

# Rules

## RULE

### Department of Agriculture and Forestry Office of Marketing Market Commission

Fees and Costs (LAC 7:V.1615)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, State Market Commission amends regulations regarding the certification and inspection of all meat, poultry and seafood products at state institutions and local school districts. These rules comply with and are enabled by R.S. 3:405, R.S. 3:410 and R.S. 39:2101.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part V. Advertising, Marketing and Processing

#### Chapter 16. Meat, Poultry and Seafood Grading and Certification Program

#### §1615. Fees and Costs

A. ...

B. Any vendor delivering a food product inspected and certified by the Department, under these regulations, shall pay an inspection fee of \$.025 per pound for each such meat, poultry or seafood product, or in the case of eggs, a fee of \$.025 per dozen. All fees and costs shall be immediately due and payable to the Department upon presentation to the vendor by the Department of the statement for services rendered.

C. If any product received by the public entity is in noncompliance with these regulations or purchase order requirements, but is accepted by the public entity because the product is needed for immediate consumption by either students, residents, patients or inmates then the vendor delivering such products shall pay the to the Department an inspection fee of \$.025 per pound for each such meat, poultry or seafood product, or in the case of eggs, a fee of \$.025 per dozen. Any public entity accepting a product that is in noncompliance with these regulations or purchase order requirements will immediately notify the Department of any such acceptance and will provide the Department with all necessary information to allow the Department to bill the vendor for payment under this Subsection.

D. Any vendor, state agency, state institution, local school district or person needing certification services from the Department and failing to notify the Department at least twenty-four (24) hours in advance of need shall be subject to a penalty of \$50.00, regardless of the time required for the services or the fees assessed by the Department.

E. Fees charged and collected by the Department under any other grading or certification program operated by the Department shall not be affected by these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405, R.S. 3:410 and R.S. 39:2101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Market Commission, LR 24:629 (April 1998), amended LR 25:2160 (November 1999).

Bob Odom  
Commissioner

9911#033

## RULE

### Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Accountability System (LAC 28:I.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:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The School Accountability System was promulgated as a Rule in the June 1999 issue of the *Louisiana Register* and amendments have been made to the policy.

#### Title 28

### EDUCATION

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

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

A. Bulletin 741

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 24:1085 (June 1998), LR 25:2160 (November 1999).

#### Bulletin 741

#### Louisiana Handbook for School Administrators

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

Refer to R.S. 17:10.1

#### Indicators for School Performance Scores

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

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

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

Indicators and Weighting	Grades Administered	10-Year Goal	20-Year Goal
CRT Tests (60 percent K-12)	Grades 4, 8, 10, 11	Average student score at BASIC	Average student score at PROFICIENT
NRT Tests (30 percent K-12)	Grades 3, 5, 6, 7, 9	Average composite standard score corresponding to the 55th percentile rank in the tested grade level	Average composite standard score corresponding to the 75th percentile rank in the tested grade level
Attendance (10 percent K-6; 5 percent 7-12)		95 percent (grades K-8) 93 percent (grades 9-12)	98 percent (grades K-8) 96 percent (grades 9-12)
Dropout Rate (5 percent 7-12)		4 percent (grades 7-8) 8 percent (grades 9-12)	2 percent (grades 7-8) 4 percent (grades 9-12)

### School Performance Scores

**2.006.03** A School Performance Score (SPS) shall be calculated for each school. This score shall range from 0-100 and beyond, with a score of 100 indicating a school has reached the 10-Year Goal and a score of 150 indicating a school has reached the 20-Year Goal. The lowest score that a given school can receive for each individual indicator index and/or for the SPS as a whole is "0."

Every year of student data shall be used as part of a school's SPS. The initial school's SPS shall be calculated using the most recent year's NRT and CRT test data and the prior year's attendance and dropout rates. Subsequent calculations of the SPS shall use the most recent two years' test data and attendance and dropout rates from the two years prior to the last year of test data used. For schools entering accountability after 1999, one year's baseline data shall be used for schools formed in mid-cycle years and two year's data for other schools.

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

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

- A score for regular education students, including gifted, talented, speech or language impaired, and Section 504 students.
- A score including regular education students AND students with disabilities eligible to participate in the CRT and/or NRT tests.
- For the purpose of determining Academically Unacceptable Schools, during the summer of 1999 for K-8 schools and during the summer of 2001 for 9-12 schools, the School Performance Score that includes only regular education students shall be used.

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

Indicator	Index Value	Weight	Indicator Score
CRT	66.0	60 percent	39.6
NRT	75.0	30 percent	22.5
Attendance	50.0	10 percent	5.0

Dropout	N/A	0 percent	0
SPS = 76.1			

Criterion-Referenced Tests (CRT) Index Calculations  
A school's CRT Index score equals the sum of the student totals divided by the number of student eligible to participate in state assessments. For the CRT Index, each student who scores within one of the following five levels shall receive the number of points indicated.

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

Formula for Calculating a CRT Index for a School

- Calculate the total number of points by multiplying the number of students at each performance level times the points for those respective performance levels, for all content areas.
- Divide by the total number of students eligible to be tested times the number of content area tests.
- Zero shall be the lowest CRT Index score reported for accountability calculations.

Initial Transition Years  
To accommodate the phase-in of Social Studies and Science tests for K-8 schools, the following CRT scores shall be used for each year:

1999 Baseline CRT Score =	1999 Math and English Language Arts (Grades 4 and 8)
2001 Comparison CRT Score =	2000 and 2001 Math and English Language Arts (both years averaged for each subject and each grade)
2001 New Baseline CRT Score =	2000 and 2001 Math, English, Social Studies, and Science (both years averaged for each subject and each grade)
2003 Comparison CRT Scores =	2002 and 2003 Math, English, Social Studies, and Science (both years averaged for each subject and each grade)

This re-averaging shall result in a re-calculated baseline to include science and social studies for K-8 schools in 2001. A similar schedule shall be used for 9-12 schools to begin with a 2001 baseline year.

Norm-Referenced Tests (NRT) Index Calculations  
For the NRT Index, standard scores shall be used for computing the SPS. Index scores for each student shall be calculated, scores totaled, and then averaged together to get a school's NRT Index score.

*NRT Goals and Equivalent Standard Scores*

Composite Standard Scores Equivalent to Louisiana's 10- and 20-Year Goals, by Grade Level *						
Grade						
Goals	Percentile Rank	3	5	6	7	9
10-Year Goal	55th	187	219	231	243	TBA
20-Year Goal	75th	199	236	251	266	TBA

\* Source of percentile rank-to-standard score conversions: *Iowa Tests of Basic Skills, Norms and Score Conversions, Form M (1996), Spring norms, interpolated for Fourth Quarter, March and Iowa Test of Educational Development, Norms and Score Conversions, with Technical Information, Form M (1996), Chicago, IL: Riverside Publishing Company.*

NRT Formulas Relating Student Standard Scores to NRT Index Where the 10-year and 20-year goals are the 55th and 75th percentile ranks respectively and where SS = a student's standard score, then the index for that student is calculated as follows:	
Grade 3:	Index 3rd grade = $(4.167 * SS) - 679.2$ SS = $(\text{Index 3rd grade} + 679.2)/4.167$
Grade 5:	Index 5th grade = $(2.941 * SS) - 544.1$ SS = $(\text{Index 5th grade} + 544.1)/2.941$
Grade 6:	Index 6th grade = $(2.500 * SS) - 477.5$ SS = $(\text{Index 6th grade} + 477.5)/2.500$
Grade 7:	Index 7th grade = $(2.174 * SS) - 428.3$ SS = $(\text{Index 7th grade} + 428.3)/2.174$
Grade 9:	Index 9th grade = TBA SS = TBA

- Formula for Calculating a School's NRT Index
1. Calculate the index for each student, using the grade-appropriate formula relating standard score to NRT Index.
  2. Zero shall be the lowest NRT Index score reported for accountability calculations.
  3. Compute the total number of index points in all grades in the school.
  4. Divide the sum of NRT Index points by the total number of students eligible to be tested.

Attendance Index Calculations An Attendance Index score for each school shall be calculated. The initial year's index shall be calculated from the prior year's attendance rates. Subsequent years' indices shall be calculated using the prior two years' average attendance rates as compared to the state goals.		
<i>Attendance Goals</i>		
	10-Year Goal	20-Year Goal
Grades K-8	95 percent	98 percent
Grades 9-12	93 percent	96 percent
Attendance Index Formulas Grades K-8 Indicator (ATT K-8) = $(16.667 * ATT) - 1483.4$ Grades 9-12 Indicator (ATT 9-12) = $(16.667 * ATT) - 1450.0$ Where ATT is the attendance percentage, using the definition of attendance established by the Louisiana Department of Education		

**Lowest Attendance Index Score**  
Zero shall be the lowest Attendance Index score reported for accountability calculations.

Dropout Index Calculations A Dropout Index score for each school shall be calculated. The initial year's index shall be calculated from the prior year's dropout rates. Subsequent years' indices shall be calculated using the prior two year's average dropout rates as compared to the state goals.		
<i>Dropout Goals</i>		
	10-Year Goal	20-Year Goal
Grades 7 and 8	4 percent	2 percent
Grades 9-12	8 percent	4 percent

Dropout Index Formulas Non-Dropout Rate (NDO) = $100 - \text{Dropout Rate (DO)}$ (expressed as a percentage)	
Grades 7 and 8	Dropout Index (7-8) = Indicator (DO Gr 7-8) = $(25 * \text{NDO}) - 2300.0$ NDO = $(\text{Indicator DO Gr 7-8} + 2300.0) / 25$
Grades 9-12	Dropout Index (9-12) = Indicator (DO Gr 9-12) = $(12.5 * \text{NDO}) - 1050.0$ NDO = $(\text{Indicator DO Gr 9-12} + 1050.0) / 12.5$

**Lowest Dropout Index Score**  
Zero shall be the lowest Dropout Index score reported for accountability calculations.

### Data Collection

**2.006.04** A test score shall be entered for all eligible students within a given school. For any eligible student who does not take the test, including those who are absent, a score of "0" on the CRT Index and NRT Index shall be calculated in the school's SPS. To assist a school in dealing with absent students, the Louisiana Department of Education shall provide an extended testing period for test administration. The only exception to this policy is a student who was sick during the test and re-testing periods AND who has formal medical documentation for that period.

### Growth Targets

**2.006.05** Each school shall receive a Growth Target that represents the amount of progress it must make every two years to reach the state 10- and 20-Year Goals.

In establishing each school's Growth Target, the SPS inclusive of students with disabilities shall be used as the baseline. However, the percentage of students with disabilities varies significantly across schools and the rate of growth for such students, when compared to regular education students, may be different. Therefore, the proportion of students with disabilities eligible to participate in the CRT or NRT test in each school will be a factor in determining the Growth Target for each school.

#### Growth Targets

During the first ten years, the formula is the following:  
 $[\text{PropRE} * (100 - \text{SPS})/N] + [\text{PropSE} * (100 - \text{SPS})/2N]$ , or 5 points, *whichever is greater*

where  
 PropSE = the number of special education students in the school who are eligible to participate in the NRT or CRT tests, divided by the total number of students in the school who are eligible to participate in the NRT or CRT tests. For purposes of this calculation, gifted, talented, speech or language impaired, and 504 students shall not be counted as special education students, but shall be included in the calculations as regular education students.

PropRE =  $1 - \text{PropSE}$ . PropRE is the proportion of students not in special education.

SPS = School Performance Score

N = Number of remaining accountability cycles in the 10-Year Goal period

During the second ten years, the formula is the following:  
 $[\text{PropRE} * (150 - \text{SPS})/N] + [\text{PropSE} * (150 - \text{SPS})/2N]$ , or 5 points, *whichever is greater*

### Growth Labels

**2.006.06** A school shall receive a label based on its success in attaining its Growth Target.

#### Growth Labels

A school exceeding its Growth Target by 5 points or more shall receive a label of *Exemplary Academic Growth*.

A school exceeding its Growth Target by fewer than 5 points shall receive a label of *Recognized Academic Growth*.

A school improving, but not meeting its Growth Target, shall receive a label of *Minimal Academic Growth*.

A school with a flat or declining SPS shall receive a label of *School in Decline*.

When a school's SPS is greater than or equal to the state goal, "Minimal Academic Growth" and "School in Decline" labels shall no longer apply.

### Performance Labels

**2.006.07** A Performance Label shall be given to a school that qualifies, in addition to Growth Labels.

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

For purpose of determining Academically Unacceptable Schools, during the summer of 1999 for K-8 schools and during the summer of 2001 for 9-12 schools, the SPS that includes only regular education students shall be used. Any school with an SPS of 30 or less, based on the test scores of regular education students only, shall be deemed an Academically Unacceptable School.

\*A school with an SPS of 30.1 - state average\* shall be labeled Academically Below Average.  
\*A school with an SPS of state average\* - 99.9 shall be labeled Academically Above Average.  
\*The state average is recalculated every growth cycle. The state average shall be the SPS calculated for all eligible students in the state, treating the state as a single unit.  
\*\*A school with an SPS of 100.0 - 124.9 shall be labeled a *School of Academic Achievement*.  
\*\*A school with an SPS of 125.0 - 149.9 shall be labeled a *School of Academic Distinction*.  
\*\*A school with an SPS of 150.0 or above shall be labeled a *School of Academic Excellence* and shall have no more Growth Targets.  
\*\*A school with these labels shall no longer be subject to Corrective Actions and shall not receive "negative" growth labels, i.e., School in Decline and Minimal Academic Growth. This school shall continue to meet or exceed Growth Targets to obtain "positive" growth labels, recognition, and possible rewards.

### Rewards/Recognition

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

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

### Corrective Actions

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

All schools in Corrective Action I shall provide pertinent information to the Louisiana Department of Education concerning steps they have taken to improve student performance in order to document activities related to Corrective Action I and in light of recent proposed changes in federal programs. This information shall be required on an annual basis.

### Requirements for Schools in Corrective Actions I

#### 1) Revised or New School Improvement Plan (due December 15)

All Louisiana schools were required to have a School Improvement Plan in place by May of 1998. Those schools falling within the category of "Academically Unacceptable" and placed in Corrective Actions I shall be required to review and either revise or completely rewrite their plan, with the assistance of a District Assistance Team, and submit it to the Division of School Standards, Accountability, and Assistance. The plan shall contain the following essential research-based components:

- A. A Statement of the school's beliefs, vision, and mission;
- B. A comprehensive needs assessment which shall include the following quantitative and qualitative data:
  - Student academic performances on standardized achievement tests (both CRT and NRT) and performance/authentic assessment disaggregated by grade vs. content vs. exceptionality);
  - Demographic indicators of the community and school to include socioeconomic factors.
  - School human and material resource summary, to include teacher demographic indicators and capital outlay factors;
  - Interviews with stakeholders: principals, teachers, students, parents;
  - Student and teacher focus groups;
  - Questionnaires with stakeholders (principals, teachers, students, parents) measuring conceptual domains outlined in school effectiveness/reform research;
  - Classroom Observations;
- C. Measurable objectives and benchmarks;
- D. Effective research-based methods and strategies;
- E. Parental and community involvement activities;
- F. Professional development component aligned with assessed needs;
- G. External technical support and assistance;
- H. Evaluation strategies;
- I. Coordination of resources and analysis of school budget (possible redirection of funds);
- J. Action plan with time lines and specific activities.

#### 2) Assurance pages (due December 15)

Each school in Corrective Actions I shall be required to provide assurances that it worked with a District Assistance Team to develop its School Improvement Plan, and that the plan has the essential components listed above. Signatures of the team members shall also be required.

#### 3) An annual Evaluation of the Level of Implementation of the School Improvement Plan (due June 15)

This evaluation shall be designed by the Louisiana Department of Education through the services of a contracted evaluator and mailed to the schools as soon as they are identified. It shall be required on an annual basis, with the first year's data pertaining to implementation activities. The evaluation for the second year shall contain some implementation data, but shall pertain particularly to student performance as determined by the School Performance Score. The Louisiana Department of Education shall make every effort to see that the information is collected in a manner that shall be of assistance to the schools and that shall provide feedback to them as they strive to improve student achievement.

Corrective Actions Level II: A highly trained Distinguished Educator (DE) shall be assigned to a school by the state. The DE shall work in an advisory capacity to help the school improve student performance. The DE shall make a public report to the school board of recommendations for school improvement. Districts shall then publicly respond to these recommendations. If a school is labeled as Academically Unacceptable, parents shall have the right to transfer their child to a higher performing public school (See Transfer Policy Standard Number 2.006.11).

Corrective Actions Level III: The DE shall continue to serve the school in an advisory capacity. Parents shall have the right to transfer their child to a higher performing public school (See Transfer Policy, Standard Number 2.006.11). A district must develop a Reconstitution Plan for the school at the beginning of the first year in this level and submit the plan to SBESE for approval.

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

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

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

A school moves into a more intensive level of Corrective Actions when adequate growth is not demonstrated during each 2-year cycle.

