 or 1 tube
Cardiac monitor/defibrillator with paper recorder, defib pads or gel, quick look paddles or hands off capability, chest attachment cable and pads, capable of min. 5 to 360 joules. An automatic external defibrillator may be used if it has manual override capability and all other features listed.	1
Pediatric drug dosing chart or tape to include all mandated drugs	1
Home use glucometer (FDA approved)	1
Nasogastric Tube (when use allowed) 5 Fr	1
Nasogastric Tube (when use allowed) 8 Fr	1
Nasogastric Tube (when use allowed) 14 to 18 Fr	1
DRUGS	
Albuterol inhalation solution 2.5 mg with appropriate delivery device	1
Aspirin 325 mg 5 grains	1
Atropine	3 mg
Benadryl 50 mg for IV use	1
Bretylium tosylate, 500 mg	1
Diazepam	10 mg injectable
Dopamine 200 mg minimum Vials	200 mg
Dextrose, 25 g in 50 cc	1
Epinephrine, 1:1,000 minimum 2 mg and Epinephrine 1:10,000 minimum 2 mg	4 mg min.
Lidocaine, 100 mg boluses	3
Loop diuretic e.g. furosemide 80 mg or bumetanide 2 mg	1 dose
Naloxone	2 mg
NTG spray or tablets	3 doses
Sodium bicarbonate, 44 meq min	2

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on this proposed rule is scheduled for Friday, February 26, 1999 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that

time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Certification Standards for Emergency  
Medical Response Vehicles (Sprint Vehicles)**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Implementation of this proposed rule will not result in state costs. However, \$320 will be incurred in SFY 1998-99 for the state's administrative expense of promulgating this proposed rule as well as the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no effect on federal revenue collections. There may be self generated revenue collections from an anticipated cost subject to implementation of a fee for this certification. However, the federal share of promulgating this proposed rule as well as the final rule is \$320 and will be incurred in 1998-99.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
All emergency medical response vehicles (sprint vehicles) operating in Louisiana, must comply with the certification of medical and safety equipment requirements. It is anticipated that there may be costs to providers subject to implementation of fees for certification of emergency medical response vehicles operating in Louisiana. There is insufficient data to determine the effect on emergency medical response vehicles operating in Louisiana to better project an impact.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
Under this rule, emergency medical response vehicles that do not carry as part of the regular equipment the required medical and safety equipment will be reported to parish offices and may be prohibited from operating in Louisiana. There is insufficient data to determine the effect on emergency medical response vehicles operating in Louisiana to project an impact.

Thomas D. Collins  
Director  
9901#078

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Insurance  
Office of the Commissioner**

Regulation 67—Audit of Title Insurance Agents  
(LAC 37:XIII.Chapter 55)

In accordance with the provisions of R.S. 49:950 et seq. of the Administrative Procedure Act, the Department of

Insurance hereby gives notice of its intent to promulgate and adopt this regulation. The purpose of this regulation is to set forth the standards and form of the audit required to audit the escrow and settlement practices, escrow accounts, security agreements, instructions and files, and the underwriting and claims practices. The audit shall include a review of the blank policy inventory and processing operations of title insurance agents as well as to establish guidelines, standards and related matters for title insurers and title insurance agents in the implementation of the Louisiana Title Insurance Act. Under the authority of Louisiana Revised Statute, Title 22, Sections 3, 7, 10, 1113, 1191(B), 2092.9(A)(1), 2092.9(A)(2) and 2092.14, the Department of Insurance gives notice that the following proposed regulation is to become effective upon its final publication in the *Louisiana Register*. The intended action complies with the statutory law administered by the Department of Insurance.

**Title 37  
INSURANCE**

**Part XIII. Regulations**

**Chapter 55. Regulation 67—Audit of Title Insurance Agents**

**§5501. Purpose**

The purpose of this regulation is to establish guidelines, standards and related matters for title insurers and title insurance agents in the implementation of the Louisiana Title Insurance Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3, 7, 10, 2092.9(A)(2) and 2092.14.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

**§5503. Definitions**

The definitions relevant to this regulation shall be those designated in LSA-R.S. 22:2092.2 of the "Louisiana Title Insurance Act."

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3, 7, 10, 2092.9(A)(2) and 2092.14.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

**§5505. Standards and Form of Audit**

A. The title insurer shall conduct an on-site audit tri-annually, meaning once every three years, of each of its appointed title insurance agents who shall have remitted \$2,500 or more in net premium during any one calendar year to the title insurer pursuant to the provisions of LSA-R.S. 22:2092.1 et seq.

1. Auditors shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners as it pertains to LSA-R.S. 22:2092.1 et seq.

2. Nothing contained in this section shall limit the right or responsibility of the title insurer to perform any other audit procedures as necessary.

3. The title insurer shall provide the Department with a copy of the audit report within 30 days of its completion, when there is a finding of any violation of LSA-R.S. 22:2092.9.A(1).

B. The title insurer shall conduct a policy inventory audit tri-annually, meaning once every three years, of each of its appointed title insurance agents, who shall have remitted less than \$2,500 in net premium during any one calendar year to the

title insurer.

1. The policy inventory audit shall include, but is not limited to, an inventory and reconciliation of all policy forms assigned to the title insurance agent.

2. Nothing contained in this section shall limit the right or responsibility of the title insurer to perform any other audit procedures as necessary.

3. The title insurer shall provide the Department with a copy of the audit report within 30 days of its completion, when there is a finding of any violation of LSA-R.S. 22:2092.9.A(1).

C. The title insurer shall be responsible for all expenses incurred by the title insurer in conducting the audits set forth in §5505.A and B, including the expenses and fees of examiners, auditors, accountants, actuaries, attorneys, clerical or other assistants who are employed by the title insurer to make the audit.

D. The title insurance agent, employees and representatives shall produce and make freely accessible to the title insurer the accounts, records, documents and files in its control in relation to the subject of the audits set forth in §5505.A and B.

E. The title insurance agent shall retain all records of all matters relating to the title insurance policies not less than seven years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3, 7, 10, 2092.9(A)(2) and 2092.14.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

#### **§5505. Errors and Omissions Coverage**

All title insurance agents, including its employees, shall maintain an errors and omissions liability policy, issued by insurers authorized to do business in this state. In no event shall the policy coverage be less than \$250,000 per claim. The title insurer shall not provide errors and omissions insurance directly or indirectly on behalf of the title insurance agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3, 7, 10, 2092.9(A)(2) and 2092.14.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

#### **§5507. Back to Back Real Estate Closings**

A. To facilitate closings where an individual sells immovable property (the "sale") and utilizes the proceeds of the sale to purchase immovable property (the "purchase"), the title insurance agent for the sale shall have certified the following:

1. that funds drawn at the time of the real estate closing and settlement are from an escrow account as defined by LSA-R.S. 22:2092.2(6); and

2. that the funds disbursed are from those funds received by the title insurance agent at the time of the real estate closing and settlement and are in one of the forms enumerated in LSA-R.S. 22:2092.11B(1)(a)-LSA-R.S. 22:2092.11B(1)(h).

B. Certification as set forth hereinabove will authorize the title insurance agent who processes the closing and settlement of the purchase to accept as "good funds" pursuant to LSA-R.S. 22:2092.11B(1)(a)-LSA-R.S. 22:2092.11B(1)(h) a check drawn on the escrow account of the title insurance agent who processed the sale, provided that the certification shall have

been executed by the title insurance agent who processed the sale and then retained by the title insurance agent who processed the purchase.

C. The collection of funds associated with any insured real estate closing is the responsibility of the title insurance agent regardless of the form of the funds accepted or any certification thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3, 7, 10, 2092.9(A)(2) and 2092.14.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

#### **§5509. Enforcement**

A. If the Department determines that the title insurer, title insurance agent, or any other person has violated this regulation or order promulgated thereunder, the Department, pursuant to R.S. 22:2092.15 et seq. may order:

1. revocation or suspension of the license of the title insurance agent and/or revocation or suspension of the certificate of authority of the title insurer; and/or fines;

2. if a corporation, a penalty not exceeding \$50,000 for each violation, and if a natural person, a penalty not exceeding \$10,000 for each violation.

B. All title insurers and title insurance agents shall be subject to all other applicable provisions of the *Louisiana Insurance Code*, unless specifically exempted by this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3, 7, 10, 2092.9(A)(2) and 2092.14.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

A public hearing on this proposed regulation will be held on February 24, 1999 in the Plaza Hearing Room of the Insurance Building located at 950 North Fifth Street, Baton Rouge, Louisiana at 9:00 A.M. All interested persons will be afforded an opportunity to make comments.

Interested persons may obtain a copy of this proposed regulation from, and may submit oral or written comments to Edwin J. Wilson, Staff Attorney, Department of Insurance, 950 North Fifth Street, Baton Rouge, Louisiana 70804-9214, telephone (225) 342-5317. Comments will be accepted through the close of business at 4:30 P.M., March 5, 1999.

James H. "Jim" Brown  
Commissioner

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Regulation 67—Audit of Title Insurance Agents**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is not anticipated that Regulation 67 would result in any implementation costs or savings to local or state governmental units.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Regulation 67 provides for the levy of penalties against companies and agents that violate the provisions of LSA-R.S.22:2092.9A(1); however, there are not sufficient data available to determine the amount of revenue that might be so generated.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated benefits or costs to directly affected groups or persons, other than any fines which would be levied for non-compliance as a result of Regulation 67. These fines would be the source of self-generated revenue for the Department of Insurance. Title insurance companies currently "audit" their agents. Regulation 67 would provide forms and guidelines to be followed in the performance of those audits and reporting to the Department of Insurance.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Regulation 67 is not expected to have any impact on competition and employment.

Donald J. McLean, Jr.      Robert E. Hosse  
Assistant Commissioner    General Government Section Director  
Management and Finance   Legislative Fiscal Office  
9901#033

**NOTICE OF INTENT**

**Department of Social Services  
Office of Community Services**

Homeless Trust Fund (LAC 48:I.Chapter 18)

In accordance with R.S. 49:950 et seq., the Administrative Procedures Act, notice is hereby given that the Department of Social Services intends to amend the existing rule, originally promulgated in the *Louisiana Register*, Volume 21, pages 401-402, (April 1995) establishing a procedure to disburse funds from the Louisiana Homeless Trust Fund. The amended rule deletes references to the Homeless Trust Fund Advisory Council, which was abolished by Act 1116 of the 1997 Legislature, and solely authorizes the Department of Social Services to implement and oversee the disbursement process for the Homeless Trust Fund. The amended rule also repeals §1813, which required the retention of a minimum residual amount in the Trust Fund, in order to allow all remaining trust fund monies to be disbursed in full. In October, 1995, under provisions of R.S. 47:120.37, the Homeless Trust Fund was removed from the donation schedule of the state income tax return, terminating revenues from this source for replenishment of the Trust Fund, and obviating the need for retention of a funding reserve.

The Homeless Trust Fund rule is hereby amended to incorporate and substitute the revised provisions stated below.

**Title 48**

**PUBLIC HEALTH**

**Part I. General Administration**

**Chapter 18. Homeless Trust Fund**

**§1801. Definitions**

A. In this Chapter:

*DSS*—means the Department of Social Services (Office of Community Services).

*Fund*—means the Louisiana Homeless Trust Fund established by R.S. 46:591 through 46:595.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:591 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:401 (April 1995), amended LR 25:

**§1803. Application Requests**

A. To receive an application, an organization that aids the homeless must submit a written request to DSS containing the following information:

1. name of the organization;
2. mailing address of the organization;
3. phone number of the organization;
4. contact person within the organization; and
5. proof of the organization's nonprofit and tax exempt status or of nonprofit application pending.

B. An organization that submits an application request will be added to DSS's mailing list and DSS shall mail the organization information about application requirements and deadlines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:591 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:401 (April 1995), amended LR 25:

**§1805. Application Requirements and Deadlines**

A. The application for funds must contain:

1. name and mailing address of the organization;
2. names and addresses of the organization's Board of Directors;
3. certification of the organization's nonprofit and tax exempt status or of nonprofit application pending;
4. brief history of the organization and its programs;
5. description of the proposed use of the requested funds;
6. description of the unmet needs of the homeless in the organization's community, including the source of the information;
7. itemized budget and budget justification for the Trust Fund proposal;
8. summary of organization's annual budget and sources of income;
9. documentation of the availability of matching funds for the proposal.

B. DSS will issue solicitations for grant applications after the end of the state fiscal year when the balance in the Fund is determined. The solicitation for grant applications will outline application deadlines and describe the eligible projects that DSS will fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:591 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:401 (April 1995), amended LR 25:

**§1807. Review of Applications**

A. DSS will review complete applications in the order the applications are received.

B. DSS shall evaluate each application according to the following factors:

1. the extent to which the proposal meets the needs of the homeless in the organization's service community, as identified by the most recent report of the Louisiana Interagency Council on the Homeless;

2. the extent to which the organization requires Homeless Trust Fund monies as an equivalent match for other homeless assistance funding;

3. the demonstrated success of the program in meeting the needs of the homeless, if the proposal concerns an existing program;

4. the extent to which the proposal provides for direct services or housing needs, rather than administrative services; and

5. other factors as identified in DSS's solicitation for grant applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:591 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:401 (April 1995), amended LR 25:

### **§1809. Notification and Appeals**

A. DSS shall notify applicants of award decisions no later than 30 days after the date of DSS's decision.

B. An organization shall notify DSS in writing and by mail of whether the organization accepts the award no later than 30 days after the date the organization received DSS's notification.

