

# Rules

## RULE

### Department of Agriculture and Forestry Office of Agriculture 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 adopts 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.

#### 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 25:829 (May 1999).

Bob Odom  
Commissioner

9905#025

## RULE

### Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Structural Pest Control Commission

Wood Infestation Report (LAC 7:XXV.121)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry adopts regulations regarding the completion of the wood destroying insect report.

The Department of Agriculture and Forestry deems it necessary to adopt these rules and regulations regarding the instructions as to completing WDIR form LPCA - 142. These rules comply with and are enabled by LSA-R.S. 3:3203.

#### Title 7

#### AGRICULTURE AND ANIMALS

#### Part XXV. Structural Pest Control

#### Chapter 1. Structural Pest Control Commission

#### §121. Wood Infestation Report

A. - C.8. ...

C.9A. Check this block only when there is no visible evidence of wood destroying insects in accessible areas on the structure(s) inspected. Evidence includes but is not limited to: live or dead wood destroying insects, wood destroying insect parts, shelter tubes, shelter tube stains, frass, exit holes or damaged wood due to wood destroying insects.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 12:285 (May 1986), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 23:856 (July 1997), LR 25:829 (May 1999).

Bob Odom  
Commissioner

9905#024

## RULE

### Department of Economic Development Racing Commission

Apprentices Contract (LAC 46:XLI.705)

The Louisiana State Racing Commission hereby amends LAC 46:XLI.705, Apprentices Contract, as follows.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XLI. Horseracing Occupations**

**Chapter 7. Jockeys and Apprentice Jockeys**

**§705. Apprentices Contract**

A. ...

B. An apprentice shall start with 5 pounds allowance. He shall continue this allowance for one year from the date of his fifth winner, after which, if he has not ridden 40 winners in the year following the date of his fifth winner, he shall continue the allowance for a period not to exceed two years from the date of his fifth winner or until he has ridden 40 winners, whichever occurs first.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148, R.S. 4:150 and R.S. 4:151.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, amended by the Department of Commerce, Racing Commission, LR 2:431 (December 1976), LR 3:27 (January 1977), repromulgated LR 4:276 (August 1978), amended by the Department of Economic Development, Racing Commission, LR 17:588 (June 1991), LR 25:829 (May 1999).

Paul D. Burgess  
Executive Director

9905#011

**RULE**

**Department of Economic Development**  
**Racing Commission**

Displaying Daily Double Rule (LAC 35:XIII.10521)

The Louisiana State Racing Commission hereby amends LAC 35:XIII.10521, Displaying Daily Double Rule as follows.

**Title 35**

**HORSE RACING**

**Part XIII. Wagering**

**Chapter 105. Daily Double**

**§10521. Displaying Daily Double Rule**

This rule shall be prominently displayed throughout the betting area of each track conducting the daily double and printed copies of this rule shall be distributed by the track to patrons upon request.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 11:616 (June 1985), amended by the Department of Economic Development, Racing Commission, LR 25:830 (May 1999).

Paul D. Burgess  
Executive Director

9905#013

**RULE**

**Department of Economic Development**  
**Racing Commission**

Horse in Racing Condition (LAC 46:XLI.313)

The Louisiana State Racing Commission hereby amends LAC 46:XLI.313, Horse in Racing Condition as follows.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XLI. Horseracing Occupations**

**Chapter 3. Trainer**

**§313. Horse in Racing Condition**

A. A trainer shall not enter or start a horse which is not in serviceably sound racing condition, has been tracheatubed or has been nerved.

B. However, horses which have had a posterior digital (heel nerve) neurectomy or cryosurgical intervention in the areas reserved for posterior digital neurectomies performed on one or more feet, may be permitted to race.

C. All horses which have undergone either of the above procedures shall be so designated on the foal certificate and be certified by the practicing veterinarian.

D. All horses which have undergone either of the above procedures prior to the adoption of this rule must also be certified, and it is the responsibility of the trainer to see that either of such procedures will be carried on the foal certificate.

E. All nerved horses, high or low, and all horses having had a cryosurgical intervention, as aforesaid, must be published on the bulletin board in the racing secretary's office.

F. Any horse which is high nerved shall not be permitted to enter in a race.

G. Except as provided herein, a trainer shall not enter or start a horse which has been a nerve blocked or treated with, or been given any drug internally, externally or by hypodermic injection, except as permitted by LAC 35:I.1501 et seq.

H. Nor shall a trainer enter or start a horse which is blind or whose vision is seriously impaired in both eyes, is on a steward's, veterinarian's, starter's or disqualified list or is permanently barred from racing in any jurisdiction.

I. Additionally, a trainer shall not enter or start a horse which is not properly plated except where permission to start without shoes is obtained from the stewards prior to entry. However, once a horse has started without shoes, it must race unshod for the balance of the meet, unless otherwise approved by the stewards. In any emergency situation the stewards shall have sole discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148 and R.S. 4:150.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, amended by the Department of Commerce, Racing Commission, LR 2:430 (December 1976), LR 3:26 (January 1977),

repromulgated LR 4:275 (August 1978), amended LR 5:325 (October 1979), LR 25:830 (May 1999).

Paul D. Burgess  
Executive Director

9905#012

**RULE**

**Department of Economic Development  
Racing Commission  
Paint Horse Racing  
(LAC 35:I.Chapter 10)**

The Louisiana State Racing Commission hereby adopts Chapter 10, Paint Horse Racing, of Title 35, Part I of the Rules of Racing. The rules within this Chapter are §1001 through §1009, as follows.

**Title 35  
HORSE RACING**

**Part I. General Provisions**

**Chapter 10. Paint Horse Racing**

**§1001. Applicable Rules**

The rules of the commission shall govern Paint horse racing wherever they are applicable. When not applicable, the stewards may enforce the rules of the American Paint Horse Association, provided they are consistent with the rules of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148 and R.S. 4:179.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 25:831 (May 1999).

**§1003. Cases not Covered**

Cases not covered by American Paint Horse Association rules shall be decided by the stewards with the advice and consent of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148 and R.S. 4:179.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 25:931 (May 1999).

**§1005. Jurisdiction**

The jurisdiction of a licensed Paint horse race meeting shall be vested solely with the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148 and R.S. 4:179.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 25:831 (May 1999).

**§1007. Official Registry**

The American Paint Horse Association shall be recognized as the sole official registry for Paint horses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148 and R.S. 4:179.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 25:831 (May 1999).

**§1009. Races with Other Breeds**

Races between Paint horses and other horse breeds are prohibited unless special permission is granted by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148 and R.S. 4:179.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 25:831 (May 1999).

Paul D. Burgess  
Executive Director

9905#015

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 741C Louisiana Handbook for School Administrators  
Local Curricula  
(LAC 28:1.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted an amendment to Bulletin 741, referenced in LAC 28:1.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November, 1975). The 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 741C Louisiana Handbook for School Administrators

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November, 1975), amended LR 25:831 (May 1999).

**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.

Weegie Peabody  
Executive Director

9905#073

## RULE

### Board of Elementary and Secondary Education

Bulletin 1475 Operational and Vehicle  
Maintenance Procedures  
(LAC 28:XXIX.Chapters 1-33)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement revised Bulletin 1475 promulgated in LR 2:198 (June 1976), referenced in LAC 28:I.915.C. Bulletin 1475 is designed to provide information and direction to local school system personnel in school transportation in Louisiana, and changes are being made to further clarify and re-emphasize certain provisions of the Bulletin.

### Title 28 EDUCATION

#### Part XXIX. Bulletin 1475 Operational and Vehicle Maintenance Procedures

Editor's Note: Bulletin 1475 was promulgated in LR 2:198 (June 1976), and revised in LR 6:488 (August 1980) and LR 21:163 (February 1995). This document is being published in codified form and historical notes will reflect a history, by section, from this time forward.

#### Chapter 1. Purpose

##### §101. Introduction

A. One of the most demanding jobs in a school system is that of the school bus driver. A key member of the educational team, the driver is charged with the responsibility of safely transporting diverse groups of

students no matter what the conditions of traffic, roadways or weather may be. En route, the driver may be required to assume the role of teacher, counselor, nurse, disciplinarian or even policeman.

B. Meeting the daily demands of their jobs requires school bus drivers to participate in training before they become certified and throughout their tenure as school bus drivers. They must be familiar with statutes, policies, ordinances and procedures and with changes in regulations that may occur.

C. The purpose of this bulletin is to provide basic essentials to assist school bus drivers in their job performance. Every school bus driver, full-time, substitute and activity bus driver should be provided a copy of Bulletin 1475 because it is the primary source of information that describes their duties as they relate to student transportation and related activities.

D. Additional information is contained in Louisiana Department of Education Bulletins 1191 (*School Transportation Handbook*), 1213 (*Minimum Standards for School Buses in Louisiana*) and 1886 (*Special Education Transportation Guide*); in the Louisiana Commercial Driver's License Program; in various federal and state statutes and regulations, as well as in local policies and directives. These documents should be readily available for reference by driving personnel and bus attendants (aides) who may wish to learn more about various aspects of student transportation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:832 (May 1999).

#### Chapter 3. Responsibilities and Roles §301. Responsibilities and Roles

A. The transportation of school children to and from school and school-related activities in Louisiana is the responsibility of the Board of Elementary and Secondary Education (BESE), the State Department of Education, the local school board, and the local school superintendent. At the local level, the school board and the school superintendent rely on certain key individuals to accomplish this task in a safe, economical and efficient manner.

B. Roles of state and local administrators and school bus drivers are enumerated in Bulletin 1191. The roles of key local personnel who handle daily transportation functions and of parents are listed below in this bulletin, also.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:832 (May 1999).

#### §303. Supervisor of Transportation

A. The local supervisor of transportation is responsible to, and acts under the authority of, the local superintendent of schools. The supervisor's duties include, but are not limited to, the following:

1. recommends employment, suspension and/or termination of bus drivers and bus attendants;
2. recommends prospective bus routes;

3. recommends rules and regulations affecting school transportation;

4. assists local school principals, bus drivers, pupils and parents in resolving transportation issues;

5. arranges, conducts, supervises and/or monitors pre-service and in service training of school bus drivers and bus attendants;

6. keeps records and prepares reports relative to local school bus transportation services;

7. investigates and reports accidents and other problems associated with pupil transportation programs;

8. supervises and evaluates all school transportation personnel as authorized by the local system's superintendent;

9. presents recommendations to the local superintendent on all phases of the pupil transportation program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:832 (May 1999).

### **§305. School Principal**

A. The principal, who has the authority of the local school board at the school level, has the following duties and responsibilities:

1. handles all disciplinary problems referred to the school;

2. maintains contact with drivers to handle individual transportation problems and promotes safety instruction;

3. conducts meetings with teachers to inform them of their role in school transportation services;

4. develops safe loading and unloading procedures for each school;

5. provides adequate supervision for pupils whose bus schedules require them to arrive at school before classes begin and/or remain after classes terminate;

6. collects transportation information from drivers and transmits it to the local supervisor and/or superintendent;

7. develops and encourages classroom programs promoting safe transportation habits;

8. conducts emergency evacuation drills as required;

9. informs students and parents of rules and regulations adopted by the local school system;

10. maintains verification on file that students and parents have read, understand and agree to abide by the school bus transportation rules and regulations as a condition for services being rendered.

NOTE: If any of these duties are designated to a member of the school staff, the principal is responsible for assuring that all requirements are met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:833 (May 1999).

### **§307. School Staff**

A. The fundamental responsibility of teachers with respect to the school transportation program is to help develop desirable attitudes toward safety among their students, and, thereby, to ensure (to the extent possible) proper behavior when the students are passengers on the school bus. Teachers can help students recognize their own

responsibilities within the school transportation program during routine daily rides, special activity trips, or during emergencies that may arise when students are on board school buses.

B. In order to do this, teachers must:

1. be thoroughly familiar with local rules and regulations for the students riding the bus with particular emphasis on the school bus stop law and emergency evacuation procedures.

2. provide classroom instruction in safe riding practices as directed by the principal. Such instruction should be given during the first week of each semester and periodically during the school year as needed;

3. encourage their students to obey safety regulations while waiting for, boarding, riding, unloading and moving away from the bus;

4. maintain control of the bus loading zones during loading and unloading at their respective schools, as assigned by local school administrators;

5. help maintain the discipline of students on field trips and while on any extra-curricular activities requiring school bus transportation;

6. ensure that drivers are provided rosters (names and telephone numbers) of student riders before buses leave on special trips.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:833 (May 1999).

### **§309. School Bus Driver**

A. The school bus driver has the most important role in the transportation program daily transporting children safely to and from school. The bus driver is responsible to the parish school board, the superintendent, the transportation supervisor and the principal for all actions relating to the safe and efficient handling of the bus.

B. The duties and responsibilities require the bus driver to:

1. have concern for the safety of the children. (Bus drivers are morally, as well as legally, responsible for safely transporting children, using every precaution for maximum protection;)

2. conduct thorough pre-trip, en route and post-trip checks on the vehicle and its special equipment;

3. know the policies of the school board concerning transportation;

4. know state and local traffic laws and ordinances governing motor vehicle operation;

5. participate in all required meetings, conferences and training courses to improve transportation skills;

6. ensure proper care, repair and inspection of the bus;

7. complete and submit required reports within specified time lines;

8. be punctual and reliable in the operation of assigned routes;

9. avoid the use of alcohol, tobacco, obscene language and narcotic drugs at all times when on the bus. (Drug-free school zone regulations must be followed;)

10. maintain orderly conduct of passengers and ensure to the extent possible that passengers follow all local and state rules and regulations;

11. maintain good public relations between school and home;

12. notify the Supervisor of Transportation of all convictions of moving violations, in accordance with Louisiana Commercial Driver's Licensing regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:833 (May 1999).

### §311. Parent/Guardian

A. Parents should understand their responsibility in working with the bus driver and school system personnel for the welfare and safety of their children. Also, emphasis should be placed on the problems involved with safe transportation and the extent of responsibility placed on bus drivers who are transporting their children.

B. Responsibilities of parents and guardians require them to:

1. be familiar with and follow local board and school level policies for school bus transportation;
2. have children ready and at their designated pickup points along the route;
3. cooperate with the school and the bus driver in teaching children safety precautions and good manners and habits for school bus passengers;
4. assist when there are disciplinary problems;
5. provide supervisory assistance at the home bus stop as necessary to ensure the safety of children;
6. help to maintain safe passage along roadways by keeping vehicles, debris, etc. out of lanes of traffic or away from loading and unloading zones.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:834 (May 1999).

## Chapter 5. Certification Requirements

### §501. Requirements

A.1. All school bus drivers must fulfill certification requirements approved by the Board of Elementary and Secondary Education. Certification requirements fall into three main time categories:

- a. initial (or first time);
  - b. annual; and
  - c. biannual.
2. Requirements in these categories are as follows.
- a. Initial Certification
    - i. Age 21 years minimum.
    - ii. Criminal record check (fingerprinting) required.
    - iii. Driving record check.
    - iv. Commercial Driver's License (CDL)
      - (a). Issued by state of residence.
      - (b). Type B recommended.
      - (c). Passenger endorsement *required*.
      - (d). Air brakes authorization (may be required).
    - v. Physical examination.
    - vi. Drug screening.
    - vii. Pre-Service Training Classroom (30 hrs.)
      - (a). First aid course.

- (b). Defensive driving course.
- (c). School bus driver course.
- (d). State/local laws, policies and procedures.
- (e). Transporting students with special needs.
- (f). Passenger management and discipline procedures.

- (g). Other topics listed in Bulletin 1191.
- viii. Pre-service training on bus (10 hrs.).
  - b. Annual Certification
    - i. Driving record check.
    - ii. Current Commercial Driver's License with appropriate endorsements and/or authorizations.
    - iii. Physical examination.
    - iv. Random drug and alcohol testing.
  - c. Biannual Certification
    - i. Eight-hour in service training. (Local school districts may elect to hold annual in service training instead of biannual training.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:834 (May 1999).

### §503. Additional Requirements

A. Additional requirements may include psychophysical examination, periodic safety meetings, annual local training and other activities conducted by local school districts.

B. Detailed information regarding certification requirements is listed in Sections III and IV, Bulletin 1191.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:834 (May 1999).

## Chapter 7. Vehicle Inspection and Maintenance

### §701. Inspection and Maintenance

A. Proper inspection and maintenance of school vehicles is vital for a safe, efficient and economical transportation program. Each local school system shall adhere to the following procedures.

1. All school buses must be maintained in safe operating condition through a systematic preventive maintenance program.

2. All school buses must be inspected during the months of June, July or August and certified as safe by the appropriate authority prior to the beginning of each school session. (Re-inspection or more frequent inspections of buses may be made by the local school system.)