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

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

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

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

### Corrective Actions Summary Chart

#### School Level Tasks

##### Level I

- 1) Utilize state diagnostic process to identify needs; and
- 2) Develop/implement a consolidated improvement plan, including an integrated budget; process must include: a) opportunities for significant parent and community involvement, b) public hearings, and c) at least two-thirds teacher approval

##### Level II

- 1) Work with advisory Distinguished Educator, teachers, parents, and others to implement revised School Improvement Plan; and
- 2) Distinguished Educator works with principals to develop capacity for change

##### Level III

- 1) Distinguished Educator continues to assist with improvement efforts and the design of that school's Reconstitution Plan

##### Reconstitution or No State Approval/No Funding

- 1) If Reconstitution Plan is approved by SBESE: a) implement Reconstitution Plan, and b) utilize data from the end of the previous year to re-calculate school performance goals and Growth Targets. If Reconstitution Plan is not approved, no state approval/no state funding

#### District Level Tasks

##### Level I

- 1) Create District Assistance Teams to assist schools;
- 2) Publicly identify existing and additional assistance being provided by districts, such as funding, policy changes, and greater flexibility;
- 3) As allowed by law, reassign or remove school personnel as necessary; and
- 4) For Academically Unacceptable schools, ensure schools receive at least their proportional share of applicable state, local, and federal funding.

##### Level II

- 1) District Assistance Teams continue to help schools;
- 2) Hold public hearing and respond to Distinguished Educators' written recommendations;
- 3) As allowed by law, local boards reassign or remove personnel as necessary; and
- 4) For Academically Unacceptable Schools, authorize parents to send their children to other public schools

##### Level III

- 1) District Assistance Teams shall continue to help schools;
- 2) Authorize parents to send their children to other public schools;
- 3) Design Reconstitution Plan; and
- 4) At the end of year one, one of the following must occur: a) schools must make adequate growth of at least 40 percent of the Growth Target or 5 points, whichever is greater; b) District shall develop Reconstitution Plan to be approved by SBESE; or c) SBESE grants non-school approval status

##### Reconstitution or No State Approval/Funding

- 1) If Recommendation Plan is approved by SBESE, provide implementation support. If the Reconstitution Plan is not approved, no state approval/no state funding

#### State Level Tasks

##### Level I

- 1) Provide diagnostic process for schools;
- 2) Provide training for District Assistance Teams;
- 3) For some Academically Unacceptable Schools only, SBESE assigns advisory Distinguished Educators to schools; and
- 4) Work to secure new funding and/or redirect existing resources to help schools implement their improvement plans

##### Level II

- 1) Assign advisory Distinguished Educator to schools; and
- 2) Work to secure new funding and/or redirect existing resources to help schools implement their improvement plans

##### Level III

- 1) Assign advisory Distinguished Educator to schools for one additional year;
- 2) At end of Year 1, SBESE approves or disapproves Reconstitution Plans; and
- 3) Work to secure new funding and/or redirect existing resources to help schools implement their improvement plans

##### Reconstitution or No State Approval/No Funding

- 1) If Reconstitution Plan is approved by SBESE, a) monitor implementation of reconstitution plan; and b) provide additional state improvement funds; and
- 2) If Reconstitution Plan is not approved, no state approval/state funding

### Reconstitution Plan

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

reorganization shall occur and how/why these proposed changes shall lead to improved student performance.

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

#### **Transfer Policy**

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

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

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

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

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

#### **Progress Report**

**2.006.12** The SBESE shall report annually on the state's progress in reaching its 10- and 20-Year Goals. The Louisiana Department of Education shall publish individual school reports to provide information on every school's performance. The school reports shall include the following information: School Performance Scores, and school progress in reaching Growth Targets.

#### **Appeals Procedures**

**2.006.13** The Louisiana Department of Education shall define "appeal" what may be appealed, and the process that the appeal shall take.

#### **Student Mobility**

**2.006.14** As a general rule, the test score of every eligible student at a given school shall be included in that school's performance score regardless of how long that student has been enrolled in that school. A school that has at least 10 percent of its students transferring from outside the district and enrolled in the school after October 1 may request that the Louisiana Department of Education calculate what its SPS would have been if such out-of-district enrollees had not been included. If there is at least a 5 point difference between the two School Performance Scores, then the school may appeal any negative accountability action taken by the state, e.g., movement into Corrective Actions, application of growth labels.

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

**2.006.15** In order to receive an SPS, a given school must have at least one grade level of CRT testing and at least

one grade level of NRT testing. A school that does not meet this requirement must either be "paired or shared" with another school in the district as described below. For the purpose of the Louisiana Accountability System, such a school shall be defined as a "non-standard school."

A school with a grade-level configuration such that it participates in neither the CRT test nor in the NRT test (e.g., a K, K-1, K-2 school) must be "paired" with another school that has at least one grade level of CRT testing and one grade level of NRT testing. This "pairing" means that a single SPS shall be calculated for both schools by averaging both schools' attendance and/or dropout data and using the test score data derived from the school that has at least two grade levels of testing.

A school with a grade-level configuration where students participate in either CRT or NRT testing, but not both (e.g., a K-3, 5-6 school), must "share" with another school that has at least one grade level of the type of testing missing. Both schools shall "share" the missing grade level of test data. This shared test data must come from the grade level closest to the last grade level in the non-standard school. The non-standard school's SPS shall be calculated by using the school's own attendance, dropout, and testing data AND the test scores for just one grade from the other school.

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

Once the identification of "paired or shared" schools has been made, this decision is binding for 10 years. An appeal to SBESE may be made to change this decision prior to the end of 10 years, when redistricting or other grade configuration and/or membership changes occur.

#### **New Schools and/or Significantly Reconfigured Schools**

**2.006.16** For a newly formed school, the school district shall petition SBESE, following existing procedures, to have a new site code assigned to that school. Once the site code is assigned, the school shall receive its initial baseline SPS the summer following its second year of operation, since it shall need two years of testing data and one year of attendance and/or dropout data.

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

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

#### **Inclusion of Alternative Education Students**

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

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

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

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

- The alternative school must have its own site code and operate as a school;
- The alternative school must have a required minimum number of students in the tested grade levels. The definition of "required minimum" is stated in section 2.006.19, and
- At least fifty percent (50 percent) of the total school population must have been enrolled in the school for the entire school year, October 1 - May 1.

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

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

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

Students 16 years of age and older who are enrolled in a Pre-GED program, not pursuing a regular high school diploma, shall not be included in the state-testing program and shall not be included in an SPS. Information on these students, e.g., number receiving a GED, shall be reported in the school's report card as a sub-report.

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

**Inclusion of Lab Schools and Charter Schools**

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

For the 1998-99 and 1999-2000 academic school years, detention and Department of Corrections facilities shall NOT receive an SPS.

### **Inclusion of Students with Disabilities**

**2.006.18** All students, including those with disabilities, shall participate in Louisiana's new testing program. The scores of all students who are eligible to take the CRT and the NRT tests shall be included in the calculation of the SPS. Most students with disabilities, approximately 80 percent of students with disabilities, shall take the CRT and the NRT tests with accommodations, if required by their Individualized Education Program. A small percentage of students with very significant disabilities, approximately 20 percent of students with disabilities, shall participate in an alternate assessment, as required by their IEP.

### **Inclusion of Schools with Very Low Numbers of Students**

**2.006.19** A minimum amount of test data shall be required for School Accountability calculations. To be included, a school shall have at least 40 testing units on the statewide criterion-referenced test. A testing unit is one subject test for one student, e.g., English language arts or mathematics. A school shall have at least 20 students with composite scores on the statewide norm-referenced test.

Weegie Peabody  
Executive Director

9911#048

## **RULE**

### **Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School Administrators—Louisiana Educational Assessment Program—LEAP 21 (LAC 28:I.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:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November, 1975). The content of the procedural block clarifies that the performance standards for *LEAP for the 21st Century* (LEAP 21) are equal to the rigor of the National Assessment of Educational Progress (NAEP) performance standards.

## **Title 28 EDUCATION**

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

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

##### **A. Bulletin 741**

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with 17:6.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975), amended LR 25:2166 (November 1999).

#### **Louisiana Educational Assessment Program**

**1.009.03** Each school system shall participate in the Louisiana Educational Assessment Program.

Performance standards for *LEAP for the 21st Century* (LEAP 21) are equal to the rigor of the National Assessment of Educational Progress (NAEP) performance standards.

District-wide test results, but not scores or rankings of individual students, shall be reported to the local educational governing authority at least once a year at a regularly scheduled local educational governing authority meeting.

Systems shall not conduct any program of specific preparation of the students for the testing program by using the particular test to be administered therein.

Weegie Peabody  
Executive Director

9911#050

## RULE

### Board of Elementary and Secondary Education

#### Bulletin 746—Hiring Full-Time/Part-Time Noncertified School Personnel (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted the rule which extends until July 1, 2000, the current policy which allows noncertified school personnel to be employed by local school systems when there is no certified teacher available. The revision is a change to the *Louisiana Administrative Code*, 28:I.903.I. There is no change proposed in the content of the current policy which allows school systems to employ noncertified teachers when there is no certified teacher available. The change extends the date only.

#### Title 28 EDUCATION

#### Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations §903. Teacher Certification Standards and Regulations

\* \* \*

##### I. Noncertified Personnel

Full-time/part-time noncertified school personnel, excluding speech, language, and hearing specialists, may be employed by local public education agencies experiencing extreme difficulty in employing certified teachers for the classroom, provided that the following documentation is submitted to the Department of Education:

A signed affidavit by the local superintendent that the position could not be filled by a certified teacher;

Submission of names, educational background, subject matter and grade level being taught as an addendum to the Annual School Report.

##### A. Individuals employed under this policy must:

1. hold a minimum of a baccalaureate degree from a regionally accredited institution;

2. take all appropriate areas of the PRAXIS/NTE at the earliest date that it is offered during the first year of employment and all appropriate areas at least once each year during subsequent years of employment; and

3. earn six semester hours of college course work each year as indicated below.

a. Teachers who have not completed a teacher education program must:

(1) within the first year of employment and prior to consideration for re-employment the second year, be

officially admitted to a teacher education program; obtain a prescription or outline of course work required for certification; and achieve the required scores on the PRAXIS Pre-Professional Skills Tests in Reading, Writing, and Mathematics. The appropriate score(s) on the Communication Skills and/or General Knowledge portions of the NTE may be accepted only if the test(s) was taken prior to September 1999;

(2) prior to consideration for re-employment each year, complete at least six semester hours of college course work as prescribed by the college or university to complete a teacher education program.

b. Teachers who have completed a teacher education program but who have not achieved the required scores on all parts of the PRAXIS/NTE, prior to consideration for re-employment each year, must earn six semester hours appropriate to the area of the PRAXIS/NTE (Pre-Professional Skills Tests in Reading, Writing, and Mathematics, the Principles of Learning and Teaching K-6 or 7-12, and the subject assessments/specialty area tests) in which the score was not achieved. Appropriate scores achieved on portions of the NTE which were formerly required may be used provided the score was achieved prior to the date the test(s) was discontinued for use in Louisiana.

A university sponsored seminar, workshop or course specially designed for preparing for the PRAXIS/NTE may be used once to substitute for three semester hours of the required course work. Documentation from the university must be provided to verify participation.

B. The following documentation, as appropriate, shall be kept on file in the LEA's Superintendent's/Personnel Office:

1. official transcripts showing a minimum of a baccalaureate degree from a regionally accredited institution;

2. documentation that the teacher has been officially admitted to a teacher education program, if applicable;

3. an outline by the college or university of the course work required for certification, or an outline of courses to help achieve the appropriate PRAXIS/NTE scores for persons who have completed a teacher education program;

4. official transcripts showing successful completion of the six semester hours as prescribed by the college or university since the last employment under this policy;

5. documentation to verify one-time participation in a university sponsored or state approved seminar/workshop/course for PRAXIS/NTE preparation for teachers who have completed a teacher education program;

6. an original PRAXIS/NTE score card showing the PRAXIS/NTE has been taken in all appropriate areas since the last employment under this policy; and

7. documentation that efforts for recruitment of certified teachers have been made (e.g. newspaper advertisements, letters, contacts with colleges, and so forth).

C. These individuals shall be employed at a salary that is based on the effective state salary schedule for a beginning teacher with a baccalaureate degree and a certificate with zero years of experience. Local salary supplements are optional.

D. The total number of years a person may be employed according to the provisions of this policy is five years.

E. To be eligible for re-employment under this policy, a teacher who has not met the requirement of earning six

semester hours of college credit or who has not taken the PRAXIS/NTE must meet one or more of the following conditions.

1. Medical Excuse. When serious medical problems of the teacher or immediate family in the same household exist, a doctor's statement is required with a letter of assurance from the teacher that six semester hours will be earned prior to the beginning of the next school year.

2. Required Courses Not Available. A letter of verification from area universities is required stating that the required courses are not being offered.

3. Change of School, Parish, or School System. Re-employment is permitted only if the change is not part of a continuous pattern.

4. Change of Certification Areas. Re-employment is permitted with assurance that the requirements for continued employment under this policy will be met.

(These are the only conditions that may be used. Documentation which supports the above condition must be maintained in the teacher's personnel file.)

THIS INTERIM EMERGENCY POLICY WILL REMAIN IN EFFECT UNTIL JULY 1, 2000.

This policy does not apply to university laboratory schools.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3761-3764.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education LR 24:1085 (June 1998), LR 25:2167 (November 1999).

Weegie Peabody  
Executive Director

9911#049

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 1213—Minimum Standards for School Buses  
(LAC 28:XXV.537)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the State Board of Elementary and Secondary Education adopted a revision to Bulletin 1213 promulgated in LR 2:187 (June 1976), referenced in LAC 28:I.915.B, and adopted in codified format in the *Louisiana Register*, April 1999. The amendment allows two decals on school buses to acknowledge the free cellular phone services made available to that school system by a provider.

**Title 28  
EDUCATION**

**Part XXV. Minimum Standards for School Buses  
Chapter 5. Bus Body Standards  
§537. Identification**

A. - F.2. ...

3. No more than two signs, not to exceed 18" x 7", acknowledging a cellular telephone service provider may appear on the side of a school bus. One sign shall be placed to the immediate left of the main door. The other sign shall be placed below or to the right of the driver's side window.

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 in LR 25:646 (April 1999), amended LR 25:2168 (November 1999).

Weegie Peabody  
Executive Director

9911#051

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 1213—Minimum Standards for School Buses  
(LAC 28:XXV.1701)

(Editor's Note: The following section, which appeared on page 653 of the April 20, 1999 *Louisiana Register*, is being republished to include text which was inadvertently omitted.)

**Bulletin 1213—Minimum Standards for School Buses  
(LAC 28:XXV.Chapters 1-17)**

**Title 28**

**EDUCATION**

**Part XXV. Bulletin 1213—Minimum Standards for  
School Buses in Louisiana**

**Chapter 17. Appendix A**

**§1701. T-10 Form**

MANDATORY FORM T-10

rev: 7/94

STATE DEPARTMENT OF EDUCATION DATE: \_\_\_\_\_

GUARANTEED FROZEN MILEAGE: \_\_\_\_\_

I propose to sell \_\_\_\_\_ the following described NEW/USED school bus.

(Contract Owner or School Board) (circle one)

CHASSIS	_____	BODY	_____
YEAR MODEL	_____	YEAR MODEL	_____
MAKE	_____	MAKE	_____
SERIAL NUMBER	_____	SERIAL NUMBER	_____
MILEAGE	_____	MILEAGE	_____
CONDITION	_____	CONDITION	_____

This vehicle meets all Federal Motor Vehicle Safety Standards and Bulletin 1213 specifications applicable at the date of manufacture.

I verify that the above information is true and correct to the best of my knowledge.

OFFICIAL PURCHASE AGREEMENT DATE: \_\_\_\_\_

LICENSE NUMBER: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE (Seller)

\_\_\_\_\_  
COMPANY

\_\_\_\_\_  
ADDRESS

Purchased by: \_\_\_\_\_ Approved by: \_\_\_\_\_  
SIGNATURE LOCAL SCHOOL SYSTEM

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
SIGNATURE OF LOCAL SCHOOL SYSTEM  
SUPERINTENDENT/TRANSPORTATION  
SUPERVISOR

COPIES SENT TO:  
WHITE/STATE DEPARTMENT OF EDUCATION  
CANARY/TRANSPORTATION DEPARTMENT  
PINK/PURCHASER  
GOLD/VENDOR

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:653 (April 1999), repromulgated LR 25:2168 (November 1999).

Weegie Peabody  
Executive Director

9911#003

## **RULE**

### **Board of Elementary and Secondary Education**

#### **Bulletin 1475—Operational and Vehicle Maintenance Procedures (LAC 28:XXIX.901)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the State Board of Elementary and Secondary Education adopted an amendment to Bulletin 1475 promulgated in LR 2:198 (June 1976), referenced in LAC 28:I.915.C, and adopted in codified format in the *Louisiana Register*, May 1999. The amendment provides instructions to school bus drivers of those buses that are equipped with cellular telephones.