C. DSS shall publish in the *Louisiana Register* a list of all projects funded during the previous state fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:591 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:401 (April 1995), amended LR 25:

### **§1811. Emergency Grants**

At any time, DSS may authorize an emergency grant of up to \$2,000 to an organization that aids the homeless, as long as funding is available. A request for an emergency grant must state the immediate nature of the request and comply with §1805.A of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:591 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:401 (April 1995), amended LR 25:

### **§1813. Residual Funds in the Homeless Trust Fund**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:591 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:401 (April 1995), repealed LR 25:

Interested persons may submit written comments to the following address: Keyth A. Devillier, Homeless Trust Fund Coordinator, Office of Community Services, Department of Social Services, Box 3318, Baton Rouge, LA 70821, or phone (225) 342-2277. He is responsible for responding to inquiries regarding the proposed rule.

Madlyn Bagneris  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Homeless Trust Fund**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Amended rule is to revise procedure for disbursement of monies on deposit in the Homeless Trust Fund to delete references to Homeless Trust Fund Advisory Council (abolished by Act 1116 of 1997) originally designated to perform certain functions in the disbursement process, and to solely authorize DSS to implement and oversee all procedures. Estimated disbursements for State Fiscal year 1998-99 will not exceed monies (approximately \$30,000) presently deposited in the Trust Fund for this purpose.

### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Rule is not anticipated to have any effect on revenue collections of state or local government units as monies to be disbursed derive from dedicated source constituting donations specifically made to the Homeless Trust Fund.

### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Trust fund dollars will be beneficial as a financial resource to support new or enhanced activities by local homeless aid projects to prevent homelessness and to assist homeless people to become self-sufficient.

### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Rule will have no effect on competition and employment in private enterprise sector. Trust Fund implementation may have a positive effect on employment through support of local programs promoting self sufficiency and employment readiness for homeless and destitute individuals.

Robert J. Hand  
Director  
Management and Finance  
9901#036

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## **NOTICE OF INTENT**

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

Family Independence Temporary Assistance Program  
(FITAP)—Earned Income Deductions  
(LAC 67:III.1149)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 2, the Family Independence Temporary Assistance Program (FITAP).

Pursuant to the authority granted to the Department by the Louisiana Temporary Assistance to Needy Families Block Grant, the agency proposes to remove the maximum limit allowed for a dependent care deduction. Although policy was changed removing the cap on the dependent care deduction effective March 1998, the agency failed to revise §1149.

Additionally, the agency is removing the dependent care deduction for those recipients who received FITAP in October 1988 or August 1992 based on application of the deduction and when such recipients would be disadvantaged by loss of the deduction.

**Title 67**  
**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 2. Family Independence Temporary Assistance Program (FITAP)**

**Chapter 11. Application, Eligibility, and Furnishing Assistance**

**Subchapter C. Need and Amount of Assistance**

**§1149. Earned Income Deductions**

A.1. - 2. ...

3. Dependent Care. Recipients may be entitled to a deduction for dependent care for an incapacitated adult, or for a child age 13 or older who is not physically or mentally incapacitated or under court supervision.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:460.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:8 (January 1982), amended LR 10:1030 (December 1984), amended by the Department of Social Services, Office of Eligibility Determinations, LR 15:629 (August 1989), amended by the Department of Social Services, Office of Family Support, LR 18:869 (August 1992), LR 23:1707 (December 1997), LR 25:

Interested persons may submit written comments by March 1, 1999 to the following address: Vera W. Blakes, Assistant Secretary, Office of Family Support, P. O. Box 94065, Baton Rouge, Louisiana 70804-4065.

Madlyn B. Bagneris  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Family Independence Temporary Assistance Program (FITAP)—Earned Income Deductions**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The immediate implementation cost to state government is the cost of publishing the rule. This cost is minimal and funds for such actions are included in the program's annual budget. There are no costs or savings to local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on revenue collection of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This action may allow an increase in FITAP benefits for a small number of recipients who would benefit from an increase in the dependent care deduction as a result of removing the maximum allowed limit. There are no costs or benefits to non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will have no impact on competition and employment.

Vera W. Blakes  
Assistant Secretary  
9901#038

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Food Stamp Program—Alien Eligibility  
(LAC 67:III.1928, 1931-1933, 1994)

The Department of Social Services, Office of Family Support, proposes to amend LAC 67:III.Chapter 19 pertaining to the Food Stamp Program.

Since 1996 several public laws revising the *United States Code* have prompted the agency to promulgate and amend rules with regard to the food stamp eligibility of non-citizens. Program review of the Notice of Intent and Declaration of Emergency concerning §1994 (*Louisiana Register*, October 1998) revealed that previous revisions had failed to include the basic regulations regarding qualified aliens. Further review noted that although Subchapter D was originally reserved for this subject area, the agency had failed to utilize it. Because Subchapter K contained reference to aliens, the first revision pursuant to welfare reform was an amendment to it.

Therefore, the agency now proposes to promulgate these regulations under Subchapter D. A change is also necessary to expand the section numbers available under Subchapter D. To accomplish this current §1931 entitled Verification of Eligibility is being renumbered as §1928 with no change to its content.

The agency published a Notice of Intent and Declaration of Emergency concerning alien eligibility in October 1998. The Notice is, therefore, voided by this action. However, since part of proposed Subchapter D now contains the emergency regulations which were effective November 1, 1998, this proposed rule will later appear in its entirety as a Declaration of Emergency to extend the effectiveness of those regulations.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 3. Food Stamps**

**Chapter 19. Certification of Eligible Households**

**Subchapter B. Application Processing**

**§1928. Verification of Eligibility**

A. The Office of Family Support shall require verification of residency requirements, the identity of the person making application and continuing shelter charges.

B. The Office of Family Support may, with prior Food and Nutrition Service approval, require additional verification of other eligibility factors as indicated by quality control reviews, audits, or other special reviews.

C. The agency will require verification of necessary information within 10 days. Failure to provide such verification may result in rejection of the application unless the household has requested additional time in which to obtain the verification or assistance in obtaining the verification. If the case is closed due to failure to submit required verification and the verification is subsequently provided within the initial 30-day period, the application will be reactivated retroactively to the date of application. If the verification is provided in the second 30-day period, the application will be reactivated and benefits will be prorated from the date the missing verification is provided.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:3194 et seq., 7 CFR 273.2, 7 CFR 273.3.c.(1)(ii).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:

#### **Subchapter D. Citizenship and Alien Status**

##### **§1931. Qualified Aliens**

A. In addition to U.S. citizens, the following qualified aliens are eligible for benefits:

1. an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act;
2. an alien who is granted asylum under Section 208 of such Act;
3. a refugee who is admitted to the United States under Section 207 of such Act;
4. an alien who is paroled into the United States under Section 212(d)(5) of such Act for a period of at least one year;
5. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date of §307 of Division C of Public Law 104-208) or §241.b.3 of such Act (as amended by Section 305(a) of Division C of Public Law 104-208);
6. an alien who is granted conditional entry pursuant to §203(a)(7) of such Act as in effect prior to April 1, 1980; or
7. an alien who is a *Cuban* or *Haitian* entrant, as defined in §501.e of the Refugee Education Assistance Act of 1980;
8. an alien who has been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien if the spouse or parent consented to, or acquiesced in, such battery or cruelty. The individual who has been battered or subjected to extreme cruelty must no longer reside in the same household with the individual who committed the battery or cruelty. The agency must also determine that a substantial connection exists between such battery or cruelty and the need for the benefits to be provided. The alien must have been approved or have a petition pending which contains evidence sufficient to establish:
  - a. the status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of §204(a)(1)(A) of the Immigration and Nationality Act (INA); or
  - b. the classification pursuant to clause (ii) or (iii) of Section 204(a)(1)(B) of the INA; or
  - c. the suspension of deportation and adjustment of status pursuant to §244(a)(3) of the INA; or
  - d. the status as a spouse or child of a United States citizen pursuant to clause (i) of §204(a)(1)(A) of the INA, or

classification pursuant to clause (i) of Section 204(a)(1)(B) of the INA;

9. an alien child or the alien parent of a battered alien as described in §1931.A.8.

AUTHORITY NOTE: Promulgated in accordance with P. L. 104-193, P.L. 104-208, P. L. 105-33 and P. L. 105-185.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 7:265 (May 1981), amended by the Department of Social Services, Office of Family Support, LR 22:286 (April 1996), LR 25:

##### **§1932. Time Limitations for Certain Aliens**

A. The following qualified aliens are eligible for benefits for a period not to exceed seven years after they obtain designated alien status:

1. refugees admitted under §207 of the Immigration and Nationality Act (INA);
2. asylees admitted under §208 of the INA; and
3. an alien whose deportation is withheld under §243(h) of such ACT (as in effect immediately before effective date of §307 of division C of P.L. 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of division C of P.L. 104-208);
4. *Cuban* and *Haitian* entrants as defined in §501(e) of the Refugee Education Assistance Act of 1980;
5. *Amerasian* immigrants admitted pursuant to §584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 as contained in §101(e) of P.L. 100-202 and amended by the 9th proviso under migration and refugee assistance in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, P.L. 100-461, as amended.

B. The following qualified aliens are eligible for an unlimited period of time:

1. veterans who have met the minimum active duty service requirements of Section 5303 A(d) of Title 38, *United States Code*, who were honorably discharged for reasons other than alienage and their spouses or unremarried surviving spouses, if the marriage fulfills the requirements of Section 1304 of Title 38, *United States Code*, and unmarried dependent children;
2. active duty personnel (other than active duty for training) and their spouses, or unremarried surviving spouses, if the marriage fulfills the requirements of Section 1304 of Title 38, *United States Code*, and unmarried dependent children;
3. aliens who have worked 40 qualifying quarters of coverage under Title II of the Social Security Act or can be credited with such qualifying quarters;
4. individuals who were lawfully residing in the United States on August 22, 1996 and are receiving benefits or assistance for blindness or disability as defined in §3(r) of the Food Stamp Act of 1997.
5. individuals who were lawfully residing in the United States on August 22, 1996 and were 65 years of age or older;
6. individuals who were lawfully residing in the United States on August 22, 1996 and are under 18 years of age.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 105-33 and P.L. 105-185.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:

**§1933. Non-Qualified Aliens**

A. The following aliens may be eligible for an indefinite period of time even though they are not qualified aliens.

1. Individuals who are lawfully residing in the United States and were members of a Hmong or Highland Laotians tribe at the time the tribe rendered assistance to the United States personnel by taking part in a military rescue operation during the Vietnam era beginning August 5, 1964 and ending May 7, 1975, as defined in §101 of Title 38, *United States Code*; the spouse or an unmarried, dependent child of such an individual; or the unremarried surviving spouse of such an individual who is deceased.

2. Individuals who are American Indian born in Canada to whom the provisions of §289 of the Immigration and Nationality Act apply or who is a member of an Indian tribe as defined in §4(e) of the Indian Self-Determination and Education Assistance Act.

AUTHORITY NOTE: Promulgated in accordance with P.L. 105-185.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:

**Subchapter K. Action on Households with Special Circumstances**

**§1994. Alien Eligibility**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 104-208 and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), LR 24:354 (February 1998), repealed LR 25:

Interested persons may submit written comments by March 1, 1999 to the following: Vera W. Blakes, Assistant Secretary, Office of Family Support, Post Office Box 94065, Baton Rouge, Louisiana, 70804-4065.

Madlyn B. Bagneris  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Food Stamp Program—Alien Eligibility**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Since this rule proposes only to clarify and reorganize certain Food Stamp Program regulations, the only cost to the state is the minimal charge for publication of the notice and final rule. There are no costs or savings to any local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on revenue collection of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no costs or benefits to any persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will have no impact on competition and employment.

Vera W. Blakes  
Assistant Secretary  
9901#037

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Social Services  
Office of the Secretary  
Bureau of Licensing**

Child Residential Care—Authority, Definitions,  
and Controlled Intensive Care Facility  
(LAC 48:I.7903, 7907 and 7925)

The Department of Social Services, Office of the Secretary, Bureau of Licensing, proposes to amend the LAC 48:I. Subpart 3, Licensing and Certification.

This proposed rule is mandated by Louisiana Revised Statutes 46:1401 through 1426.

These standards are being amended to add procedures for licensure, add definitions and to add additional licensing modules.

**Title 48  
PUBLIC HEALTH—GENERAL  
Part I. General Administration  
Subpart 3. Licensing and Certification  
Chapter 79. Child Residential Care  
§7903. Authority**

A.1. - 2. ...

3. To carry out the legislative provisions and meet the needs of children who have been placed in out-of-home care, separate regulations have been developed which are designed for the different types of programs. These programs are established as "modules" to the child residential care regulations as listed below:

- a. Therapeutic Wilderness Program; and
- b. Controlled Intensive Care Facility or Unit.

4. To obtain a license as a Child Residential Care Facility, an applicant must meet, and adhere to, the licensing standards as stipulated in §§7901-7921. These standards shall be known as core standards.

5. To obtain a license as a Therapeutic Wilderness Program, an applicant must meet the core standards plus the licensing standards as stipulated in the module under §7923. If any core standard is not applicable to the Therapeutic Wilderness Program, it shall be so stated in the module.

6. To obtain a license as a Controlled Intensive Care Facility or Unit, an applicant must meet the core standards plus the licensing standards as stipulated in the module under

§7925. If any core standard is not applicable to the Controlled Intensive Care Facility or Unit, it shall be so stated in the module.

7. An applicant may be licensed as a "stand alone" Child Residential Facility, a Therapeutic Wilderness Program or a Controlled Intensive Care Facility.

8. A facility already licensed as a Child Residential Facility may also be licensed to operate a Therapeutic Wilderness Program or a Controlled Intensive Care Unit by meeting the additional appropriate licensing standards. However, the licensed capacity of these units shall be separate from the licensed capacity of the Child Residential Facility.

9. A facility already licensed by another agency or as another type program must meet the licensing standards for Child Residential Facility plus the appropriate module standards.