3. All school buses must be inspected by an approved Louisiana Motor Vehicle Inspection Station during December, January or February of each school year.

4. Accurate maintenance records must be kept for each school bus.

5. School bus drivers (including substitutes and activity bus drivers) *must* conduct pre-trip inspections before beginning each trip, whether morning, mid-day, afternoon or evening. Inspection must include the following:

- a. windshield wipers and washer;
- b. engine compartment:
  - i. battery;
  - ii. wiring;

- iii. fluid levels;
- iv. belts;
- v. hoses;
- vi. radiator, etc.;
- c. all lights;
- d. exhaust system and a check for any pools of oil or other fluids under the bus;
- e. tires and wheels;
- f. emergency door and buzzer and service door (check for manual locks);
- g. mirrors;
- h. all gauges;
- i. all emergency equipment:
  - i. first aid kit;
  - ii. fire extinguisher;
  - iii. reflector kit with three (3) reflectors;
  - iv. spare electrical fuses;
- j. all glass (windows, door panels, etc.);
- k. seats;
- l. brakes;
- m. stop arms;
- n. all interior lights;
- o. cleanliness;
- p. security of fuel filler cap;
- q. back-up alarms, crossing arms, wheel chair lifts and other special equipment, if applicable;
- r. all other items required by the Louisiana CDL program.

6. Any defects or deficiencies in the areas listed above that may affect the safety of the vehicle's operation or result in mechanical breakdowns must be reported verbally and in writing to the proper authorities (*and approval must be granted by the proper authorities if the bus is to continue without appropriate repairs*).

7. A written report shall be made at the completion of each trip or tour of duty regarding any defect, deficiency, malfunction or questionable performance of school vehicles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:834 (May 1999).

### §703. Inspections

A. A pre-trip inspection checklist designed by the local school district, must be completed by drivers of all school buses (including activity buses and spare buses) and maintained in the vehicle until it is filed with the local Transportation Office.

1. Included in the pre-trip check should be an inventory of required documents: commercial driver's license, D.O.T. physical verification, proof of vehicle insurance, copy of vehicle registration, student roster, seating chart, route description and stop locations (for daily routes), emergency telephone numbers, accident report forms, etc.

B. Bus drivers are reminded that, in accordance with the Commercial Driver's License program requirements, inspections are not limited to pre-trip inspections. En route (during the trip) and post-trip (after the trip) inspections are required. (Local school districts may provide reporting forms for these inspections.) One of the most important items in a post-trip check, of course, is to *look throughout*

*the bus for students who may have remained on board.* It is possible that a student may fall asleep on the seat or even be lying on the floor between seats.

C. The post-trip inspection is also an opportunity for the driver to check for damage to the bus, for weapons, for litter, for personal belongings of students, etc. This inspection can be performed as the driver walks through the bus, securing it before the next run.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:835 (May 1999).

## Chapter 9. Vehicle Operation

### §901. Specific Procedures

A. Specific procedures have been developed to ensure the highest possible degree of safety for school bus drivers and their passengers. The operational procedures described in this chapter have proved to be successful not only in Louisiana, but also in other states. No matter how sound they are, however, they will be successful only if each bus driver is focused on the specific operational task at hand.

#### 1. Loading and Unloading

a. The bus driver assumes a position behind the wheel before the first child boards and remains seated until the last child is discharged, except for approved loading and unloading of students with disabilities.

b. As required in R.S. 32:318, red flashing warning signals must be used for student loading and unloading. *At no other time are these lights to be used.*

c. The bus driver will select a safe stopping point within local school board guidelines, even if this requires children to walk a distance.

d. For buses equipped with a red four-light flashing warning system, drivers must activate the system at least 100 feet but not more than 500 feet before coming to a stop on the roadway. The lights must continue flashing for children to board, alight and/or cross roadways.

e. For buses equipped with an amber and red eight-light flashing warning system, drivers must activate the amber flashing lights at least 100 feet but not more than 500 feet before coming to a stop. Red flashing warning lights must be activated when the bus is stopped and must continue flashing while children board, alight and/or cross roadways.

f. The bus must stop in the right traffic lane, or the local school system has the option to permit loading and unloading on the shoulder of the road (when sufficient room exists on the shoulder or on adjacent state property) or on private property, when permission can be obtained from the owner and when no children are required to cross the highway to load or unload. (Off-road loading and unloading negates the effectiveness of flashing lights and stop arm signals. See also R.S. 32:80.)

g. Buses shall not stop within intersections to pick up or discharge passengers.

h. The bus driver must activate stop arms after the bus has stopped and before students are permitted to board or alight from the bus. The Louisiana "School Bus Stop Law" (R.S. 32:80) requires drivers of vehicles meeting or overtaking school buses stopped on a highway to load or unload students to stop the vehicle not less than 30 feet from the school bus when flashing warning lights and stop arms

have been activated and to remain stopped until the signals have been deactivated and the bus has resumed motion. (Bus drivers *must* deactivate signals before resuming motion.)

i. The bus driver must *ascertain that traffic has stopped* and only then open the door for entrance or exit of pupils.

j. Before crossing to the opposite side of the road, children must walk 10 to 15 feet in front of the bus on the shoulder of the roadway, checking the traffic and then crossing when it is safe to do so. at no time should children cross the road behind the school bus. Children who must walk parallel to the bus should walk approximately ten feet from the side of the bus where space permits. Where space does not permit such a distance, the bus driver must determine that passengers are clear of the bus before setting the bus in motion.

k. The bus driver must allow all passengers to reach their respective seats before placing the bus in motion after passengers have boarded the bus.

l. As the bus approaches a bus stop for passenger unloading, all passengers must remain seated until the bus comes to a complete stop and the bus driver has determined that it is safe for passengers to walk to the front of the bus and to exit.

m. The bus driver should be especially watchful for clothing, book bags, knapsacks or other carry-on items that can be caught in the handrail or the bus door, thereby possibly causing student injury. The bus driver should always scan the area around the bus door before placing the bus in motion at bus stops.

n. Emergency doors shall not be used for routine student loading and unloading.

o. The school bus shall not be operated on school grounds except to pick up and discharge students or during student safety instruction exercises, but then only when students are carefully supervised.

## 2. Railroad Crossings

a. The driver of any school bus, with or without pupils, shall come to a complete stop no closer than 15 feet but within 50 feet of the rail nearest the front of the bus.

b. Drivers making stops for railroad crossings shall observe traffic. Bus speed shall be reduced far enough in advance of the stop to avoid trapping other motorists in panic stops or rear-end collisions with the bus. On multiple lane roadways, the bus should stop in the right lane whenever possible.

c. Turn signal lights may be operated in their *hazard mode* except when prohibited by state statute or local regulation. Except for hazard lights and brake lights, no other school bus signals will be activated for the railroad crossing.

d. When the bus has stopped, the driver shall fully open the service door, listen and look in both directions along the track or tracks for approaching engines, trains or train cars.

e. For improved vision and hearing, the window at the driver's left and the service door should be opened, and all noisy equipment (radios, fans, etc.) should be turned off and should remain turned off until the bus has safely cleared the crossing.

f. When any school bus must stop for any railroad track at grade, *all pupils must be silent until the crossing is*

*completed*. Such signal for silence shall be given by the school bus driver.

g. If the view of the tracks is obstructed for 1,000 feet or less in either direction, no portion of the bus may be driven onto the tracks until the driver has made certain that no train is approaching. Although railroad signals may indicate the tracks are clear, the driver must develop and use visual and audible senses to determine whether or not it is safe to proceed.

h. The school bus driver shall always drive across the tracks in an appropriate low gear and not change gears while crossing the tracks.

i. After a train has passed the crossing on multiple tracks, the bus driver shall not drive the bus onto any track until the driver is certain that no train (possibly hidden by the first train) is approaching on an adjacent track.

j. The driver of a school bus that has stopped at any railroad track or tracks at which any flashing red lights and/or bells have been activated shall not proceed across such tracks unless by authorization from a law enforcement officer or a railroad flagman.

k. At crossings controlled by traffic signals, the bus driver shall obey the traffic signals.

l. No bus driver shall drive the bus through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

m. The bus driver must never accept a lack of movement as an indication that the device is working or is out of order. A bus driver must always consider a railroad grade crossing as conclusive warning of danger and shall not cross the track until the bus driver has determined that no train is approaching.

n. During wet, stormy or foggy weather, before placing part of the bus on the tracks, the bus driver must know that the crossing can be made safely. Any use of flares or warning signals must be taken as an additional warning of danger.

## 3. Intersections

a. Use only brake lights as signals when coming to a stop.

b. For buses equipped with standard transmissions, place the gearshift in neutral while waiting for the traffic to clear or for the traffic light to change to green.

c. Use the hand ("parking") brake if on a grade to prevent rolling backward or forward. (Being in neutral gear prevents the bad practice of "slipping" the clutch to keep the bus from rolling and, with the hand brake engaged, may prevent the bus from plowing into another vehicle in case of a rear-end collision.)

d. When approaching an intersection not controlled by stop or yield signs or signal lights, and at controlled intersections where the school bus has the right of way, the driver should remove his right foot from the accelerator and allow it to cover the brake pedal until the bus has cleared the intersection or until there is no danger of a collision. (This will reduce the time required to react in case of an emergency.)

e. School buses should not stop within intersections to pick up or to discharge passengers.

## 4. Turns

a. Always activate turn signals at least 100 feet before beginning the turning maneuver.

b. Keep the bus as far right as possible for right turns to prevent other vehicles from passing on the right of the bus.

c. For left turns, keep the bus as close to the center line as possible. If two left turn lanes are designated, stay in the outside lane if possible to provide better visibility and a wider turning area.

d. Keep front wheels pointing forward until it is safe to make the turn. This will help to prevent the bus from being knocked into oncoming traffic in the event of a rear-end collision.

#### 5. Driving Speeds

a. Never drive faster than legal speeds on highways, on city streets, in school zones, etc. R.S. 32:62 sets the maximum speed at 35 miles per hour under conditions that require frequent stops to receive and discharge students when the posted speed is 35 miles per hour or greater. *At no time shall a school bus be operated in excess of 55 miles per hour, including interstate highway travel.*

b. In curves, on hills, highway entrance and exit ramps, etc., the posted speed is set for automobiles; therefore, school buses should reduce speed below posted speeds.

#### 6. Interstate Driving

a. Interstate driving is particularly dangerous because of the high rate of speed involved. For this reason it is important that school buses use the right lane except for passing, for exiting to the left, or for hazardous conditions. The following procedures will make a safer interstate driver.

##### i. When changing lanes:

(a). check rear and side view mirrors;

(b). check blind spots by looking toward the rear over each shoulder;

(c). activate the turn signal;

(d). when conditions are favorable, move smoothly and safely into the next lane, maintaining a safe distance (4 seconds or more) behind the vehicle in front;

(e). when passing another vehicle, after following the above procedures and when the passed vehicle is visible, signal again and move smoothly into the right lane.

ii. Maintain a following distance of 4 seconds or more.

iii. Drive at speeds appropriate for traffic conditions but not more than 55 miles per hour.

iv. Posted ramp speeds, as indicated previously, apply to automobiles. Reduce school bus speed to accommodate all necessary maneuvers.

#### 7. Miscellaneous

a. Passengers should be reminded of safe riding practices, especially of remaining seated and keeping hands, arms and heads inside the bus.

b. *All standing is prohibited.* At no time may a rider stand while the bus is in motion. In compliance with R.S. 32:293, it shall be unlawful for anyone responsible for the transportation of children to permit a number of children exceeding one hundred percent (100%) capacity of a bus to be transported at one time. (School bus capacity is determined by the bus body manufacturer.)

c. Drivers should constantly scan the interior of the bus as well as the areas ahead, to the sides and to the rear of the bus.

d. The bus must never be fueled while passengers are on board or while the engine is running.

e. Drivers are required to wear seat belts and other safety devices provided by the bus manufacturer at all times while the bus is in motion.

f. Drivers shall not leave their buses while passengers are on board unless there is an extreme emergency. If an emergency requires the driver to leave the bus, the engine must be stopped and the ignition key removed by the driver.

g. While the engine is running, the driver shall not leave the bus *at any time when passengers are on board*. When the bus is empty, the driver should not leave the bus when the engine is running except when inspecting, servicing or repairing the bus requires the driver to do so.

NOTE: Drivers of special needs buses who must assist in the loading and unloading of passengers in wheel chairs are not considered to have left the bus so long as they remain on or beside the bus to assist with the loading or unloading, itself.

h. The service (entrance) door and the emergency exit door(s) must remain closed at all times while the bus is in motion.

i. Buses should *not* be backed except in situations *where there is no safer alternative*. On school grounds, especially, backing should be avoided. If necessary, re-routing, improving loading/unloading areas or other measures must be taken to eliminate the hazard of backing the bus. If there is no safe alternative to backing, these warnings should be heeded.

ii. Back while students are on board. If backing is required when students are being picked up, pick them up and then back the bus. If students are being dropped off, back the bus and then drop them off.

iii. Arrange for assistance during backing maneuvers. A responsible person should be positioned to the rear of the bus at the passenger's side to signal to the driver. All signals must be agreed upon before backing begins, but the most important signal is stop!

j. Headlights must be turned on whenever it is necessary to use windshield wipers.

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## Chapter 11. Emergency Procedures

### §1101. Safety

A. *Safety* is the key word for school transportation in Louisiana. The most important obligation shared by all persons involved in school transportation is their collective responsibility for the prevention of accidents, especially accidents involving school bus passengers.

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### §1103. Accidents

A. Most school bus accidents occurring in Louisiana are related by one or more factors. These are reminders that accidents can happen at any time, even when most conditions appear to be favorable for safe driving.

1. Most school bus accidents occur while school bus drivers are distracted or inattentive to traffic or roadway conditions. This fact points out the need for each driver to concentrate on driving and, therefore, to maintain discipline on the bus.

2. Most school bus accidents occur on dry improved roadways. Drivers may have a tendency to relax safety efforts when road conditions are favorable, but they should be just as attentive when driving on dry roads with hard surfaces as they are when driving on muddy gravel or dirt roads.

3. Most school bus accidents occur during clear weather. Drivers may have a tendency to relax safety efforts also when weather conditions are not adverse; but they should be just as attentive when driving in clear weather as they are when driving in rain, fog or other adverse weather conditions.

4. Most school bus accidents occur during the afternoon hours, when bus drivers may become tired and tend to be in more of a hurry to reach their destinations. Students, also, may be tired and restless; thus, discipline may be more of a problem than in the morning. Other motorists may be tired and hurrying as well. Bus drivers should be especially attentive and prepared to drive defensively during this time.

B. Breakdowns may contribute to collisions if disabled school buses are not removed from roadways and secured in safe off-road locations. It is essential for the bus driver to take precautionary action at the scene of a breakdown or a vehicle accident to minimize additional risk and to ensure the safety of uninjured passengers.

C. These are important procedures to follow and points to remember.

1. Remain calm.
2. Secure the bus.
  - a. Activate hazard warning lights.
  - b. Set the parking brake and shift the transmission into the appropriate gear.
  - c. Stop the engine and turn off the ignition switch, unless the ignition switch must be on to operate a two-way radio or public address system, if the bus is so equipped. All other equipment (heater and defroster fans, AM/FM radio, etc.) should be turned off to prevent unnecessary drain on the battery.
3. Send for help. If a bus attendant (aide) or a chaperon is present, send the attendant or chaperon; otherwise, request a passerby to call for help. In the absence of another party, remain at the scene, and send two responsible student passengers to the nearest telephone to seek assistance.

4. Decide whether or not to evacuate the bus. Evacuate if *any* of these conditions exist:

- a. presence of fire or toxic fumes;
- b. danger of fire;
- c. unsafe position of the bus;
- d. hazardous weather conditions.

5. If evacuation is ordered, follow these procedures:

- a. use the exit farthest from danger;
  - b. use the service (front) door when time and conditions permit in order to minimize injury during evacuation;
  - c. use both the service door and the emergency exit(s) if time is a factor;
  - d. if the bus is equipped with emergency exit windows and/or roof-top emergency escape hatches, use them only when the service door and/or the emergency exit door are not adequate to evacuate students safely;
  - e. enlist the assistance of responsible students for the evacuation process;
  - f. remove the first aid kit and keep it with the passengers;
  - g. move passengers to a safe location approximately 100 feet from the danger zone.
6. Apply first aid if required, and especially if *any* of these conditions exist:

- a. blocked airway or stoppage of breathing;
- b. severe bleeding;
- c. shock;
- d. fractures.