#### **Title 28**

#### **EDUCATION**

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

#### **Chapter 9. Vehicle Operations**

#### **§901. Specific Procedures**

A.1. - 7.j. ...

k. The use of cellular telephones by school bus operators shall be authorized only under the following conditions:

- i. an emergency situation exists, such as a mechanical problem, accident, illness of driver or passenger;
- ii. bus is pulled safely out of traffic (if possible) and motor is turned off.

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 25:835 (May 1999), amended LR 25:2169 (November 1999).

Weegie Peabody  
Executive Director

9911#047

## **RULE**

### **Board of Elementary and Secondary Education**

#### **Bulletin 1566—Guidelines for Pupil Progression (LAC 28:XXXIX.Chapters 1-11)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the State Board of Elementary and Secondary Education adopted revised Bulletin 1566, Guidelines for Pupil Progression. The revised guidelines for Pupil Progression incorporate the High Stakes Testing Policy and other policies related to the promotion and retention of

students. School systems will implement the new guidelines with the 1999-2000 school session.

#### **Title 28**

#### **EDUCATION**

#### **Part XXXIX. Bulletin 1566—Guidelines for Pupil Progression**

Editor's Note: Bulletin 1566 was promulgated in LR 6:144 (April 1980), amended LR 11:685 (July 1985) and LR 16:766 (September 1990), promulgated LR 19:1417 (November 1993), amended LR 24:2081 (November 1998). Historical notes will reflect activity on individual sections from November 1999 forward.

#### **Chapter 1. Purpose**

#### **§101. Foreword**

A. This publication represents a forward step in the implementation of a vital component of R.S. 17:24.4. These Guidelines represent a cooperative effort of offices in the Louisiana Department of Education (LDE), and educators from across the State.

B. The Louisiana Department of Education will continue to provide leadership and assistance to school systems in an effort to attain a public system of education that makes the opportunity to learn available to all students on equal terms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2169 (November 1999).

#### **§103. Preface**

A. "The goal of the public educational system is to provide learning environments and experiences, at all stages of human development, that are humane, just and designed to promote excellence in order that every individual may be afforded an equal opportunity to achieve his full potential" (Preamble to Article VIII, Louisiana Constitution). This goal statement from the Constitution suggests that public elementary and secondary education is only a part of a continuum of services that should be available to assist each individual to identify and reach his/her own educational or training goals as quickly and effectively as possible.

B. The amendment and enactment of the Louisiana Competency-Based Education Program, Act 750, (R.S. 17:24.4) by the Louisiana State Legislature in Regular Session during the summer of 1997, was the result of an ever-increasing demand by Louisiana's taxpayers for a better accounting of their educational dollars. A forerunner of Act 750 was Act 621, the Public School Accountability Law. This far-reaching statute called for:

1. the establishment of a program for shared educational accountability in the public educational system of Louisiana;
2. the provision for a uniform system of evaluation of the performance of school personnel;
3. the attainment of established goals for education;
4. the provision of information for accurate analysis of the costs associated with public educational programs;
5. the provision of information for an analysis of the effectiveness of instructional programs; and
6. the annual assessment of students based on state content standards.

C. The Louisiana Competency-Based Education Law evolved from the Accountability Law into a unique program that encompasses all recent educational statutes, providing

opportunities for students to learn systematically and opportunities for educators to gear instructional programs to achievement based on specific objectives.

D. The Louisiana Competency-Based Program is based on the premise that the program must provide options to accommodate the many different learning styles of its students. Every effort is being made to tailor the curriculum to the needs of the individual student, including the student with special instructional needs who subsequently needs curricular alternatives. Such a practice enhances the probability of success, since the student is provided with an instructional program compatible with his individual learning styles as well as with his needs.

E. The Louisiana State Legislature in Regular Session during the summer of 1997 amended and reenacted R.S. 17:24.4 (F) and (G) (1), relative to the Louisiana Competency-Based Education Program, to require proficiency on certain tests as determined by the State Board of Elementary and Secondary Education (SBESE) for student promotion and to provide guidelines relative to the content of Pupil Progression Plans.

F. The amended sections relate state content standards adopted for mathematics, English language arts, science, and social studies, to the Louisiana Educational Assessment Program (LEAP), and to the comprehensive Pupil Progression Plans of each of the 66 local educational agencies.

G. A *Pupil Progression Plan* is a comprehensive plan developed and adopted by each parish or city school board; it shall be based on student performance on the Louisiana Educational Assessment Program with goals and objectives that are compatible with the Louisiana Competency-Based Education Programs and that supplement standards approved by the State Board of Elementary and Secondary Education (SBESE). A Pupil Progression Plan shall require the student's proficiency on certain tests as determined by the SBESE before he or she can be recommended for promotion.

H.1. The revised Section G of the Competency-Based Education Program, Act 750, addresses the Pupil Progression Plan as follows:

Each city and parish school board shall appoint a committee which shall be representative of the parents of the school district under the authority of such school board. Each committee shall participate and have input in the development of the Pupil Progression Plans provided for in this Section. Each parish or city school board shall have developed and shall submit to the State Department of Education a Pupil Progression Plan which shall be in accordance with the requirements of this section and be based upon student achievements, performance, and proficiency on tests required by this section. Each parish or city school board plan for pupil progression shall be based on local goals and objectives which are compatible with the Louisiana Competency-Based Education Program numerated in R.S. 17:24.4 (B), which comply with the provisions of R.S. 17:24.4 (A) (3), and which supplement the performance standards approved by the State Board of Elementary and Secondary Education. Each local school board shall establish a policy regarding student promotion or placement which shall comply with the provisions of this Section, including the requirements for Pupil Progression Plans. Based upon the local school board policy, which policy shall be developed with the participation and input of the committee provided for in this Subsection G, each teacher shall, on an individualized basis, determine promotion or placement of each student. Each local school board may

review promotion and placement decisions in order to insure compliance with the established policy. Review may be initiated by the local board, superintendent, or parent or guardian. Those students who fail to meet required proficiency levels on the state administered criterion-referenced test of the Louisiana Educational Assessment Program shall receive remedial education programs that comply with regulations adopted by the State Board of Elementary and Secondary Education.

2. Those persons responsible for developing local Pupil Progression Plans must build their plans on a broad-based instructional program fluid enough to accommodate the individual student's previous experience, his acquired skills and abilities, and his deficiencies and disabilities, while at the same time maintaining a balance in the student's curricular experiences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2169 (November 1999).

### **Chapter 3. General Procedure for Development; Approval and Revision of a Pupil Progression Plan**

#### **§301. Development of a Local Plan**

##### **A. Committee of Educators**

1. The State Board of Elementary and Secondary Education (SBESE) and the Louisiana Department of Education (LDE) require assurances that the local education agency (LEA) Supervisors of Elementary and Secondary Education, Special Education, Vocational Education, Adult Education, Title I, teachers and principals and other individuals deemed appropriate by the local Superintendent are included in the development of the parish Pupil Progression Plan.

##### **B. Committee of Parents**

1. Act 750 of the 1979 Louisiana Legislature states that "each city and parish school board shall appoint a committee which shall be representative of the parents of the school district under the authority of such school board. Such committees shall participate and have input in the development of the Pupil Progression Plan."

2. A committee representing the parents of the school district shall be appointed by each city and parish school board. Procedures shall be established whereby this committee shall be informed of the development of the Pupil Progression Plan. Opportunities shall be provided for parents to have input into the development of the local plan.

3. Due process and equal protection considerations require the local board to include on the parent committee representatives of various disability groups, racial, socio-economic, and ethnic groups from the local district.

4. The local board shall provide staff support to the parent committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2170 (November 1999).

#### **§303. Description of Committees**

A. The local school system shall keep on file a written description of the method of selection, composition, function and activities of the local committees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2170 (November 1999).

### **§305. Public Notice**

A. Meetings of the local committees shall be conducted within the legal guidelines of Louisiana's Open Meetings Law. [R.S. 42.4.2(A) (2); Attorney General's Opinion Number 79-1045]

B. The local Pupil Progression Plan shall be adopted at a public meeting of the local board, notice of which shall be published pursuant to the Open Meetings Law. It shall be stated that once the plan is adopted, it will be submitted to the SBESE for approval pursuant to Act 750. Once the plan is approved by the SBESE, the policies in the local plan shall be incorporated into the policies and procedures manual of the local school board.

C. The statement defining the committee-selection process and the Pupil Progression Plan are public documents and must be handled within the guidelines of the Public Records Act (R.S. 44:1-42).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 1999).

### **§307. Approval Process**

#### **A. Approval**

1. Upon adoption for submission by the local school board, the plan along with a formal submission statement shall be submitted annually to the Office of Student and School Performance for review by the LDE.

#### **B. Review and Revision**

1. Local Pupil Progression Plans must be accompanied by a completed checklist.

2. Local systems will be informed in writing of approval.

3. Local systems whose plans need revision will be informed of needed changes.

4. Local systems are to resubmit revised plans for final approval, following the procedures outlined in Part B under Public Notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 1999).

## **Chapter 5. Placement Policies; State Requirements**

### **§501. State Requirements**

A. Each local Pupil Progression Plan shall contain written policies relative to regular placement and alternatives to regular placement. Such policies must conform to the requirements of these guidelines.

B. Based upon local school board policy pursuant to these guidelines, each teacher shall, on an individualized basis, determine promotion or placement of each student [Act 750; R.S. 17:24.4(G)]. Local School Board policies relative to pupil progression will apply to students placed in regular education programs as well as to exceptional students and to students placed in alternative programs. Placement decisions for exceptional students must be made in accordance with the least restrictive environment requirements of state and federal laws (Act 754 regulations, subsection 443).

C. No school board member, school superintendent, assistant superintendent, principal, guidance counselor, other teacher, or other administrative staff members of the school or the central staff of the parish or city school board shall attempt, directly or indirectly, to influence, alter, or otherwise affect the grade received by a student from his/her teacher (R.S. 17:414.2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 1999).

### **§503. Regular Placement<sup>1</sup>**

#### **A. Promotion—Grades K-12**

1. Promotion from one grade to another shall be based on the following statewide evaluative criteria.

a. Requirements in Bulletin 741, Louisiana Handbook for School Administrators

i. Each plan shall include the school attendance requirements.

ii. Each plan shall include the course requirements for promotion by grade levels.

iii. Each plan shall include other applicable requirements.

b. Requirements of the Louisiana Educational Assessment Program

i. Each plan shall include the statement that, in addition to completing a minimum of 23 Carnegie units of credit as presented by SBESE, the student shall be required to pass all components of the Graduation Exit Examination in order to receive a high school diploma.

ii.(a). No fourth or eighth grade student shall be promoted if he or she scores at the "Unsatisfactory" level on the English language arts or mathematics components of LEAP for the 21st century (LEAP 21).

(b). Exceptions. This state policy may be overridden by the School Building Level Committee (and therefore the student can be promoted) only under the following conditions:

(i). if a given student scores at the "Unsatisfactory" level in English language arts or mathematics and scores at the "Proficient" or "Advanced" level in the other;

(ii). if a student with disabilities has participated in an alternative assessment;

(iii). for the 1999/2000 school year only, if a given student had been formerly classified as Alternative to Regular Placement (ARP) during the 1997-98 school year and if that student has participated in summer programs and retesting.

iii. Summer school and end-of-summer retest must be offered by school systems at no costs to all students who score at the "Unsatisfactory" level.

iv. Fourth grade students who are 12 years old on or before September 30 (and still have not scored above "Unsatisfactory") must be enrolled in an alternative setting or program.

v. A school system, through its superintendent, may apply for an appeal on behalf of individual fourth grade students who have not scored above the "Unsatisfactory" level after retesting provided that certain criteria are met.

vi. Eighth grade students who are 16 years of age on or before September 30 must enroll in an alternative program or setting, Option 2 or Option 3.

(a). Option 2—placement in a transitional program at the traditional high school campus where students take non-credit remedial courses in English language arts and/or mathematics and may take credit courses in other subjects. Students may remain in Option 2 for a maximum of two years and will participate in the Grade 8 LEAP 21.

(b). Option 3—placement in an alternative program/setting, job skills training program or other program designed to meet students' needs. Students are working toward a GED, certificate of completion, or other diploma options. Students in Option 3 may choose to take the eighth grade LEAP 21 for a maximum two years.

vii. Exceptional students participating in LEAP 21 must be provided with significant accommodations as noted in the students IEP.

viii. The aforementioned policies will be in effect from Spring 2000 through Spring 2003. Beginning in Spring 2004, the policies will also apply to students scoring at the "Approaching Basic" level.

c. Other Requirements

i. Each plan shall include the function of the school building level committee/student assistance team as it relates to student promotion.

B. Retention—Grades K-12

1. Retention of a student shall be based upon the student's failure to meet the criteria established by local boards for promotion and other criteria contained in these guidelines.

C. Acceleration

1. Grades K-8

a. The local school board shall establish written policies and procedures for the placement of students who evidence that they will benefit more from the instructional program at an advanced grade level.

2. Grades 9-12

a. The local school board shall follow the policies and procedures established in Bulletin 741, *Louisiana Handbook for School Administrators*, and other local requirements for student acceleration.

D. Transfer Students

1. The local school board shall establish written policies for the placement of students transferring from all other systems and home study programs (public, nonpublic, (both in and out-of-state), and foreign countries).

<sup>1</sup>Schools can only make recommendations to parents regarding student enrollment in kindergarten, since kindergarten is not mandatory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 1999).

**§505. Progression—Students Participating in Alternate Assessment**

A. The local school board shall establish written policies for progression of those exceptional students who are participating in alternate assessment.

1. The students participating in the alternate assessment will progress from one grade level to the next if they meet the following assurances.

a. The student has met attendance requirements according to Bulletin 741.

b. The student has completed 70 percent of his annual goals.

c. Transition planning, if noted on the IEP, has been addressed by the student and documented by the teacher.

d. The student participated in the alternate assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 1999).

**§507. Alternatives to Regular Placement**

A. The local school board shall establish written policies for all alternatives to regular placement. Prior to a student's being removed from the regular program and being placed in an alternative program, written informed consent by the student's parents or guardians must be obtained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 1999).

**§509. Alternative Schools/Programs**

A. The local school board may establish alternative schools/programs which shall respond to particular educational need(s) within the community.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 1999).

**§511. Review of Placement**

A. Review of promotion and placement decisions may be initiated by the local school board, superintendent and/or parent or guardian [Act 750; R.S. 17:24.4(G)].

B. Each local school board may adopt policies whereby it may review promotion and placement decisions in order to insure compliance with its local plan [Act 750; R.S. 17:24.4(G)].

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 1999).

**§513. Policies on Records and Reports**

A. Local school systems shall maintain permanent records of each student's placement, K-12. Each record shall be maintained as a part of the student's cumulative file.

B. Student records for the purposes of these guidelines shall include:

1. course grades;
2. scores on the Louisiana Educational Assessment Program;
3. scores on local testing programs and screening instruments necessary to document the local criteria for promotion;
4. information (or reason) for student placement (see definition of *placement*);
5. documentation of results of student participation in remedial and alternative programs;
6. special education documents as specified in the approved IDEA-Part B, LEA application;

7. a copy of the letter informing the parent of either the placement of the student in or the removal of the student from a remedial program;

8. a copy of the parent's written consent for either the placement of a student in or the removal of a student from an alternative to regular placement program;

9. a statement regarding written notification to parent concerning retention and due process procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 1999).

#### **§515. Policies on Due Process**

A. Due process procedures for teachers, students, and parents shall be specified in each local Pupil Progression Plan as related to student placement. The local school system must assure that these procedures do not contradict the due process rights of exceptional students as defined in the IDEA-Part B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999).

### **Chapter 7. Placement Policies; Local Options**

#### **§701. Local Options**

A. In addition to the statewide mandatory criteria for student placement in Chapter 5, §501 of these guidelines, local school boards, by written local policies, may also establish local criteria to be used in determining student placement. Such criteria shall be compatible with the statewide criteria established in Chapter 5, §501 and shall be submitted to the LDE as part of the local Pupil Progression Plan.

B. Local option criteria for Pupil Progression Plans shall conform to the following guidelines. Additionally, at the option of local school systems, the plans may include other factors to be considered in pupil placements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999).

#### **§703. Legislative Guidelines**

A. Local school systems are encouraged to develop local criterion-referenced testing programs for local assessment use [Act 621; R.S. 17:391.7(G) and Act 750; R.S. 17:24(H)].

B. Local criteria for K-12 must supplement the content standards approved by the SBESE [Act 750; R.S. 17:24(G)].

C. Local criteria must be coordinated with statewide curricular standards for required subjects, to be developed as part of the competency-based education plan [Act 750; R.S. 17:24.4(E) and (G)].

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999).