10. A facility licensed by another agency or as another type program must have a clear separation between the areas to be licensed that will prohibit the residents from intermingling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:46 (April, 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24: 2129 (November 1998), LR 25:

**§7907. Definitions**

\* \* \*

*Core Standards*—the basic licensing standards that all providers must meet in order to obtain a license.

\* \* \*

*Module*—the additional licensing standards that must be met, in addition to the core standards, to obtain a license for a particular speciality.

\* \* \*

*Controlled Intensive Care Facility or Unit*—a staff secure, intensive therapeutic program of individualized treatment provided on a twenty-four (24) hour, seven (7) day a week basis.

\* \* \*

*Controlled Time-Out*—an intervention used only in extreme situations where a child is out of control, and is a danger to him/herself or others, or whose presence is a severe disruption of the therapeutic environment.

\* \* \*

*Time-Out*—an intervention utilized when a child needs to be removed from a situation or circumstance and does not have the ability, at the time, to self monitor and determine readiness to rejoin the group.

AUTHORITY NOTE: Promulgated in Accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24: 2129 (November 1998), LR 25:

**§7925. Controlled Intensive Care Facility or Unit**

A. Controlled Intensive Care Facilities or Units shall meet all core standards (§§7901-7921), unless specifically replaced

or revised, plus the standards as stipulated in this module.

**B. Orientation**

1. All direct care staff shall receive 40 hours of orientation/training prior to being independently assigned to a particular job. In addition to the topics listed under §7911.E.1, the following topics must be covered:

- a. interpersonal relationships;
- b. communication skills;
- c. child growth and development;
- d. social/cultural lifestyles of the population served;
- e. procedures for use of time-out including controlled time-out; and
- f. procedures for use of locked doors and gates, if allowed.

2. All clerical and support staff, who have minimum contact with residents, shall receive at least sixteen (16) hours of orientation/training in topics other than specific job responsibilities, during the first two (2) weeks of employment. At a minimum this orientation/training must cover the following:

- a. security procedures;
- b. emergency and safety procedure including medical emergencies;
- c. the provider's philosophy, organization, program, practices and goals;
- d. detecting and reporting suspected abuse and neglect;
- e. reporting critical incidents;
- f. interpersonal relationships;
- g. children's rights; and
- h. social/cultural lifestyles of the population served.

3. All volunteers shall receive orientation, prior to beginning work, as listed for clerical staff.

4. All staff with supervisory authority over direct care staff or who have routine contact with residents shall receive orientation/training as listed for direct care staff.

**C. Annual Training**

1. All supervisory and direct care staff shall receive at least forty (40) hours of training, in addition to the orientation training, during the first year of employment.

2. All supervisory and direct care staff shall receive at least forty (40) hours of training each year of employment.

3. All clerical and support staff shall receive at least sixteen (16) hours of training each year of employment.

**D. Staffing Requirements.** Section 7911.H.3 of the core standards shall be replaced with the following for this module.

1. A Controlled Intensive Care Facility or Unit shall have an adequate number of qualified direct care staff on duty and with the children at all times to ensure the health, safety and well being of children and to carry out all treatment plans.

2. The provider shall maintain a direct care staff to children ratio of at least 1:2 when children are present and awake and a staff to children ratio of at least 1:3 when children are present and asleep.

3. Direct care staff shall always be awake while on duty.

4. In addition to required direct care staff, at least one supervisory staff person shall be on call in case of emergency.

5. Any deviation from the staffing ratios as required by this section may only be made as agreed upon by the

placing/funding agency and the provider. A provider may not deviate from the required staffing ratio for any placement made by anyone, or any agency, other than an agency of the State of Louisiana. The procedure for an agreement is as follows.

a. The agreement shall be based upon the needs of the children being placed in the facility.

b. A copy of the agreement, signed by both the placing/funding agency and the provider must be on file and a copy mailed to the Bureau of Licensing.

c. The agreement must have an effective beginning date and an ending date. The ending date shall be for no longer than twelve (12) months without a new agreement being signed.

d. An agreement may be canceled by either the placing/funding agency or provider by giving a two (2) week written notice. A copy of this notice shall be mailed to the Bureau of Licensing.

#### E. Clothing

1. If a Controlled Intensive Care Facility or Unit requests, and is approved to provide uniforms or other clothing to residents, the following procedures must be followed.

a. All uniforms or clothing must be provided by the provider at no cost to the children, their family, the placing or the funding agency. This clothing must be neat, clean and of a type that would normally be worn in the community. Also, no individual child shall be required to wear any distinguishing type clothing or uniform for punishment or for any other negative reason.

b. To be approved to furnish uniforms or other clothing to residents, the provider must obtain a letter of approval from each state agency or court that places children in the facility. These letters of approval must state the type of uniform or clothing to be used and be submitted to the Bureau of Licensing.

c. If approval is granted, all residents, regardless of how or by whom admitted, shall be required to wear the uniform or clothing in accordance with approved treatment policies and procedures.

d. If approval is granted by the Bureau of Licensing, §7913.J.3 of the core standards shall not be enforced.

F. Intake Evaluation. Section 7915.B.1 of the core standards shall be replaced with the following for this module.

1. The Controlled Intensive Care Facility or Unit shall accept a child into care only when a current, comprehensive intake evaluation or assessment has been completed including health, family history, medical, social, psychological, and as appropriate, a developmental and vocational or educational assessment. This evaluation or assessment must have been completed or updated within the last six (6) months. If the child has been hospitalized for treatment, a copy of the last hospitalization report must be provided. This evaluation shall contain evidence that a determination has been made that the child cannot be maintained in a less restrictive environment within the community.

2. An emergency placement of a child into a Controlled Intensive Care Facility or Unit may be made without current evaluations or assessments only as follows:

a. The placing/funding agency verifies that the child requires controlled intensive care.

b. The proper evaluations or assessments are made available to the provider within fifteen (15) days.

3. If the proper evaluations or assessments are not made available to the provider within fifteen (15) days, the child must be removed.

#### G. The Treatment Plan

1. Section 7917.A.4 of the core standards shall be revised to require the treatment plan manager to review and approve status reports of the successes and failures of a child at least every thirty (30) days.

2. Section 7917.B.1 of the core standards shall be revised to require an initial treatment plan to be developed within seventy-two (72) hours of admission. If a master plan is not developed within fifteen (15) days of admission, a review of the initial plan must be made at this time. A master plan shall be developed within thirty (30) days of admission.

H. Time-out Procedures. In addition to §7917.K of the core standards concerning time-out procedures, the following shall be required for the use of controlled time-out.

1. If a child becomes uncontrollable and is a danger to her/himself or others he/she may be placed in controlled time-out. If a child is placed in controlled time-out, the procedures are as follows.

a. Controlled time-out may be for no longer than the time it takes for a child to reach a point where he/she is no longer a danger to her/himself or to others.

b. Controlled time-out shall be in increments of no more than fifteen (15) minutes each.

c. Direct care staff may not place a child in controlled time-out for more than the initial fifteen (15) minute time frame.

d. When direct care staff places a child in controlled time-out, the unit supervisor or case manager must be notified immediately.

e. If a second fifteen (15) minute time-out segment is needed, the unit supervisor or case manager must give approval.

f. The unit supervisor or case manager may only approve two (2) additional time-out time frames [the third and fourth fifteen (15) minute period].

g. Any further use of controlled time-out must be approved by a licensed mental health professional.

2. Written reports must be prepared and signed by the individuals authorizing each 15 minute time frame of controlled time-out which gives the events that preceded the need for the use of controlled time-out; why there was a need for additional controlled time-out; how the child reacted to controlled time-out, etc.

3. The case or treatment plan manager must prepare an incident report which covers the events that preceded the initial controlled time-out, the progression of events throughout the entire controlled time-out period and the end result of the time-outs. It shall also give any recommendations that may be deemed necessary to prevent the need for repeated use of controlled time-outs for the individual child or the need for changes in the child's individual treatment plan. This report shall be submitted to the administrator of the agency.

4. The door to the controlled time-out room may only be physically held closed by staff so that the child cannot exit the room.

5. The door to the controlled time-out room shall have a view panel that allows staff to observe the child at all times and staff shall keep the child in continuous sight the entire time that he/she is in the room.

6. The room used for controlled time-out shall have at least sixty (60) square feet of floor space and shall have no furniture, obstructions, projections or other devices that could be used as a means to cause harm to the child or as a weapon against staff.

7. As soon as the child is under control and is no longer a threat of harm to him/herself or others, the door to the controlled time-out room must be released.

I. Exterior Space. In addition to §7919.A of the core standards concerning exterior space, the following shall be required if the Controlled Intensive Care Facility or Unit utilizes a security fence with locked gates.

1. The fence shall have a gathering area that is at least fifty (50) feet away from the building.

2. The space shall be of sufficient size to allow for fifteen (15) square feet of space per each resident and staff that may be in the building.

3. The fence may not be equipped with razor wire.

4. All staff working in the controlled area must carry keys to the gate at all times.

J. Sleeping Accommodation. Section 7919.D.3 of the core standards shall be replaced with the following for this module.

1. A Controlled Intensive Care Facility or Unit shall not permit more than two (2) children to occupy a designated bedroom space.

2. Any deviation to allow more than two (2) children to occupy a designated bedroom space may only be made as agreed upon by the placing/funding agency and the provider. A provider may not deviate from the required two (2) children to a bedroom for any placement made by anyone, or any agency, other than an agency of the State of Louisiana. The procedure for an agreement is as follows.

a. The agreement shall be based upon the needs of the children placed in the facility.

b. A copy of the agreement, signed by both the placing/funding agency and the provider must be on file and a copy mailed to the Bureau of Licensing.

c. The agreement must have an effective beginning date and an ending date. The ending date shall be for no longer than twelve (12) months without a new agreement being signed.

d. An agreement may be canceled by either the placing/funding agency or provider by giving a two (2) week written notice. A copy of this notice shall be mailed to the Bureau of Licensing.

3. Doors to individual bedrooms shall not be equipped with locks or any other device that would prohibit the door from being opened from either side.

K. Interior Space

1. Doors leading into a Facility or Unit may be locked only in the direction of ingress.

2. Doors in the line of egress shall not be locked.

3. Any deviation to allow the outermost doors in the line of egress to be locked may only be made after approval has been given by the Office of State Fire Marshal and as agreed upon by the placing/funding agency and the provider. A provider may not deviate from the requirement for unlocked egress doors for any placement made by anyone, or any agency, other than an agency of the State of Louisiana. The procedure for an agreement is as follows.

a. The agreement shall be based upon the needs of the children placed in the facility.

b. A copy of the agreement, signed by both the placing/funding agency and the provider must be on file and a copy mailed to the Bureau of Licensing.

c. The agreement must have an effective beginning date and an ending date. The ending date shall be for no longer than twelve (12) months without a new agreement being signed.

d. An agreement may be canceled by either the placing/funding agency or provider by giving a thirty (30) day written notice. A copy of this notice shall be mailed to the Bureau of Licensing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:46 (April, 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24: 2129 (November 1998), LR 25:

Interested persons may request copies as well as submit written comments on this proposed rule to Theresa Anzalone, Director, Bureau of Licensing, Office of the Secretary, Department of Social Services, P. O. Box 3078, Baton Rouge, LA 70821-3078. All interested persons will be afforded an opportunity to submit data, views or arguments in writing within 30 days after publication. The deadline date for all comments is February 19, 1999 at 4:30 p.m.

Public hearings on this proposed rule will be held on Wednesday, February 24, 1999 at the Hope Haven Center, 10010 Barataria Boulevard, Marrero, LA 70072 at 10 a.m. to 11 a.m.; Thursday, February 25, 1999 at the Bureau of Licensing, 2751 Wooddale Boulevard, Suite 330, Baton Rouge, LA 70806 at 10 a.m. to 11 a.m. and Friday, February 26, 1999 at the Louisiana Methodist Children's Home, 901 South Vienna, Ruston, LA 71270 at 9 a.m. to 10 a.m. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at the public hearing.

Madlyn B. Bagneris  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Child Residential Care—Authority,  
Definitions and Controlled Intensive Care Facility**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no implementation costs to state or local governmental units associated with this rule. It will amend the licensing standards for child residential care by establishing

regulations and procedures for Controlled Intensive Care Facilities.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This rule will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated costs or economic benefits to any persons or non-governmental units.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect projected on competition. One possible effect on employment will be increased opportunities for employment of staff at these new facilities. However, these additional employment opportunities are not anticipated to be significant in number.

Madlyn B. Bagneris  
Secretary  
9901#034

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Social Services  
Office of the Secretary  
Bureau of Licensing**

**Day Care Centers—Disclosure of Information  
(LAC 48:I.5350)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and as authorized by R.S. 46:1426, notice is hereby given that the Department of Social Services, Office of the Secretary, Bureau of Licensing proposes to adopt the following rule governing the disclosure of information concerning licensed child day care centers.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part I. General Information**

**Subpart 3. Licensing and Certification**

**Chapter 53. Day Care Centers**

**§5350. Disclosure of Information as Specified Under  
R.S. 46:1426**

A. Purpose; Authority. It is the intent of the Legislature to protect the health, safety, and well-being of children who are in out-of-home day care centers. Toward that end, R.S. 46:1426 allows parents or guardians of children enrolled in, or who have made application to be enrolled in, a day care center to obtain certain information pertaining to that particular day care center in addition to information that may be obtained under the Public Records Act subject to the limitations provided by R.S. 46:56(F)(4)(c).

B. Procedure for Requesting Information

1. Requests for information may be made by a parent or guardian of a child either by telephone or in writing.

2. Upon receipt of a request that does not give assurance that the person making the request is a parent or guardian of a child that is currently attending or that has completed a current

application to attend the day care center in question, the Bureau of Licensing shall furnish the parent or guardian a certification form that must be completed and signed that certifies that their child is currently attending or that a current application has been made for the child to attend the particular day care center.