7. Secure the area.

a. In the event of a collision, move the bus *only* if there is a danger of fire or further collision or if ordered to do so by a law enforcement officer or a supervisor.

b. Place reflective triangles or flares as required if the vehicle is expected to be disabled for more than ten (10) minutes. (Never use *flares* where fuel or chemical spillage or other conditions may cause a fire.)

i. If the bus is stalled in the forward lane of travel or on the shoulder nearest the forward lane of travel on a *straight, flat undivided roadway*, place one triangle approximately 10 feet to the rear on the traffic side of the bus. Place a second triangle approximately 100 feet to the rear and the third triangle approximately 100 feet ahead of the bus. If the disabled bus is stopped near a curve, a hill or another hazardous area, extend the second and/or third reflective triangles farther. (If the bus is stopped in the lane opposite the forward lane of travel or on the shoulder of the opposite lane of travel, the reflector marking the location of the bus should be placed approximately 10 feet from the front, instead of the rear, of the bus.)

ii. On a *divided or one-way roadway*, position the first and second reflective triangles as indicated above. Place the third triangle *behind the bus*, approximately 100 feet beyond the second triangle.

8. Notify appropriate authorities, including the Supervisor of Transportation, as soon as possible.

9. In the event of a collision or other accident, be extremely cautious of what you say and to whom. do not admit fault to anyone at the scene! State only the *facts* as you know them to be. Stay out of earshot of others to discuss the situation with the Supervisor of Transportation or another school system official.

10. Obtain names, addresses and telephone numbers of witnesses and of drivers of other vehicles involved. Write down driver's license numbers (if available) and vehicle license numbers of drivers and vehicles involved in the collision.

11. Indicate on the *school bus seating chart* all passengers, where they were seated at the time of the

accident and any injuries that were sustained by the passengers.

12. Follow up as required in meetings with school system officials, filling out records and reports (including SR-10 and the Uniform School Bus Accident Report Form) as required. (See Chapter 29)

D. Bus drivers should be certain that emergency telephone numbers, a roster with names and telephone numbers of all student passengers and necessary forms are carried on the bus at all times. Before leaving for "special" trips (field trips, athletic trips, etc.), the bus driver must be provided with a roster of student and adult passengers. Every school principal should clearly explain this requirement to school staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

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### **Chapter 13. Student Instruction**

#### **§1301. Student Instruction**

A. Because of the increasing number of pupils being transported and the ever increasing number of accidents on the highways, there is a need to instruct pupils on safe riding practices and on proper evacuation of a school bus in case of an emergency. Students in head start, pre-kindergarten, kindergarten and primary grades and students with disabilities, along with students who only occasionally ride school buses (field trips, etc.), require more frequent reinforcement than do more experienced riders.

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#### **§1303. Classroom Instruction**

A. At least twice during the school session, intensive classroom instruction must be given on safe riding practices. This instruction must be presented once during the first 6 weeks of each semester and coordinated to involve bus drivers, bus attendants, teachers and principals. Once the instruction has been completed, the principal must complete Form T-7, certifying that the instruction has been performed and must submit the form to the local Transportation Supervisor.

B. Instruction must include, but is not limited to, the following topics:

1. student behavior at bus stops and while on board the bus;
2. identifying individuals who have authority over passengers;
3. passenger loading and unloading procedures;
4. seat assignments;
5. acceptable and unacceptable conduct on the bus;
6. keeping the bus clean;
7. care of the bus and its equipment;
8. emergency procedures, including evacuation drills;
9. meeting the bus, waiting for the bus, leaving the area after unloading;
10. all other local and state rules and regulations.

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#### **§1305. Emergency Exits**

A. In an emergency, it is possible for passengers to jam the emergency exit(s) by all trying to get out of the bus at the same time. Exits must be orderly for the safety and well being of all passengers. Emergency evacuation drills are required for all students (even occasional riders) who may ride a school bus.

B. One emergency exit drill must be held during the first six (6) weeks of *each* school semester. More frequent drills may be necessary for younger students and students with disabilities to help them overcome the fear of an emergency, of jumping from the rear emergency exit of the bus, etc. The evacuation procedure is presented in Chapter 27.

C. These guidelines are offered to assist with conducting safe, efficient drills.

1. Have a written policy covering the drills.
2. Obtain permission in advance from school officials to hold drills. The principal (or designee) should be available to coordinate and assist with the drills.
3. Practice drills on school grounds, during school hours, in a safe place and under supervision.
4. Allow for individual differences in jumping out of the rear emergency exit. Helpers should be instructed to offer a helping hand (*palm up*) and to avoid grasping the passenger's hand or arm. (Passengers will hold on if they need to.)
5. Time each drill and record the times.
6. Practice exiting the bus through the service (front) door, the rear emergency exit and both simultaneously.
7. Complete Form T-8 and give it to the Principal (or designee) or send it to the Supervisor of Transportation as instructed.

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#### **§1307. Student Helpers**

A. Student helpers can be valuable assistants in times of emergency, especially if the driver is incapacitated and unable to direct emergency procedures at the scene of an emergency and no trained adult is available to assist. If student helpers are included in the emergency plan, they should be responsible, should be regular riders and should live near the end of the bus route. Written parental consent should be obtained by the driver before students are designated for this purpose.

B. Designated students should be taught these basic procedures:

1. how to turn off the ignition switch;
2. how to set the parking brake;
3. how to summon help;
4. how to direct emergency exits;
5. how to set emergency reflective markers;
6. under what conditions they are authorized to take action and what action they are to take.

C. The bus driver should perform all these functions when possible and should use student helpers only to *help*

with orderly evacuations except when the driver is unable to direct the operation personally.

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## **Chapter 15. School Bus Routes**

### **§1501. Bus Routes**

A. The primary responsibility for establishing and continuing school bus routes rests with the local school board. Local school boards are responsible for maintaining safe, efficient, economical school transportation programs:

1. by establishing and continuing only those routes that are needed to assure timely arrivals and departures within the framework of established school hours;

2. by designing routes to achieve maximum utilization of buses and the elimination of unnecessary and duplicated mileage; and

3. by consolidating and eliminating bus routes when they are no longer needed.

B. School bus routes must be designed so that they begin at the farthest point from the school or schools served and proceed on the shortest charted course. Exceptions may exist when local school officials determine it is more economical to do otherwise and/or when there are hazardous conditions.

C. School bus routes are measured in terms of "one-way mileage." Paid one-way mileage *for contract drivers* begins when the first child is picked up and ends when the final destination or school is reached. When one-way mileage differs in the afternoon from that of the morning route, the one-way mileage for the morning and the afternoon routes is totaled and divided by two. The result is the average one-way daily mileage for that particular route.

D. The term route shall apply to the combined total daily trips (or "runs") regularly assigned to the bus driver.

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## **Chapter 17. Passenger Management**

### **§1701. Passenger Conduct**

A. Driver distraction is a major cause of school bus accidents. More often than not, distraction is caused by student misbehavior on board the school bus or at the bus stop. *The school bus is safe only when all passengers are conducting themselves properly and the driver is able to concentrate on driving.*

B. These are rules of passenger conduct printed in Bulletin 1191.

1. Cooperate with the driver; your safety depends on it.

2. Be on time; the bus will not wait.

3. Cross the road cautiously when waiting for and leaving the bus.

4. Follow the driver's instructions when loading and unloading.

5. Remain quiet enough not to distract the driver.

6. Have written permission and be authorized by the principal to get off at a stop other than your own.

7. Do not stand when the bus is in motion.

8. Do not extend arms, head or other objects out of windows and doors.

9. Do not throw objects in the bus nor out of windows and doors.

10. Use the emergency exit(s) only in an emergency and when authorized to do so.

11. Do not eat or drink on the bus.

12. Do not use or possess tobacco, matches, cigarette lighters, obscene materials, weapons or other prohibited items on the bus.

13. No objects are allowed on the bus if prohibited by state or federal law or local school board policies.

14. Do not damage the bus in any way.

15. Be courteous and safety-conscious; protect your riding privilege; enjoy your ride.

C. These rules of conduct should provide a basis for each driver to teach passengers how they must behave in order to enjoy the privilege of riding the school bus. For some students, the number of rules may have to be reduced and the language simplified so that they can understand them. Periodically, every driver should review safe riding practices with passengers.

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### **§1703. Successful Drivers**

A. Passenger management is the direct responsibility of every bus driver. At times it may be necessary for the bus driver to enlist the assistance of parents, school officials or the Supervisor of Transportation. Most successful bus drivers handle most situations before they get out of hand. Their success is attributed to these basic factors.

1. Successful drivers, themselves, follow rules.

2. Successful drivers communicate rules of conduct clearly to passengers.

3. Successful drivers are able to solve most problems that arise on their buses.

4. Successful drivers are flexible but firm.

B. The following "do's" and "don'ts" will help you to be a successful driver.

1. Do's

a. *Do* get to know your passengers and call them by name.

b. *Do* control your emotions; always be courteous, even under adverse conditions.

c. *Do* be a friendly authority, a responsible role model.

d. *Do* keep rules to a minimum, but consistently enforce all rules.

e. *Do teach* passengers proper school bus conduct.

f. *Do* develop a good relationship with school administrators.

g. *Do* involve parents, if necessary, to enforce rules of conduct.

h. *Do* address problems before they get out of hand.

i. *Do* be enthusiastic and show a sincere interest in students' interests.

j. *Do* be consistent.

2. Don't's
  - a. *Don't* say anything to students you would not say to parents or other adults.
  - b. *Don't* humiliate a student, especially in the presence of his peers.
  - c. *Don't* make *idle* threats. ("Say what you mean and do what you say you're going to do.")
  - d. *Don't* dispense group punishment.
  - e. *Don't* be a "yeller" or a "screamer."
  - f. *Don't* argue with passengers; be assertive.
  - g. *Don't* see and hear *everything*.
  - h. *Don't* become overly familiar with students.
  - i. *Don't* question the authority of others in front of students. Instead, question authority, if you care to, in the proper setting.
  - j. *Don't* be afraid to apologize.

C. School bus drivers are urged to try to handle problems directly with students involved. The next step is to involve parents and then school officials if necessary. Following these steps helps students to understand that, indeed, the school bus driver is the "captain of the Ship."

D. If the school bus driver finds it necessary to report student conduct to a school official for assistance in resolving a behavioral problem, a form *must* be used. *Failure to use the Behavior Report form will result in the school official not being able to support the bus driver in handling the problem in a timely, effective manner.* This form has been adopted by the Board of Elementary and Secondary Education for use by all school districts in Louisiana. Copies of the form are available through each local school district office.

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## Chapter 19. Basic First Aid Principles

### §1901. First Aid Training

A. School bus drivers in Louisiana are required to participate in first aid training so that they can be prepared to respond to emergencies that may occur on their bus routes. Knowing how to apply basic first aid techniques to a passenger who becomes ill or is injured can literally save a life.

B. This chapter is included in the Bulletin not as a replacement for the comprehensive first aid course, but rather as a ready reference for drivers. Emphasis is placed on a few basic procedures to help the driver to respond to emergencies until trained professionals can take over treatment, either at the scene or after victims have been transferred to a medical facility.

C.1. Three steps should be taken initially:

- a. *check*, or evaluate, the scene and any victim;
- b. *call* for help if appropriate; and
- c. care for the victims.

2. The first step, "check," is an evaluation:

- a. of the scene;
- b. of types of injuries; and
- c. of needs for immediate attention.

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HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:841 (May 1999).

### §1903. Check, or Evaluation of the Scene

A. Some situations require high priority action. For example, at an accident scene if there is danger of fire, explosion, toxic fumes, collisions or other cause of further injury, the first priority is to move *everyone* from the threat of danger. This means foregoing first aid treatment initially. Only after all passengers are safe should first aid be administered. (See Chapter 11: Emergency Procedures)

B. When passengers are safely removed (or if no threat of danger exists), the bus driver must initiate treatment. This is done by assessing the victims and setting priorities for treatment.

C. If assistance is required, the bus driver should summon help by whatever means may be available as soon as possible. (See Chapter 11: Emergency Procedures)

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### §1905. Check, or Evaluation of Victims at the Scene

A. Evaluating victims of illness or injury is a very important step. An initial check will help isolate specific problems: blocked airway or stoppage of breathing, severe bleeding, shock--the three most critical injuries that require prompt attention. If the victim is conscious, ask questions in an effort to determine the extent of injuries or the nature of the illness. If the victim is unconscious, use approved methods of checking for breathing, for bleeding, for fractures or other injuries. During the check, look for medical alert tags that may give a clue as to what might be wrong and the treatment required.

#### 1. Blocked Airways or Stoppage of Breathing

a. If the victim is conscious, the airway may be open; however, the victim may be choking and can lose consciousness if the obstruction is not removed. Check for breathing difficulties that might need attention. If the victim is unconscious, check for breathing for approximately five seconds: look for the chest to rise and fall, listen for breathing and feel for air coming from the victim's mouth and nose. Check, also, for a pulse. (If necessary to check breathing, turn the victim on his back.

b. Most victims can be saved if breathing can be resumed (naturally or artificially) within two minutes. If the victim is not breathing but has a pulse, begin rescue breathing procedures. If the victim has no pulse, cardio-pulmonary resuscitation (CPR) is required. (See "treatment of victims", this Chapter.)

#### 2. Severe Bleeding

a. Victims who are hemorrhaging can be dead in less than two minutes. Look for blood-soaked clothing and for open wounds with profuse bleeding. Try to determine the type of bleeding and the amount of blood lost. Learn to recognize these types of external bleeding:

- i. capillary oozing: a steady ooze of dark-colored blood;
- ii. venous bleeding: a flow of dark-colored blood;

iii. arterial bleeding: bright red blood, flowing swiftly in spurts or jets.

b. When evaluating the severity of bleeding, remember that blood flowing in a heavy stream or in large spurts indicates a serious condition, and you must attempt to bring it under control immediately.

3. Shock

a. Shock occurs when the circulatory system does not carry oxygen to all parts of the body. Vital body functions are depressed, and death may result without proper medical treatment. The three most common causes of severe shock are inadequate breathing, excessive bleeding and unsplinted fractures.

b. Shock is easily recognized. The victim's skin is pale and clammy, with small drops of sweat, particularly around the lips and forehead. The person may complain of nausea and dizziness, the pulse may be fast and weak and the breathing may be shallow and irregular. The eyes may be dull, with enlarged pupils. The victim may be unconscious or unaware of the seriousness of the injury and, then, may suddenly collapse. Restlessness and irritability may be noted.

4. Fractures, Strains, Sprains

a. Ask the conscious victim to describe the nature of the injury. Check from head to toe (toe to head for children) and observe swelling, discoloration, limply hanging limbs or other notable indications of injury. Check the unconscious victim (after administering essential emergency aid, such as rescue breathing) by feeling the extremities, from head to toe. Care should be taken to avoid unnecessary movement of the head, neck and back during this procedure.

B. The bus driver should wear latex gloves and otherwise protect against the spread of germs during the check and the care activities.

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**§1907. Call for Help, if Necessary**

A. The nature of the emergency will dictate whether or not emergency assistance is required; however, if the emergency is of a medical nature and there is any doubt in the mind of the driver, seek help immediately.

B. If there is no two-way communication available on the bus, a passer-by may be able to assist by using a portable telephone or an automobile telephone or by going to a nearby telephone to call. It is important for the bus driver to provide concise, clear information for the caller: the nature of the emergency, the location of the school bus, how many passengers are in need of assistance, whether or not the driver needs assistance, whether a tow truck is needed, and any other information that will be of assistance to the responders to the emergency.

C. If in doubt, don't hesitate; call for help!

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**§1909. Care, or Treatment of Victims**

A. With the initial check having been completed, action must be taken to attend to any life-threatening situations that may exist. Victims' needs next must be prioritized for treatment as follows:

1. stoppage of breathing/blockage of airway;
2. severe bleeding;
3. shock;
4. fractures and less urgent injuries (secondary check).