#### **§705. Departmental Guidelines**

A. Student scores on local testing programs may be used as additional criteria for determining pupil progression. Additional skills may be specified and tested for mastery at the local level as additional criteria for placement.

B. With reference to pupil placement, the local school system shall state the name of the instrument and publisher of other testing and screening programs to be used locally in grades K-12 for regular and exceptional students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999).

### **§707. Other Local Option Factors**

A. In conjunction with the enumerated legislated guidelines and LDE directives, local school systems may include evaluative criteria in their local Pupil Progression Plans. If other criteria are used, the Pupil Progression Plan must so specify.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999).

### **Chapter 9. Regulations for the Implementation of Remedial Education Programs Related to the LEAP/CRT Program**

#### **§901. Preface**

A. The regulations for remedial education programs approved by the State Board of Elementary and Secondary Education are an addendum to Bulletin 1566, *Guidelines for Pupil Progression*, Board Policy 4.01.90. The regulations provide for the development of local remedial education programs by local education agencies.

B. The Louisiana Department of Education shall recommend for approval by the SBESE only those local remedial education plans in compliance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999).

#### **§903. Legal Authorization**

A. R.S. 17:24.4(G) provides that those students who fail to meet required proficiency levels on the state administered criterion-referenced tests of the Louisiana Educational Assessment Program shall receive remedial education programs that comply with regulations adopted by the State Board of Elementary and Secondary Education.

B. R.S. 17:394 - 400 is the established legislation for the remedial education programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999).

#### **§905. Definition and Purpose**

A. Definitions

*Department*—is the Louisiana Department of Education.

*Remedial Education Programs*—are defined as local programs designed to assist students, including identified students with disabilities, to overcome their educational deficits identified as a result of the state's criterion-referenced testing program for grades 4 and 8 and the Graduation Exit Examination (R.S. 17:396, 397, 24.4 and Board Policy).

*State Board*—is the State Board of Elementary and Secondary Education.

B. Purpose

1. The purpose of the Louisiana Remedial Education Act is to provide supplemental funds for the delivery of supplemental remedial instruction adapted for those eligible students in the elementary and secondary schools of this state as set forth in the city and parish school board Pupil Progression Plans approved by the SBESE. A program of remedial education shall be put into place by local parish and city school systems following regulations adopted by the Department and approved by the State Board pursuant to R.S. 17:24.4. All eligible students shall be provided with appropriate remedial instruction (R.S. 17:395 A).

2. The intent of remedial educational programs is to improve student achievement in the grade appropriate skills identified as deficient on the state's criterion-referenced testing program for grades 4 and 8 and the Graduation Exit Examination (R.S. 17:395 B and Board Policy).

3. For the Graduation Exit Examination only, remediation shall be provided in English language arts, mathematics, and written composition to all eligible students beginning in either the summer of 1989 or the 1989-90 school year. Remediation shall be provided in social studies and science for those eligible students beginning in either the summer of 1990 or during the 1990-91 regular school year (R.S. 17:24.4(G), 395 B and C and Board Policy).

4. Beginning in the Summer of 2000, remediation in the form of summer school shall be provided to students who score at the "Unsatisfactory" level on LEAP 21st Century (LEAP 21) English language arts or mathematics tests.

5. Beginning in the Fall of 2000 (or earlier), remediation shall be provided to students who score at the "Unsatisfactory" level on LEAP for the 21st Century (LEAP 21) science and social studies tests.

6. Beginning in the Fall of 2000 (or earlier), remediation is recommended for students who score at the "Approaching Basic" level on LEAP for the 21st Century (LEAP 21) English language arts, mathematics, science, or social studies tests.

7. Beyond the goal of student achievement in grade appropriate skills, additional goals are to give students a sense of success, to prevent alienation from school, and to prevent their early departure from school (R.S. 17:395 B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999).

**§907. Responsibilities of the State Board of Elementary and Secondary Education**

A The SBESE shall perform the following functions in relation to the remedial education program:

1. approve as a part of the Pupil Progression Guidelines (Bulletin 1566) the regulations for development of local remedial education programs designed to meet student deficiencies as identified through the Louisiana Educational Assessment Program in English/Language arts, written composition, mathematics, social studies and science (R.S. 17:399 A) for the Graduation Exit Examination and English language arts, mathematics, science and social studies for LEAP 21;

2. approve remedial education programs submitted by local education agencies as a part of their local Pupil Progression Plan (R.S. 17:398 B);

3. approve qualifications/certification requirements for remedial education teachers (R.S. 17:398 A);

4. receive from the Department an annual evaluation report on local remedial education programs that meet the requirements of R.S. 17:400 B;

5. approve the evaluation criteria developed by the Department for determining the effectiveness of remedial education programs [R.S. 17:399 B (2) and Board Policy].

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2174 (November 1999).

**§909. State Funding of Remedial Education Programs**

A. Remedial education funds shall be appropriated annually within the Minimum Foundation Program formula.

B. State remedial education funds shall be distributed to the parish and city school boards according to the distribution process outlined within the Minimum Foundation Program.

C. State funds for the remedial education program shall not be used to supplant other state, local, or federal funds being used for the education of such students (R.S. 17:399 (B)5). A plan for coordination of all state, local and federal funds for remediation must be developed by each LEA.

D. The use of state remedial education funds shall not result in a decrease in the use for educationally deprived children of state, local, or federal funds which, in the absence of funds under the remedial education program, have been made available for the education of such students [R.S. 17:399 (B)5].

E. For funding purposes, a student receiving remediation in English/Language arts, written composition, mathematics, social studies and/or science, shall be counted for each area in which remediation is needed (R.S. 17:398 B) for the Graduation Exit Examination and for English language arts and mathematics for LEAP 21.

F. Students in the State Remediation Program are also included in the student membership count for MFP funding purposes.

G. The remedial education program shall be coordinated with locally funded and/or federally funded remedial education programs, but shall remain as a separate remedial program.

H. If the Department determines through its monitoring authority that a city or parish board is not actually providing the type of remedial education program that was approved through its Pupil Progression Plan or is not complying with state evaluation regulations, the Department shall recommend appropriate action until such time as it is determined that the school board is in compliance with its approved Pupil Progression Plan and with state evaluation regulations.

I. The state and local funds expended in the program shall be included in the instructional parameters for each city or parish school board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2174 (November 1999).

### **§911. Criteria for State Approval**

#### **A. Student Eligibility**

1. Any public elementary or secondary student, including an exceptional student participating in LEAP 21, who does not meet the performance standards established by the Department and approved by the State Board, as measured by the state criterion-referenced tests, shall be provided remedial education (R.S. 17:397).

2. The failure of Special Education students to achieve performance standards on the state criterion-referenced tests does not qualify such students for special education extended school year programs (Board Policy).

#### **B. Teacher Qualifications**

1. Remedial teachers shall possess the appropriate certification/qualifications as required by the SBESE.

2. Parish and city school boards may employ an instructional paraprofessional under the immediate supervision of a regularly certified teacher to assist with the remediation. Paraprofessionals must have all of the following qualifications:

- a. must be at least twenty years of age;
- b. must possess a high school diploma or its equivalent; and
- c. must have taken a nationally validated achievement test and scored such as to demonstrate a level of achievement equivalent to the normal achievement level of a tenth grade student (R.S. 17:398A and Board Policy).

3. Parish and city school boards may employ educators already employed as regular or special education teachers to provide remedial instruction. These educators may receive additional compensation for remedial instruction, provided the services are performed in addition to their regular duties (R.S. 17:398 A).

#### **C. Program Requirements**

##### **1. Student Profile**

a. The Remedial Education Student Profile for the LEAP 21/Graduation Exit Examination, provided by the LDE shall be used by the local school system for providing remediation for each eligible student (Board Policy).

##### **2. Coordination With Other Programs**

a. The school system shall assure that coordination and communication occur on a regular basis among all who provide instruction for a student receiving remedial instruction (Board Policy).

##### **3. Instruction**

a. For the Graduation Exit Examination, remediation shall be provided in English language arts, mathematics and writing to all eligible students beginning in either the summer of 1989 or the 1989-90 school year. Remediation shall be provided in social studies and science for those eligible students beginning in either the summer of 1990 or during the 1990-91 regular school year (R.S. 17:24.4(G); 395 B and C and Board Policy).

b. Beginning in the Summer of 2000, remediation in the form of summer school shall be provided to students who score at the "Unsatisfactory" level on LEAP 21st Century (LEAP 21) English language arts or mathematics tests.

c. Beginning in the Fall of 2000 (or earlier), remediation shall be provided to students who score at the

"Unsatisfactory" level on LEAP for the 21st Century (LEAP 21) science and social studies tests.

d. Beginning in the Fall of 2000 (or earlier), remediation is recommended for students who score at the "Approaching Basic" level on LEAP for the 21st Century (LEAP 21) English language arts, mathematics, science, or social studies tests.

e. Instruction shall include but not be limited to the philosophy, the methods, and the materials included in local curricula that are based upon State Content Standards in mathematics, English language arts, science and social studies (Board Policy 3.01.08).

f. Remedial methods and materials shall supplement and reinforce those methods and materials used in the regular program (Board Policy).

g. Each student achieving mastery criteria shall continue receiving instruction for maintenance of grade appropriate skills. The amount of instruction shall be based upon student need (R.S. 17:395.E).

#### **D. Student Assessment**

1. The parish and city school boards shall develop, as part of their Pupil Progression Plans, mastery criteria based on the State Content Standards and local curricula based on these standards (R.S. 17:395 D and Board Policy).

2. For Graduation Exit Examination these mastery criteria shall be used in determining the extent of student achievement in those grade appropriate skills in English language arts, written composition, mathematics, social studies, and/or science in which he/she was found deficient (R.S. 17:395 D, 17:24.4(G) and Board Policy).

3. For LEAP 21, these mastery criteria shall be used in determining the extent of student achievement in those grade appropriate skills in English language arts, mathematics, science and social studies.

4. School systems shall describe the methods used to measure student achievement of these criteria (R.S. 17:395 D and Board Policy).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2175 (November 1999).

### **§913. Local Program Development and Evaluation**

A. Each parish and city school board shall develop annually a remedial education program as part of its Pupil Progression Plan, which complies with the established regulations adopted by the Department and approved by the SBESE pursuant to R.S. 17.24.4. The remedial education plan shall be reviewed annually by the Department prior to recommendation for approval by the SBESE (R.S. 17:395 A and Board Policy).

B. The remedial education plan shall describe all remedial instruction and proposals for program improvement. Proposals shall include a narrative that shall incorporate the following:

1. program objective;
2. student population to be served and the selection criteria to be used;
3. methodologies, materials, and/or equipment to be used in meeting the remediation needs;
4. brief description of the remedial course;
5. plan for coordination of state, federal, and local funds for remediation;

6. procedure for documenting student's and parent(s) refusal to accept remediation;

7. evaluation plan encompassing both the educational process and the growth and achievement evidenced of students (R.S. 17:399A).

C. The remedial program shall be based on performance objectives related to educational achievement in grade appropriate skills addressed through the statewide curriculum standards for required subjects, and shall provide supplementary services to meet the educational needs of each participating student.

D. Each local school system shall adhere to the remedial education plan as stated in its approved Pupil Progression Plan and shall provide services accordingly (R.S. 17:400 A and Board Policy).

E. Each local school system shall include within the remedial education plan a summary of how state, federal, and local funds allocated for remediation have been coordinated to ensure effective use of such funds [R.S. 399 A (5) and B (4) and Board Policy].

F. Each local school system shall maintain a systematic procedure for identifying students eligible for remedial education (R.S. 17:397).

G. Each local school system shall offer remediation accessible to all students. Refusal to accept remediation by student and parent(s) must have written documentation signed by student and parent(s).

H. A list of all students eligible for remediation shall be maintained at the central office level with individual school lists maintained at the building level (Board Policy).

I. Each local school system shall participate in the evaluation of the Remedial Education Program conducted by the Department [17:399 A (6) and Board Policy].

J.1. Each local school system shall complete an annual evaluation of its program, using the approved Department guidelines, and shall submit the evaluation report to the State Superintendent by June 15 of each year [R.S. 17:399 B (1) and Board Policy]. The evaluation plan shall include specific means to examine and document:

- a. student performance;
- b. coordination with other programs;
- c. instruction.

2. The evaluation shall be conducted as described in the local evaluation plan (Board Policy).

K. Annually, prior to October 15, each school system shall report to the public the results of its efforts to provide a remedial education program and the results of the monitoring review submitted by the State Superintendent (Board Policy).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2175 (November 1999).

#### **§915. State Department of Education Responsibilities**

A. The Department shall be responsible for reviewing plans, monitoring implementation, and evaluating the remedial education programs of the local school system (R.S. 17:400 A).

B. The State Superintendent of Education shall prepare an annual report for submission to the SBESE and the Joint Committee on Education of the Louisiana Legislature which shall contain:

1. the number of students participating in remedial education programs; and

2. the level of student achievement.

C. The department shall provide guidelines for local evaluation of programs, shall review the local evaluation plans, shall monitor the implementation of remedial education plans, and shall receive and approve evaluation reports (R.S. 17:400 A and Board Policy).

D. Within 60 days of receipt of the evaluation report from the local school system, the Department shall submit to each local school system an analysis of the system's evaluation report and the Department's monitoring results (Board Policy).

E. The Department shall provide technical assistance to the city and parish school boards which shall include:

1. assistance with development of the remedial section of the Pupil Progression Plan;
2. assistance with staff development;
3. assistance with the use of appropriate Department forms;
4. assistance with program implementation; and
5. assistance with conducting local evaluations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2176 (November 1999).

#### **Chapter 11. Appendix A §1101. Definition Of Terms**

A. As used in this bulletin the terms shall be defined as follows:

##### **1. State Terms**

*Acceleration*—advancement of a pupil at a rate faster than usual in or from a given grade or course. This may include "gifted student" as identified according to Bulletin 1508.

*Alternate Assessment*—the substitute way of gathering information on the performance and progress of students who do not participate in typical state assessments.

*Alternative to Regular Placement*—placement of students in programs not required to address the State Content Standards.

*Content Standards*—statements of what we expect students to know and be able to do in various content areas.

*LEAP 21 Summer School*—the summer school program offered by the LEA for the specific purpose of preparing students to pass the LEAP 21 test in English language arts, or mathematics.

*Louisiana Educational Assessment Program (LEAP)*—the state's testing program that includes the grades 3, 5, 6, 7 and 9 Louisiana Norm-referenced Testing Program; the grades 4 and 8 Criterion-referenced Testing Program including English language arts, mathematics, social studies and science and the Graduation Exit Examination (English language arts, mathematics, written composition, science and social studies).

*Promotion*—a pupil's placement from a lower to a higher grade based on local and state criteria contained in these Guidelines.

*Pupil Progression Plan*—"The comprehensive plan developed and adopted by each parish or city school board which shall be based on student performance on the Louisiana Educational Assessment Program with goals and

objectives which are compatible with the Louisiana competency-based education program and which supplement standards approved by the State Board of Elementary and Secondary Education (SBESE). A Pupil Progression Plan shall require the student's proficiency on certain test as determined by SBESE before he or she can be recommended for promotion."

*Regular Placement*—the assignment of students to classes, grades, or programs based on a set of criteria established in the Pupil Progression Plan. Placement includes promotion, retention, remediation, and acceleration.

*Remedial Programs*—programs designed to assist students including identified exceptional and Non/Limited English Proficient (LEP) students, to overcome educational deficits identified through the Louisiana Education Assessment Program and other local criteria.

*Remediation*—see Remedial Programs.

*Retention*—nonpromotion of a pupil from a lower to a higher grade.

## 2. Local Terms

a. The definition of *terms* used in a local school system plan must be clearly defined for use as the basis for interpretation of the components of the plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2176 (November 1999).

Weegie Peabody  
Executive Director

9911#039

## RULE

### Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Payment Program for Medical School Students  
(LAC 28:IV.2301, 2303, 2313)

The Louisiana Student Financial Assistance Commission (LASFAC) hereby implements rules for the Tuition Payment Program for Medical School Students as follows.

#### Title 28 EDUCATION

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

#### Chapter 23. Tuition Payment Program for Medical School Students

#### §2301. General Provisions

A. - B. ...

1. annually awards not more than four monetary loans to eligible students who commit to practice the profession of medicine as a primary care physician, as defined herein, for at least two consecutive years in a rural or poor community in Louisiana designated a "rural health shortage area" by the Louisiana Department of Health and Hospitals (hereinafter referred to as a "Designated Area"). When the individual receiving the award practices medicine in a Designated Area for two consecutive years as provided in these rules, the loans are forgiven in full.

2. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3041.10-3041.15.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:2177 (November 1999).

#### §2303. Establishing Eligibility

A. - A.4. ...

5. agree to the full time practice of the profession of medicine as a primary care physician in a Designated Area for at least two consecutive years after graduating from medical school and completing a residency program in a primary care field as defined in §2303.D, above; and

A.6. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3041.10-3041.15.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:2177 (November 1999).