3. Upon receiving the needed information, or the certification form, the Bureau of Licensing shall initiate a review of the records of that particular day care center.

4. The Bureau of Licensing shall provide or make available all information, if any, that is requested, subject to limitations as provided by law.

5. Failure of a parent or guardian to sign a certification form or provide compelling information that indicates their child is either currently attending or has made application to attend said day care center will result in the request being handled as a request under the Public Records Act.

C. Information that May Be Released

1. Information that may be released under R.S. 46:1426 is as follows:

a. each valid finding of child abuse, neglect, or exploitation occurring at the center, subject to the limitations provided by R.S. 46:56(F)(4)(c);

b. whether or not the day care center employs any person who has been convicted of or pled guilty or nolo contendere to any of the crimes provided in R.S. 15:587.1;

c. any violations of standards, rules, or regulations applicable to such day care center; and

d. any waivers of minimum standards authorized for such day care center.

2. No information may be released that contains the name, or any other identifying information, of any child involved in any situation concerning the day care center.

3. The identity of any possible perpetrator or of the party reporting any suspected abuse, neglect or exploitation shall not be disclosed except as required by law.

4. If there is no information in the files other than information covered under the Public Records Act, the parent or guardian shall be so notified and informed of the procedure for obtaining that information.

D. Costs. As is required for obtaining copies of records under the Public Records Act, parents or guardians wanting copies of records under R.S. 46:1426 shall be informed of the costs involved and pay for copies of said records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1426

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 25:

Interested persons may request copies as well as submit written comments on this proposed rule to Theresa Anzalone, Director, Bureau of Licensing, Office of the Secretary, Department of Social Services, P. O. Box 3078, Baton Rouge, LA 70821-3078. All interested persons will be afforded an opportunity to submit data, views or arguments in writing within 30 days after publication. The deadline date for all comments is February 19, 1999 at 4:30 p.m.

A public hearing on this proposed rule will be held on Thursday, February 25, 1999 at the Bureau of Licensing, 2751 Wooddale Boulevard, Suite 330, Baton Rouge, LA 70806 at

9 a.m. to 10 a.m. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at the public hearing.

Madlyn B. Bagneris  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Day Care Centers—Disclosure of Information**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There are no implementation costs to state or local government associated with this rule. It will require that certain procedures be established in the Bureau of Licensing when parents or guardians request information concerning a licensed child day care center in which their child is either currently enrolled or applied for enrollment.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
This rule will have no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no anticipated costs or economic benefits to any persons or non-governmental units.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This rule will have no impact on competition or employment.

Madlyn Bagneris  
Secretary  
9901#035

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Transportation and Development  
Office of the General Counsel**

**Outdoor Advertisement—Unzoned Areas  
(LAC 70:I.136)**

In accordance with the applicable provisions of the Administrative Procedure Act, L.R.S. 49:950 et seq., notice is hereby given that the Louisiana Department of Transportation and Development intends to promulgate a rule entitled "Erection and Maintenance of Outdoor Advertising in Unzoned Commercial and Industrial Areas," in accordance with R.S. 48:461.2(e).

**Title 70  
TRANSPORTATION  
Part I. Office of the General Counsel  
Chapter 1. Outdoor Advertisement  
§136. Erection and Maintenance of Outdoor  
Advertising in Unzoned Commercial and  
Industrial Areas**

**A. Definitions**

*Unzoned*—those areas on which no land-use zoning is in effect. This term does not include any land area which has a rural zoning classification or which has land use established by

zoning variance, non-conforming rights recognition or special exception.

*Unzoned Commercial or Industrial Areas*—those areas which are not zoned by state or local law, regulation or ordinance and on which there are located one or more permanent structures within which a commercial or industrial business is actively conducted. The business must be equipped with all customary utilities and must be open to the public regularly or be regularly used by employees of the business as their principal work station. The area along the highway extending outward 800 feet from and beyond the edge of such activity shall also be included in the defined area; however the area created by the 800 foot measurement may not infringe upon any of the following:

- a. public parkland;
- b. public playground;
- c. public recreation area;
- d. scenic area;
- e. cemetery;
- f. an area that is predominantly residential in nature with more than 51 percent of the land devoted to residential use.

Each side of the highway will be considered separately in applying this definition. All measurements shall be from the outer edge of the regularly used buildings, parking lots, storage, processing or landscaped areas of the commercial or industrial activities, and shall not be made from the property lines of the activities and shall be along or parallel to the edge of the pavement of the highway.

**B. Qualifying Criteria for Unzoned Commercial and Industrial Areas**

**1. Primary Use Test**

a. The primary use or activity conducted in the area must be of a type customarily and generally required by local comprehensive zoning authorities in this state to be restricted as a primary use to areas which are zoned industrial or commercial.

b. The fact that an activity may be conducted for profit in the area is not determinative of whether or not an area is an unzoned commercial or industrial area. Activities incidental to the primary use of the area, such as a kennel or repair shop in a building or on property which is used primarily as a residence, do not constitute commercial or industrial activities for the purpose of determining the primary use of an unzoned area even though income is derived from the activity.

c. If, however, the activity is primary and local comprehensive zoning authorities in this State would customarily and generally require the use to be restricted to a commercial or industrial area, then the activity constitutes a commercial or industrial activity for purposes of determining the primary use of an area, even though the owner or occupant of the land may also live on the property.

**2. Visibility Test**

The purported commercial or industrial activity must be visible from the main-traveled way within the boundaries of that unzoned commercial or industrial area by a motorist of normal visual acuity traveling at the maximum posted speed limit on the main traveled way of the highway. Visibility will

be determined at the time of the field inspection by the Department's authorized representative.

3. Structures and Grounds Requirements

a. Area. Any structure to be used as a business or office must have an enclosed area of six hundred (600) square feet or more.

b. Foundation. Any structure to be used as a business or office must be affixed on a slab, piers or foundation.

c. Access. Any structure to be used as a business or office must have unimpeded access from a roadway to an adequate customer parking lot adjacent to business building.

d. Utilities. Any structure to be used as a business or office must have normal utilities. Minimum utility service shall include business telephones, electricity, water service and waste water disposal, all in compliance with appropriate local, state and parish rules. Should a state, parish or local rule not exist, compliance with minimum utility service shall be determined at the time of field inspection by the Department's authorized representative.

e. Identification. The purported enterprise must be identified as a commercial or industrial activity which may be accomplished by on-premise signing or outside visible display of product.

f. Use. Any structure to be used as a business or office must be used exclusively for the purported commercial or industrial activity.

g. Limits. Limits of business activity shall be in accordance with the definition of "Unzoned commercial or industrial areas" stated in §136.A.

h. Activity Requirements. In order to be considered a commercial or industrial activity for the purpose of outdoor advertising regulation, the following conditions may be taken into consideration by the Department. The Department shall make a determination based upon a totality of the circumstances.

i. The purported activity or enterprise is open for business and actively operated and staffed with personnel on the premises a minimum of eight (8) hours each day and a minimum of five (5) days each week.

ii. The purported activity or enterprise maintains all necessary business licenses, occupancy permits, sales tax and other records as may be required by applicable state, parish or local law or ordinance.

iii. A sufficient inventory of products is maintained for immediate sale or delivery to the consumer. If the product is a service, it is available for purchase on the premises.

iv. The purported activity or enterprise is in active operation a minimum of six (6) months at its current location prior to the issuance of any outdoor advertising permit.

C. Where a mobile home or recreational vehicle is used as a business or office, the following conditions and requirements also apply.

1. Self-propelled vehicles will not qualify for use as a business or office for the purpose of these rules.

2. All wheels, axles, and springs must be removed.

3. The vehicle must be permanently secured on piers, pad or foundation.

4. The vehicle must be tied down in accordance with minimum code requirements. If no code, the vehicle must be

affixed to piers, pad or foundation.

D. Non-Qualifying Activities for Commercial or Industrial Unzoned Areas

1. Outdoor advertising structures.

2. Agriculture, forestry, ranching, grazing, farming and related activities, including but not limited to, wayside fresh produce stands.

3. Transient or temporary activities.

4. Activities more than 660 feet from the nearest edge of the right-of-way.

5. Activities conducted in a building principally used as a residence.

6. Railroad tracks and minor sidings.

7. Residential trailer parks, apartments, rental housing and related housing establishments intended for long term residential uses.

8. Oil and mineral extraction activities.

9. Junkyards.

10. Schools, churches or cemeteries.

11. Recreational facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.2(e).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the General Counsel, LR 25:

All interested persons so desiring shall submit oral or written data, views, comments, or arguments no later than 30 days from the date of publication of this Notice of Intent to: Mitchell Lopez, Traffic Planning Supervisor, Department of Transportation and Development, P.O. Box 94245, Baton Rouge, La. 70804-9245, Phone (504) 935-0128.

Kam K. Movassaghi, Ph.D., P.E.  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Outdoor Advertisement-Unzoned Areas**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no cost to state or local governmental units in order to implement this rule. Although the federal government has not threatened sanctions, the Federal Highway Administration takes great interest in proper control of outdoor advertising and endorses the department's formalization of these policies which are drafted in accordance with the provisions of the Federal Highway Beautification Act.

The department currently enforces rules concerning outdoor advertising on state highway rights-of-way. This new rule would address a recurring problem for the department in its effort to regulate outdoor advertising devices. Certain outdoor advertising companies are using temporary entities which are created solely for the purpose of qualification for outdoor advertising locations in unzoned areas.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There should be no cost and/or economic benefit to the outdoor advertising industry. This rule formalizes current policy. The industry should benefit from the now specific, objective criteria to be utilized by the department in determining the propriety of certain outdoor advertising locations.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition or employment.

Kam K. Movassaghi, Ph.D., P.E.  
Secretary  
9901#052

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Transportation and Development Office of Real Estate

##### Appraisal Handbook for Fee Appraisers (LAC 70:XVII.Chapter 5)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., notice is hereby given that the Department of Transportation and Development intends to promulgate a rule entitled "Appraisal Handbook for Fee Appraisers", in accordance with R.S. 48:443.

#### Title 70

#### TRANSPORTATION

#### Part XVII. Real Estate

#### Chapter 5. Appraisal Handbook for Fee Appraisers

#### §501. Definitions

*Acquired Right-of-Way*—that portion of land, improvements and/or other rights acquired or expropriated.

*Business Loss*—a reduction in the income stream being produced by a business conducted on the property.

*Date of Taking*—the date of deposit of an estimate of compensation into the registry of court; also, where no formal taking occurs, the first date of substantial interference with ownership of the property.

*Delay Damages*—capitalization of reduced income due to unreasonable delay in completing the project.

*Department*—the Louisiana Department of Transportation and Development.

*Economic Gain*—an amount of money representing a benefit to the owner when the sum of all components of loss (part taken, improvements, severance damages and economic loss) results in a value to the owner of a greater amount than is necessary to place the owner in the same pecuniary position that he enjoyed prior to the taking.

*Economic Loss*—an amount of money over and above traditional payment for part taken and severance damages that must be expended by the owner to place him in the same pecuniary position that he enjoyed prior to the acquisition.

*Expenditure*—money paid out.

*Front Land/Rear Land*—a theory of compensation whereby property closer to the roadway is arbitrarily assigned a greater value than "rear" property.

*Full Extent of the Owner's Loss*—constitutionally mandated

measure of compensation whereby the owner receives the traditional measure of compensation (part taken, improvements and severance damage) plus any other economic loss sustained minus any economic gain created by the taking; that amount of money required to place the owner in the same pecuniary position had his property not been acquired.

*Functional Replacement*—the replacement of real property, either lands or facilities or both, acquired as a result of a transportation-related project, with lands or facilities, or both which will provide equivalent utility.

*Gain*—an increase in value.

*Highest and Best Use*—that reasonable and probable use that supports the highest present value, as defined, as of the effective date of the appraisal. Alternatively, that use, from among reasonable probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible, and which results in highest land value. The definition immediately above applies specifically to the highest and best use of land. It is to be recognized that in cases where a site bears existing improvements, the highest and best use of the total property, as improved, may be determined to be different from the highest and best use if vacant. The existing use will continue, however, unless and until land value in its highest and best use exceeds the total value of the property in its existing use. (See *Interim Use*.) Also implied is that the determination of highest and best use results from the appraiser's judgment and analytical skill, i.e., that the use determined from analysis represents an opinion, not a fact to be found. In appraisal practice, the concept of "highest and best use" represents the premise upon which value is based. In the context of "most probable selling price" (market value), another appropriate term to reflect highest and best use would be *most probable use*.

*Interim Use*—a transitional use or that existing and relatively temporary use in which the transition to highest and best use is deferred. A building or other improvement may have a number of years of remaining life, yet may not enhance the value of the land which has a higher use.

*Loss*—a decrease in value.

*Loss of Profits*—loss due to either reduced revenues, increased expenses or both.

*Market Value*—the most probable price, in terms of money, which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale effective on a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and each act in what they consider their own best interest;
3. a reasonable time is allowed for exposure in the open markets;
4. payment is made in cash or its equivalent;
5. financing, if any, is on terms generally available in the community as of a specified date. This financing should be typical for the property type in its locale;

6. the price represents a normal consideration for the property sold unaffected by special financing amounts and/or terms, services, fees, costs, and credits incurred in the transaction. Numerous definitions of *Market Value* have been devised over the years by professional organizations, government bodies, courts, etc.

*Non-Conforming Use*—a use which was lawfully established and maintained but which, because of a subsequent change of a zoning ordinance, no longer conforms to the use regulations of the zone in which it is located. A non-conforming building or non-conforming portion of the building shall be deemed to constitute a non-conforming use of the land upon which it is located. Such changes preclude additions or changes without municipal approval.