B. Maintenance of Airway and Respiration. Airways must be maintained so as to remain open. If the victim is having a breathing problem, *rescue breathing* must begin as soon as possible after natural breathing has been interrupted, or when natural breathing is so irregular or so shallow as to be ineffective. Rescue breathing is a method of getting air into and out of a victim's lungs until the victim can breathe without assistance.

a. Rescue breathing is performed in this manner.

i. If the victim is not lying on his back, turn the victim as one unit so that he is lying on his back.

ii. Open the victim's mouth and remove any obvious obstructions with a finger sweeping motion.

iii. Tilt the victim's head back by lifting on the chin and pressing on the forehead.

iv. Check for breathing for 5 seconds, using the look-listen-feel technique.

v. Pinch the victim's nostrils, place your mouth over the victim's mouth and give 2 slow breaths. (If mouth-to-nose breathing is required, hold the victim's mouth closed during the procedure.)

vi. Remove your mouth from the victim's mouth, turn your head and listen for the return outflow of air. Check for pulse for 5 seconds.

vii. If a pulse is present but the victim is not breathing, give 1 slow breath every 5 seconds for 1 minute (12 breaths). Recheck pulse. If breathing is not restored, continue this procedure at the rate of approximately 12 breaths per minute, checking for pulse at the end of each cycle. (For a child, the rate should be about 20 shallower breaths per minute.)

viii. *If there is no exchange of air*, check the position of the head and jaw and check for foreign objects blocking the air passage and repeat the breathing procedure. If rescue breathing still is not possible because of blockage of the airway, straddle the victim, place the heel of one hand against the middle of the victim's abdomen just above the navel. Give up to five abdominal thrusts, pushing inward and upward. Next, lift the victim's jaw and tongue and sweep out the mouth, retrieving any foreign objects. Tilt the victim's head back again, lift the chin and try to give breaths. If the airway remains blocked, repeat the procedure; if the airway is cleared but the victim cannot breathe on his own, begin rescue breathing.

b. Normal breathing may begin again after 15 minutes of rescue breathing. If it does not, continue the procedure until relieved or until the victim begins to breathe.

c. If there is no pulse, the victim is in cardiac arrest. *Cardiopulmonary resuscitation* (CPR) should begin immediately. CPR is performed in this manner.

i. Position yourself so that you can give chest compressions and rescue breaths without having to move, if possible. Find the notch where the victim's breastbone and

ribs meet, and place the heel of your hand just above this notch. Cover this hand with the other hand, lock your arms in a straight position, and begin giving chest compressions: 15 in about 10 seconds. Next, give two slow breaths.

ii. Repeat the compressions and breaths four times in a cycle. At the end of the cycle, check for a pulse. If there is no pulse, repeat the cycle.

iii. If there is a pulse, check for breathing. If the victim is not breathing, continue with rescue breathing, as described above.

d. When breathing resumes, monitor the victim and treat for shock. (See techniques for control of shock below.)

#### C. Control of Bleeding

1. If possible, wear latex or vinyl gloves or protect hands with plastic wrap, plastic bags or other non-porous materials.

a. Apply *direct pressure* over the wound area. Place the cleanest material available (preferably a pad of sterile gauze) against the bleeding point and apply firm pressure. Apply and secure a bandage over the pressure pad. Leave the dressing and bandage in place. If necessary to add more dressing material, place it directly over the other dressing.

b. *Elevate* the extremity above the heart level, *if possible*, while continuing to apply direct pressure if bleeding persists. Gravity will help to reduce blood pressure and slow the flow of blood to aid in clotting. *Do not elevate a broken extremity*, however.

c. If bleeding continues, pressure should be applied to *pressure points* on an artery between the wound and the heart. These are the pressure points:

i. temporal artery located in the hollow just in front of the ear;

ii. facial artery located in the small crevice about one inch from the angle of the jaw;

iii. carotid artery located deep and back on each side of the Adam's apple;

iv. subclavian artery located deep and down in the hollow near the collarbone;

v. brachial artery located on the inner side of the upper arm, about three inches below the armpit;

vi. femoral artery located midway in the groin, between the crotch and the hip.

d. A *tourniquet* is dangerous to apply, dangerous to leave on and dangerous to remove. It can cause gangrene and, subsequently, could cause loss of a limb. A tourniquet is rarely required and should be used only for severe, life-threatening hemorrhage that can not be controlled with direct or arterial pressure. Once applied, the tourniquet must not be removed except by professional medical personnel. Use only wide, flat materials and never string, wire, rope and other narrow materials.

2. Monitor victims and treat for shock. (See techniques for control of shock in this chapter.)

#### D. Treatment for Shock

1. When administering to a victim of shock, follow these steps.

a. Have the victim lie down.

b. Elevate the victim's feet and legs 12 inches or more, unless there is a possibility of head, neck or back injuries or broken bones in the hip or leg region.

c. Control any external bleeding.

d. Keep the victim warm but not hot.

e. Do not give the victim anything to eat or drink, even though he is thirsty.

f. Keep the victim quiet.

g. *Seek medical attention immediately*, especially if the suspected cause of shock is reaction to an insect bite or sting.

2. After caring for victims with life-threatening injuries, check all victims to identify other injuries that require attention. Follow procedures learned in the first aid course. Some of the procedures most likely to be required for school bus passengers are described below.

#### a. Miscellaneous Procedures

i. Be reminded that the procedures are summarized in this publication. School bus drivers must continually update training in proper first aid procedures to maintain first aid skills.

##### (a). Fractures, Strains and Sprains

(i). If the victim's head, neck or back is injured and it is not necessary to move the victim for protection from further injury, it is advisable to await professional assistance. Under any circumstance, if the victim is to be moved, the injured part must be immobilized. This most commonly is done by splinting the injured area and the area above and below it. Anatomic splints (use of a part of the body), soft splints (towels, shirts, blankets, materials found in the school bus first aid kit) or rigid splints (workbooks, magazines, boards, etc.) may be used for this purpose. Remember to check for blood circulation after splinting to ensure that the splint is not too tight.

(ii). For strains and sprains, get the victim to school or to the home bus stop as quickly as possible so that ice can be applied to the injured area and further medical assistance can be obtained.

(b). Insect Bites and Stings. Remove the stinger (scrape away or use tweezers, but avoid squeezing more venom into the wound), wash the wound if possible, apply a cold pack if available, watch for signals of medical reaction (possible shock) and seek medical attention.

(c). Animal Bites. Wash the wound if bleeding is minor, control bleeding, apply antibiotic ointment if available, cover the wound and seek medical attention.

(d). Sudden Illnesses. Sudden illness may result from diabetic emergencies, seizures, onset of influenza or other causes. The victim may experience confusion, light-headedness, dizziness or weakness, diarrhea, chills or sweats, nausea, blurred vision, severe headache, breathing difficulty or even unconsciousness. If the cause is not known, first aid should follow the usual pattern check the scene and the victim, call for help and begin caring for the victim.

(i). Care for life-threatening conditions first. Help the victim to rest comfortably, reassuring the conscious victim. Keep the victim from getting over-heated or chilled. Monitor the victim for changes in breathing or consciousness. Do not give anything to eat or drink unless the victim is fully conscious. If the victim vomits, place the victim on his side. If the illness is a diabetic emergency, give him candy, soft drink or other available source of sugar. If the victim faints and no head or back injury is suspected, elevate the victim's legs 8 to 10 inches.

ii. If the victim has a seizure, do not hold or restrain the victim or place anything between the victim's

teeth. Cushion the victim's head and body with clothing, books or whatever else may be available and remove nearby objects to prevent injury. Allow the victim to rest after the seizure. Get medical help.

(e). Nosebleed. Give the victim gauze from the first aid kit, have him lean forward and pinch the nostrils together until the bleeding stops.

(f). Tooth Knocked Out. Have the victim place a piece of sterile dressing directly in the space where the tooth is missing and bite down to maintain pressure to control bleeding. If the tooth can be found, preserve it by placing it in a closed container of cool milk or water (if available) for possible reinsertion. Seek medical assistance.

(g). Burns. Remove the victim from the source of the burn. Cool the burn, using large amounts of cool water. (Ice or ice water may be used on small superficial burns but should not be used on severe burns.) Cover the burn loosely with dry, sterile dressing or a clean cloth. Do not puncture blisters and do not put ointment on severe burns. Monitor the victim closely and get additional medical help.

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## **Chapter 21. Tips From the Professionals**

### **§2101. Training**

A. Pre-service training and in service training stress the importance of the school bus driver in the daily educational routine. The driver helps set the mood, good or bad, for passengers by the way they are treated on the ride to and from school each day. Nobody ever said the job was easy, but it can be made easier if the bus driver is a good manager of passengers and sets a positive example by performing the duties expected of a professional school bus driver.

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### **§2103. Tips**

A. Here are some tips from outstanding school bus drivers who pride themselves as being *professionals*.

1. Read your handbooks, bulletins, newsletters, etc. and learn as much about the job as possible.

2. Always conduct pre-trip, en route and post-trip inspections.

3. Maintain a clean bus, even if it is the property of someone else.

4. Follow the rules set down for bus drivers in Louisiana.

5. Drive as smoothly as conditions permit, avoiding jerky motions and slowing down for bumps and rough places.

6. Always use lights and signals in accordance with laws.

7. Transport only passengers assigned to you, including those who are temporarily assigned to you by school authorities.

8. Do not allow pets on board. Do not transport objects that cannot be safely stowed beneath a seat or safely held by the student during the bus ride.

9. Be clean and neatly dressed at all times.

10. Be courteous to passengers, their parents and to the motoring public.

11. Be prompt and accurate when filing reports with schools or the central office.

12. Be proud that you are a professional school bus driver, the safest of any group of professional drivers in America!

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## **Chapter 23. Reference Sources for Specific Topics**

### **§2301. Topics**

A. The topics listed herein after are *not* intended to be all-inclusive, covering every facet of student transportation services in Louisiana. The list is intended to provide Louisiana sources of reference for information regarding some of the topics most frequently questioned and discussed. It is recommended that every school bus driver consult with the local Supervisor of Transportation if additional information or further clarification is required.

B. Louisiana Department of Education Bulletins referenced below are as follows: Bulletin 1191: *School Transportation Handbook* (rev. 1998), Bulletin 1213: *Minimum Standards for School Buses in Louisiana* (rev. 1998), Bulletin 1475: *The Louisiana School Bus Driver Operational and Vehicle Maintenance Procedures* (rev. 1998), and Bulletin 1886: *Special Education Transportation Guide* (rev. 1998).

Eligible (for School Bus Transportation) Students	<p>One mile or more from school  RS 17:158  RS 17:2003  RS 17:3381  Bulletin 1191, Chapter 23  Bulletin 1886, Section II</p> <p>Less than one mile from school  RS 17:158  Bulletin 1191, Chapter 23</p> <p>Post-secondary vocational technical facilities  RS 17:2003</p> <p>College students  RS 17:3381</p>
Emergency Procedures	RS 9:2793 RS 32:398 RS 37:1732 ("Good Samaritan Law") Bulletin 1191, Chapters 15 & 33 Bulletin 1475, Chapters 11 & 27 Bulletin 1886, Sections II, III Louisiana CDL Manual, pp. 2.13-2.16
First Aid Procedures	Bulletin 1475, Chapter 19 Bulletin 1886, Section V
Guaranteed ("frozen") mileage	RS 17:497 Bulletin 1191, Chapter 21
Habitual offender defined	RS 32:1472
Insurance Against Injury to Students Transported to School	RS 17:159 RS 17:159.1 RS 17:159.2 RS 32:601 RS 32:604
Minimum Insurance Coverage	RS 45:162 (17)(18)
Passenger Management/ Discipline	RS 14:95.2 (Illegal Weapons) RS 17:223 RS 17:240 (Smoking) RS 17:416 Bulletin 1191, Chapters 5, 9 & 15 Bulletin 1475, Chapters 13 & 17 Bulletin 1886, Sections II, IV Louisiana CDL Manual, pp. 4.2-4.3
Public Intimidation (of School Bus Drivers)	RS 14:122

Roles and Responsibilities	<p>Overview</p> <p>RS 17:24 (State Department of Education)  RS 17:41 (Attorney General and State Superintendent of Education)  Bulletin 1191, Chapters 3, 5 &amp; 25  Bulletin 1475, Chapter 3  Bulletin 1886, Section I</p> <p>Parish and city school boards  RS 17:51  RS 17:81  RS 17:104  RS 17:105  RS 17:111  RS 17:491 (Payment for Physical Examinations)  RS 23:897 (Payment for Physical Examinations)  Bulletin 1191, Chapter 5  Bulletin 1475, Chapter 15</p> <p>Bus drivers  RS 17:168 (Extra Duties)  RS 17:491 (Definition of "School Bus Operator")  RS 32:52  RS 32:53  RS 32:58  RS 32:80  RS 32:171 (Railroad Crossing)  RS 32:173 (Railroad Crossing)  RS 32:281 (Backing the School Bus)  RS 32:282  RS 32:328  RS 32:398  RS 32:402  RS 32:404  RS 32:1301  Bulletin 1191, Chapters 5 &amp; 13  Bulletin 1475 (All)  Louisiana CDL Manual, Sections 1-4 and 5 (if appropriate)</p> <p>Special needs drivers and bus attendants (aides)  Bulletin 1191, Chapter 25  Bulletin 1886 (All)</p>
Rules and Regulations: Requirements and Authority	RS 17:164 RS 17:165 RS 17:166 RS 17:494

School Bus Drivers	<p>Compensation</p> <p>RS 17:495</p> <p>RS 17:496</p> <p>RS 17:496.1</p> <p>RS 17:497</p> <p>RS 17:497.1</p> <p>RS 17:497.2</p> <p>RS 17:498</p> <p>RS 17:499</p> <p>RS 17:500.1</p> <p>RS 17:500.2</p> <p>Driver selection requirements</p> <p>RS 15:587.1 (See Also RS 17:578)</p> <p>RS 17:15</p> <p>RS 17:491</p> <p>RS 17:491.1</p> <p>RS 17:493.1</p> <p>RS 17:691</p> <p>RS 32:52</p> <p>RS 32:402</p> <p>RS 32:408</p> <p>RS 32:417</p> <p>Bulletin 1191, Chapter 7</p> <p>Bulletin 1475, Chapter 5</p> <p>Probation/tenure for bus drivers</p> <p>RS 17:432</p> <p>Removal from duty</p> <p>RS 17:493</p> <p>Sick leave</p> <p>RS 17:500</p> <p>RS 17:500.1</p> <p>RS 17:500.2</p>
School Bus Routes	<p>Definition</p> <p>Bulletin 1191, Chapter 21</p> <p>Bulletin 1475, Chapter 15</p> <p>Design/measurement/assignment</p> <p>RS 17:493.1</p> <p>RS 17:1747(E)</p> <p>Bulletin 1191, Chapter 21 &amp; 31</p> <p>Bulletin 1475, Chapter 15</p> <p>Bulletin 1886, Section II, Appendix C</p> <p>Discontinuance for economically justifiable reasons</p> <p>RS 17:158</p> <p>RS 17:492</p> <p>Filling vacancies</p> <p>RS 17:493.1</p> <p>RS 17:493.1(D)</p> <p>RS 17:500</p>

School Buses	<p>Capacities</p> <p>RS 17:158.4</p> <p>RS 17:32:293 ("Standee Law")</p> <p>Bulletin 1213, Chapter 5</p> <p>Bulletin 1475, Chapter 9</p> <p>Definition/types</p> <p>Bulletin 1213, Chapter 5</p> <p>Bulletin 1475, Chapter 29</p> <p>Inspection</p> <p>RS 32:53</p> <p>RS 32:1301</p> <p>RS 32:1302</p> <p>Bulletin 1191, Chapters 5 &amp; 13</p> <p>Bulletin 1475, Chapters 7 &amp; 25</p> <p>Louisiana CDL Manual, pp. 2.1-2.12, 4.1-4.2, 4.5</p> <p>Maximum speed limits</p> <p>RS 32:62</p> <p>Bulletin 1475, Chapter 9</p> <p>Purchases</p> <p>RS 17:158.1</p> <p>RS 17:158.2</p> <p>RS 17:158.3</p> <p>RS 17:158.4</p> <p>RS 17:158.5</p> <p>RS 17:162 (Private Use)</p> <p>RS 17:163</p> <p>RS 17:493</p> <p>RS 17:497</p> <p>RS 47:301 (Sales Tax Exemption for Certain School Buses)</p> <p>Specifications</p> <p>RS 17:158.5</p> <p>RS 17:161 (See RS 17:163)</p> <p>RS 17:164</p> <p>RS 17:164.1 (Crossing Control Device)</p> <p>RS 30:751 (Alternative Fuels Requirement)</p> <p>RS 30:752 (Alternative Fuels Requirement)</p> <p>RS 32:53</p> <p>RS 32:282</p> <p>RS 32:308</p> <p>RS 32:318</p> <p>RS 32:375</p> <p>RS 32:378(D) (Audible Backing Alarm)</p> <p>RS 32:1301</p> <p>RS 39:362.1 (Alternative Fuels Requirement)</p> <p>Bulletin 1213 (All)</p> <p>Federal Guide 17</p> <p>Federal Motor Vehicle Standards for School Buses</p>
Special Fuels (LPG and CNG) Tax Reduction	<p>RS 47:802(F)</p> <p>RS 47:803</p>

Special Provisions for Special Education Students Who Cannot Be Transported by School Bus	Bulletin 1191, Chapter 25 Bulletin 1886, Appendix D
Toll-free Ferry and Bridge Passage for Students	RS 17:157
Training Requirements	RS 17:497.3 Bulletin 1191, Chapter 9 Bulletin 1475, Chapter 5 Bulletin 1886, Section II Public Law 105-17 (IDEA)
Vehicle License Fees	RS 47:466 RS 47:468
Vehicles Meeting and Overtaking School Buses	RS 32:80

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**Chapter 25. School Bus Pre-Trip Inspection Checklist §2501. Checklist**

A. Each local school district is required to maintain records for every school bus operated in its fleet. One such record is the pre-trip inspection checklist, which indicates that whoever drives a particular school bus on the date(s) indicated has performed the pre-trip inspection, as required by various federal and state regulations.