#### §2313. Discharge of Obligation

A. The loan may be discharged by engaging in a full-time primary care medical practice in a Designated Area for a period of two years, by monetary repayment or by cancellation.

B. Discharging the loan by entering into the full-time practice as a primary care physician in a Designated Area is accomplished by:

1. completing a residency in a primary care field of medicine within four (4) years of the graduation from medical school; and

2. practice as a primary care physician on a full time basis for a period of at least two consecutive years in a Designated Area.

C. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3041.10-3041.15.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:2177 (November 1999).

Jack L. Guinn  
Executive Director

9911#001

## RULE

### Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Inactive and Abandoned Sites  
(LAC 33:VI.Chapters 1-8)(IA002)

Editor's Note: Due to reengineering at the Department of Environmental Quality effective July 1, 1999, the Office and Division names have been changed in the Notice of Intent heading and in the Historical Note for each section in this rule. The contents of the Notice and the rule have not changed, with the exception of technical amendments to the proposed rule.

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted the Inactive and Abandoned Sites regulations, LAC 33:VI.Chapters 1-8 (IA002).

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

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

### **Title 33**

## **ENVIRONMENTAL QUALITY**

### **Part VI. Inactive and Abandoned Hazardous Waste and Hazardous Substance Remediation Site**

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

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

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

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

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

D. These regulations provide the opportunity for public participation.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2178 (November 1999).

##### **§103. Regulatory Overview**

A. Purpose. This Section provides an overview of identification, investigation, and remediation activities for sites where hazardous substances could have been disposed of and from which such hazardous substances could be discharged. This Section is a summary only; if there are any inconsistencies between this Section and the remainder of these regulations, the regulations shall govern.

###### **B. Site Discovery and Evaluation**

1. Site Discovery Reporting. These regulations establish a reporting program as required by the Louisiana Environmental Quality Act to help identify inactive or

uncontrolled sites where hazardous substances could have been disposed of or discharged. Owners, lessees, and other persons who know or discover that hazardous substances have been discharged or disposed of at such a site must report this information to the department within the specified time. The department may also discover sites through its own investigations, referrals from other agencies, or other means.

2. Integrated Data Management Database. Sites reported are placed in the department's integrated data management database. This database provides the department with an accurate inventory of all potential and confirmed sites in the state. All sites in the integrated data management database may not be remediated under the authority of the department; some sites may be referred to other federal and/or state programs, and some sites may not require remediation.

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

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

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

2. A corrective action study (CAS) shall be performed by PRPs or the department to develop appropriate remedial alternatives for achieving the preliminary goals identified in the RI report and to provide performance and cost data for use in evaluating these alternatives and selecting a remedy.

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

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

D. Enforcement and Potentially Responsible Party Participation. It is the policy of the department that, where possible, the cost of actions taken in accordance with the act and these regulations shall be borne by potentially responsible parties. In furtherance of that policy, the department shall invite PRPs to participate in the investigation and remediation process. The department shall impose a limited moratorium on its own site work and enforcement action while it negotiates good faith offer(s)

received from one or more PRPs. The department retains the right to fully exercise all other enforcement authorities granted it by law, including administrative and judicial orders.

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2178 (November 1999).

#### **§105. Compliance with other Laws**

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2179 (November 1999).

#### **§107. Authority**

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2179 (November 1999).

#### **§109. Enforcement**

Failure to comply with the provisions of these regulations or with the terms and conditions of any order issued hereunder constitutes a violation of the act and these regulations. Such violations shall be subject to any enforcement action including penalties in accordance with R.S. 30:2025.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2179 (November 1999).

#### **§111. Construction of Rules**

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

B. The terms *applicable*, *appropriate*, *relevant*, and similar terms implying discretion mean as determined by the

department, with the burden of proof on other persons to demonstrate that the requirements are or are not necessary.

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

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

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

F. *Shall* means the provision is mandatory.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2179 (November 1999).

#### **§113. Severability**

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2179 (November 1999).

#### **§115. Computation of Time**

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2179 (November 1999).

#### **§117. Definitions**

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

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

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

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

*Agent In Charge*—the person who represents a site at the time of sampling. This can be a representative of the following: the owner or operator, a PRP or group of PRPs, a

bankruptcy trustee, the executor of an estate, an attorney representing any of these parties, or any other person with similar responsibilities.

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

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

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

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

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

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

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

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

*Department*—Louisiana Department of Environmental Quality.

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

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

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

*Environmentally Sensitive Area*—an area needing an increased level of environmental protection, such as areas near schools and within wellhead protection areas; or an area having a terrestrial or aquatic resource, fragile natural setting, or other highly-valued environmental or cultural features such as wetlands, endangered or threatened species

habitat or breeding areas, national or state parks, wildlife refuges or management areas, areas near scenic or wild rivers or streams, or national or state forests.

*EPA*—the United States Environmental Protection Agency.

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

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

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

*Hazardous Substance*—any gaseous, liquid, or solid material that, because of its quantity, concentration, or physical, chemical, or biological composition when released into the environment, poses a substantial present or potential hazard to human health, the environment, or property, regardless of whether it is intended for use, reuse, or is to be discarded. This term includes all hazardous waste, hazardous constituents, hazardous materials, and pollutants. The term *hazardous substance* does not include petroleum, including crude oil or any fraction thereof, that is not otherwise specifically listed or designated as a hazardous substance under this Section, and does not include natural gas, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). The term does include petroleum products that contain hazardous waste, hazardous substances, or hazardous waste constituents, except where the nature of such hazardous waste, substances, or constituents and the concentrations in which they are found in the petroleum products indicate that the contaminant is an indigenous component of the petroleum product. Notwithstanding the foregoing, the term *hazardous substance* does not include compressed air, firecrackers, carbon paper, coal briquettes, dry ice, fish meal, flares, electric wheel chairs, motor vehicles, and tear gas devices. The following substances have been designated as hazardous by regulation:

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

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

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

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

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

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

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

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

*Minimum Remediation Standards*—the levels of hazardous substances in media that are considered by the department to be acceptable according to risk-based standards established by the Risk Evaluation/Corrective Action Program (RECAP) in accordance with LAC 33:I.Chapter 13.

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

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

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

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

*Oversight*—all activities performed by the department to ensure that the activities of PRPs in conducting site investigations or remedial actions relative to a site are performed in compliance with Louisiana statutes, applicable state and federal regulations, work plans approved by the department, and accepted practices and procedures. Oversight activities by the department include, but are not

limited to, site inspections; the review and approval of work plans, submittals, and reports; confirmatory sampling and analysis; the evaluation and interpretation of data, plans, and reports as submitted by PRPs; and public participation activities.

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

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

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

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

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

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

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

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

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

*Preliminary RECAP Standards*—the level of hazardous substances proposed to remain in the media after the successful completion of a final remedy in accordance with RECAP.

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

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

*Remedial Action*—the removal, confinement, or storage of any hazardous substance, including constructing barriers, securing the site, encapsulating in clay or other impermeable material, or otherwise containing or isolating the hazardous substance; cleaning up contamination; recycling or reusing of hazardous substances; diverting, destroying, or segregating reactive or other wastes; dredging or excavating a site; repairing or replacing leaking containers; collecting

leachate and runoff; on-site treatment or incinerating of a substance; providing alternative water supplies; monitoring, testing, or analyzing; employing legal, engineering, chemical, biological, architectural, or other professional consultants or personnel; investigating, initiating, or prosecuting of administrative proceedings or lawsuits to final judgment; transporting and disposing of waste from a site; and any other action the department deems necessary to restore the site or remove the hazardous substance. The definition of *remedial action* shall include all types of action referred to as response actions in CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (*Federal Register* 55(46): 8666, March 8, 1990), and includes any action referred to as a remedy in these regulations.

*Remedial Cost*—all reasonable costs associated with site discovery, investigation, and evaluation; administrative costs of the department relative to a site; costs associated with public participation; oversight costs and costs including, but not limited to, removing, confining, or storing any hazardous substance; constructing barriers, securing the site, and encapsulating in clay or other impermeable material; cleaning up of contamination; recycling or reusing of a hazardous substance; diverting, destroying, or segregating reactive or other wastes; dredging or excavating a site; repairing or replacing leaking containers; collecting leachate and runoff; on-site treatment or incinerating of a substance; providing alternative watersupplies; monitoring, testing, or analyzing; employing legal, engineering, chemical, biological, architectural, or other professional consultants or personnel; investigating, initiating, or prosecuting lawsuits to final judgement; transporting and disposing of waste from the site; or any other action the secretary determines necessary to restore the site or remove the hazardous substance.

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2179 (November 1999).

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

### **§201. Site Discovery**

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

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

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

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

2. The department must be notified regardless of whether the contaminants were discovered before or after the effective date of these regulations.

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

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

b. if the report was delivered by other means (e.g., hand-delivered, telefaxed), the notification date shall be the date of receipt of the report by the department.

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

a. the location of the inactive or uncontrolled site;

b. the types of hazardous substances disposed of or discharged at the site;

c. the amounts of such hazardous substances;

d. other names the plant, facility, or site operated under in the past; and

e. the history of operations at the site.

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

a. application of pesticides and other agricultural chemicals;

b. use of hazardous substances for domestic purposes;

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

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

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

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

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

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

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

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

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

c. bankruptcy notices.

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2182 (November 1999).

### **§203. Integrated Data Management Database**

A. Each site reported to or discovered by the department in accordance with this Chapter will be placed in the department's integrated data management database. This database includes lists of both potential and confirmed sites.

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

1. no evidence of contamination by hazardous substance(s) was observed at the site;

2. the site does not fall under the jurisdiction of the department due to statutory, regulatory, or legal requirements;

3. remedial actions were successfully completed at the site;

4. any and all hazardous substances on site do not pose or present an imminent and substantial endangerment to health or the environment;

5. the site does not exist based on current information; or

6. adequate information is not available to determine whether or not the site does exist.

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2183 (November 1999).

### **§205. Preliminary Evaluation**

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

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

1. determine whether the site could best be handled under the authority of the United States Environmental Protection Agency or by state regulatory authority;

2. for sites under state authority, determine which state regulatory authority has jurisdiction over the site;

3. determine whether there is adequate evidence that hazardous substances have been discharged or disposed of at a site;

4. identify the hazardous substances (if present) and collect information regarding the extent and concentration of such substances;

5. identify site characteristics that could result in movement of the hazardous substances present at the site into or through the environment;

6. perform an initial evaluation of the potential risk to human health or the environment posed by the site; or

7. determine whether further investigation or action is necessary.

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

1. provide the department, when applicable, with access to the site and to any buildings or structures on the site in accordance with R.S. 30:2012; and

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2183 (November 1999).

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2184 (November 1999).

#### **§303. Declaration that a Site is Abandoned**

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

1. has received for storage, treatment, or disposal or now contains or emits wastes that are identified, classified,

or defined to be hazardous wastes in accordance with these regulations;

2. was not closed in accordance with the requirements of the act, as defined in these regulations, and other regulations adopted thereunder;

3. constitutes or could constitute a danger or potential danger to human health and the environment; and

4. has no financially responsible owner or operator who can be located by the department or has one or more financially responsible owners or operators who have failed or refused to undertake actions ordered by the administrative authority in accordance with R.S. 30:2204(A) or (B).

#### **B. Site Owner(s) Notice and Response**

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

a. the site is to be declared abandoned;

b. the owner is liable for the costs of the investigation and remediation of the site;

c. the declaration of abandonment and/or use of the property for disposal of hazardous wastes may be recorded in the mortgage records of the parish where the property is located in accordance with R.S. 30:2039; and

d. a lien may be imposed on the property in accordance with R.S. 30:2225(F)(1).

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

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

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

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

a. acquiring emergency easements and rights of way;

b. conducting negotiations for property acquisition; and

c. exercising the right of eminent domain, as provided by R.S. 30:2036, to secure the site or compel cleanup or containment of hazardous substances consistent with these and other regulations and guidelines established by the administrative authority.

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2184 (November 1999).

### §305. Property Liens

#### A. Liens Against Property Declared Abandoned by the Department

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

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

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

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

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

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

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

- c. the owner may apply to the administrative authority or file an action in the district court seeking to reduce the value of the lien to have the debt so recorded be reduced to the appraised value of the property. If the administrative authority or the court finds that such a reduction is appropriate, the administrative authority or the court shall authorize the clerk to reduce the value of the lien.

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

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

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

recorded security interests only to the extent of the fair market value of the property prior to all remedial actions by the state.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2185 (November 1999).

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

#### §401. PRP Search

##### A. Purpose

1. The purpose of this Chapter is to provide a mechanism for the department to ensure that the costs of remedial actions are borne by the potentially responsible parties for each site where hazardous substances are present, while at the same time reserving for the department the right to respond as quickly as possible to sites where hazardous substances could be present and the right to institute legal actions against those parties potentially responsible for remedial costs.

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

##### B. Preliminary PRP List

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

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

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

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

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

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

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

- v. owns or owned or operates or operated the pollution source or facility subsequent to the disposal of a hazardous substance.

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2185 (November 1999).

### **§403. Notification to Provide Information**

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

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

1. the types of hazardous substances and their chemical name or makeup, if known;
2. the quantities of hazardous substances disposed of or discharged;
3. the location(s) of disposal or discharge from any known pollution source or facility;
4. dates of disposal of hazardous substances and quantities disposed of on each date;
5. names of persons providing transportation of hazardous substances; and
6. names of owners or operators of the site at the time of disposal or discharge of hazardous substances.

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2186 (November 1999).

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

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

B. Upon receipt of a demand for remediation, a PRP must respond to the administrative authority within 60 calendar days with a good faith proposal to undertake the remedial actions approved by the administrative authority in accordance with LAC 33:VI.705.B. The administrative authority may grant reasonable extensions to the 60-day period upon written request submitted by a PRP prior to the expiration of the initial period.

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

D. If, after investigation, the administrative authority determines that it is not feasible to make demand on every

known PRP for a particular site in accordance with R.S. 30:2275(D) and these regulations, then such demand may be limited to those parties determined most responsible by the administrative authority.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2186 (November 1999).

## **Chapter 5. Site Remediation**

### **§501. Remedial Actions**

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2186 (November 1999).

### **§502. Role of PRPs in Remedial Actions**

A. The department may, as its sole discretion, direct PRPs to perform any site investigation, remedial

investigation, corrective action study, and/or remedial action in accordance with the following:

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2186 (November 1999).

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

The goal of site remediation activities is to achieve the minimum remediation standards defined in the RECAP standards in accordance with LAC 33:I.Chapter 13. The standards shall be used in determining the remedial goals at the site.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2187 (November 1999).

#### **§505. Removal Action**

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

1. Removal actions may:

a. achieve the RECAP standards for the site as a whole;

b. achieve the RECAP standards for a part of the site; or

c. provide a partial remedy (i.e., provide a remedy for some of the hazardous substances from all or part of the site, but not completely achieve the RECAP standards).

2. Removal actions shall be consistent with the final remedy (defined in LAC 33:VI.511) if the final remedy is known.

3. The success of the removal action shall be verified by the department, or PRPs as directed by the department, using confirmation sampling.

4. If the removal action results in achievement of the RECAP standards established by the department, the

department may determine that no further action is required. The department may then issue a decision document stating that the removal action is the final remedy and no further action is required.

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

B. A removal action work plan shall be prepared by the department, or by PRPs as directed by the department. Any plan prepared by PRPs shall be reviewed and approved by the department prior to the commencement of the removal action. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' plan. The minimum requirements for a removal action work plan include:

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

2. a description of the intended removal action activities;

3. a sampling and analysis plan; and

4. a site-specific health and safety plan.

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2187 (November 1999).

#### **§507. Remedial Investigation**

A. A Remedial Investigation (RI) includes:

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

2. the development of preliminary RECAP standards.

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

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

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

a. identification of all data needs following the review of existing preliminary evaluation reports and other existing data;

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

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

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

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

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

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

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

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

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

c. characteristics of all contaminated media at the site;

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

e. extent of the contamination at the site;

f. actual and potential exposure pathways through environmental media;

g. actual and potential receptors;

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

i. other factors that impact the remedial alternatives investigated.

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

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

a. a scope and description of the investigation;

b. a site background summary;

c. sampling and analysis results;

d. identification of the sources of release;

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

f. proposed preliminary RECAP standards; and

g. conclusions and recommendations for further action.

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2187 (November 1999).

#### **§509. Corrective Action Study**

A. A Corrective Action Study (CAS) includes:

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

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

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

C. Corrective Action Study Activities

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

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

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

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

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

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

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

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

c. Infeasible Alternatives. Alternatives that may ultimately prove to be technically or administratively

infeasible to implement shall be eliminated from further consideration;

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

e. Regulatory Requirements. Remedial actions must meet all state and federal Applicable, Relevant, and Appropriate Requirements (ARARs) for the location or for specific remedies, unless the requirements of LAC 33:VI.511.A.3 are met.