*Owner*—one who can exercise rights of ownership.

*Pecuniary Position*—a measure of monetary status.

*Reimbursement*—monetary restoration.

*Super-Adequacy*—a greater capacity or quality in a structure or one of its components than the prudent purchaser or owner would include or would pay for in the particular type of structure under current market conditions.

*Severance Damage*—the diminution of market value of the remainder area which arises in the case of a partial acquisition by reason of the acquisition (severance), and/or the construction of the improvement in the manner proposed.

*Use Tract*—refers to a portion of the larger tract that has a different highest and best use. Once the use tract is defined, each square foot within the tract is deemed to have the same value as the remainder of the use tract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

### **§503. Overview of the Purpose of the Appraisal**

A. The laws of Louisiana provide that just compensation must be paid for the value of real property or rights taken. The value of the real property or rights taken must be based on the premise of the "highest and best use" or the most profitable, legal and likely use for which a parcel of property may be utilized. The determination of such use may be based on the highest and most profitable continuous use for which the property is adapted, or likely to be used, for a reasonable future time. However, elements affecting value which depend upon events or a combination of events which, while possible, are not reasonably probable, should be excluded from consideration. Also, if the intended use is dependent upon an uncertain act of another person, the intention cannot be considered.

B. The appraiser should perform an analysis of the market demand giving consideration to the highest and best use. Where a property is composed of more than a single highest and best use, the appraiser must type, value and support each portion separately. Where different uses and values of property are being acquired, each use and corresponding value must be stated separately, thereby complying with state laws and compensating for the full value of the partial acquisitions. Based on the highest and best use, the appraiser must set forth a reasonable and factual explanation indicating his/her support, reasoning and documented conclusions.

C. The compensation shall include the fair market value of property acquired. Also to be included shall be compensation for damages caused to the remainder where only a portion of the property is acquired if, in fact, the damages are compensable under current Louisiana law. If any economic gains accrue to the remaining property as a result of the project, the estimated damages and/or other economic losses may be partially or wholly offset by those estimated gains.

D. Compensation will not be confined to the value of property acquired and damages, but shall include compensation to the full extent of the owner's loss. The owner shall be placed in the same financial position after the acquisition as before the acquisition.

E. All market data, comparable sales, forms, and documentation which are referred to within the report and are pertinent to the fair market value of the property being appraised shall be collected and shall cite the project and ownership for which the appraisals are being written. Simply referring to data used for other projects or appraisals is not acceptable.

F. All recognized appraisal procedures and approaches to value: i.e., the "cost approach", the "market approach" and the "income approach", that apply to the property under appraisal, are to be considered by the appraiser and utilized if found to be applicable. If an approach is found not applicable to the property being appraised, there shall be included a concise and detailed reasoning as to its shortcomings. The appraiser shall explain the reason(s) why, in the correlation of value, one or more approaches are more applicable to his/her estimate of market value, and/or why the other approach or approaches are less applicable to the property being appraised.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

### **§505. Conduct of Appraiser**

A. Each appraiser is a representative of the Louisiana Department. It is important that he/she be courteous and considerate in dealing with the property owners or their representatives. This is particularly important since the appraiser may be the first Louisiana Department of Transportation and Development representative to make contact with the owners.

B. The appraiser shall include documentation to indicate the date and extent of his contact with the property owners. Should the appraiser fail to contact the owners, he/she shall document the efforts to locate the owners. It is recommended that contact be made initially by certified letter as a method of documentation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

### **§507. Qualifications of Fee Appraisers**

Upon the appraiser's initial request for a Fee Appraiser Application Packet, the Appraisal Division Chief will notify the appraiser of the receipt of the request and provide the necessary forms to be completed. Those forms will include a letter stating the minimum requirements to be considered for

employment by the Louisiana Department of Transportation and Development Appraisal Division. If the appraiser meets the qualification requirements of the Louisiana Department of Transportation and Development and is approved for employment, he/she will be included on the Approved Panel of Fee Appraisers. It is a minimum requirement for acceptance of Fee Appraisers on the Louisiana Department's Approved Panel of Fee Appraisers that the appraiser be a Certified Appraiser licensed pursuant to the Louisiana Certified Real Estate Appraiser Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§509. Application for Approval as Fee Appraiser**

Application must be submitted to the DOTD Real Estate Appraisal Division Chief prior to inclusion of said appraiser on the Louisiana Department of Transportation and Development Approved Panel of Fee Appraisers. The form includes several general questions concerning the appraiser's personal and appraisal background in order to gain insight into the appraiser's experience, qualifications and training. Upon completion of the application and acceptance by the Appraisal Division, the Appraisal Division Chief will recommend to the Director of Real Estate that the appraiser be placed on the Approved Panel of Fee Appraisers. Upon approval, the Appraisal Division Chief will notify the appraiser of his/her approval and request that the appraiser read and sign one of two copies of the Agreement for Appraisal Services and return a single copy to the Appraisal Division for processing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§511. Agreement for Appraisal Services**

The Agreement for Appraisal Services is a document which every Fee Appraiser employed by the Louisiana Department of Transportation and Development is required to sign. The agreement sets out the parameters within which the Department of Transportation and Development and the appraiser will cooperate, as well as sets forth the details and requirements that must be met within the appraisal report. The appraiser should be very familiar with all of the requirements contained within this agreement. The signed form, after its execution, will be placed in the appraiser's file and need not be re-signed with each contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§513. Contract for Appraisal Services**

A. The Contract for Appraisal Services is the form utilized by Louisiana Department of Transportation and Development in obtaining the services of Fee Appraisers on a given project. The contract sets forth the requirements for each appraisal requested and sets a completion date by which the assignment must be submitted. The contract binds the Louisiana Department of Transportation and Development and the Fee Appraiser until such time as the assignment is complete or the

contract has been terminated. However, work on a contract should not begin until a "Letter of Authorization" is received instructing the appraiser to begin.

B. The appraiser should examine the agreement in detail and should be particularly aware of the time element established within the contract. The Louisiana Department of Transportation and Development operates its construction program according to a schedule of contract letting and the appraiser's failure to meet the time requirement of the contract will damage the overall completion of a project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§515. Contract Extensions**

It is the policy of the Louisiana Department of Transportation and Development that contract completion dates shall not be extended past the original due date. However, while all due diligence should be taken to meet the contract requirements, it is sometimes necessary to extend a contract. Just cause must be documented by the appraiser and a letter of request must be presented to the Louisiana Department of Transportation and Development Appraisal Division with adequate lead time to process the request through the appropriate channels prior to the contract completion date. In the event that a completion date is not met and an extension has not been granted, the contract will be considered void. Payment cannot be made for outstanding appraisals. At the discretion of the Appraisal Division, it may become necessary to contract with another appraiser to complete the project assignment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§517. Items Excluded from Appraisals**

A. Typically, moving expenses of owners and tenants rightfully in possession of real estate are reimbursable in accordance with the Louisiana Relocation Assistance Law which provides for the reasonable expenses of moving personal property. The actual cost of moving expenses is provided by the Relocation Assistance Officer for use of the property owners or tenants, and is not determined by the appraiser. Therefore, no moving expenses for personal property should be included within the appraisal report under normal circumstances.

B. The following items should be excluded from the appraisal report:

1. moving expenses for personal property;
2. estimated costs of relocations; or
3. adjustments or repairs of such items as public utilities, service connections for water, sewer, mobile homes, additions, etc., which will be caused by the required acquisition unless those costs are included within the Contract for Appraisal Services as "cost-to-cure" items.

C. When appraising a commercial establishment, the appraiser is to include itemized relocation and business re-establishment costs within the "full extent" estimate if a relocation of the business and improvements is judged to be necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

### **§519. Appraisal Formats**

A. Appraisals are to be reported, in most cases, on Forms A, B or C. Form D will be used sparingly and only in the appraisal of certain small, vacant, minimally valued acquisitions.

B. All formats will include, in addition to the applicable pages listed within the individual formats; a Certificate of the Appraiser, comparable sales, improvements, floor plans and/or plot plans, flood maps, right-of-way maps provided by the Department, statement of limiting conditions, any references made during the report, a copy of the owner's notification letter and property inspection documentation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

### **§521. Interest Being Appraised**

The interest being appraised is full ownership, less mineral rights. Each appraisal will show an estimated value of the total interest held. No breakdown of individual interests, other than lease fee/leasehold interests, held in full ownership should be made, except as specifically instructed by the Department. However, servitude and/or similar encumbrances on properties being appraised should be investigated and reported within the appraisal report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

### **§523. Highest and Best Use**

A. In an assignment, it is required that the appraiser fully analyze the highest and best use of a parcel and include that analysis within the appraisal report as a detailed and concise narrative. There are locations where the highest and best use is obvious. At other locations, evaluation for highest and best use renders limited possibilities. If that is the case and a detailed analysis is not warranted, a less detailed written analysis is acceptable.

B. In cases where it is necessary to estimate the highest and best use of an improved parcel, the focus is on the existing use as well as all potential alternate uses. To correctly accomplish the goal, the appraiser must analyze the highest and best use as improved and as vacant.

C. Often, the existing use will be the highest and best use and that conclusion may be clearly obvious to the appraiser. The discussion within the report need not be as detailed as with a different or changing highest and best use.

D. The support of the appraiser's opinion is most critical in the not so obvious situations when the appraiser may need to respond to inquiries by the Reviewer Appraiser or an Attorney. Because the highest and best use determinations affect the value conclusion, an unsupported estimate of the highest and best use may lead to unnecessary and costly litigation for both the agency and the property owners.

E. When the highest and best use is estimated to be different from the existing use, the appraiser is essentially concluding that the present improvements no longer provide an acceptable return of the investment for that purpose. This generally occurs when the value of land in an area, due to changing conditions, increases to such a degree that it approaches or exceeds the value as improved. In cases such as this, a detailed analysis and discussion will be required utilizing accepted appraisal techniques.

F. The appraiser must substantiate the existence of demand for the proposed use; that the physical features of the property would accommodate that use; that the use is compatible with zoning requirements or a reasonable probability exists for re-zoning and there are no restrictions that would preclude that use.

G. Another item for consideration within the highest and best use evaluation is the recognition and adherence to the "consistent use theory". Basically, a property in transition to another use cannot be valued on the basis of one use for the land and another for the improvements. This may introduce the possibility of an interim use. Sometimes an improvement is not the proper improvement to maximize the value of the whole property. There may be some type of interim use of that improvement which may be utilized until such time as the land can be put to its highest and best use. This improvement may be valued by ascertaining the amount of temporary income derived during the interim period or a value based upon the use of the interim improvement for another highest and best use until a proper improvement can be justified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

### **§525. Land Valuation**

A. For the determination of land values, a careful and thorough investigation of sales of nearby comparable lands is to be made. The report is to include sufficient information to show that the appraised values of land are adequate, reasonable and well supported by actual comparable sales. Any adjustments made to a comparable sale will be fully supported and soundly reasoned based upon facts gathered within the local real estate market of the project assignment. In the case of a special use property or a limited local market, the appraiser may search for comparable data and utilize any data located outside of the actual market area of the subject project. These requirements apply to an "after value" appraisal as well.

B. When an appraiser is assigned to a project, he/she will be required to compile and submit a binder of comparable sales data. This is generally referred to as the "Master Binder". This Master Binder will be submitted by a prearranged date as set forth in the Contract for Appraisal Services or as verbally agreed upon between the Review Appraiser and the Fee Appraiser.

C. The Louisiana Department of Transportation and Development Appraisal Division may furnish market data forms to the appraiser upon request. These forms are to be

used in all cases to report the market data information developed by the appraiser. The appraisers may develop their own forms, but must include the information required within the Louisiana Department of Transportation and Development form.

D. It is not considered improper for an appraiser to obtain information about a sale from another appraiser, provided the information is limited to factual information such as vendor, vendee, consideration, recordation, date of sale and legal description. The comparable information received from another appraiser should not include any analysis of the comparable sales, i.e., breakdown of land and improvements, analysis of a time factor or any other adjustment. The appraiser of record, through verification or their own judgment, must determine those items.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

### **§527. Valuation of the Entire Tract**

A. The value determined for an entire tract is to be the value before the acquisition of the required right-of-way absent any influence of the proposed project construction. The estimated value shall be determined on the date of the appraisal study unless the appraiser is otherwise instructed by the Project Review Appraiser or is instructed within the Contract for Appraisal Services.

B. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, is to be disregarded in determining the compensation for the required property.

C. Under most circumstances, the value estimate is to include the entire tract, based upon the highest and best use, and is to include all items of real property unless instructed otherwise within the Contract for Appraisal Services. The appraiser may include only a portion of a whole property if, in the highest and best use determination, he/she finds that the portion of the ownership affected by the taking is a separate "economic use tract"; the determination is supported and clearly understandable; and the Review Appraiser concurs in the determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

### **§529. Valuation of the Remainder**

A. The value estimate attributed to the remainder is a separate and singular appraisal problem. The appraiser is required to perform a complete appraisal of the remainder.

B. Reference may be made to factual data contained within the "before" appraisal as it pertains to the "after" appraisal. However, the appraiser is to separately analyze and document the data to form his/her conclusions within the "after" appraisal.

C. The estimated value of the remainder is to be a realistic appraisal of value considering economic gains or losses caused

by the required acquisition and proposed construction. It is required that the appraiser employ all three approaches when they are applicable to the appraisal problem. If and when an approach is not considered applicable, justification shall be provided.