B. The checklist is designed to meet requirements of documenting pre-trip inspections. It may be used by the local school district, or another form may be developed for this purpose. Whatever inspection form is adopted for local use, it must be validated by the person who inspects the bus, whether by a full-time driver, by a substitute driver or by an activity bus driver.

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**Chapter 27. Conducting Emergency Exit Drills §2701. Exit Drills**

A. The ever increasing number of accidents on the highways necessitates that pupils be instructed on how to properly evacuate a school bus in case of an emergency. Schools should organize and conduct emergency drills for all students who may ride school buses. This includes those students who ride only when attending school-related activities.

B. Three exit drill methods are required.

1. All passengers exit through the service (front) door.
2. All passengers exit through the rear emergency exit.
3. Passengers in the front half of the bus exit through the service door; passengers in the rear half exit through the rear emergency exit.

C. If an additional emergency exit *door* is installed on the bus, passengers should be taught how to exit through this door. It is not necessary to require exiting through

emergency exit windows and roof-top hatches during drills, but evacuation procedures using these exits should be explained to passengers.

D. Students should be thoroughly instructed on proper evacuation procedures.

1. Remain seated until otherwise instructed.
2. Leave all personal items on the bus.
3. Move orderly and quickly to the designated exit(s).
4. After exiting the bus, move immediately to the area designated by the driver or by the driver's assistant. (If passengers are instructed to line up in the same or reverse order of their bus seating arrangement, they should do this before moving to a safe location approximately 100 feet from the bus.)

5. Passengers should remain quietly in the designated area until instructed to return to the school bus.

E. The driver should remain with the bus until all passengers have been moved safely away and the area has been secured.

F. Evacuation drills should be timed and critiqued so that corrections can be made if necessary. It is important that very young passengers and passengers with disabilities be given assistance if necessary, and that they be given more frequent drills as a means of reassuring them of their ability to evacuate the bus when the need arises.

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**Chapter 29. Uniform School Bus Accident Reporting Procedures**

**§2901. Reporting Procedures**

A. All school bus accidents, no matter how minor, must be reported by the bus driver to the Supervisor of Transportation, who must ensure that all appropriate reporting procedures are followed. This reporting requirement applies to students who are injured while on board the bus, even if the bus is not in a collision or a near-collision. (Such accidents are called "on-board" accidents.) It applies whether or not bus passengers are injured or the bus is damaged as a result of the accident.

B.1. The Uniform School Bus Accident Report Form (adopted by the Louisiana Department of Education in July, 1985) must be completed *whether passengers are on board or not* if the accident involves property damage, personal injury or fatality to :

- a. occupants in the bus (driver, students, other passengers);
- b. occupants of any other vehicle(s) involved in the accident;
- c. non-occupants of the school bus or other vehicle (e.g., student in the loading/unloading zone, pedestrian, bystander, etc.).

2. If requested, the report must be sent to the Louisiana Department of Education's representative.

C. The purpose of the form is to provide for the compilation of accurate, uniform and reliable information about school bus accidents so that problems and trends can be identified and needed safety programs can be developed. Information submitted by individual school districts may be compiled and provided to national organizations and federal

government agencies whose mission, at least in part, is to help ensure the highest of safety for school bus passengers.

D. The bus driver is responsible for filling out and turning in the form, unless otherwise instructed by the Supervisor of Transportation, who then assumes responsibility for the procedure. All applicable items must be indicated on the form. If information required to complete a blank or blanks is not available, "unknown" should be entered in the blank(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:847 (May 1999).

### §2903. Definitions

**Accident** that occurrence in a sequence of events which usually produces unintended injury, death or property damage.

**Bus** a motor vehicle with motive power designed for carrying more than 10 persons.

**Driver** the person driving the school bus or other motor vehicle involved in the accident.

**Loading & Unloading Zone** any place the school bus stops to load or unload student passengers.

**School Bus** every motor vehicle that complies with the color, equipment and identification requirements set forth in Title 32, Louisiana Revised Statutes, and which is used to transport children to and from school or school-related activities, but not including buses operated by common carriers in urban transportation of school children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:848 (May 1999).

### §2905. Types of School Buses

A. There are four types of school buses.

1. Type A a conversion or body constructed and installed upon a van-type compact truck or front-section vehicle, with a gross vehicle weight rating of 10,000 pounds or less, designed for carrying more than 10 persons.

2. Type B a conversion or body constructed and installed upon a van or front-section chassis, or stripped chassis, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. Part of the engine is beneath and/or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels.

3. Type C a body installed upon a flat back cowl chassis with a gross vehicle weight rating of more than 10,000 pounds designed for carrying more than 10 persons. All of the engine is in front of the windshield and the entrance door is behind the front wheels.

4. Type D a body installed upon a chassis with the engine mounted in the front, midships, or rear, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. The engine may be behind the windshield and beside the driver's seat; it may be

at the rear of the bus, behind the rear wheels, or midships between the front and rear axles. The entrance door is ahead of the front wheels.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:848 (May 1999).

### Chapter 31. Instructions for the Report Form

#### §3101. Front Side Top of Report

A. Fill in the parish or city school system for which you drive.

B. Fill in the date, day and time of the accident. Be sure to circle a.m. or p.m.

C. Give the location where the accident occurred as to parish, street, road or highway and the city or town.

D. Give the driver's name and commercial driver's license number.

E. Fill in the name of the bus owner, chassis make, body make and model year.

F. Fill in the police report number (if known) and indicate whether or not the school bus driver was cited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:848 (May 1999).

#### §3103. Front Side Numbered Section of Report

A. Indicate type of accident. (Check only one response.)

B. Complete if "fixed object" accident. (Check only one response.)

C. If known, place a check beside the approximate dollar value for damage sustained. (This information can be supplied later, if available.) If the amount cannot be determined, write "unknown." For "off bus loading/unloading accidents" only, check only one response each for a, b, c.

D. Indicate manner of collision between vehicles or objects.

E. Check only *one* response for the entire item.

F. In the box marked "enter," write only one letter to designate the first point of impact.

G. Check as many responses as may be applicable to describe circumstances contributing to the accident. These responses apply to all drivers, objects, roadway conditions, etc.

H. Write in the total number of lanes on the roadway.

I. Indicate whether or not the roadway was divided.

J. Write the *posted* speed limit on the roadway where the accident occurred.

K. Indicate the approximate speed of the school bus (if applicable) at the time of the accident. If the school bus was *stopped*, write "0."

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:848 (May 1999).

**§3105. Reverse Side of Report**

A. Check or write in all information required. All information in the Driver Profile section must be checked by the Supervisor of Transportation (or designee).

B. "Type of Bus" refers to Types A, B, C, and D. Consult descriptions under the heading "definition" in Chapter 29. Indicate rated capacity (66, 60, 54, etc., passenger) and how many students (pupils) were actually on board at the time of the accident.

C. To describe the accident, explain in your own words what occurred, and to the extent possible, why it occurred. Remember to state only facts. Refer to each vehicle by number, with the school bus being #1. If passengers were on board, describe their behavior at the time of the accident.

D. If the accident involved one or more students *at the bus loading/unloading zone*, describe the behavior of all students present as the bus arrived and stopped.

E. Fill the diagram, placing as nearly as possible, drawings of all vehicles involved.

F. If the bus driver signs the report, the Supervisor of Transportation (or designee) should sign the report, also.

G. "Information Required by Local School System" is additional space for use by the local school system. It may be left blank, if appropriate.

H. The Supervisor of Transportation should consult the Department of Education to ask whether or not the Uniform School Bus Accident Report Form should be forwarded to the Department of Education.

I. in the event of a fatality, the Supervisor of Transportation contact the National Highway Traffic Safety Administration, Department of Transportation and complete the Fatal School Bus Accident Notification Form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:849 (May 1999).

**Chapter 33. School Bus Behavior Report**

**§3301. Behavior Report**

A. Act 305 of the 1993 Regular Session of the Louisiana Legislature required the Board of Elementary and Secondary Education to adopt a form to be used by all school bus drivers employed by Louisiana school districts to report student behavior problems on the school bus. Copies for use by bus drivers are available from each local school district.

B. Bus drivers, supervisors, principals and all other personnel involved in school bus passenger management must understand that *this in not a suggested form* it is the form to be used for reporting inappropriate student behavior on board Louisiana's school buses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 2:198 (June 1976), revised in LR 6:488 (August 1980) and LR 21:163 (February 1995), promulgated LR 25:849 (May 1999).

Weegie Peabody  
Executive Director

9905#022

**RULE**

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

Tuition Opportunity Program for Students (TOPS)  
Out-of-State High Schools (LAC 28:IV.1701)

The Louisiana Student Financial Assistance Commission (LASFAC) amends rules of the Tuition Opportunity Program for Students (R.S. 17:3042.1 and R.S. 17:3048.1).

**Title 28  
EDUCATION**

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

**Chapter 17. Responsibilities of High Schools, School  
Boards, Special School Governing  
Boards, the Louisiana Department of  
Education and LASFAC on Behalf of  
Eligible Non-Louisiana High Schools**

**§1701. Eligibility of Graduates Based Upon the High  
School Attended**

A.1. - A.3. ...

4. Out-of-State High Schools

a. all other public or non-public high schools located in one of the United States other than Louisiana, which have been approved by the state's chief state or territorial school officer listed in the Louisiana Department of Education Bulletin 1462, or by the public body which is that state's equivalent of Louisiana's Board of Elementary and Secondary Education, and those high schools located in foreign countries which have been authorized or approved by a Department in the Executive Branch of the United States government to teach the dependents of members of the U.S. Armed Forces stationed abroad;

i. graduates of out-of-state high schools are eligible to participate in the Rockefeller State Wildlife Scholarship and the State Student Incentive Grant Programs;

ii. graduates of out-of-state high schools who are Louisiana residents or the dependents of a Louisiana resident serving on active duty with the Armed Forces or who have a parent who is a Louisiana resident are eligible to participate in TOPS.

b. a school will be deemed to be approved by the appropriate state agency if that state agency certifies:

i. that the high school in question received funding from the state to cover all or a portion of the costs of instruction; and

ii. that the high school in question adopted and does adhere to state and federal non-discrimination policies and statutes.

\*\*\*

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance,

Jack L. Guinn  
Executive Director

9905#001

**RULE**

**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 has amended 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 rule are to increase the stringency of the rule for EPA approval.

This 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-I]

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 25:850 (May 1999).

Gus Von Bodungen, P.E.  
Assistant Secretary

9905#033

## RULE

### 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 has amended 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 is 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 is 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 rule are to mirror federal regulations.

This 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 25:852 (May 1999).

##### §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 25:852 (May 1999).

Gus Von Bodungen, P.E.  
Assistant Secretary

9905#032

## RULE

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

EPA Authorization Package of 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\*)

(Editor's Note: Portions of the following rule, which appeared on pages 430 through 497 of the March 20, 1999 *Louisiana Register*, are being republished in their entirety to correct site references.)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended 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 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 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 rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This 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 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 V. Hazardous Waste and Hazardous Materials

##### Subpart 1. Department of Environmental

##### Quality Hazardous Waste

#### Chapter 1. General Provisions and Definitions

##### §109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise:

\* \* \*

[See Prior Text]

*Hazardous Waste* a solid waste, as defined in this Section, is a hazardous waste if:

\* \* \*

[See Prior Text in 1 - 2]

a. it exhibits any of the characteristics of hazardous waste identified in LAC 33:V.4903. However, any mixture

of a waste from the extraction, beneficiation, or processing of ores and minerals excluded under LAC 33:V.105.D.2.h and any other solid waste exhibiting a characteristic of hazardous waste under LAC 33:V.4903 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred; or if it continues to exhibit any of the characteristics exhibited by the nonexcluded wastes prior to mixture. Further, for the purposes of applying the toxicity characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in LAC 33:V.4903.E.Table 5 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture;

\* \* \*

[See Prior Text in 2.b-d.ii]

iii. one of the following wastes listed in LAC 33:V.4901.C, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation, heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste Number K050), crude oil storage tank sediment from petroleum refining operations (EPA Hazardous Waste Number K169), clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations (EPA Hazardous Waste Number K170), spent hydrotreating catalyst (EPA Hazardous Waste Number K171), and spent hydrorefining catalyst (EPA Hazardous Waste Number K172); or

\* \* \*

[See Prior Text in 2.d.iv-4.b.ii.(a)]

(b). waste from burning any of the materials exempted from regulation by LAC 33:V.4105.B.8 and 9 ;

\* \* \*

[See Prior Text in 4.b.ii.(c)- d]

e. Catalyst inert support media separated from one of the following wastes listed in LAC 33:V.4901.C: spent hydrotreating catalyst (EPA Hazardous Waste Number K171) and spent hydrorefining catalyst (EPA Hazardous Waste Number K172).

\* \* \*

[See Prior Text in Hazardous Waste 5. - *Small Quantity Generator* Solid Waste]

\* \* \*

[See Prior Text in 1-3.b.ii]

c. reclaimed materials noted with an "\*" in column 3 of Table 1 in this Chapter are solid wastes when reclaimed (except as provided under LAC 33:V.105.D.1.p). Materials noted with a "A--@" in column 3 of Table 1 are not solid wastes when reclaimed (except as provided under LAC 33:V.105.D.1.p);

\* \* \*

[See Prior Text in 3.d-6]

TABLE 1				
	Use Constituting Disposal (1)	Energy Recovery/ Fuel (2)	Reclamation (except as provided in LAC 33:105.D.1.p for mineral processing secondary materials) (3)	Speculative Accumulation (4)
Spent Materials	*	*	*	*
Sludges (listed in LAC 33:V.4901)	*	*	*	*
Sludges exhibiting a characteristic of hazardous waste	*	*	-----	*
By-products (listed in LAC 33:V.4901)	*	*	*	*
By-products exhibiting a characteristic of hazardous waste	*	*	-----	*
Commercial chemical products (listed in LAC 33:V.4901.E and F)	*	*	-----	-----
Scrap Metal other than excluded scrap metal (see excluded scrap metal)	*	*	*	*

\* \* \*

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:47 (January 1990), LR 16:218 (March 1990), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR:853 (May 1999).

## **Chapter 22. Prohibitions on Land Disposal**

### **Subchapter A. Land Disposal Restrictions**

#### **§2214. Waste-Specific Prohibitions<sup>1</sup> Organobromine Wastes**

A. Effective April 20, 1999, the wastes specified in LAC 33:V.4901.C as EPA Hazardous Wastes Number K140 and in LAC 33:V.4901.F as EPA Hazardous Waste Number U408 are prohibited from land disposal. In addition, soils and debris contaminated with these wastes, radioactive wastes mixed with these hazardous wastes, and soils and debris contaminated with these radioactive mixed wastes, are prohibited from land disposal.

B. The requirements of Subsection A of this Section do not apply if:

1. the wastes meet the applicable treatment standards specified in LAC 33:V.2223 -2236;
2. persons have been granted an exemption from a prohibition in accordance with a petition under LAC 33:V.2241 or 2271, with respect to those wastes and units covered by the petition;
3. the wastes meet the applicable treatment standards established in accordance with a petition granted under LAC 33:V.2231;
4. hazardous debris has met treatment standards in LAC 33:V.2223 or in the alternative treatment standards in LAC 33:V.2230; or
5. persons have been granted an extension to the effective date of a prohibition in accordance with LAC 33:V.2239, with respect to these wastes covered by the extension.

C. To determine whether a hazardous waste identified in this Section exceeds the applicable treatment standards specified in LAC 33:V.2223, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable universal treatment standard levels of LAC 33:V.2233, the waste is prohibited from land disposal and all requirements of this Chapter are applicable, except as otherwise specified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 25:443 (March 1999), repromulgated LR:855 (May 1999).