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

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

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

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

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

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

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

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

i. the treatment process used and materials treated;

ii. the amount of hazardous materials destroyed or treated;

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

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

d. short-term effectiveness, considering:

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

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

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

e. implementability, considering:

i. the ability to construct and operate the technology at the site;

ii. the reliability of the technology;

iii. the cost of undertaking additional remedial actions (if necessary);

iv. the ability to monitor effectiveness of the remedy;

v. the ability to obtain approvals from other agencies;

vi. coordination with other agencies;

vii. the availability of off-site treatment, storage, and disposal services, and capacity for disposal of residuals;

viii. the availability of necessary equipment and specialists, and services and materials; and

ix. the availability of prospective technologies;

f. cost effectiveness, considering capital costs and operating and maintenance costs; and

g. compliance with all state and federal ARARs.

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2188 (November 1999).

#### **§511. Selection of the Final Remedy**

A. The final remedy shall:

1. protect human health and the environment;

2. comply with the RECAP standards determined in accordance with these regulations; and

3. comply with federal and state ARARs. An alternative remedy that does not meet an ARAR under federal environmental or state environmental or facility siting laws may be selected under the following circumstances:

a. the alternative is an interim measure and will become part of a total remedial action that will attain the ARAR;

b. compliance with the requirement will result in greater risk to human health and the environment than other alternatives;

c. compliance with the requirement is technically impracticable from an engineering perspective;

d. the alternative will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, or limitation through use of another method or approach; or

e. for a remedial action funded by the department only, an alternative that attains the ARAR will not provide a balance between the need for protection of human health and the environment at the site and the availability of monies to

other sites that could present a threat to human health and the environment.

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

1. assess the remedial alternatives described in the CAS report, considering:

- a. the goals, objectives, and requirements of the act and these regulations;
- b. state and federal ARARs;
- c. the current and expected uses of the site property;
- d. the effectiveness of the remedy in significantly reducing the volume, toxicity, or mobility of the hazardous substances at the site;
- e. the effectiveness of the remedy in permanently reducing the volume, toxicity, or mobility of the hazardous substances at the site (permanent remedies shall be preferred);
- f. the reliability of the remedial alternatives, and the potential for future remedial costs if an alternative does not achieve the desired RECAP standard;
- g. the ability to monitor remedial performance;
- h. the cost effectiveness of a final remedy (cost effectiveness shall be considered only in choosing between alternatives that each adequately meet the requirements in this Section); and
- i. other factors determined appropriate by the department;

2. finalize the RECAP standards;

3. prepare a decision document stating the final remedy that includes:

- a. the final RECAP standards for the site and a brief discussion of how these were determined;
- b. a brief description of each remedial alternative evaluated;

c. the results of the evaluation of the alternatives and identification of the alternative selected by the department;

d. a brief discussion of the strengths and weaknesses of the selected alternative relative to the site, contaminated media, and contaminants;

e. a discussion of the results of the risk assessment if the preferred alternative would result in hazardous substances, contaminants, or pollutants remaining at the site in concentrations above the RECAP standards; and

f. an explanation of any waivers of state or federal ARARs;

4. present the preferred alternative to the public in a draft decision document in accordance with the public participation procedures described in LAC 33:VI.Chapter 8; and

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

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

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

action is required and issue a decision document stating that the removal action is the final remedy.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2189 (November 1999).

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

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

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

1. a work plan, including:

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

2. a sampling and analysis plan;

3. a quality assurance/quality control plan;

4. a site-specific health and safety plan;

5. a project implementation schedule; and

6. other information required at the discretion of the department. The department may allow information to be incorporated by reference to avoid unnecessary duplication.

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

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

1. performed in compliance with the remedial design and the remedial project plan, as approved by the department; and

2. consistent with the intent of the act and these regulations.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2190 (November 1999).

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2191 (November 1999).

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2191 (November 1999).

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

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

B. Departmental assessment may result in:

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2191 (November 1999).

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

A. General

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

- a. hazardous substances remain on-site at levels above remedial goals; or
- b. post-remedial management is part of the approved remedy.

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

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

1. the name, telephone number, and address of the person responsible for the operation and maintenance of the site;
2. a description of all operation and maintenance tasks and specifications;
3. all design and construction plans;
4. any applicable equipment diagrams, specifications, and manufacturer's guidelines;
5. an operation and maintenance schedule;
6. a list of spare parts available at the site for repairs;
7. a site-specific health and safety plan; and
8. other information as requested by the department.

C. Monitoring. If required by the department, a monitoring plan shall be developed by the department, or by PRPs as directed by the department. A monitoring plan prepared by PRPs shall be submitted to the department for review and approval. The department shall provide comments to the PRPs and require revisions as necessary before approving the PRPs' plan. This plan shall include a description of provisions for monitoring of site conditions

during the post-remedial management period to prevent further endangerment to human health and the environment, including:

1. the location of monitoring points;
2. the environmental media to be monitored;
3. the hazardous substances to be monitored and the basis for their selection;
4. a monitoring schedule;
5. monitoring methodologies to be used (including sample collection procedures and laboratory methodology);
6. provisions for quality assurance and quality control;
7. data presentation and evaluation methods;
8. a contingency plan to address ineffective monitoring; and
9. provisions for reporting to the department on a semiannual basis including, at a minimum:
  - a. the findings from the previous six months;
  - b. an explanation of any anomalous or unexpected results;
  - c. an explanation of any results that are not in compliance with the RECAP standards; and
  - d. proposals for corrective action.

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

1. compliance with the O and M schedule;
2. determination of whether or not the implementation of the O and M plan is proceeding as designed to maintain the intended level of protection to human health and the environment;
3. compliance with monitoring data reporting requirements;
4. completion of any necessary repairs;
5. compliance with and effectiveness of institutional controls (if any were implemented as part of the remedy);
6. determination of whether or not any newly enacted laws or newly promulgated regulations are applicable to the site and require additional action; and
7. post-remedial management costs incurred.

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

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2191 (November 1999).

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

A. All remedial actions and post-remedial management activities performed by PRPs shall be subject to oversight by the department or the department's authorized representative.

Nothing in this Section shall affect the responsibility or liability of any PRP.

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

1. the governing legal document or settlement agreement (e.g., cooperative agreement or judicial or administrative order);
2. any statement of work, project plan (work plan, sampling and analysis plan, quality assurance/quality control plan, health and safety plan), or other plan developed and approved for the remedial action;
3. generally accepted scientific and engineering methods; and
4. all ARARs, as appropriate.

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

1. determined by the department;
2. site-specific; and
3. dependent on the nature and complexity of the remedial action.

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

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2192 (November 1999).

## **Chapter 6. Cost Recovery**

### **§601. Purpose and Scope**

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

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

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

1. no PRPs can be identified;
2. no identified PRP is financially viable;
3. the PRP identified is a parish, state or political subdivision of the state, or federal entity;
4. the department may be unable to meet its burden of proof on one or more elements of its case;
5. the time and expense of the department's effort to recover costs exceed the amount to be recovered;
6. a legal action, settlement, or agreement between the PRP(s) and the department or state precludes past, present, and/or future cost recovery; or
7. the department meets unforeseen legal, administrative, or programmatic constraints that preclude further attempts at recovering costs.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2192 (November 1999).

### **§603. Calculation and Invoicing of Remedial Costs**

A. Remedial costs shall be calculated to reflect the actual cost of remedial actions to the department, including but not limited to, all costs of investigation, remediation, enforcement, oversight, and cost recovery. Such costs shall be calculated as the sum of:

1. direct personnel costs—the total of the number of direct hours expended by all department employees with regard to a specific site multiplied by the employee's hourly rate at the time the expense was incurred;

2. fringe benefits—the total of all personnel fringe benefits based on the categories and their respective rates for hours expended by each employee at the site;

3. department's direct costs—the total of direct costs to the department, including without limitation, personnel, operating services, equipment, supplies, travel, sampling, and contractual charges; and

4. payments made by the department to its contractors—the total of all payments made by the department to its contractors, grantees, or agents for planning, management, direction, or performance of remedial and oversight actions for a specific site.

B. The department will invoice PRPs according to the cost recovery provisions defined in a legal agreement and/or R.S. 30:2271 et seq. and/or as determined necessary by the department.

C. The department may establish by rule an indirect rate and may recover indirect costs, such as office space, file storage space, utilities, insurance, equipment usage, administrative overhead, operating services, and other overhead costs.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2193 (November 1999).

### **§605. Documentation of Remedial Costs**

A. The department shall document all remedial costs. This documentation shall be the basis for recovery of remedial costs.

B. The department shall compile and retain supporting documentation for costs for which it may seek reimbursement. This documentation may include, but is not limited to:

1. time and attendance records;

2. records of the cost of site-specific travel including, but not limited to, travel reimbursement forms, requisitions, invoices, or memoranda;

3. invoices from the purchase of supplies, services, or equipment for a specific site;

4. contractor invoices;

5. cooperative agreements or other legal action documents;

6. records of site-specific direct costs, such as laboratory sampling and analytical costs, equipment rentals, copying service, or other services; and

7. records reflecting the costs of bringing an enforcement action, including without limitation, staff time, equipment use, hearing records, expert assistance, and such other items as the department determines to be a cost of the action. Contractor quarterly reports or pre-award documents that may contain confidential information concerning contractor overhead and labor rates shall not be included.

C. Unless required for a longer period of time, documents shall be retained at the offices of the department for a period of at least three years from completion of the remedial action or the time that the department determines that no further action is required at a site.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2193 (November 1999).

### **§607. Determination of Remedial Costs; Demand to PRPs**

A. Timing. The department may at any time prepare a written determination of the cost of partial or complete remediation of a site. The department may revise its determination in writing at any time thereafter.

B. Demand to PRPs. The department may seek to recover its remedial costs using any of the means described in the act and these regulations.

#### **C. Treble Liability**

1. PRPs who fail to comply with demand letters, administrative orders, or court orders concerning the site without sufficient cause are potentially liable for three times the total remedial costs.

2. In the event the court finds any PRP liable for three times the value of the remedial costs allocated by the court to that PRP, this finding shall not be used to mitigate the allocated share of other PRPs also found liable for the site.

#### **D. Review of Cost Documentation**

1. The department shall provide an opportunity for review of the cost documentation for a particular site to any person who has received a demand for payment of remedial costs from the department. The department may accept written factual information to support any dispute concerning the calculation of the demand. The department may take such further action as it determines necessary regarding review.

2. Neither the department's cost determination nor any administrative review in accordance with Subsection D.1 of this Section shall be considered to be an adjudication in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2193 (November 1999).

## **Chapter 7. Settlement and Negotiations**

### **§701. Purpose**

A. The goal of the department in all settlement negotiations with PRPs is to obtain complete site remedial actions by the PRPs and/or to collect 100 percent of the department's costs for site remediation.

B. The liability of PRPs to the department is absolute and presumed in solido.

C. Where the department finds that PRP involvement will further the department's goals, the department may enter into negotiations with the PRPs, subject to the limitations and procedures set forth in this Chapter. With the concurrence of the attorney general where required by law, the department may settle or resolve, as deemed advantageous to the state, any suits, disputes, or claims for any penalty under the act or these regulations.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2193 (November 1999).

### **§703. Cooperative Agreements**

A. Cooperative agreements may be used to reflect agreements by PRPs to conduct any remedial action at a site or to reimburse the department for remedial costs. This does not preclude the use of enforcement action, if necessary.

B. The department may enter into cooperative agreements with any person for the purpose of conducting any remedial action measures in accordance with these regulations.

C. The department may enter into a cooperative agreement with one or more PRPs as a result of negotiations.

D. Each cooperative agreement shall address the following provisions:

1. a statement of jurisdiction;
2. a description of parties bound;
3. a description of work to be performed or of costs to be paid and a schedule for such work or payment;
4. oversight by the department;
5. access;
6. reporting requirements;
7. project deliverables, including a schedule for submission and revisions;
8. project coordinators;
9. a requirement for certification upon completion of work;
10. reimbursement of remedial costs, if applicable;
11. force majeure;
12. retention of records;
13. notices and submissions;
14. effective date; and
15. appendices.

E. Each cooperative agreement may contain, but not be limited to, the following provisions:

1. indemnification of the department and insurance;
2. stipulated penalties;
3. covenants not to sue;
4. quality assurance/quality control and sampling and data analysis;
5. assurance of financial ability to complete work;
6. emergency response procedures;
7. dispute resolution procedures;
8. information to be provided to the department; and
9. public participation.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2194 (November 1999).

### **§705. Negotiations**

A. Purpose. The department's goal in negotiating PRP participation in remedial actions and reimbursement of the costs incurred by the department is to obtain complete remediation by the PRPs and/or to collect 100 percent of the department's remedial costs.

B. Good Faith Proposal

1. Upon receipt of the demand letter in accordance with LAC 33:VI.405.B or at any other time, PRPs who wish to pay for the department to conduct a remedial action or

who wish to conduct the action themselves shall respond in writing within 60 days or such other time that the department may specify and make a good faith offer concerning the implementation of the remedial action or payment of the department's costs. The department will negotiate with PRPs only if the initial proposal from the PRPs constitutes a substantial portion of the remedial action or a good faith proposal. The department has sole discretion to determine whether to start negotiations after receipt of a proposal from PRPs.

2. In making its decision, the department shall weigh factors it deems appropriate, including the potential resource demands for conducting the negotiations against the likelihood of getting 100 percent of the department's costs or a complete remedial action.

3. The department may elect to negotiate for less than 100 percent when it deems that the circumstances of the case warrant such action.

4. When there are five or more PRPs interested in negotiating, the department may request that the PRPs select a representative to negotiate with the department.

C. Negotiations After Issuance of Administrative Orders. PRPs who have received unilateral administrative orders may negotiate with the department for dismissal of the administrative order upon execution of a cooperative agreement unless an emergency situation has been declared or the department determines that a stay of remedial actions or of enforcement will be detrimental to the public health, welfare, or the environment. The department has sole discretion in determining whether to enter into negotiations after issuance of a unilateral administrative order. Except by written determination of the department, no request for or conduct of negotiations in accordance with this Section shall serve to stay or modify the terms of any such unilateral administrative order.

D. Notice to Fewer Than All PRPs. Nothing in these regulations shall be construed to require the department to send a notification and a demand for information in accordance with R.S. 30:2274 or a demand for remedial action or costs in accordance with R.S. 30:2275 when the department determines that it is not feasible to make a demand on every PRP. PRPs who do not receive such notifications or demands remain subject to later notification letters, or demand letters in accordance with LAC 33:VI.403 and 405, unilateral administrative orders, or other enforcement actions. PRPs who did not receive a notification or a demand but who are interested in responding with a good faith offer may participate.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2194 (November 1999).

### **§707. Contribution Protection**

A. Any responsible party that has resolved its liability to the department in an administrative or judicially approved settlement shall be considered to be a participating party within the meaning of R.S. 30:2276(G) and as defined in these regulations and shall not be liable for claims by any other parties regarding matters addressed in the settlement.

B. Settlement between the department and any party does not discharge any other PRPs unless the terms of the settlement documents so provide, but such settlement shall

reduce the potential in solido liability of the others by the amount of the settlement.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2194 (November 1999).

#### **§709. De Minimis Settlements**

A. If practicable and in the public interest, as determined by the administrative authority, the department may settle with any PRP whose waste contribution to a site is minimal in terms of amount and toxicity in comparison to other hazardous substances or hazardous wastes or hazardous waste constituents at the site.

B. The department may consider a de minimis settlement offer when it has sufficient information about all identified PRPs, including financial information, to determine each PRP's waste contribution to the site and information about the costs of remedial action at the site.

C. The goal of negotiations with de minimis parties is to achieve quick and standardized agreements through the expenditure of minimal enforcement resources and transaction costs. Where feasible the department may require de minimis parties to negotiate collectively at multi-party sites.

D. To attain the goal set forth in Subsection C of this Section, the de minimis settlement should ordinarily involve a cash payment to the department by the settling party or parties, rather than a commitment to perform work. Where a remedial action is being conducted in whole or in part by PRPs, it may be appropriate for settling de minimis parties to deposit the amount paid in accordance with the de minimis settlement into a site-specific trust fund to be administered by a third party trustee and used for remedial action for that site.

E. In evaluating a de minimis settlement offer the department may consider any factors and information it deems appropriate, including:

1. amount of waste contributed;
  2. toxicity of potential settling party's waste;
  3. costs of litigation;
  4. public interest considerations;
  5. value to the department of a present sum certain;
- and
6. nature and strength of the case against nonsettling PRPs.

F. De minimis agreements shall be entered into as cooperative agreements or judicial orders, in accordance with these regulations. Any de minimis settlement shall contain, in addition to other standard provisions, the following terms:

1. requirement that the settling party be responsible for a percentage of site remedial costs in excess of that amount the department and the party agree may be allocated to the settling party for purposes of settlement (premium payment);
2. reservation of natural resource damage recovery, except where expressly waived by the natural resource trustee(s); and
3. reopener clauses allowing the department to pursue the settling de minimis parties if information not known to the department at the time of settlement indicates that the

volume and/or toxicity criteria for settlement is no longer satisfied with respect to the settling party or parties.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2195 (November 1999).