D. The remainder value is not simply a value representing the difference between the value of an entire tract or use tract less the value of the required right-of-way, but is a well-supported and carefully analyzed value estimate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

### **§531. Valuation of the Improvements**

A. When buildings or other improvements are located partially or wholly within the proposed right-of-way, the appraisal is to be made on the basis that the Louisiana Department of Transportation and Development will purchase the improvements. In rare situations, an appraisal will be made on the basis of the purchase of a portion of a major improvement or the cost to relocate a major improvement on-site. In such situations, the appraisal report must fully explain the justification for not buying the entire building. In assigning appraisals, the Project Review Appraiser will specify whether an improvement will be purchased or a "cost-to-cure" will be provided for the appraiser's use.

B. In the case of a severed building that is not specified as a "whole acquisition", the appraiser shall include within the report the cost to restore the remaining improvement to its former utility and usefulness. A "cost-to-cure" does not necessarily alleviate other damages to an improvement or a remainder. Other damages may include a loss of utility or a change in access.

C. In some instances, an improvement is located substantially outside of the right-of-way with only a minor portion projecting into the required area and removal of the portion within the right-of-way would leave the major portion of the building reasonably suitable for use on the remaining site. When estimating damages under this scenario, the appraiser will be required to consider the most feasible of the two following possibilities:

1. the remainder of the improvements may possibly remain adjacent to the right-of-way line with a possible loss of value due to their position relative to the new right-of-way, coupled with other possible damages as discussed above; or

2. the entire improvement may be moved to a more advantageous location on the remaining site. In this case, the damage estimate would be based on the cost of moving the improvement and restoring it to a new location. These costs will not exceed the damages which would occur if the basis of the estimate were a cost to re-face a portion of the improvement located within the right-of-way, nor will they exceed the cost to purchase the improvement as a whole.

D. The appraiser is to fully analyze each scenario and follow the path that is the most cost-effective in order to restore the owner to a pecuniary position equal to that before the acquisition. However, it will rarely be requested that a "cut and re-face" or "move back" cure be used. These types of cures will be utilized in only very special cases where other, better

accepted methods could not be utilized.

E. There may be within the proposed taking items that would be classified as part of the realty. These items may include machinery, fixtures, pumps, underground tanks, water or air lines, pump islands, etc. These items may be the property of a lessor or a lessee. If the appraiser's assignment is to include these types of items, the items shall be valued based upon their contributory value to the whole property. If these items are determined to be a liability, then the value estimate should reflect that determination as well. The determination as to which items will be included within the report will be made by the Project Review Appraiser with the input of the appraiser.

F. It is expected that appraisers employed by Louisiana Department of Transportation and Development will be qualified to estimate the cost of improvements generally encountered, such as residences and appurtenant improvements. The issuance of a contract by the Louisiana Department of Transportation and Development is sufficient evidence of the Department's approval of the appraiser's expertise in such circumstances. However, in certain instances, where high value improvements are to be acquired or affected, the Louisiana Department of Transportation and Development may obtain and furnish to the appraiser reproduction and/or replacement costs and/or "cost-to-cure" estimates by special agreement with a building contractor, professional engineer, registered surveyor, cost estimator or other specialist. In such cases, the use of special consultants will be provided in a separate employment agreement in which the consultant is identified and provisions are made for the consultant to be available for testimony in the event of condemnation proceedings. All required materials will be provided to the appraiser for use within the appraisal report if the appraiser so chooses.

G. Unless specifically provided for in the Contract for Appraisal Services, the Louisiana Department of Transportation and Development will not pay additional amounts above the fee per parcel established for services to compensate for quotes or services of contractors or other specialists obtained by the appraiser. The fee of the appraiser is to compensate for providing a complete appraisal satisfactory for the purpose of the Louisiana Department. The appraisal report shall comply with the Agreement for Appraisal Services and the Contract for Appraisal Services as stated. Any findings of a consultant employed to aid in making an appraisal must be included and clearly identified within the appraisal report if accepted by the appraiser. If the findings of the consultant are not acceptable to the appraiser, he/she will include his/her own supported estimate or the justification for providing items which are not utilized.

H. A partial acquisition may result in damages to a remainder property that may be reduced or eliminated by construction of access roads, relocation of driveways or some other design modification. When the appraiser feels justified in requesting a study to determine the feasibility of such modification, he/she may submit a request to the Project Review Appraiser for such modification. When merited, the Louisiana Department of Transportation and Development will provide the appraiser with the engineering and construction

costs to be weighed against damage items which may be mitigated. This procedure is intended to assure a realistic estimate of damage based upon "cost to cure" estimates which may or may not be practical from an engineering standpoint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

### **§533. Role of the Cost Consultant**

A. If necessary, the Appraisal Division may procure the services of individuals other than appraisal experts. Those persons are usually "Building Cost Consultants". These consultants are trained and/or experienced in the construction industry, with knowledge of and access to construction costs and related areas of expertise. The consultant may be asked to provide such items as reproduction and replacement costs, "cost to cure" items damaged by the required acquisition, or costs for comparison purposes which would not be included within an appraisal report. The cost consultant provides a service to the appraiser and the Louisiana Department of Transportation and Development and provides costs, as requested, and in conjunction with all other consultants who will utilize the estimate. The cost consultant is answerable to the Project Review Appraiser, as well as to the appraiser(s) of record.

B. The cost consultant is to work hand-in-hand with the appraiser and Review Appraiser. Although the cost consultant is the most qualified to judge construction costs, the appraiser is the person responsible for all values used within the appraisal report.

C. The cost consultant is required to contact all property owners and offer them the opportunity to accompany the consultant during the property inspection. In the case of the cost consultant, it is absolutely necessary to inspect all improvements due to the nature of the assignment. Only in very rare situations would it be possible to complete a consultant assignment without, at least, a rudimentary inspection of improvements. This would only be acceptable when an owner refuses entrance upon the subject site or within the subject improvements.

D. The responsibility for the use of a cost estimate, whether replacement cost, reproduction cost, "cost to cure", or other cost assignment belongs to the appraiser. It is absolutely necessary that the appraiser and the cost consultant work together. The cost consultant is responsible for the estimated costs if reproduction and replacement are issues.

E. The cost consultant and the appraiser must agree on the factual data, such as the size of the improvement, location upon the site, and minor improvements. When a "cost to cure" is required, the cost consultant must provide a method of cure that is approved by both the appraiser and Review Appraiser in order for the assignment to be acceptable and for payment to be made. Therefore, the cost consultant and the appraiser(s) should inspect the subject property together, if possible, and confer and compare factual data and proposed cures prior to submission of the contracted estimate for review. The provided reports shall contain a breakdown of the components required in a reproduction, replacement or "cost to cure" estimate and

shall quote a source of justification for said costs.

F. The appraiser, who is ultimately responsible for the costs quoted within his/her report will contact the Review Appraiser should a provided cost estimate not be suitable for inclusion within an appraisal report. However, the Review Appraiser should have made a determination prior to receipt of said report by the appraiser. The Review Appraiser will then contact the consultant and discuss the situation and the appraiser's concerns. Should it be found that revision is warranted, the cost consultant will be responsible for that revision. Payment for services rendered will be withheld until such time as acceptable revisions or corrections are submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

### **§535. Appraisal Confidentiality**

Contents of appraisals shall not be revealed to property owners, representatives of owners, or the general public. The information contained within the appraisal report is the property of the Louisiana Department. Any appraiser not adhering to this rule will be denied future employment by the Louisiana Department of Transportation and Development Real Estate Directorate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

### **§537. Property Inspection with the Owner(s)**

A. Reasonable effort shall be made to contact and meet with the owners or their designated representatives in order to afford them the opportunity to accompany the appraiser on inspection of the property being appraised. The appraiser is not obligated to meet the owner at any place other than the property being appraised or the nearest point of public access to the property being appraised.

B. Tasks for the Appraiser to Perform in Making Contact with the Owner(s)

1. Mail a form letter along with a stamped, addressed return envelope. All owners listed on provided Title Research Reports are to be afforded an opportunity to meet. A copy must be forwarded to the District Real Estate Manager, the Project Review Appraiser and must be included within the report. It is recommended that the letter to the owners be transmitted by certified mail.

2. Telephone contact is acceptable if it is followed by a detailed written report of owner contact, including the name of the person(s) contacted, time of meeting, and date. Copies must be sent to the Project Review Appraiser, the District Real Estate Manager and must be included within the appraisal report.

C. The site inspection shall not be made until the following criteria are met:

1. a meeting is scheduled with the owner(s) or;
2. the owner(s) replies that he/she/they do not wish to accompany the appraiser on the site inspection or;
3. three weeks have passed since the date of the notification letter mailing to the owner(s), there is no reply, and the letter is not returned "undeliverable".

D. The appraiser shall remain obligated to meet with the

owner(s) for an additional three weeks following the mailing of the notification letter if two separate written attempts have been made to contact the owner(s) at the address(es) furnished by the Louisiana Department of Transportation and Development and both letters are returned marked "undeliverable". After that time has elapsed, the appraiser is relieved of his obligation to meet with the owner(s).

E. The appraiser will notify the District Real Estate Manager and the Project Review Appraiser of any undeliverable notification letters within a period of five working days. The District Real Estate Manager will then have 15 working days from the notification by the appraiser to reply to the appraiser's request for any supplemental address data. The appraiser is to send a second owner notification letter if additional data is furnished by the District Office.

F. The meeting with the owner shall be on or near the property to be inspected, unless the appraiser agrees to meet elsewhere. The appraiser will inspect the property to be appraised and make every effort to meet with the owner(s) at a time that is convenient to the owner and reasonable for all parties involved. At the time of the scheduled meeting, the inspections should be completed, if possible. If the owner(s) fails to meet with the appraiser as scheduled, the appraiser will be obligated to set up a second meeting with the owner(s) and meet "after the fact". If the owner(s) does not meet with the appraiser for the second scheduled appointment, the appraiser is no longer obligated to meet with the owner.

G. The appraiser shall document any owner contact and site inspections and will make that documentation a part of the appraisal report within the addenda. Also, a photocopy of the notification letter to and from the owner(s) will be included within the addenda of the appraisal report. Telephone contacts made with the owner(s) should be documented by name, date, time, telephone number and subject of the contact. These items will also be included within the addenda along with the site inspection report that includes persons present, place, time and date.

H. In the appraisal of commercial or industrial properties under long-term lease, the lessee should also be afforded the opportunity to accompany the appraiser during his inspection of the property.

I. The appraiser shall go upon the property and into the buildings and interview the property owner, tenant or authorized representative and make an appraisal in accordance with the requirements of the Louisiana Department. The property owner must be given opportunity to offer his/her input, information and opinion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

### **§539. Completeness of Appraisal and Appraisal Reports**

A. The investigation is to be thorough and the appraisal report is to furnish adequate and reasonable information that fully explains and justifies determinations contained within the appraisal report.

B. The appraiser must complete all applicable appraisal criteria in accordance with the Louisiana Department of

Transportation and Development requirements and requirements of the "Uniform Standards of Professional Appraisal Practice", as set forth in the Agreement for Appraisal Services. Any departure shall require full justification.

C. Most of the fee appraisal work required by the Department of Transportation and Development involves properties required for projects in which federal funds are utilized. Therefore, all reports must meet Departmental and Federal Highway Administration (FHWA) requirements for each project assigned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§541. Establishment and Payment of Fees**

A. Appraisal fees shall be established by the Project Review Appraiser based upon a fee estimate compiled during on-site inspection of the subject project. Concurrence will be obtained from the appraiser prior to submission of a Contract for Appraisal Services. The fee schedule will be contained within the Contract for Appraisal Services and will delineate between the fee for individual reports and the total contract fee established for the subject project.

B. Invoices submitted by the appraiser shall consist of three copies. Each shall include the date, state project number, federal aid project number (if applicable), project title, route number and parish. Also required within the invoice will be the contracted fee for each report submitted for disposition, a statement that payment has not been received for the submitted invoice and the appraiser's signature.

C. The Louisiana Department of Transportation and Development Appraisal Division will not process any invoice submitted by an appraiser for personal services rendered the Louisiana Department of Transportation and Development unless the fee has been previously established by written contract, approved by all necessary parties, and authorization to proceed has been forwarded to the consultant. Invoices may not be dated or forwarded to the Louisiana Department of Transportation and Development prior to the authorization date established within the Authorization to Proceed form letter submitted to the appraiser by the Louisiana Department of Transportation and Development Real Estate Director.

D. In addition, no invoice will be paid prior to approval by the Project Review Appraiser of the individual reports submitted. The reports must be found satisfactory and in conformance with the requirements of the Louisiana Department, as stated within the Contract for Appraisal Services and the Agreement for Appraisal Services. Any individual report found not to meet the necessary requirements as set forth shall be corrected by the appraiser to the satisfaction of the Project Review Appraiser prior to payment of the agreed upon fee for that particular project. No payment will be made for reports submitted following the contracted assignment completion date. At that point, the contract is voided and a new contract must be approved and authorization must be received through the established channels prior to payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§543. Update of Appraisals**

A. It may become necessary for the appraiser to update appraisals from the original date of valuation to the current date or to a specified date of acquisition. If this should become necessary, the Project Review Appraiser will initiate a contract specifying the required date of valuation, the fee schedule and the completion date for the assignment. All contracts to update shall refer to a specific completion date in order to give ample time for the appraisals to be reviewed by the Project Review Appraiser prior to negotiations.

B. All updated appraisals in which there are value changes by reason of time lapse shall be supported by updated comparable sales data gathered within the project neighborhood. If sufficient sales data is not available within the subject neighborhood, the appraiser should investigate similar type properties in more removed areas as support for updated values.