#### **§2216. Waste-Specific Prohibitions<sup>1</sup> Toxicity Characteristic Metal Wastes**

A. Effective April 20, 1999, the following wastes are prohibited from land disposal: the wastes specified in LAC 33:V.Chapter 49 as EPA Hazardous Waste Numbers D004 - D011 that are newly identified (i.e. wastes, soil, or debris identified as hazardous by the toxicity characteristic leaching procedure, but not the extraction procedure) and waste, soil, or debris from mineral processing operations that is identified as hazardous by the specifications in LAC 33:V.Chapter 49.

B. Effective April 20, 1999, the following waste is prohibited from land disposal: slag from secondary lead smelting which exhibits the toxicity characteristic due to the presence of one or more metals.

C. Effective May 26, 2000, the following wastes are prohibited from land disposal: newly identified characteristic wastes from elemental phosphorus processing; radioactive wastes mixed with EPA Hazardous Waste Numbers D004 - D011 that are newly identified (i.e. wastes, soil, or debris identified as hazardous by the toxicity characteristic leaching procedure, but not the extraction procedure); or mixed with newly identified characteristic mineral processing wastes, soil, or debris.

D. Between April 20, 1999 and May 26, 2000, newly identified characteristic wastes from elemental phosphorus processing, radioactive waste mixed with EPA Hazardous Waste Numbers D004 - D011, wastes that are newly identified (i.e. wastes, soil, or debris identified as hazardous by the toxicity characteristic leaching procedure, but not the extraction procedure) or mixed with newly identified characteristic mineral processing wastes, soil, or debris may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in LAC 33:V.2239.H.2.

E. The requirements of Subsections A and B of this Section do not apply if:

1. the wastes meet the applicable treatment standards specified in LAC 33:V.2223 - 2236;
2. persons have been granted an exemption from a prohibition in accordance with a petition under LAC 33:V.2241 or 2271, with respect to those wastes and units covered by the petition;
3. the wastes meet the applicable alternate treatment standards established in accordance with a petition granted under LAC 33:V.2231; or
4. persons have been granted an extension to the effective date of a prohibition in accordance with LAC 33:V.2239, with respect to these wastes covered by the extension.

F. To determine whether a hazardous waste identified in this Section exceeds the applicable treatment standards specified in LAC 33:V.2223, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents (including underlying hazardous

constituents in characteristic wastes) in excess of the applicable universal treatment standard levels of LAC 33:V.2233, the waste is prohibited from land disposal, and all requirements of this Chapter are applicable, except as otherwise specified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 25:443 (March 1999), repromulgated LR:855 (May 1999).

## **§2218. Waste-Specific Prohibitions: Petroleum Refining Wastes**

A. Effective April 20, 1999, the wastes specified in LAC 33:V.4901.C.Table 2 as EPA Hazardous Wastes Numbers K169, K170, K171, and K172, soils and debris contaminated with these hazardous wastes, radioactive wastes mixed with these hazardous wastes, and soils and debris contaminated with these radioactive mixed wastes, are prohibited from land disposal.

B. The requirements of Subsection A of this Section do not apply if:

1. the wastes meet the applicable treatment standards specified in LAC 33:V.2223-2236;

2. persons who have been granted an exemption from a prohibition in accordance with a petition under LAC 33:V.2241 or 2271, with respect to those wastes and units covered by the petition;

3. the wastes meet the applicable treatment standards established in accordance with a petition granted under LAC 33:V.2231;

4. hazardous debris that have meet the treatment standards in LAC 33:V.2223 or in the alternative treatment standards in LAC 33:V.2230; or

5. persons have been granted an extension to the effective date of a prohibition in accordance with LAC 33:V.2239.

C. To determine whether a hazardous waste identified in this Subsection exceeds the applicable treatment standards specified in LAC 33:V.2223, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable universal treatment standard levels of LAC 33:V.2233, the waste is prohibited from land disposal and all requirements of this Chapter are applicable, except as otherwise stated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 25:444 (March 1999), repromulgated LR:856 (May 1999).

## **Chapter 35. Closure and Post-Closure Requirements Subchapter B. Post-Closure Requirements**

### **§3523. Post-Closure Plan, Amendment of Plan**

\* \* \*

[See Prior Text in A - B.2.a]

b. the functioning of the monitoring equipment in accordance with the requirements of LAC 33:V.Chapters 23, 25, 27, 29, 32, and 33;

3. the name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period ; and

4. for facilities where the administrative authority has applied alternative requirements at a regulated unit under LAC 33:V.3301.G, 3501.D, and/or 3701.D, either the alternative requirements that apply to the regulated unit or a reference to the enforceable document containing those requirements.

\* \* \*

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

c. events which occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan ; or

d. the owner or operator requests the administrative authority to apply alternative requirements to a regulated unit under LAC 33:V.3301.G, 3501.D, and/or 3701.D.

\* \* \*

[See Prior Text in D.3 - E]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 14:791 (November 1988), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:480 (March 1999), repromulgated LR 25:856 (May 1999).

## **Chapter 43. Interim Status Subchapter V. Air Emission Standards for Tanks, Surface Impoundments, and Containers §4723. Schedule for Implementation of Air Emission Standards**

A. Owners or operators of facilities existing on December 6, 1996, and subject to Subchapters H, I, and J of this Chapter shall meet the following requirements:

1. install and begin operation of control equipment or waste management units required to comply with this Subchapter and complete modifications of production or treatment processes to satisfy exemption criteria in accordance with LAC 33:V.4725 by December 6, 1996, except as provided for in Subsection A.2 of this Section;

2. when control equipment or waste management units required to comply with this Subchapter cannot be installed and in operation, or modifications of production or treatment processes to satisfy exemption criteria in accordance with LAC 33:V.4725, by December 6, 1996, the owner or operator shall:

a. install and begin operation of the control equipment and waste management units, and complete modifications of production or treatment processes as soon as possible, but no later than December 6, 1997;

b. prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for control equipment waste management units and production or treatment process modifications; initiation of on-site installation of control equipment, or waste management units, and modifications of production or treatment processes; completion of the control equipment or waste management unit installation, and production or treatment

process modifications; and performance of testing to demonstrate that the installed equipment or waste management units and modified production or treatment processes meet the applicable standards of this Subchapter;

\* \* \*

[See Prior Text in A.2.c - A.2.d]

B. Owners or operators of facilities and units in existence on the effective date of the statutory or regulatory amendment that renders the facility subject to Subchapters H, I, or J of this Chapter shall meet the following requirements:

1. install and begin operation of all control equipment or waste management units required to comply with this Subchapter, and complete modifications of production or treatment processes to satisfy exemption criteria in accordance with LAC 33:V.4725, by the effective date of the amendment except as provided for in Subsection B.2 of this Section;

2. when control equipment or waste management units required to comply with this Subchapter cannot be installed and begin operation, or when modifications of production or treatment processes to satisfy exemption criteria in accordance with LAC 33:V.4725 cannot be completed, by the effective date of the amendment, the owner or operator shall:

a. install and begin operation of the control equipment or waste management units, and complete modification of production or treatment processes as soon as possible, but no later than 30 months after the effective date of the amendment;

\* \* \*

[See Prior Text in B.2.b - c]

C. Owners and operators of facilities and units that become newly subject to the requirements of this Subchapter after December 8, 1997, due to an action other than those described in Subsection B of this Section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this Subchapter; the 30-month implementation schedule does not apply).

D. The administrative authority may elect to extend the implementation date for control equipment at a facility, on a case-by-case basis, to a date later than December 8, 1997, when special circumstances that are beyond the facility owner's or operator's control delay installation or operation of control equipment, and the owner or operator has made all reasonable and prudent attempts to comply with the requirements of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1747 (September 1998), LR 25:487 (March 1999), repromulgated LR 25:856 (May 1999).

L. Hall Bohlinger  
Deputy Secretary

9905#049

**RULE**

**Department of Environmental Quality  
Office of the Secretary**

**Records of Decision for Judicial Review  
(LAC 33:I.Chapter 20)(OS028)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Office of the Secretary regulations, LAC 33:I.Chapter 20 (Log #OS028).

These regulations provide for the assembly, in a uniform and consistent order, of a record of decision of any DEQ action or decision which is the subject of an appeal to, or other request for judicial review by, a court of competent jurisdiction. The basis and rationale for this rule are to comply with R.S. 30:2050.20.

This 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 I. Office of the Secretary**

**Subpart 1. Department Administrative Procedures**

**Chapter 20. Records of Decision for Judicial Review**

**§2001. Scope and Purpose**

A. These regulations provide for the assembly, in a uniform and consistent order, of a record of decision of any department action or decision that is the subject of an appeal to, or other request for judicial review by, a court of competent jurisdiction.

B. These regulations do not apply to matters handled by the Department of State Civil Service, Division of Administrative Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:857 (May 1999).

**§2003. Definitions**

*Record of Decision* for purposes of this Chapter, all documents, evidence, and other items presented to, and/or actually considered by, the decision maker for the purpose of influencing the decision. This shall include, but is not limited to:

1. the record of any hearing or other proceeding held in connection with the decision or action;
2. any comments, written or oral, submitted to the department in connection with the decision or action;
3. any response to such comments issued by the department;
4. all matters officially noticed by the decision maker;
5. any written statement of the decision or action and reasons therefor; and

6. for permit actions:
  - a. the permit application, including all supplements and amendments thereto;
  - b. any notices of deficiency issued by the department;
  - c. any responses to notices of deficiency;
  - d. any correspondence relating to the permit application;
  - e. any public notices relating to the permit action; and
  - f. the final permit, if granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:857 (May 1999).

#### **§2005. Responsibility for Assembly of Record of Decision**

A. When the department is served with notice of an appeal or other request for judicial review, such notice shall be immediately forwarded to the department's Legal Division, which shall be responsible for assembling a complete and legible copy of the record of decision and transmitting it to the court.

B. Upon receipt of such notice, the Legal Division shall promptly notify the decision maker and other appropriate agency personnel, each of whom shall be responsible for promptly transmitting to the Legal Division complete and legible copies of any portions of the record of decision that may be in his/her possession or control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:858 (May 1999).

#### **§2007. Format of Record of Decision**

A. Unless otherwise required by law or rule of court, the copy(ies) of the record of decision that are transmitted to the court shall be assembled in the format indicated in Paragraphs 1 - 5 of this Subsection.

1. The main body of the record shall consist of all documents (or legible copies thereof) other than exhibits. (Exhibits are addressed in Paragraph 2 of this Subsection.) The main body shall be assembled according to the provisions of Subparagraphs a - e of this Paragraph.

a. The documents shall be arranged in chronological order, with the oldest document as the first.

b. Each page shall be consecutively numbered. The page number shall be inscribed in the lower right corner of the page, where it is possible to do so without obscuring text or other information.

c. The pages shall be on white paper, measuring eight and one-half inches by fourteen inches. The image shall be on one side of the paper only.

d. If the main body of the record contains more than 250 pages, it shall be divided into volumes of 250 pages or less.

e. Each volume shall be bound at the top, with front and back covers. The front cover of each volume shall be inscribed with:

- i. the name of the court to which the record is directed;
- ii. the title of the action;

- iii. the docket number assigned by the court;
- iv. the division of the court to which the matter is assigned;
- v. the words, **Record of Decision**;
- vi. the name, address, and telephone number of each attorney of record, with the name and status of each party he/she represents;
- vii. the volume number of that volume and the total number of volumes (i.e., volume 2 of 3); and
- viii. the number of exhibits included in the record of decision.

2. Those portions of the record of decision that are not included in the main body are submitted as exhibits. Exhibits shall conform to the provisions of Subparagraphs a - d of this Paragraph.

a. The following items shall not be included in the main body of the record of decision, but rather shall be submitted as exhibits:

- i. items that are larger than eight and one-half by fourteen inches, such as maps, charts, and blueprints;
- ii. bound materials, such as books and materials in loose-leaf binders; and
- iii. any other items that are too bulky or cumbersome to be efficiently included in the main body of the record of decision.

b. Each exhibit shall be assigned a number. The numbers shall be assigned chronologically according to the date appearing on the exhibit, if any. If no date appears on the exhibit, the exhibit number shall be assigned according to the date of submittal of the exhibit to the department.

c. Each exhibit shall be labeled with the exhibit number, a brief description of the exhibit, and the date appearing thereon or the date of submittal, as applicable.

d. Exhibits shall be packaged in boxes, envelopes, or other containers in such a manner as to facilitate storage and handling. Each box, envelope, or container shall bear a label inscribed with the following information:

- i. the name of the court to which the record is directed;
- ii. the title of the action;
- iii. the docket number assigned by the court;
- iv. the division of the court to which the matter is assigned;
- v. the words, **Record of Decision**;
- vi. the name, address, and telephone number of each attorney of record, with the name and status of each party he/she represents; and
- vii. the exhibit number for each exhibit contained therein and the total number of exhibits (i.e., exhibits 2 and 3 of 7).

#### **3. Confidential Documents**

a. Documents or other materials that are part of the record of decision, but have been declared confidential by the secretary in accordance with R.S. 30:2030, R.S. 30:2074(D), or other law, shall be submitted to the court only under seal. **Under seal** shall mean contained in sealed envelopes or boxes, which are clearly marked or labeled with the following inscription: **CONFIDENTIAL -- FOR REVIEW BY COURT PERSONNEL ONLY**. The enclosed materials have been declared confidential by the Secretary of the Louisiana Department of Environmental Quality, pursuant to La. R.S. [insert citation].

b. Confidential materials submitted under seal, as described in Subparagraph a of this Paragraph, shall not be placed in the main body of the record of decision nor in the exhibits. In place of each such item in the main body of the record of decision the following notice shall be placed, accompanied by a copy of the secretary's written determination of confidentiality as to that item: **NOTICE -- CONFIDENTIAL ITEM SUBMITTED UNDER SEAL.** An item which would otherwise appear at this point in the record of decision has been submitted to the court separately and under seal, because the Secretary of the Louisiana Department of Environmental Quality has declared it confidential, pursuant to La. R.S. [insert citation]. See the attached written determination of confidentiality.

4. Indexes

a. The following indexes shall be prepared:

i. a chronological index of every document in the main body of the record of decision, showing the date, item name or description, and page number of the first page of each document;

ii. an alphabetical index of every document in the main body of the record of decision, showing the date, item name or description, and page number of the first page of each document; and

iii. a chronological index of every exhibit in the record of decision, showing the exhibit number and description of each exhibit.

b. A copy of each index shall be included in each volume of the main body of the record of decision, directly beneath the front cover.

c. A copy of the exhibit index shall be placed in each box, envelope, or other container in which exhibits are transmitted to the court.

5. Certificate of Completeness and Authenticity. The first volume of the main body of the record of decision shall contain an original certificate of the decision maker as to the completeness and authenticity of the entire record of decision. Each other volume, if any, shall contain a copy of that certificate. The certificate, or copy thereof, shall be placed after the last page of each volume.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:858 (May 1999).

Herman Robinson  
Assistant Secretary

9905#030

**RULE**

**Office of the Governor  
Division of Administration  
Board of Trustees of the  
State Employees Group Benefits Program**

**PPO/EPOC Provider Contracting Criteria**

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:871(C) and

874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, and in accordance with R.S. 40:2204(D), the Board of Trustees has established a process and implemented criteria governing contracting with health care providers or groups of providers for participation in a preferred provider organization or other managed care arrangement, as follows:

**Criteria for Participation in a Preferred Provider Organization, Exclusive Provider Organization, or Other Managed Care Arrangement**

**I. Notice of Intent to Contract**

Notice of intent to contract with health care providers, or with groups or organizations of health care providers, on behalf of the State Employees Group Benefits Program, for participation in a preferred provider organization, exclusive provider organization, or other managed care arrangement shall be given by publication in the official journal of the State of Louisiana or by direct solicitation setting forth the Program's intent to contract, describing the services sought, and providing a contact point for requesting a detailed explanation of the services sought and the criteria to be used in developing contracts.

**II. Preferred Provider Organization (PPO) Criteria**

The following criteria shall govern participation in the Program's Preferred Provider Organization (PPO).

A. The health care provider shall be appropriately licensed in accordance with the laws of the state where the services are to be rendered.

B. The health care provider shall accept the reimbursement schedule established by the Program.

C. The health care provider shall execute a PPO contract setting forth the Program's terms and conditions.

**III. Exclusive Provider Organization Criteria**

In addition to the PPO criteria, following criteria shall govern participation in the Program's Exclusive Provider Organization (EPO).

**A. Hospital Participation**

1. In each regional service area established by the Program, at least one tertiary care hospital facility shall be selected for participation.