#### **§711. Mixed Funding**

A. PRP Lead Site. The department may provide funds from the Hazardous Waste Site Cleanup Fund, as defined in R.S. 30:2205, to a responsible party for the purpose of assisting with the cost of remediation incurred by the responsible party. This assistance may be provided through cooperative agreements in accordance with R.S. 30:2032.

B. Department Lead Site. The department may accept funds from PRPs for the purpose of assisting with the payment of remedial costs incurred by the department, regardless of when those costs are incurred. This assistance may be provided solely in the form of cash contributions, which may go to either the Hazardous Waste Site Cleanup Fund or to the Environmental Trust Fund, as defined in R.S. 30:2015, at the department's discretion.

C. Eligibility and Mixed Funding Criteria. The administrative authority shall make a determination whether a proposal is eligible for funding. The only circumstances under which mixed funding can be approved by the department are when the funding will achieve both:

1. substantially more expeditious or enhanced remediation than would otherwise occur; and
2. the prevention or mitigation of unfair economic hardship. In considering this criterion the department shall consider the extent to which mixed funding will either prevent or mitigate unfair economic hardship faced by the PRP, if the remedial action were to be implemented without public funding, or achieve greater fairness with respect to the payment of remedial costs between the PRP entering into a cooperative agreement with the department and any nonsettling PRPs.

D. Funding Decision. The department may hold informal discussions on mixed funding with PRPs for a particular site. If a responsible party is found to be eligible for mixed funding, the administrative authority shall make a determination regarding the amount of funding to be provided, if any. This shall be determined at the discretion of the administrative authority and is not subject to review. A determination of eligibility is not a funding commitment. Actual funding will depend on the availability of funds.

E. Remedial Costs. The department may recover the amount of public funding spent on remedial actions from the nonparticipating PRPs. For purposes of such cost recovery action, the amount in mixed funding attributed to the site shall be considered as remedial costs paid by the department.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2195 (November 1999).

#### **§713. Availability of Facilitation/Mediation**

The department, at its sole discretion, will entertain PRP requests to participate in alternative dispute resolution procedures such as mediation, nonbinding arbitration, and facilitation at the PRP's expense. The department must agree

upon the selection of any facilitator or mediator engaged to conduct the dispute resolution procedure.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2195 (November 1999).

## **Chapter 8. Public Information and Participation**

### **§801. Public Information**

A. The department shall ensure that site-related information is available to the public by providing access to all public records and information obtained by the department unless such information has been designated confidential by the secretary, as authorized in R.S. 30:2030 and/or LAC 33:I.501.

B. As appropriate, the department, or PRPs as directed by the department, shall actively disseminate information to the public concerning site remedial activities. All information dissemination activities undertaken by PRPs shall be performed under the direction and approval of the department. Methods for disseminating site information include, but are not limited to, the methods listed in Subsection B.1-3 of this Section.

1. Information Repositories. The department may establish and maintain an information repository in a public location near the site. If a repository is established, PRPs shall provide the department with copies of all necessary documents.

2. Fact Sheets or Newsletters. The department, or PRPs as directed by the department, may draft and distribute fact sheets or newsletters concerning site activities. If directed by the department, PRPs shall provide for the drafting, printing, and distribution of the fact sheets or newsletters.

3. Informational Open Houses. The department may hold informational open houses to discuss site activities with interested citizens. If directed by the department, the PRPs shall assume all costs of these informational meetings and shall provide materials as directed by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2196 (November 1999).

### **§803. Public Participation**

A. In order to ensure that the public has an opportunity to comment on site-related decisions, the department, or PRPs as directed by the department, shall provide opportunities for public participation as listed in this Section. All public participation activities undertaken by PRPs shall be performed under the direction and approval of the department.

1. For sites that have been declared abandoned in accordance with R.S. 30:2225, an opportunity for public comment shall be provided for any site closure plan in which the department proposes to treat, store, or dispose of hazardous wastes at the site.

a. Notice of the public comment period and any public hearing on the closure plan shall be placed in the newspaper of general circulation in the parish where the site is located. The contents and format of the notice shall follow guidelines established by the department.

b. Prior to the commencement of the public comment period, the department, or PRPs as directed by the department, shall place a copy of the site closure plan in a public location near the site.

2. For sites where the secretary has made a demand for remedial action in accordance with R.S. 30:2275, the department shall, upon written request, provide an opportunity for a public meeting prior to approval of a site remedial investigation plan and selection of a remedy. Additionally, if a written request is received, the department shall hold a public comment period of not more than 60 calendar days duration prior to approval of a site remedial investigation plan and selection of a site remedy. Written requests shall be mailed to Louisiana Department of Environmental Quality, Box 82178, Baton Rouge, LA 70884-2178.

a. Notice of the public comment period and public meeting should be placed in the newspaper of general circulation in the parish where the site is located. The contents and format of the notice shall follow guidelines established by the department.

b. Prior to any public comment period, the department, or PRPs as directed by the department, shall place a copy of the document being reviewed in a public location near the site.

B. The department shall, as appropriate, provide or direct PRPs to provide additional opportunities for public participation.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2196 (November 1999).

James H. Brent, Ph.D.  
Assistant Secretary

9911#034

## **RULE**

### **Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division**

Louisiana Environmental Regulatory Innovations Program  
(LERIP) (LAC 33:I.3701-3715)(OS032)

Editor's Note: Due to Reengineering at the Department of Environmental Quality effective July 1, 1999 the Office and Division names have been changed in the Notice of Intent heading and in the Historical Note for each section in this rule. The contents of the Notice and the rule have not changed, with the exception of technical amendments to the proposed rule.

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted the Office of the Secretary regulations, LAC 33:I.Chapter 37 (Log No. OS032).

The rule will establish the procedures for participation in the Louisiana Environmental Regulatory Innovations Program (LERIP), as well as an Excellence and Leadership Program. The rule contains application requirements,

department review conditions, a priority system for ranking demonstration projects, project amendment and renewal procedures, and project termination. Facility owners and operators, in conjunction with stakeholders, are encouraged to develop and implement effective pollution prevention and/or pollution reduction strategies to achieve levels below required regulation levels. R.S. 30:2566 requires the department to promulgate regulations for the administration of the Louisiana Environmental Regulatory Innovations Programs, including the Excellence and Leadership Program. The basis and rationale for this rule are to promulgate regulations to consider regulatory flexibility as an incentive to superior environmental performance.

This rule meets an exception 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. Departmental Administrative Procedures**

#### **Chapter 37. Regulatory Innovations Programs**

##### **§3701. Purpose**

This Chapter establishes procedures for voluntary participation in the Louisiana Environmental Regulatory Innovations Programs (LERIP) as provided by R.S. 30:2561 et seq. Its purpose is to provide regulatory flexibility consistent with federal guidelines in exchange for superior environmental performance.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2561 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2197 (November 1999).

##### **§3703. Definitions**

*Administrative Authority*—the secretary of the Department of Environmental Quality or the secretary's designee.

*Demonstration Project (DP)*—a project containing all the elements required in LAC 33:I.3705, intended to be implemented in exchange for regulatory flexibility.

*Final Project Agreement (FPA)*—the final document agreed upon between the secretary and a program participant that specifically states the terms and duration of the proposed project. The final project agreement is an enforceable document.

*Regulatory Flexibility*—a qualified participant in a regulatory innovations program may be exempted by the secretary from regulations promulgated by the department under this chapter consistent with federal law and regulation.

*Stakeholders*—citizens in the communities near the project site, facility workers, government representatives, industry representatives, environmental groups, or other public interest groups with representatives in Louisiana and Louisiana citizens, or other similar interests.

*Superior Environmental Performance*—

1. a significant decrease of pollution to levels lower than the levels currently being achieved by the subject facility under applicable law or regulation, where these lower levels are better than required by applicable law and regulation; or

2. improved social or economic benefits to the state, as determined by the secretary while achieving protection to the environment equal to the protection currently being achieved by the subject facility under applicable law and regulation, provided that all requirements under current applicable law and regulation are being achieved by the facility.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2561 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2197 (November 1999).

##### **§3705. Application for a Demonstration Project**

A. An application for a demonstration project (DP) shall be submitted to the administrative authority. The application shall, at a minimum, include:

1. a narrative summary of the DP, including the specific statutes or rules for which an exemption is being sought;

2. a detailed explanation including a demonstration that the DP:

a. is at least as protective of the environment and the public health as the method or standard prescribed by the statute or rule that would otherwise apply;

b. will provide superior environmental performance;

c. will not transfer pollution impacts into a product;

d. will identify, if applicable, any proposed transfer of pollutants between media;

e. will include verifiable measures of success for project goals;

f. will not increase or shift risk to citizens or communities;

g. is consistent with federal law and regulation, including any requirement for a federally approved, delegated, authorized, or implemented program or plan; and

h. reduces the time and money spent at the facility on paperwork and other administrative tasks that do not directly benefit the environment;

3. an implementation schedule that includes a proposal for monitoring, recordkeeping, and/or reporting, where appropriate, of environmental performance and compliance under the DP;

4. a plan to identify and contact stakeholders, to advise stakeholders of the facts and nature of the project, and to request stakeholder participation and review. Stakeholder participation and review shall occur during the development, consideration, and implementation stages of the DP. The plan shall also include notice to the employees of the facility to be covered by the proposed project and a description of efforts made or proposed to achieve local community support;

5. the time period for which the exemption is sought; and

6. any other information requested from the applicant by the administrative authority during the application period.

B. The application shall be signed by the applicant or its duly authorized agent and shall certify that all information is true, accurate, and complete to the best of that person's knowledge.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2197 (November 1999).

### **§3707. Demonstration Project Priority System**

A. Priority will be given to projects after considering whether the technology:

1. will result in significant pollution prevention or source reduction, particularly in low income areas already burdened with pollution;
2. will reduce air emissions in a nonattainment area;
3. will maintain or improve coastal wetland environments;
4. will be transferable to other members of the regulated community; and
5. will allow the department, the applicant, and other state and local agencies to spend less time and resources over the long term to monitor and administer the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2198 (November 1999).

### **§3709. Review of Application for Demonstration Project**

A. Within 180 days after submittal of a complete application for a DP, the department will conduct a review and notify the applicant of its initial decision regarding acceptability of the proposed project.

B. The department will consider, among other factors, the applicant's compliance history and efforts made to involve the stakeholders and to achieve local community support.

C. If the department determines the DP to be unacceptable, it will provide written reasons for the determination.

D. A DP that has been determined to be unacceptable may be resubmitted in accordance with Subsection A of this Section provided all reasons for the unacceptable determination have been addressed.

E. The department will not approve any DP as a FPA if it requires prior approval by the USEPA, until the USEPA has formally approved all regulatory flexibility necessary for execution of the FPA. When an application for a DP includes regulatory flexibility that may affect a federal requirement or a state requirement that implements a federally approved, delegated, authorized, or implemented program or plan, the department shall submit a copy of the application to the USEPA for review and approval.

F. If the department determines the DP to be acceptable:

1. a public hearing will be held at a location near the proposed project to receive comments;
2. public comments will be received for 30 days after the hearing;
3. a response summary addressing the major issues raised during the comment period will be prepared by the department;
4. an applicant may be required to supplement or modify the application;
5. a recommendation will be made to the administrative authority to approve or deny the project; and
6. a FPA will be executed or a denial issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2198 (November 1999).

### **§3711. Public Notice**

A. An applicant whose DP has been approved shall publish notice of the FPA in the official journal of the parish governing authority where the project will be implemented. Notice under this Section shall, at a minimum, include:

1. a brief description of the FPA and of the business conducted at the facility;
2. the name and address of the applicant and, if different, the location of the facility for which regulatory flexibility is sought; and
3. the name, and a brief description of the regulatory relief that has been granted, address, and telephone number of a department contact person from whom interested persons may obtain further information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2198 (November 1999).

### **§3713. Amendment or Renewal**

A. An application for amendment or renewal of a FPA shall be filed in the same manner as an original application under this Chapter.

B. If amendment or renewal procedures have been initiated at least 120 days prior to the FPA expiration date, the existing FPA will remain in effect and will not expire until the administrative authority has made a final decision on the amendment or renewal.

C. The administrative authority shall determine whether a public hearing will be held.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2198 (November 1999).

### **§3715. Termination**

A. By the Recipient

1. A party to a FPA may terminate the FPA at any time by sending notice of termination to the administrative authority by certified mail.

2. The party terminating must be in compliance with all existing statutes or regulations at the time of termination.

B. By the Department

1. Noncompliance with the terms and conditions of a FPA or any provision of this Chapter may result in the FPA being voided, except that the recipient shall be given written notice of the noncompliance and provided an opportunity, not less than 30 days from the date the notice was mailed, to show cause why the FPA should not be voided. Procedures for requesting a show cause hearing before the Division of Administrative Law shall be included in the written notice.

2. In the event more stringent or more protective regulations become effective after execution of a FPA, the recipient shall amend or modify the FPA to provide environmental protection equal to the new regulation pursuant to department and EPA approval, or the FPA will be voided.

3. In the event a FPA becomes void, the administrative authority may specify an appropriate and reasonable transition period to allow the recipient to come into full

compliance with all existing statutory and regulatory requirements, including time to apply for any necessary agency permits, authorizations, or certifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2198 (November 1999).

Dale Givens  
Secretary

9911#036

## RULE

### Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

#### Requirements for Commercial Hazardous Waste Incinerators (LAC 33:V.529)(HW070)

Editor's Note: Due to reengineering at the Department of Environmental Quality effective July 1, 1999, the Office and Division names have been changed in the Notice of Intent heading and in the Historical Note for each section in this rule. The contents of the Notice of Intent and the rule have not changed.

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 Hazardous Waste regulations, LAC 33:V.529 (Log #HW070).

The regulation requires that applications for new permits and substantial modifications of existing permits for commercial hazardous waste incinerators comply with certain existing provisions of the Hazardous Waste Regulations (LAC 33:Part V), Air Quality Regulations (LAC 33:Part III), and Water Quality Regulations (LAC 33:Part IX). The basis and rationale for the rule are to respond to a petition for rulemaking requesting that rules be adopted to comply with R.S. 30:2011(D)(24). This rule clarifies which DEQ regulations apply to commercial hazardous waste incinerators.

This rule meets an exception 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 5. Permit Application Contents

##### Subchapter E. Specific Information Requirements

##### §529. Specific Part II Information Requirements for Incinerators

Except as LAC 33:V.Chapter 31 provides otherwise, owners and operators of facilities that incinerate hazardous waste must fulfill the requirements of Subsection A, B or C of this Section.

\* \* \*

[See Prior Text in A. - D.2]

E. Commercial Hazardous Waste Incinerators. The administrative authority shall issue no new permit or substantial permit modification, as defined in LAC 33:I.1503, that authorizes the construction or operation of any commercial hazardous waste incineration facility, of any type, until the permit applicant complies with:

1. all applicable hazardous waste regulations in LAC 33:V, particularly as they pertain to:
  - a. design as required in LAC 33:V.Chapters 5 and 31;
  - b. siting as required in LAC 33:V.Chapters 5, 7, and 15;
  - c. construction as required in LAC 33:V.Chapters 7 and 31;
  - d. operation as required in LAC 33:V.Chapters 3, 5, 7, and 31;
  - e. emission limitations as required in LAC 33:V.Chapters 5 and 31; and
  - f. disposal methods as required in LAC 33:V.Chapters 22, 31, and 35;
2. all applicable air quality regulations in LAC 33:III; and
3. all applicable water quality regulations in LAC 33:IX.

AUTHORITY NOTE: Promulgated in accordance with R.S. 2180 and 30:2011D.24(a).

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 10:280 (April 1984), LR 22:817 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2199 (November 1999).

James H. Brent, Ph.D.  
Assistant Secretary

9911#035

## RULE

### Office of the Governor Office of Elderly Affairs

#### GOEA Policy Manual Revision (LAC 4:VII.Chapter 11)

In accordance with Revised Statutes 49:950 et seq., the Administrative Procedure Act, the Governor's Office of Elderly Affairs (GOEA) hereby amends the GOEA Policy Manual effective November 20, 1999. The purpose of the proposed rule change is to update existing policies governing the Office of Elderly Affairs. This rule complies with R.S. 46:931 to R.S. 46:935, R.S. 14:403.2, R.S. 49:2010.4, R.S. 40:2802(D), Public Law 89-73—the Older Americans Act (OAA) of 1965 as amended, and 45 CFR 1321.

## Title 4

### ADMINISTRATION

#### Part VII. Governor's Office

##### Chapter 11. Elderly Affairs

##### Subchapter A. State Agency on Aging

##### §1101. Office of Elderly Affairs

- A. Authority, Organization and Purpose

1. Chapter 7 of Title 46 of the Louisiana Revised Statutes of 1950 (R.S. 46:931 et seq.) provides for the establishment and administration of the Office of Elderly Affairs (GOEA) within the Office of the Governor.