C. Updated appraisals shall be submitted to the Appraisal Division for review and, if warranted, a revised Fair Market Value Estimate will be issued by Louisiana Department of Transportation and Development for the purpose of negotiation and acquisition. When the appraiser is required to revise, supplement or otherwise update the appraisal report, regardless of the format employed, a revised or updated "Certificate of Appraiser" shall be submitted with the revisions or updates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§545. Types of Appraisal Formats**

A. Upon the receipt of approved right-of-way plans, the assigned Project Review Appraiser will make an on-site inspection and examination of each parcel on the project. Based upon that inspection, the Review Appraiser will determine which appraisal format shall be necessary for each parcel or parcels based upon the complexity of the appraisal problem. That determination will include:

1. the number of appraisals;
2. the format of appraisals;
3. the estimated fees;
4. the estimated appraisal contract completion date.

B. The Contract for Appraisal Services will include the parcel number, fee and the format for each appraisal to be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§547. Form A**

A. This form is designed for a complete, detailed appraisal of an entire ownership, including all land and improvements, using all applicable approaches. In effect, this is two separate appraisals. The "before the acquisition" and "after the acquisition" appraisals pertain to partial acquisitions only. Each segment, "before and after", is to be completed in detail and separately. All approaches to value are to be utilized in detail when applicable. All economic gains or losses are to be

analyzed in detail and submitted within the report. "Cost-to-cures" will be compared to possible economic gains or losses in order to determine the feasibility of a proposed cure. Any feasibility study shall be included within the report.

B. The purpose of the format is to determine if any economic gains and/or economic losses have accrued to the ownership due to the partial acquisition. Any economic gains shall offset all or a portion of the compensation due for any severance damages and/or other economic losses. Economic gains may not offset the value of realty estimated within the required area except as authorized by *Louisiana Department of Transportation and Development of Highways vs. Bitterwolf*, 415 So. 2d 196.

C. All pages from the title page to the required exhibits shall be included in the report. At the discretion of the appraiser, additional pages may be included. The following pages are required.

1. "Before Acquisition" Analysis
  - a. Title Page
  - b. Table of Contents
  - c. Letter of Transmittal
  - d. Summary of Salient Facts and Conclusions
  - e. Basis for Summary of Fair Market Value
  - f. Title Data
  - g. Discussion of the Appraisal Problem
  - h. Photos of the Subject Property
  - i. Neighborhood Data
  - j. Site Data
  - k. Statement of Highest and Best Use
  - l. Comparable Land Sales and Listings Analysis
  - m. Correlation and Indication of Land Value
  - n. Improvements
  - o. Floor Plan
  - p. Market Data Approach to Value
  - q. Income Data Approach to Value
  - r. Cost Data Approach to Value
  - s. Source and Justification of the Cost Approach
  - t. Correlation of the Whole Property Value and Allocation of Value
  - u. Required Right-of-Way
2. "After Acquisition" Analysis
  - a. Site Data
  - b. Statement of Highest and Best Use
  - c. Comparable Land Sales and Listings Analysis
  - d. Correlation and Indication of Land Value
  - e. Improvements
  - f. Floor Plan
  - g. Market Data Approach to Value
  - h. Income Data Approach
  - i. Cost Data Approach
  - j. Source and Justification of the Cost Approach
  - k. Correlation of the After Value and Allocation of Value
  - l. Analysis of Other Economic Considerations (Full Extent)
  - m. Final Estimate of Value
  - n. Certificate of the Appraiser
  - o. Addenda
    - i. Assumptions and Limiting Conditions

- ii. Vicinity, Strip and Remainder Maps
- iii. Property Inspection Report
- iv. Owner Notification Letter
- v. Firm Maps
- vi. Others at the discretion of the appraiser

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

**§549. Form B**

A. This form is designed as a complete, detailed appraisal of an entire ownership, including all land and improvements, using all applicable approaches, unless instructed to do otherwise by the Project Review Appraiser. This format is utilized most often to value an ownership that will be totally within a required area.

B. The following pages shall be required within the form. Other pages may be included at the discretion of the appraiser.

1. Title Page
2. Table of Contents
3. Letter of Transmittal
4. Summary of Salient Facts and Conclusions
5. Basis for summary of Fair Market Value
6. Title Data
7. Discussion of the Appraisal Problem
8. Photos of the Subject Property
9. Neighborhood Data
10. Site Data
11. Statement of Highest and Best Use
12. Comparable Land Sales and Listings Analysis
13. Correlation and Indication of Land Value
14. Improvements
15. Floor Plan
16. Market Data Approach to Value
17. Income Data Approach to Value
18. Cost Data Approach to Value
19. Source and Justification of the Cost Approach
20. Correlation of the Whole Property Value and Allocation of Value
21. Required Right-of-Way
22. Analysis of Other Economic Considerations (Full Extent)
23. Final Estimate of Value
24. Certificate of the Appraiser
25. Addenda
  - a. Assumptions and Limiting Conditions
  - b. Vicinity, Strip and Remainder Maps
  - c. Property Inspection Report
  - d. Owner Notification Letter
  - e. Flood Insurance Rating Maps
  - f. Others at the discretion of the appraiser

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

**§551. Form C**

A. This form is designed to be used only for simple acquisitions where no apparent economic gains or losses will accrue to the remainder property other than minor "cost-to-cure" items. The form does not require detailed discussions of

the items listed, but the determinations made by the appraiser must be conclusive and based upon market support.

B. If, during the appraisal assignment, the appraiser finds that there are damages or benefits to the ownership by reason of the project, the appraiser is not to proceed with Form C but is to notify the Project Review Appraiser. The Review Appraiser will then decide which form to utilize and will amend the appraisal contract to reflect those changes by format and fee schedule. Furthermore, when utilizing this form, it will be necessary for the appraiser to include the following statement within the body of the Certificate: "No damages or loss to the remainder of the owner's property resulted from this partial acquisition, therefore, pursuant to R.S. 48:453(B), no 'after appraisal' is required."

C. The following pages are to be included within the report and may include others, within the discretion of the appraiser.

1. Title Page
2. Table of Contents
3. Letter of Transmittal
4. Summary of Salient Facts and Conclusions
5. Basis for Summary of Fair Market Value
6. Title Data
7. Photos of the Subject Property
8. Neighborhood Data
9. Site Data
10. Statement of Highest and Best Use
11. Comparable Land Sales and Analysis
12. Correlation of Land Value
13. Required Right-of-Way
14. Analysis of Other Economic Considerations (Full Extent)
15. Certificate of the Appraiser
16. Addenda
  - a. Assumptions and Limiting Conditions
  - b. Vicinity, Strip and Remainder Maps
  - c. Property Inspection Report
  - d. Owner Notification Letter
  - e. Flood Insurance Rating Maps
  - f. Others at the discretion of the appraiser

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§553. Form D**

A. This form is designed for only the most simplistic appraisal problem and only the most necessary discussion is required. The form refers to the maximum value of the required area with which this form may be used, i.e. \$10,000. When utilizing this form, the appraiser is to include the following statement within the body of the Certificate: "No damages or loss to the remainder of the owner's property resulted from this partial acquisition, therefore, pursuant to R.S. 48:453(B), no 'after appraisal' is required."

B. The use of this form is determined by the Project Review Appraiser and is to include the following pages.

1. Summary Page
2. Site Data
3. Discussion of the Appraisal Problem and Title Data

4. Analysis of Other Economic Consideration (Full Extent)

5. Certificate of the Appraiser

6. Addenda

- a. Assumptions and Limiting Conditions
- b. Vicinity, Strip and Remainder Maps
- c. Owner Notification Letter
- d. Property Inspection Report
- e. Others at the discretion of the appraiser

C. All of the above-described forms are guides for submittal of acceptable appraisal reports. The appraiser may develop his/her own form, within reason. However, the form developed must include the information and detail required above and should be of the same basic format.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§555. Court Testimony**

A new contract will be executed in accordance with the instructions of the Louisiana Department of Transportation and Development Attorney for the purpose of trial testimony. Any change in the original appraisal premise or appraisal format will require the written approval of both the Louisiana Department of Transportation and Development Real Estate Director, or his designee, and the General Counsel of the Louisiana Department of Transportation and Development Legal Division, or his designee. Any change in the estimated value of the subject property from the original valuation date will be justified in complete detail and documented within the appraisal report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§557. Right-of-Way Cost Estimates**

A. It may become necessary to provide a Contract for Appraisal Services to an appraiser for the completion of a right-of-way cost estimate. These cost estimates are written estimates of the cost of acquiring right-of-way, including land, improvements, servitudes, damages and any contingencies for a proposed project. These cost estimates are handled on a "total project" basis and not by individual parcels, as is normally the case with an appraisal assignment. The degree of accuracy and the amount of supporting data required within the estimate will depend upon the amount of time which the appraiser has to complete the estimate and the amount of supporting data at his disposal.

B. The purpose of a right-of-way cost estimate is to provide a basis for decisions on the location of a proposed highway project and to provide a basis for allocation of funds for a future project.

C. The contract procedure for right-of-way cost estimates will be the same procedure as that for the appraisal contract. The Project Review Appraiser will issue the contract for the project and will be responsible for satisfactory completion of the assignment.

D. The appraiser is to determine what steps are necessary to complete the cost estimate. Due to varying degrees of accuracy required and the varying amounts of lead time in which the appraiser will have to complete the estimate, no

attempt should be made to explain the possibilities, techniques or methods of the procedure used. However, it is desirable to maintain a file of support data for future reference.

E. The Certificate of the Appraiser and other appraisal forms are not required for right-of-way cost estimates. However, the appraiser should compile his/her data in an orderly fashion complete with a summary page containing the components of the estimate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### §559. Special Problems

A. Full Extent of the Owner's Loss. Compensation to the full extent of the owner's loss is constitutionally mandated. The main problem is separating traditional real estate appraisal work from the task of determining additional economic gains or losses not directly related to the real estate value. This section will attempt to re-examine definitions, as well as separate into components the five elements of the "full extent" concept.

B. Part Taken. R.S. 48:453(A) requires that "The measure of compensation for the property expropriated is determined as of the time the estimated compensation was deposited into the registry of the court, without considering any change in value caused by the proposed improvement for which the property is taken". In addition to statutory considerations, the decision in *Louisiana Department of Transportation and Development of Highways vs. Hoyt*, 284 So.2d 763 requires that compensation for the part taken not necessarily be that value for the entire tract if, in fact, there is a "higher and better use" tract. If the part taken comes from a severable tract which would have a higher and better use than the overall value for the parent tract, then the owner is entitled to that higher value for the part acquired.

C. Improvements. Traditional approaches to the valuation of improvements are usually adequate and no specific appraisal instruction is necessary. A common problem that occurs involves non-conforming improvements where the improvements do not contribute or contribute less to the highest and best use for the land, if vacant. For discussion of this concept in a reported lawsuit, see *Louisiana Department of Transportation and Development of Highways vs. Whitman*, 313 So.2d 918. A deduction should be made for depreciation as garnered from the market data obtained by the appraiser. The use of a straight age/life method of depreciation without empirical market support included within the appraisal report is not acceptable for use by Louisiana Department.

D. Severance Damages. R.S. 48:453(B) defines *severance damages* as "The measure of damages, if any, to the defendant's remaining property as determined on a basis immediately before and immediately after the acquisition, taking into consideration the effects of the completion of the project in the manner proposed or planned". This definition is traditional and contemplates only the diminution in value of the property, which may not be the entirety of damage sustained. See for further discussion the case of *Louisiana Department*

*of Transportation and Development of Highways vs. Constant*, 369 So.2d 699.

E. Other Economic Loss. R.S. 48:453(C) instructs that the owner shall be compensated to the full extent of his loss. The courts have defined this to mean that the owner shall be placed in the same position pecuniarily as though his property had not been acquired. Frequently the owner will not be able to purchase a physical replacement for property acquired or damaged for the compensation estimated to be severance damages. This can occur for a variety of reasons and gives rise to a compensable economic loss. See further discussion of this issue in *City of Shreveport vs. Standard Printing*, 427 So.2d 1304 and *Monroe Redevelopment vs. Kusun*, 398 So.2d 1159. Other economic losses may also be business losses. See further discussion of this issue in *Louisiana Department of Transportation and Development vs. Tynes*, 433 So.2d 809.

F. Other Economic Gain. The four items (part taken, improvements, severance damages and other economic loss) noted above may serve to overcompensate the landowner beyond his pecuniary loss. An example of this occurs when the landowner's facility is in need of physical maintenance, but the new facility relieves him of the cost of repairs to the old facility. "Betterment" may occur in a variety of ways and in some cases, the landowner may benefit if he is forced to move or go out of business. "Betterment" may occur when a landowner's rear land becomes front land.

G. The five components (part taken, improvements, severance damages, other economic loss and other economic gain) listed above represent both traditional, as well as new constitutional demands placed on the Department of Transportation and Development in attempting to estimate the full extent of the owner's loss. In some instances, the appraiser will not have all of the information necessary to make a complete estimate, but in every instance, the appraiser should realize that there are few quantifiable demands made by landowners that have not been held to be compensable. In any event, "full extent" is the sum of the first four items less the fifth. However, it should be remembered that economic gains may not offset or be deducted from the value of the realty located within the acquired area.

H. The "full extent of the owner's loss" does not generally apply to "owner-occupied" residential property because relocation assistance provided by the Louisiana Department's will compensate the owner for items other than the realty. However, the "full extent of the owner's loss" must be addressed. Should the appraiser find that circumstances dictate that relocation assistance does not fully address the loss, then additional compensation may be necessary. Normally, this concept will apply only to a business that is economically viable. In instances where a business is marginal at best or a losing proposition, the compensation afforded the owner for the realty may well be the "full extent of the owner's loss".

I. R.S. 48:443(B) states that "each estimator, in determining the extent of the owner's loss, shall consider the replacement value of the property taken." The appraiser must research the market and consider offers for sale in arriving at the estimated fair market value.