2. To be eligible for selection as a tertiary care hospital facility, the hospital shall provide the following services:

a. general medical and surgical facilities (inpatient and outpatient);

b. intensive and critical care units;

c. emergency care facility;

d. cardiovascular care unit;

e. obstetrical care, unless the Program contracts directly with an obstetrical care hospital facility in the region;

f. rehabilitation; and

g. skilled nursing unit.

3. Selection will be based upon cost analysis (60 percent) and market acceptability for plan participants (40 percent).

4. The hospital shall agree to participate for a minimum term of one year, consistent with the Program's plan year.

5. Selected hospitals shall execute an EPO hospital contract setting forth the Program's terms and conditions.

**B. Physician Network Participation**

1. In each regional service area established by the Program, at least one physician network shall be selected for participation.

2. To be eligible for selection, a physician network shall have at least twenty (20) primary care physicians for each proposed region. Primary care physicians are licensed medical doctors practicing in the areas of family practice, general practice, internal medicine, pediatrics, and obstetrics/gynecology. A minimum of four (4) physicians must practice in each of the following categories:

- a. Family Practice, General Practice, or Internal Medicine;
- b. Pediatrics; and
- c. Obstetrics/Gynecology.

3. In addition to the primary care physician requirements, the physicians network in each proposed region shall include physicians practicing in the areas of Urology, General Surgery, Orthopedics, Radiology, Pathology, Anesthesiology, Otolaryngology, Neurology, Allergy, Gastroenterology, Ophthalmology and Dermatology. The Program may relax or enlarge this requirement based upon its contracting experience with a particular specialty.

4. A primary care physician may not participate in more than one EPO network in each region.

5. All physicians in the network shall participate for a minimum term of one year, consistent with the Program's plan year, except for reasons of retirement from the practice of medicine or relocation of the physician's practice out of the region.

6. Selection will be based upon cost analysis (60 percent) and market acceptability for plan participants (40 percent).

7. Selected physician networks shall execute an EPO physician contract setting forth the Program's terms and conditions.

Jack W. Walker, Ph.D.  
Chief Executive Officer

9905#70

**RULE**

**Office of the Governor  
Office of Elderly Affairs**

GOEA Policy Manual Service Provider  
(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) has amended the GOEA Policy Manual effective May 20, 1999. The purpose of the 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.

**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 25:860 (May 1999).

**§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 25:860 (May 1999).

**§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 25:860 (May 1999).

### §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 providers 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 providers 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 25:862 (May 1999).

**§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 25:863 (May 1999).

**§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 providers governing body shall have full responsibility for full service providers 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 25:863 (May 1999).

### §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 25:864 (May 1999).

### **§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 25:865 (May 1999).

### **§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 25:865 (May 1999).

### **§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 providers' 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 providers' 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 25:865 (May 1999).

### **§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 25:866 (May 1999).

### **§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 25:866 (May 1999).

### **§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 25:866 (May 1999).

### §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 25:867 (May 1999).

### §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 25:867 (May 1999).

### **§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 25:868 (May 1999).

### **§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 25:868 (May 1999).

**§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 25:869 (May 1999).

**§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 25:869 (May 1999).

**§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.

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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 25:869 (May 1999).

**§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* is 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 service 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 25:869 (May 1999).

### **§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 25:870 (May 1999).

#### §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 25:871 (May 1999).

P.F. "Pete" Arceneaux, Jr.  
Executive Director

9905#002

**RULE**

**Department of Health and Hospitals  
Board of Veterinary Medicine**

Ownership of Records  
(LAC 46:LXXXV.701)

The Board of Veterinary Medicine hereby amends 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.

**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 or contract services 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 25:870 (May 1999).

Charles B. Mann  
Executive Director

9905#004

**RULE**

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

**Disproportionate Share Hospital Payment Methodologies**

The Department of Health and Hospitals, Bureau of Health Services Financing adopts the following rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq. and pursuant to Title XIX of the Social Security Act. This rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

**Rule**

The Department of Health and Hospitals, Bureau of Health Services Financing amends the March 20, 1998 rule to include the definition of a teaching hospital as required by Act 19 of the 1998 Legislative Session. This rule is being published in its entirety in order to provide clarity to the existing regulations governing the disproportionate share hospital payment methodologies.

**I. General Provisions**

A. Reimbursement will no longer be provided for indigent care as a separate payment to hospitals qualifying for disproportionate share payments.

B. Total cumulative disproportionate share payments (DSH) under any and all DSH payment methodologies shall not exceed the federal disproportionate share state allotment for Louisiana for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The Department shall make necessary downward adjustments to hospitals' disproportionate share payments to remain within the federal disproportionate share allotment and the state disproportionate share appropriated amount.

C. Appropriate action including, but not limited to, deductions from DSH, Medicaid payments and cost report settlements shall be taken to recover any overpayments

resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

D. DSH payments to a hospital other than a small rural or state hospital determined under any of the methodologies below shall not exceed the hospital's uncompensated cost for the hospital's fiscal year-end cost report ending during the previous state fiscal year ending. DSH payments to a small rural hospital determined under any of the methodologies below shall not exceed the hospital's uncompensated cost for the hospital's fiscal year end cost report ending during April 1 through March 31 of the previous year. DSH payments to a state operated hospital determined under any of the methodologies below shall not exceed the hospital's uncompensated cost for the state fiscal year to which the payment is applicable.

E. Qualification is based on the hospital's latest year-end cost report for the year ended during the period July 1 through June 30 of the previous year except that a small rural hospital's qualification is based on the hospital's year end cost report for the year ending during the period April 1 through March 31 of the previous year. Only hospitals that return timely DSH qualification documentation will be considered for disproportionate share payments. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

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

G. *Net Uncompensated Cost* is defined as the cost of furnishing inpatient and outpatient hospital services net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients. It is mandatory that qualifying hospitals seek all third party payments including Medicare, Medicaid and other third party carriers. Hospitals not in compliance with free care criteria will be subject to recoupment of DSH and Medicaid payments.

H. No additional payments shall be made to a hospital if an increase in days is determined after audit. Overpayments from a hospital from reductions in pool days originally reported shall be recouped and redistributed to the hospital that has the largest number of inpatient days attributable to individuals entitled to benefits under the State Plan of any hospitals in the State for the year in which the recoupment is applicable.

I. Disapproval of any one of these payment methodology(ies) by the Health Care Financing Administration does not invalidate the remaining methodology(ies).

## II. Qualifying Criteria for a Disproportionate Share

### Hospital:

A. in order to qualify as a Disproportionate Share Hospital, a hospital must have at least two (2) obstetricians who have staff privileges and who have agreed to provide obstetric services to individuals who are Medicaid eligibles. In the case of a hospital located in a rural area (i.e., an area outside of a Metropolitan Statistical Area), the term *Obstetrician* includes any physician with staff privileges at

the hospital to perform non-emergency obstetric procedures; or

B. a hospital must treat inpatients who are predominantly individuals under 18 years of age; or

C. a hospital which did not offer non-emergency obstetric services to the general population as of December 22, 1987; and

D. a hospital has a utilization rate in excess of either of the below-specified minimum utilization rates:

1) *Medicaid Utilization Rate*: a fraction (expressed as a percentage), the numerator of which is the hospital's number of Medicaid (Title XIX) inpatient days and the denominator of which is the total number of the hospital's inpatient days for a cost-reporting period. Hospitals shall be deemed disproportionate share providers if their Medicaid utilization rates are in excess of the mean plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments; or

2) *Low-Income Utilization Rate*: the sum of:

(a) the fraction (expressed as a percentage), the numerator of which is the sum (for the period) of the total Medicaid patient revenues plus the amount of the cash subsidies for patient services received directly from State and local governments, and the denominator of which is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the cost reporting period; and

(b) the fraction (expressed as a percentage), the numerator of which is the total amount of the hospital's charges for inpatient services which are attributable to charity (free) care in a period, less the portion of any cash subsidies as described in Section II.D.2.a. above in the period which are reasonably attributable to inpatient hospital services; and the denominator of which is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero ('0'). The above numerator shall not include contractual allowances and discounts (other than for indigent patients ineligible for Medicaid), i.e., reductions in charges given to other third party payers, such as HMO's, Medicare, or Blue Cross; nor charges attributable to Hill-Burton obligations. A hospital providing *free care* must submit its criteria and procedures for identifying patients who qualify for free care to the Bureau of Health Service Financing for approval. The policy for free care must be posted prominently and all patients must be advised of the availability of free care and procedures for applying.

Hospitals shall be deemed disproportionate share providers if their low-income utilization rates are in excess of twenty-five (25 percent) per cent; or

3) effective November 3, 1997 be a small rural hospital as defined in III B below; and

E. in addition to the qualification criteria outlined in A-D above, effective July 1, 1994, the qualifying disproportionate share hospital must also have a Medicaid inpatient utilization rate of at least one (1 percent) per cent.

## III. Reimbursement Methodologies

### A. Public State-Operated Hospitals

1. A *Public State Operated Hospital* is a hospital that is owned or operated by the State of Louisiana.

2. DSH payments to individual public state-owned or operated hospitals shall be equal to one hundred (100 percent) of the hospital's net uncompensated costs subject to the adjustment provision in Section III.A.3. below. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

3. In the event it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH appropriated amount, the Department shall calculate a pro rata decrease for each public (state) hospital based on the ratio determined by dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public hospitals during the state fiscal year and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH appropriated amount.

B. Small Rural Hospitals

1. A *Small Rural Hospital* is a hospital (other than a long-term care hospital, rehabilitation hospital, or free-standing psychiatric hospital but including distinct part psychiatric units) meeting the following criteria:

a) had no more than sixty hospital beds as of July 1, 1994, and:

(1) is located in a parish with a population of less than fifty thousand; or

(2) is located in a municipality with a population of less than twenty thousand; or

b) meets the qualifications of a sole community hospital under 42 C.F.R. ' 412.92(a).

2. Payment based on uncompensated cost for qualifying small rural hospitals shall be in accordance with the following two pools:

a) *Public (non-state) Small Rural Hospitals* are small rural hospitals as defined in Section III.B.1. above which are owned by a local government.

b) *Private Small Rural Hospitals* are small rural hospitals as defined in Section III.B.1. above that are privately owned.

3. Payment is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the cost reporting period ended during the period April 1 through March 31 of the preceding year multiplied by the amount set for each pool. If the cost reporting period is not a full period (twelve months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year. No additional payment shall be made if an increase in uncompensated cost is determined after audit.

4. A pro rata decrease necessitated by conditions specified in I.B. above for rural hospitals described in this section will be calculated using the ratio determined by dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals in this section, then multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH appropriated amount.

C. All Other Hospitals (Private and Public Non-state Rural Hospitals over 60 Beds, Private and Public Non-State

Urban Hospitals, Free-Standing Psychiatric Hospitals Exclusive of State Hospitals, Rehabilitation Hospitals and Long-term Care Hospitals).

1. Payment shall be based on actual paid Medicaid days for a six month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the Medicaid days pools is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

2. Payment based on Medicaid days provided by qualifying hospitals shall be in accordance with the following three pools:

a) *Teaching Acute Care Hospitals* are acute care hospitals (exclusive of distinct part psychiatric units) not included in Section III.A. or B. above which are recognized under the Medicare principles of reimbursement as approved teaching hospitals. Rehabilitation, long term care, and freestanding psychiatric hospitals will not be recognized as teaching hospitals.

b) *Non-Teaching Acute Care Hospitals* are acute care hospitals (excluding distinct part psychiatric units) that are not recognized under Medicare principles of reimbursement as approved teaching hospitals and are not included in III.A. or B above. Rehabilitation and long term care hospitals qualifying for DSH payments are classified in this group.

c) *Psychiatric Hospitals* are Free-standing psychiatric hospitals and distinct part psychiatric units not included in III. A. or B. above.

3. Disproportionate share payments for each pool shall be calculated based on the product of the ratio determined by dividing each qualifying hospital's actual paid Medicaid inpatient days for a six month period ending on the last day of the month preceding the date of payment (which will be obtained by DHH from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified hospitals in the pool, and multiplying by an amount of funds for each respective pool to be determined by the director of the Bureau of Health Services Financing. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days. Pool amounts shall be allocated based on the consideration of the volume of days in each pool or the average cost per day for hospitals in each pool.

4. A pro rata decrease necessitated by conditions specified in I.B. above for hospitals described in this section will be calculated based on the ratio determined by dividing the hospital's Medicaid days by the Medicaid days for all qualifying hospitals in this section, then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

David W. Hood  
Secretary

9905#065

**RULE**

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

Hospital Neurological Rehabilitation  
Program Reimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts 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 Administrative Procedure Act, R.S. 49:950 et seq.

**Rule**

The Department of Health and Hospitals, Bureau of Health Services Financing amends the reimbursement methodology for Hospital Intensive Neurological Rehabilitation Care Program contained in the July 20, 1993 rule by discontinuing the automatic application of an inflationary adjustment to the prospective rates for intensive neurological rehabilitation care services. The subsequent application of the inflationary adjustment to the reimbursement rates for these hospital services shall be contingent on the allocation of funds by the Legislature in the Appropriations Bill.

David W. Hood  
Secretary

9905#064

**RULE**

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

Inpatient Psychiatric Services  
Reimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule in the Medical Assistance Program as authorized by LA. R.S. 46:153 and pursuant to Title XIX of the Social Security Act.

**Rule**

The Department of Health and Hospitals, Bureau of Health Services Financing amends the reimbursement methodology for inpatient psychiatric services contained in the June 20, 1993 rule by discontinuing the automatic application of an inflationary adjustment to the prospective rates for inpatient psychiatric services.

The subsequent application of the inflationary adjustment for inpatient psychiatric services shall be contingent on the allocation of funds by the Legislature in the Appropriations Bill.

David W. Hood  
Secretary

9905#063

**RULE**

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

Pharmacy Program Erectile Dysfunction Drugs

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule in the Medicaid Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act.

**Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing limits the number of units of prescription drugs for the treatment of erectile dysfunction that are reimbursable by the Medicaid Program to six units per month per patient. Units include tablets, injectables, intraurethral pellets and any other dosage form which may become available. In addition, the following provisions will govern the reimbursement for these drugs.

1. Prescriptions issued for the treatment of erectile dysfunction must be hand written and shall include a medically accepted indication.

2. An ICD-9 diagnosis code must be written on the hard copy of the prescription or attached to the prescription which is signed and dated by the prescriber.

3. Recipient specific diagnosis information from the prescriber via the facsimile is acceptable when signed and dated by the prescriber.

4. Acceptable ICD-9 diagnosis codes for these drugs includes impotence of non-organic origin or impotence of organic origin.

5. No reimbursement for therapeutic duplication of drugs, early refills, or duplicate drug therapy within the therapeutic class of drugs used to treat erectile dysfunction is allowed.

David Hood  
Secretary

9905#062

**RULE**

**Department of Public Safety and Corrections  
Corrections Services**

Disciplinary Board Penalty Schedule  
(LAC 22:I.359)

In accordance with the Administrative Procedure Act LSA R.S. 49:953(B) and in order to comply with the First Circuit Court of Appeals ruling in *Terry Rivera, Sr. v. State of Louisiana*, et al., Number 98/CA/0507, decided December 28, 1998 (consolidated with *Joseph Romero v. La. Department of Public Safety and Corrections*, et al., Number 98/CA/0508), the Department of Public Safety and Corrections, Corrections Services hereby adopts rules and regulations dealing with the Disciplinary Board Penalty Schedule.

**Title 22**  
**CORRECTIONS, CRIMINAL JUSTICE AND LAW**  
**ENFORCEMENT**

**Part I. Corrections**

**Chapter 3. Adult and Juvenile Services**

**§359. Penalty Schedule. Disciplinary Report (Heard by Disciplinary Board)**

- A.1.a. - d. ...
- e. Forfeiture of good time up to a maximum of 30 days.
- f. - h. ...
- 2.a. - e. ...
- f. Forfeiture of good time up to a maximum of 180 days.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, *Wolff v. McDonald*, 94 S.Ct. 2963 (1974) and *Ralph v. Dees*, C/A/ 81-94, USDC (Md.La.)

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 7:6 (January 1981), repromulgated by the Department of Public Safety and Corrections, Corrections Services, Office of Adult Services, LR 17:605 (June 1991), amended LR 19:653 (May 1993), LR 25:876 (May 1999).

Richard L. Stalder  
Secretary

9905#029

**RULE**

**Department of Public Safety and Corrections**  
**Office of State Police**

Criminal History Background Checks on Licensed  
Ambulance Personnel and Nonlicensed Persons  
(LAC 55:I.201-209)

The Department of Public Safety and Corrections, Office of State Police, Louisiana Bureau of Criminal Identification and Information, in compliance with and under authority of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 15:575 et seq., and R.S. 40:1300.51 et seq., hereby promulgates these rules and regulations pertaining to criminal history background checks on licensed ambulance personnel and nonlicensed persons pursuant to R.S. 40:1300.51 et seq. as outlined below.

**Title 55**  
**PUBLIC SAFETY**  
**Part I. State Police**

**Chapter 2. Criminal History Background Checks on Licensed Ambulance Personnel and Nonlicensed Persons**

**§201. Statement of Department Policy**

The rules contained herein are promulgated by the Louisiana Bureau of Criminal Identification and Information of the Department of Public Safety and Corrections, Office of State Police, in order to set forth the policies and procedures applicable to requesting and receiving criminal history background checks on licensed ambulance personnel and nonlicensed persons, pursuant to R.S. 40:1300.51 et seq., by employers and authorized agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:575 et seq. and R.S. 40:1300.51 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 25:876 (May 1999).

**§203. Definitions**

For the purposes of these rules, the following words and phrases shall mean:

*Applicant* a person who has submitted a request to the Louisiana Department of Public Safety and Corrections, Office of State Police, Louisiana Bureau of Criminal Identification and Information in accordance with these rules to be approved as an authorized agency.

*Authorized Agency* an individual who meets the qualification requirements and has been approved by the Bureau to receive criminal history information to conduct employment screening pursuant to R.S. 40:1300.51 et seq.

*Bureau* the Louisiana Bureau of Criminal Identification and Information within the Department of Public Safety and Corrections, Office of State Police as provided for in R.S. 15:576.

*Criminal History Record* shall have the same meaning as provided for in R.S. 15:576.

*Employer* shall have the same meaning as provided for in R.S. 40:1300.51(6).

*Licensed Ambulance Personnel* shall have the same meaning as provided for in R.S. 40:1300.51(5).

*Nonlicensed Person* shall have the same meaning as provided for in R.S. 40:1300.51(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:575 et seq. and R.S. 40:1300.51 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 25:876 (May 1999).

**§205. Application to be Approved as an Authorized Agency**

A. An individual wishing to be approved as an authorized agency must submit an application to the Bureau along with the following documents to prove the individual's qualifications.

1. The applicant must be currently licensed in the state of Louisiana as a private investigator or detective by the Louisiana State Board of Private Investigator Examiners as evidenced by current and valid licensure issued by the Board.

2. The applicant must not currently be charged by bill of information or under indictment for, or have been convicted of, any felony offense in this state or any other jurisdiction, and submit to a background investigation to determine such.

3. Proof of qualification to do business within the state of Louisiana as evidenced by a valid certificate of authority issued by the Secretary of State, and designation of an agent for service of process as required by law. If the applicant is operating as a sole proprietorship, a current valid occupational license will be accepted.

4. The applicant must execute a written agreement whereby she/he agrees to maintain the confidentiality of any and all information provided to it by the Bureau pursuant to R.S. 40:1300.51 et seq., abide by all applicable laws, rules and regulations pertaining to receipt and use of criminal history information, cooperate in any auditing procedure conducted by the Bureau, and inform the Bureau in writing

of any known violations regarding the use of criminal history information she/he receives.

B. Upon receipt of a completed application for approval as an authorized agency, the Bureau shall review the application and conduct whatever investigation it deems necessary to verify the information. Upon completion of this review, the Bureau shall inform the applicant in writing of its approval or denial of the application.

C. Each authorized agency must maintain the eligibility requirements to be approved as an authorized agency. Each authorized agency shall notify the Bureau in writing of a change in its qualification requirements within fifteen days of the change. Failure to continue to maintain the eligibility requirements shall result in cancellation of approval as an authorized agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:575 et seq. and R.S. 40:1300.51 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 25:876 (May 1999).

#### **§207. Request for Criminal History Information**

A. A request for the Bureau to conduct a criminal history check authorized by R.S. 40:1300.52 shall be made on a form provided by the Bureau and submitted to it by an employer or authorized agency.

B. Each request for a criminal history check authorized by R.S. 40:1300.52 submitted to the Bureau shall be accompanied by the fee of \$10.00 as established by R.S. 40:1300.52(B)(2) and LAC 55:I.101.A.

C. Each request for a criminal history check submitted to the Bureau by an authorized agency shall be accompanied by a letter of engagement or contract with the employer as proof that the authorized agency may request and receive criminal history information on behalf of the employer. The results of each criminal history check submitted by an authorized agency on behalf of an employer will be reported to the authorized agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:575 et seq. and R.S. 40:1300.51 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 25:877 (May 1999).

#### **§209. Receipt and Use of Criminal History Information**

A. Any authorized agency or employer which receives criminal history information pursuant to R.S. 40:1300.52 shall maintain the confidentiality of the records obtained.

B. The criminal history information received by an employer or authorized agency shall be used for the sole purpose of determining the applicant's eligibility for employment with the stated employer.

C. Any authorized agency who fails to maintain the confidentiality of criminal history information obtained pursuant to R.S. 40:1300.52, or who uses such information for any purpose other than determining the applicant's eligibility for employment with the stated employer, shall have its approval as an authorized agency canceled and be ineligible to receive criminal history information pursuant to R.S. 40:1300.52.

D. Any authorized agency or employer who fails to maintain the confidentiality of criminal history information obtained pursuant to R.S. 40:1300.51 et seq., or uses such information for any purpose other than determining the

applicant's eligibility for employment with the stated employer shall be subject to all other penalties provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:575 et seq. and R.S. 40:1300.51 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 25:877 (May 1999).

Colonel W.R. "Rut" Whittington  
Superintendent

9905#071

### **RULE**

#### **Department of Revenue Corporation Income and Franchise Taxes Division**

##### **Employer Tax Credits (LAC 61:I.1901)**

Under the authority of R.S. 47:6012 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., The Department of Revenue, Corporation Income and Franchise Taxes Division, in consultation with the Department of Labor, has adopted LAC 61:I.1901, to provide for administration of the employer tax credits for donating certain materials, equipment, or instructors to certain training programs or schools.

Act 30 of the 1998 Regular Session of the Louisiana Legislature enacted R.S. 47:6012 to provide for employer tax credits for donations of materials, equipment, or instructors to certain public training programs, vocational-technical schools, apprenticeship programs, or community colleges to assist in the development of training programs designed to meet industry needs. Revised Statute 47:6012(C) requires the Department of Revenue, in consultation with the Department of Labor, to adopt regulations to define terms and establish criteria for determining eligible public training providers and specify the maximum allowable tax credit.

#### **Title 61**

#### **REVENUE AND TAXATION**

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

#### **Chapter 19. Miscellaneous Tax Exemptions**

#### **§1901. Employer Tax Credits for Donations of Materials, Equipment, or Instructors to Certain Training Programs or Schools**

##### **A. Definitions**

*Department* the Department of Revenue.

*Employer* an entity authorized to do business in the State of Louisiana that employs one or more individuals performing services on its behalf.

*Instructor* an individual qualified, as determined by the training institution, to provide educational or instructional services designed to furnish technical knowledge to persons enrolled in a training program when the instructor's time or salary are donated by an employer.

a. The donation of an instructor's time is when the instructor, while on the payroll of the donating employer, is allowed to spend a portion or all of a work day providing

instructional services either on the premises of the training institution or on the employer's premises, when approved by the training institution as part of the training curriculum.

b. The donation of an instructor's salary is when the funds for the salary of an instructor, who is an employee and on the payroll of the training institution, are provided by the donating employer.

*Latest Technology Available in Materials and Equipment* machinery and equipment that:

a. has never been used except for normal testing by the manufacturer to ensure that the machinery or equipment is of proper quality and in good working order;

b. has been used by the retailer or wholesaler solely for the purpose of demonstrating the product to customers for sale;

c. is of the type currently manufactured for sale to customers; or

d. has been used by the donating employer for three years or less and was still used in production immediately prior to donation.

*Training Institution* a public training provider, secondary or postsecondary vocational technical school, apprenticeship program registered with the Louisiana Department of Labor, or community college. The term does not include institutions or other entities organized for profit.

*Value* the donor's actual cost for new machinery or equipment or the appraised worth of used materials and equipment and instructional services.

#### B. Tax Credit

1. A credit shall be allowed against the individual and corporate income tax and the corporate franchise tax for the donation of the latest technology available in materials and equipment and the donation of instructors made to public training providers, secondary and postsecondary vocational-technical schools, apprenticeship programs registered with the Louisiana Department of Labor, or community colleges within the state.

2. The tax credit shall be an amount equal to one-half the value of the donated materials, equipment, or services rendered by the instructor at the time of donation.

a. When used materials or equipment or instructional services are donated, the institution accepting the donation shall obtain an appraisal to establish the value of the materials, equipment, or instructional services, which is to be provided to the donating employer.

b. When new materials or equipment are donated, the donating employer shall submit an invoice showing the actual price paid, which shall be considered the value of the donated property.

3. A donation shall not qualify for the tax credit unless it is accepted by the training institution.

a. The training institution accepting the donation shall furnish to the donating employer certification of the donation that includes the date of the donation and the value of the donated materials, equipment, or instructional services.

b. The donating employer shall attach this certification to the income or franchise tax return filed with the department for the year in which the credit is claimed.

4. The tax credit shall be a credit against the applicable tax or taxes for the tax period that the donation was made and when combined with all other applicable tax

credits, shall not exceed 20 percent of the employer's tax liability for any taxable year. The tax credits may only be taken by the donating employer entity and may not be passed through to partners or shareholders when the donating entity is a partnership, Subchapter S corporation, or Limited Liability Company.

C. Maintenance or Service Agreement. If requested by the training institution receiving the donation, any employer donating material or equipment may agree to provide a minimum of three months maintenance or service to the institution in order to receive the tax credit. This agreement shall cover the cost of any maintenance required on the donated materials or equipment for the term of the agreement.

D. Orientation Agreement. Any employer donating materials or equipment to an eligible training institution shall agree to provide the training institution with materials or equipment operating instructions at no cost to the institution at a location specified in the agreement. Orientation instruction shall take place within two weeks after installation of the donated materials and equipment.

E. Eligible Donations. The tax credit shall be applicable to donations made after July 1, 1998 and before January 1, 2001.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6012.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Corporation Income and Franchise Taxes Division, in consultation with the Department of Labor, LR 25:877 (May 1999).

John Neely  
Secretary

9905#003

### RULE

#### Revenue, Department of Office of Alcohol and Tobacco Control

Responsible Vendor Program Vendors

(LAC 55:VII.505)

Under the authority of R.S. 26:933 et seq. and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, amends LAC 55:VII.505 to increase the annual fee from \$35 to \$50 for each licensed establishment holding a Class A-General, Class A-Restaurant, or Class B-Retail alcoholic beverage permit issued under R.S. 26:71 or R.S. 26:271.

Act 1054 of the 1997 Regular Session of the Louisiana Legislature enacted R.S. 26:931 et seq., to establish the Responsible Vendor Program to educate vendors, their employees and customers about selling, serving, and consuming alcoholic beverages in a responsible manner. LAC 55:VII.501, adopted April 1998, implemented assessment of an annual \$35 fee for all new and renewal permits for licensed establishments holding Class "A" General, Class "A" Restaurant, or a Class "B" Retail Alcoholic Beverage Control Permits issued under R.S. 26:71 or R.S. 26:271 to

fund administration of the Responsible Vendor Program. LAC 55:VII.501 was amended in October 1998 to include additional sections and moved the annual fee to LAC 55:VII.505.A.4.

Section 936 of Title 26 provides for a fee, not to exceed \$50 per licensed establishment, to fund the costs of developing and administering the Responsible Vendor Program. The purpose of this amendment is to increase the fee currently set at \$35 to \$50. This increase will fund the development of a telecommunication system, which will enable beverage alcohol retailers to phone in to the Office of Alcohol and Tobacco Control and conduct a license check for certified servers and sellers of alcohol products. This system will need to be installed, training conducted, an awareness campaign initiated, and policies designed for Responsible Vendor personnel. This fee increase will also help to broaden awareness of the Responsible Vendor Program via our Internet website.

**Title 55**

**PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control**

**Chapter 5. Responsible Vendor Program**

**§505. Vendors**

**A. Certification and Enrollment as a Responsible Vendor**

\* \* \*

4. The vendor shall pay an annual fee of \$50 per licensed establishment holding a Class A-General, Class A-Restaurant, or Class B retail permit for the purpose of funding development and administration of the Responsible Vendor Program.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:931 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1949 (October 1998), amended LR 25:879 (May 1999).

Murphy J. Painter  
Commissioner

9905#034

**RULE**

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

**State Case Registry/ Safeguarding Information  
(LAC 67:III.2756)**

The Department of Social Services, Office of Family Support, amends the *Louisiana Administrative Code*, Title 67, Part III, Subpart 4, Support Enforcement Services (SES), the child support enforcement program.

Pursuant to Public Law 104-193, the Personal Responsibility Work Opportunity Reconciliation Act, and subsequent amendments to the Codes of Federal Regulations and LRS 46:236.10, the Department will maintain a State Case Registry of child support orders which will contain case information on child support cases and all child support orders issued or modified. Case information will be forwarded to the Federal Case Registry and may be released

to courts, other child support agencies, prosecutors, and sometimes the other parent of the child(ren), unless the information is safeguarded. If there is evidence of domestic violence, the information will not be released without a court order.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 4. Support Enforcement Services**

**Chapter 27. Support Enforcement**

**Subchapter D. State Case Registry**

**§2756. Safeguarding Information**

A. Support Enforcement Services shall maintain a State Case Registry which contains case names, Social Security numbers, dates of birth, address, and employer information on all cases receiving services and all child support orders issued or modified in the state. This information shall be transmitted to the Federal Case Registry which may be accessed by authorized agencies in other states. If a determination is made that SES has reasonable evidence of family violence, either domestic violence or child abuse, the State Case Registry shall include an indicator of family violence for the individual. The family violence indicator will prohibit release of information to any authorized person or agency, unless the authorized person or agency secures a court order to release the information. The court will make the ultimate decision regarding disclosure of that information to the requester.

B. Reasonable evidence of *family violence* is defined by any one of the following:

1. a protective order has been entered with respect to either party or the child;
2. DSS or medical records indicate violence or abuse;
3. corroborative evidence from at least two witnesses;
4. residence in a shelter for battered women;
5. good cause determination has been made by FITAP, Medicaid, or Foster Care.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, 45 CFR 303.15, 303.21 and 307.11, and LA R.S. 46:236.10.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:879 (May 1999).

Madlyn B. Bagneris  
Secretary

9905#069

**RULE**

**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., the Louisiana Department of Transportation and Development hereby promulgates 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 25:880 (May 1999).

Kam K. Movassaghi, Ph.D., P.E.  
Secretary

9905#035

## RULE

### Department of Transportations 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., the Department of Transportation and Development hereby promulgates 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 25:881 (May 1999).

### §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 25:882 (May 1999).

#### **§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 25:883 (May 1999).

#### **§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 25:883 (May 1999).

#### **§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 25:883 (May 1999).

#### **§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 25:883 (May 1999).

#### **§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 25:883 (May 1999).

#### **§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 25:883 (May 1999).

#### **§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 25:884 (May 1999).

#### **§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 25:884 (May 1999).

#### **§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 25:884 (May 1999).

#### **§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 25:884 (May 1999).

#### **§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 25:885 (May 1999).

#### **§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 25:885 (May 1999).

#### **§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 25:885 (May 1999).

#### **§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 25:885 (May 1999).

### **§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 25:886 (May 1999).

### **§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 25:887 (May 1999).

### **§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 25:887 (May 1999).

### **§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 25:888 (May 1999).

### **§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 25:888 (May 1999).

### **§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 25:888 (May 1999).

**§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 25:889 (May 1999).

**§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 25:889 (May 1999).

**§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 25:889 (May 1999).

**§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 25:890 (May 1999).

**§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 submission 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 25:890 (May 1999).

**§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 25:890 (May 1999).

### §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 25:891 (May 1999).

### §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 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 25:891 (May 1999).

### **§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 25:892 (May 1999).

### **§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 25:892 (May 1999).

#### **§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 25:893 (May 1999).

#### **§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 25:893 (May 1999).

#### **§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 25:893 (May 1999).

#### **§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 25:893 (May 1999).

#### **§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 25:893 (May 1999).

#### **§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 25:894 (May 1999).

#### **§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 25:894 (May 1999).

#### **§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 Departments 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.

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