J. In an effort to standardize the process of determining additional financial compensation due, a policy has been adopted concerning determination of the estimated monies due the property owner. This policy states that the appraiser is to determine availability and cost of a functionally equivalent replacement facility in such cases where major improvements are acquired. A proposed replacement facility, if available, must be suitable for occupancy with only minor alterations and provide a like utility and, if necessary, location to the owner. There may be no adequate facility in the market or renovation may be determined to be too costly to justify a replacement facility. The appraiser must also estimate the cost, if possible, to replace the acquired improvements on the remainder site.

K. As another test of the compensation due, the appraiser is to determine the cost to purchase a new site and construct a new facility at that location or the possible rental/lease of a suitable facility.

L. Another method may be the replacement of a lost income stream with suitable compensation, in terms of money, to provide income in a like and reasonable manner as prior to the acquisition. The appraiser will then recommend the most suitable and cost-effective method to restore the owner to his/her previously enjoyed pecuniary position.

M. According to Louisiana Department of Transportation and Development policy, should a substantial difference exist between the estimated market value of a property and the cost of a functionally equivalent replacement facility, the appraiser will discuss the findings within the appraisal report. Should this difference prompt the need for an economic analysis of the validity of a business, the appraiser and the Project Review Appraiser will request, in writing, that consultants be employed to make a determination. There may be additional considerations involved, depending upon the situation or type of property or business involved. The appraiser is to also include an estimate of relocation costs and business re-establishment costs when it is deemed necessary to relocate or re-establish a business. The "full extent of the owner's loss" estimate is to be itemized within the report for the use and understanding of those who negotiate for the parcels.

N. The appraiser is to study all applicable alternatives to determine the most appropriate and cost-effective manner in which to place the owner in the same pecuniary position "after" the acquisition as "before" the acquisition. This study, as noted within the Contract for Appraisal Services, shall include the location of any available sites or buildings, and shall be included within the appraisal report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§561. Front Land/Rear Premise**

A. It is the policy of the Louisiana Department of Transportation and Development that the "front land/rear land" premise of valuation shall not be utilized under normal circumstance. This is not an acceptable method of valuation in most circumstances.

B. Only in those situations where the present use or the demand within the immediate area is quantifiable will the front

use tract be valued separately from the remainder or rear land. In those cases where a front use tract valuation is justifiable, damages may not occur to the front use remainder when excess rear land is readily available to replace the lost front land. Should damages be determined to apply, the damage estimate will be based on the typically lesser rear land value.

C. There occasionally may be cases where the use of the "front land/rear land" premise is justifiable and will include damages to the front use tract. In such cases, it is suggested that the appraiser inform the Review Appraiser and/or the Appraisal Manager for his/her area of the situation prior to its use and that the use of the premise be fully supported by factual data within the body of the appraisal report submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§563. Mineral Rights**

A. The Louisiana Department of Transportation and Development and the State of Louisiana do not generally acquire mineral rights. The property owner will retain the mineral rights beneath the area conveyed to the state. While the owner will be prohibited from exploring or drilling for or mining for oil, gas or other minerals of any kind within the area acquired, the owner may employ directional drilling from adjacent lands to extract such minerals, if possible. In cases where solid minerals are affected, i.e. those other than oil and gas, the appraiser, with the concurrence of the Review Appraiser, is to provide values for the affected minerals.

B. In some situations or markets, it may be typical to transfer mineral rights. If that occurs, the appraiser is to analyze the value of the rights transferred through the use of market sales and make adjustments, if warranted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§565. Timber Value**

A. For assignments in which timber-producing lands are involved, particularly in areas where timber is grown for commercial purposes, it will generally be necessary to value the land and the timber separately. In some instances, it may become the responsibility of the appraiser to abstract the timber and land value from market sales of whole property timberland tracts. However, due to the specialized nature of timber appraisal, the Department of Transportation and Development will most often secure the services of a Registered Forester to supply the value of timber upon a project or particular site. In those instances, the appraiser will provide the value of the raw land and include the value of the timber, as provided by the forester, within the report.

B. In situations where the appraiser determines that the highest and best use of a tract is a greater use than timberland, the value of the timber will nevertheless be included within the report as an improvement item. However, at the appraiser's discretion, the contributory value to the "highest and best use" may be zero.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

**§567. Crop Value**

Prior to appraisal assignments, a determination shall be made by Louisiana Department of Transportation and Development Real Estate Titles and Acquisition personnel stating whether there is sufficient time prior to the right-of-way acquisition to allow harvesting of crops planted within the required area. If there is adequate time, the Real Estate Titles and Acquisition personnel will not be required to consider the compensation for crops. If time is limited, the Real Estate Titles and Acquisition personnel will estimate the value of the crop, and that sum will be included in the approved offer. Typically, the appraiser will not be involved in estimating the value of crops unless specifically requested to do so by the Project Review Appraiser.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

**§569. Control of Access**

A. Within the Contract for Appraisal Services, the Project Review Appraiser will instruct the appraiser concerning the proper appraisal format to use in order to value the ownership affected by "control of access". The appraiser, in most circumstances, will analyze the effects of "control of access" after the acquisition in the same way that he analyzes any "before and after" appraisal problem. A full analysis, with all due documentation as to findings, shall be included within the report.

B. All due diligence will be taken in consideration of the possible or probable use of a remainder that is influenced by "control of access". The appraiser should acquaint himself fully with the rights of the Louisiana Department of Transportation and Development and the rights of the owner concerning access control. In instances in which the Department of Transportation and Development exercises control of access, a legal determination as to the compensability or non-compensability must be made. The appraiser should consult with the Louisiana Department of Transportation and Development through the Review Appraiser, Project Engineers, District Managers, and the Legal Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

**§571. Owner's Refusal to Permit Entry**

A. There may be times when a property owner refuses to permit appraisers employed by Louisiana Department of Transportation and Development to enter the property for an on-site inspection, measurement, photography or interview. In such cases, the following procedure applies.

B. The appraiser should not enter the property, but should make every effort to examine the property from as many vantage points as possible. The appraiser shall make a careful inspection of all available records including ASCS maps and aerial photographs, U.S. Geodetic Survey contour maps, tax records, building inspector records, etc. As many and varied photos should be taken as deemed prudent.

C. As a matter of procedure, the appraiser will notify the Project Review Appraiser of the situation and clearly set forth that he/she was not permitted to enter upon the property and that the report is predicated upon certain assumptions. Those assumptions shall be noted. Also to be listed will be the sources of information used as a basis for those assumptions.

D. When the appraisal report is forwarded to the Appraisal Division for review, a determination will be made by the Project Review Appraiser as to whether or not to pursue legal action to obtain access to the property. The Project Review Appraiser will make every effort to inspect the property from any vantage point possible prior to forwarding a recommendation of action.

E. When the appraisal is approved and the recommended offer is furnished for processing, negotiation will be initiated on that basis. The Real Estate Titles and Acquisition Agent conducting the negotiations will make every reasonable effort to observe the property in question for the purpose of further verification of the appraiser's assumptions. If radical variation appears to exist, the Appraisal Division will be advised before continuing the negotiations. If the recommended offer is not accepted, eminent domain proceedings will commence and entry by court order will be obtained at that time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

**§573. Lease Interests**

A. The appraiser is to inquire concerning leases of subject properties whenever that possibility exists. That inquiry most particularly applies to improvements owned by a lessee. A review of a lease will be made by the appraiser so that he/she is familiar with the terms and conditions of the lease. Any findings or conclusions shall be included within the appraisal report.

B. The appraiser is to value the whole property and is to establish the value to be assigned to each interest in that ownership. The appraiser is to value all lease fee and leasehold interests and is to provide a breakdown of those values within the appraisal report. The appraiser is to include the portion acquired and estimated damages, should they apply.

C. In situations in which a lease is recorded, that information will be supplied within the provided Title Research Report. Discovery of unrecorded leases are the responsibility of the appraiser. The appraiser shall inquire as to the existence of such leases and shall provide an opportunity for such disclosure to the property owner within the required Owner Notification Letter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

**§575. Fencing Value**

A. Front fencing owned by the property owner is to either be bought, rebuilt or replaced if it is of contributory value to the land. Front fencing will normally be replaced or rebuilt by the project construction contractor on the owner's property in order to restore the enclosure.

B. Side (cross) fencing will be removed and will not be

replaced. Compensation will be paid for said fencing. All fencing, whether front or side, is to be valued within the report and delineated by parcel and orientation.

C. Fencing used for other than the containment of livestock will be rebuilt or replaced unless the right-of-way is acquired by negotiations and the property owner requests payment for the contributory value estimated. If the right-of-way is acquired by expropriation, the value is deposited in the registry of the court. In either instance, the existing fence will be removed by the project construction contractor.

D. All fences constructed on controlled access highways for the purpose of controlling access will be built and maintained by Louisiana Department. Fences built along frontage roads or cross roads on controlled access facilities for the benefit of the property owner will be built off the highway right-of-way and will be maintained by the property owner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§577. Servitude**

A. There are two types of servitudes commonly encountered by the appraiser that must be included in the valuation process of the appraisal. They are the "construction" servitude and the "drainage" servitude.

B. The "construction servitude" is a temporary servitude providing access for construction purposes to areas outside the required right-of-way. The compensation for this servitude is based upon the estimated unit land value multiplied by a rate set by the appraiser. That figure is then multiplied by the area within the servitude. The rate utilized is a rate of return that is consistent with investment return rates commonly accepted within the current local market. The appraiser is to apply the calculated estimate on a yearly basis as a rental. That rental is to be included within the estimate of the just compensation.

C. The "drainage servitude" is a permanent servitude acquiring a number of rights. The acquisition partially includes right-of-entry and subsurface rights other than mineral rights. The ownership is greatly limited by the nature of the usage, and compensation will be greater than that estimated for the construction servitude. The process of calculation is identical to that of the construction servitude, however, the rate utilized will be based on the permanent loss of rights. Generally, 80 percent to 90 percent rates will be used. Ultimately, the appraiser will decide upon the value of the rights taken and to what extent they will be permanently lost. This value will be included within the estimate of the just compensation. In circumstances where a remaining area of an ownership is damaged due to a partial acquisition, estimated damages to any permanent servitude will apply only to that portion of the bundle of rights that remain after the acquisition of the rights required of the servitude.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

#### **§579. Railroad Parcel Acquisition**

A. The Louisiana Department of Transportation and Development will pay the appraised market value of the interest acquired from railroad companies for any additional

right-of-way required from their right-of-way property.

B. Railroad parcels will be divided into two categories. One will be designated an "RR" parcel at railroad crossings. Any other takings from railroad properties will have a normal parcel identification for which the Department of Transportation and Development will offer the estimated market value for interest acquired. Louisiana Department of Transportation and Development will acquire the "RR" parcels as right-of-way servitudes with the railroad company retaining its rights for railroad passage at the Department's proposed joint crossings. Designation and appraisal of the railroad acquisition at crossings as servitudes is to allow the compensation for only those rights acquired. Only those rights acquired should be compensated for within the appraisal.

C. The Louisiana Department of Transportation and Development Appraisal Division is responsible for establishing the value of the various types of railroad acquisitions. The appraisal of railroad properties is based on market value and the interest acquired from the railroad companies. The appraiser should take into consideration the following:

1. size and shape of the railroad ownership;
2. topography;
3. location;
4. adjoining usage;
5. value of the required area before construction versus value after construction; and
6. any adverse effect that the acquisition will have on the utility of the property.

D. The types of acquisitions from railroad properties will be appraised as follows.

1. At crossings, the Louisiana Department of Transportation and Development will obtain a bundle of rights similar to the rights which the railroad company will be retaining. In most cases, the appraisal of a right-of-way crossing should reflect a value range of zero to a maximum of 50 percent of fair market value. However, the actual percentage of value will be estimated by the appraiser. The type of construction at crossings could have a varying effect upon the percentage utilized. The different types of construction at crossings are as follows:

a. Grade crossings are those where railroad tracks and proposed roadways are at the same level. This type of construction could have the greatest effect upon the utility of the property.

b. Above grade construction or an overpass should have little effect on the utility. However, consideration should be given to pier placement and its adverse effects, if any, on the railroad property.

c. Below grade construction or an underpass is the third type of possible construction at crossings.

2. All other acquisitions from railroad right-of-way in excess of crossings shall be appraised and the estimated market value will be offered in relation to the interest that the Louisiana Department of Transportation and Development acquires. In most cases, the Louisiana Department of Transportation and Development will appraise and offer 100 percent of market value. However, in the case of servitude acquisition, the Louisiana Department of Transportation and

Development will offer compensation in accordance with the interest estimated to be acquired by the appraiser.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:443.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Real Estate, LR 25:

All interested persons so desiring shall submit oral or written data, views, comments, or arguments no later than 30 days from the date of publication of this notice to James Dousay, Director, Real Estate Section, Department of Transportation and Development of Transportation and Development, Box 94245, Baton Rouge, LA 70804-0245, Telephone (225) 237-1214.

Kam K. Movassaghi, Ph.D., P.E.  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Appraisal Handbook for Fee Appraisers**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no implementation costs to state or local governmental units because the Department has conformed to these procedures since 1982.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units as a result of the implementation of this rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The contract fee appraisers will benefit from this rule because their qualifications for employment are clearly set forth. They are required to receive certification from the Louisiana Real Estate Commission, which costs \$345.00 the first year, \$270.00 biannually thereafter.

The public will benefit insofar as the program is set up to be conducted fairly and give the affected landowners the benefit of a fair process.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There should be no effect on competition and employment because the Department has conformed to these procedures since 1982.

Kam K. Movassaghi, Ph.D., P.E.  
Secretary

9901#059

Robert E. Hosse  
Director  
General Government Section  
Legislative Fiscal Office