2. Executive Order MJF 99-14 established and provided for the operation of the Office of Community Programs to consolidate the following agencies and/or divisions within the Office of the Governor that provide services for the citizens and local governments of the state of Louisiana:

- a. the Office of Elderly Affairs (R.S. 46:931, et seq.);
- b. the Office of Disability Affairs (R.S. 46:2581 et seq.);
- c. the Office of Indian Affairs (R.S. 46:2301, et seq.);
- d. the Office of Municipal Affairs;
- e. the Louisiana Interagency Coordinating Council for Child Net [R.S. 17:1979 and 36:4(R)];
- f. the Office of Rural Development (R.S. 3:314, et seq.);
- g. the Louisiana Abstinence Education Project (Executive Order No. MJF 98-11, as amended by Executive Order No. MJF 99-13);
- h. the Louisiana State Troops to Teachers Placement Assistance Program (Memorandum of Agreement dated February 2, 1995);
- i. the Office of Urban Affairs and Development (Executive Order No. MJF 96-47); and
- j. the Office of Women's Services (R.S. 46:2521, et seq.).

3. GOEA serves as the focal point for the development and administration of public policy regarding Louisiana's elderly citizens. GOEA is the sole State agency designated by the governor and the legislature to develop and administer the state plan on aging. GOEA also administers several statewide programs including the Long Term Care Assistance Program, the Adult Protective Services Program for the Elderly and the Long Term Care Ombudsman Program.

#### B. Powers and Responsibilities

1. GOEA has the following powers and duties under state law:

- a. to administer the Older Americans Act and related programs;
- b. to collect facts and statistics and make special studies of conditions pertaining to the employment, health, financial status, recreation, social adjustment or other conditions affecting the welfare of the aged;
- c. to keep abreast of the latest developments in aging throughout the nation and to interpret such findings to the public;
- d. to provide for a mutual exchange of ideas and information on the national, state, and local levels;
- e. to conduct hearings and to subpoena witnesses;
- f. to make recommendations to the governor and to the legislature for needed improvements and additional resources to promote the welfare of the aging in the state;
- g. to coordinate the services of all agencies in the state serving the aging and require reports from such state agencies and institutions including carrying out the provisions of R.S. 46:935;

h. to adopt and promulgate rules and regulations deemed necessary to implement the provisions of the law in accordance with the Administrative Procedure Act;

i. to exercise the functions of the state relative to nutrition programs for the elderly and handicapped citizens of Louisiana;

j. to perform the functions of the state which are designed to meet the social and community needs of Louisiana residents sixty years of age or older, including but not limited to the provision of such comprehensive social programs as homemaker services, home repair and maintenance services, employment and training services, recreational and transportation services, counseling, information and referral services, protective services under R.S. 14:403.2, and health related outreach; but excluding the transportation program for the elderly administered by the Department of Transportation and Development under Section 16(b)(2) of the Federal Mass Transportation Act of 1964 as amended and other such programs and services assigned to departments of state government as provided in Title 36 of the Louisiana Revised Statutes;

k. to administer the Louisiana Senior Citizens Trust Fund;

l. to administer the Long Term Care Assistance Program;

m. to operate the Office of the State Long Term Care Ombudsman;

n. to serve as the "Adult Protection Agency" for any individual sixty years of age and over in need of adult protective services as provided in R.S. 14:403.2(E).

o. to administer all federal funds appropriated, allocated, or otherwise made available to the state for services to the elderly, whether by block grant or in any other form, with the exception of funds for programs administered by the Department of Social Services or the Department of Health and Hospitals, on August 15, 1995, and to distribute those funds in accordance with and consistent with R.S. 46:936;

p. to approve recommendations from any parish voluntary council on aging prior to the creation of a new state-funded senior center in the state, as provided in §1233 of this Manual; and

q. to provide meeting space and staff support for the Executive Board on Aging [(R.S. 46:934(G))].

#### 2. Strategic Planning

a. In accordance with R.S. 39:31, GOEA shall engage in strategic planning and produce a strategic plan to guide ongoing and proposed activities for five years, to be updated at least every three years. A schedule will be provided by the Commissioner of Administration with guidance for the timely preparation, revision and submission of strategic plans.

##### b. Content of the Strategic Plan:

i. mission statements for each program funded through GOEA;

ii. goals that reflect the expected results the agency plans to achieve on behalf of the elderly;

iii. objectives that support each goal;

iv. strategies that GOEA will use to achieve its objectives;

v. measurable performance indicators for each objective, including at a minimum, indicators of input, output, outcome, and efficiency;

vi. statements identifying the principal clients and users of each program; and

vii. potential external factors beyond the control of GOEA that could affect the achievement of goals and objectives.

c. Each goal shall have the statutory requirement of authority.

d. Program evaluations shall be used to develop objectives and strategies.

e. GOEA shall maintain documentation as to the reliability and appropriateness of each performance indicator and the method used to verify the performance indicators. GOEA shall also indicate how each performance indicator will be used in GOEA's management decisions.

f. The strategic plan shall be used in the construction of the annual operational plan for budget development purposes. Information taken from the strategic plan or operational plan for inclusion in the executive budget or supporting documents shall be included at the discretion of the Commissioner of Administration.

### C. Functions of the Governor's Office of Elderly Affairs

#### 1. Administrative Functions:

a. to develop and follow written policies in carrying out its functions under state and federal laws and regulations;

b. to develop and enforce policies governing all aspects of programs operating under the Older Americans Act, whether operated directly or under contract;

c. to manage and control funds received from federal and state sources;

d. to recruit, train and supervise qualified staff to perform responsibilities; and

e. to procure necessary supplies, equipment and services.

#### 2. Advocacy Functions:

a. to review, monitor, evaluate and comment on all Federal, State and local plans, budgets, regulations, programs, laws, levies, hearings, policies, and actions which affect or may affect older individuals and recommend any changes in these which GOEA considers to be appropriate;

b. to provide technical assistance and training to agencies, organizations, associations or individuals representing older persons;

c. to review and comment, upon request, on applications to state and federal agencies for assistance in meeting the needs of the elderly;

d. to consolidate and coordinate multiple state and federal resources to facilitate the development of comprehensive community-based services for the elderly; and

e. to develop financial resources for programs on aging beyond those allocated under the Older Americans Act.

#### 3. Service Systems Development Functions:

a. to develop and administer the state plan on aging;

b. to be primarily responsible for the planning, policy development, administration, coordination, priority setting and evaluation of all State activities related to the objectives of the Older Americans Act;

c. to divide the State into distinct planning and service areas, in accordance with guidelines issued by the Administration on Aging;

d. to designate for each planning and service area after consideration of the views offered by the unit or units of general purpose local government in such area, a public or private nonprofit agency or organization as the area agency on aging (AAA) for such area;

e. in consultation with area agencies on aging, in accordance with guidelines issued by the Administration on Aging, and using the best available data, to develop and publish, for review and comment, a formula for distribution within the State of funds received under Title III of the Older Americans act that takes into account:

i. the geographical distribution of older individuals in the State; and

ii. the distribution among planning and service areas of older individuals with greatest economic need and/or greatest social need, with particular attention to low-income minority older individuals;

f. to submit its formula developed under §1105.C.6 to the Administration on Aging for approval; and

g. to establish and follow appropriate procedures to provide due process to affected parties, if the State agency initiates an action or proceeding to:

i. revoke the designation of the AAA under §1111.C.3.d;

ii. designate an additional planning and service area in the State;

iii. divide the State into different planning and service areas; or

iv. otherwise affect the boundaries of the planning and service areas in the State.

### D. Governor's Office of Elderly Affairs Administration

#### 1. Staffing

a. GOEA shall be administered by an executive director, who shall be recommended by the Louisiana Executive Board on Aging to the governor to serve at his pleasure, subject to confirmation by the Senate. The executive director shall be qualified by education and experience to assume leadership of the State Agency on Aging.

b. The GOEA executive director shall employ an adequate number of qualified staff to carry out the duties and functions of the State agency as provided by law.

c. GOEA shall have within the State agency an Office of the State Long-Term Care Ombudsman, with a full-time State ombudsman and such other staff as are appropriate.

d. GOEA shall provide an individual who shall be known as a State legal services developer, and other personnel, sufficient to ensure:

i. state leadership in securing and maintaining legal rights of older individuals;

ii. state capacity for coordinating the provision of legal assistance;

iii. state capacity to provide technical assistance, training, and other supportive functions to area agencies on aging, legal assistance providers, ombudsmen, and other persons as appropriate; and

iv. state capacity to promote financial management services for older individuals at risk of conservatorship.

e. GOEA may contract with other parties for the performance of certain functions and responsibilities.

f. Subject to the requirements of the Louisiana Department of Civil Service:

i. GOEA will give preference to persons aged sixty or over for any staff positions (full-time or part-time) for which such persons qualify; and

ii. GOEA shall give special consideration to individuals with formal training in the field of aging (including an educational specialty or emphasis in aging and a training degree or certificate in aging) or equivalent professional experience in the field of aging for any staff positions (full time or part time) for which such individuals qualify.

g. All GOEA personnel matters shall be governed by state law and the rules of the Louisiana Department of Civil Service.

## 2. Policies

a. GOEA shall develop and enforce written policies in carrying out its functions under state and federal laws and regulations. These policies shall be developed in consultation with other appropriate parties within the state. GOEA shall keep its policies current, and revise them as necessary in accordance with the Louisiana Administrative Procedure Act.

b. GOEA shall:

i. draft proposed policies and/or policy changes;

ii. submit proposed policies and/or policy changes to the Louisiana Executive Board on Aging for review and comment;

iii. publish proposed policies/policy changes in the Louisiana Register in order to solicit public input;

iv. conduct public hearings to obtain oral and/or written comments from interested parties; and

v. consider all comments in establishing final policies.

c. GOEA shall take into account, in connection with matters of general policy arising in the development and administration of the State plan, the views of recipients of supportive services or nutrition services, or individuals using multipurpose senior centers provided under such plan.

d. GOEA shall establish and maintain a manual to which shall include current policies promulgated by the State agency in the Louisiana Administrative Code. GOEA shall make copies of said manual available to all GOEA contractors and subcontractors. Copies may be provided at cost.

## 3. Reports

a. GOEA shall submit to the U.S. Administration on Aging, the governor, and the legislature any reports that they require.

b. GOEA shall establish and maintain administrative records and reports for its total operation to satisfy legal requirements and for use as a management tool.

c. Program records and reports shall be reviewed periodically by appropriate staff, to evaluate the records' adequacy and continued usefulness.

## 4. Confidentiality and Disclosure of State Agency Information

a. The Governor's Office of Elderly Affairs shall ensure that any agency providing services with funds administered by GOEA shall not disclose any information about or obtained from an older person, in a form which identifies the person, without his informed, written consent or that of his authorized representative.

b. All information related to problems identified in the process of monitoring and evaluating area agencies on aging and/or service providers shall be considered confidential information until such time as problems are resolved or final action is taken in accordance with GOEA policy. Such information may be disclosed to persons or organizations outside GOEA only if authorized by the executive director.

c. In the conduct of monitoring the ombudsman program, access to files, minus the identity of any complainant or resident of a long term care facility, shall be available only to the executive director of the Office of Elderly Affairs and one other senior manager of the Office of Elderly Affairs designated by the executive director for this purpose. The confidentiality protections concerning any complainant or resident of a long term care facility as prescribed in Section 307(a)(12) of the Older Americans Act shall be strictly observed.

d. Subject to the confidentiality requirements of this paragraph, the GOEA executive director will make available at reasonable times and places to all interested parties information and documents developed or received by GOEA in carrying out its responsibilities.

e. In administering the Elderly Protective Services Program, all information in case records regarding elderly victims of abuse, neglect and exploitation shall be confidential as outlined in R.S. 14:403.2(E)(8).

## 5. Program Monitoring

a. GOEA shall monitor the performance of all programs and activities initiated under the Older Americans Act for quality and effectiveness in order to:

i. identify performance problems as a basis for determining an area agency's need for technical assistance and training;

ii. measure an area agency's progress toward developing a comprehensive and coordinated service delivery system in the planning and service area (PSA), and to guide the GOEA in providing resources and technical support to enhance the development of such systems;

iii. to ensure compliance with applicable federal and state laws, regulations and other requirements; and

iv. to ensure cost-effective use of available resources for the elderly.

b. Performance Indicators:

i. extent to which proposed service output (as specified in the area plan) is being provided, including:

(a) number of persons served, by service;

(b) units of service provided; and

(c) expenditures by source and service;

ii. extent to which each objective, and tasks related thereto, were completed as compared to the area plan;

iii. extent to which AAA responsibilities and requirements are being carried out;

iv. extent to which required services are being provided;

v. extent to which federal and state laws, regulations and other requirements are being followed; and

vi. extent to which the AAA is fostering the development of a comprehensive and coordinated service delivery system in the PSA, including:

(a). encouraging the development by other agencies of access services, community services, in-home services, and services to residents of care providing facilities, beyond those funded by the AAA; and

(b). providing for service management mechanisms which link clients with appropriate services and permit ease of movement by clients from one type of care and provider to another, as necessary.

c. Monitoring Procedures:

i. review AAA program and fiscal reports relative to the performance indicators, and for the purposes stated in this paragraph;

ii. conduct on-site performance evaluations of each AAA;

iii. share the results of all monitoring activities with the AAA governing body and director along with:

(a). recommendations for correcting problems; and

(b). remedial actions the State agency will take to assist the AAA and actions which must be taken by the AAA, including time frame for completion of such actions.

6. Program Evaluation

a. Program evaluation is designed to measure the extent to which the operation of programs resulted in the lessening of need for service for older persons. It is intended to support decision-making by the state and area agencies in the areas of resource allocation to services and program design, by showing which service delivery models are effective and result in program outcomes which are consistent with the goals of the Older Americans Act.

b. GOEA may carry out its evaluation responsibilities through or in consultation with institutions of higher learning, or other organizations with demonstrated competence in the field of evaluation research. Priority will be given to the evaluation of new programs and services as a basis for modification, expansion or termination.

c. Termination or suspension of the area plan, withholding funds, or other punitive actions may be effected by GOEA if the AAA fails to take actions and correct problems specified by GOEA.

7. Resource Development

a. GOEA shall identify resources potentially available for services for the aging at the federal and state levels, and from both public and private sources.

b. GOEA shall prepare applications, or facilitate such preparation on the part of AAAs or others, to secure identified funds.

c. GOEA shall provide information for use in justifying the allocation of funds for programs on aging, by such sources.

8. Coordination

a. Because state and federal funds administered by GOEA support only a small fraction of services available for the aging, and since one of the primary purposes of GOEA is to foster coordination among the many disparate programs for the elderly, the following activities shall be carried out:

i. identification of programs administered at the national and state level which impact on the well-being of older persons;

ii. establishment and use of common service nomenclatures to facilitate interagency communication and analysis;

iii. collection and analysis of information about the types of services allowable and actually provided, eligible/actual clientele, location of service providers/recipients, sources and amounts of expenditures by service;

iv. participation in joint planning and program design efforts at the state level for the purpose of:

(a). sharing of facilities and equipment (e.g., school buildings, community centers, transportation vehicles, etc.);

(b). centralizing functions common to several delivery programs for the aging (e.g., case management, information and referral, long term care ombudsman activities, etc.);

(c). collocating services in support of AAA focal point development;

(d). developing consensus among as many agencies as possible on a continuum of needed services, the geographic locations for such services, and assigning service development and delivery responsibilities among agencies; and

(e). entering into cooperative written agreements with the Louisiana Department of Health and Hospitals for the administration of the Adult Protective Services Program pursuant to R.S. 14:403.2, and with agencies administering Title XIX and Title XX of the Social Security Act, state transportation agencies, foundations, United Way agencies, and other private organizations for the purpose of carrying out these activities, and supplying copies of these interagency agreements to area agencies.

b. To carry out its responsibility to develop a comprehensive and coordinated service delivery system, GOEA shall make special efforts to coordinate with agencies administering the following programs:

i. the Job Training Partnership Act;

ii. Title II of the Domestic Volunteer Service Act of 1973;

iii. Titles XVI, XVIII, XIX, and XX of the Social Security Act;

iv. Sections 231 and 232 of the National Housing Act;

v. The United States Housing Act of 1937;

vi. Section 202 of the Housing Act of 1959;

vii. Title I of the Housing and Community Development Act of 1974;

viii. Title I of the Higher Education Act of 1965 and the Adult Education Act;

ix. Sections 3, 9, and 16 of the Urban Mass Transportation Act of 1964;

x. the Public Health Service Act including block grants under Title XIX of such Act;

xi. the Low-Income Home Energy Assistance Act of 1981;

xii. Part A of the Energy Conservation in Existing Buildings Act of 1976, relating to weatherization assistance for low income persons;

- xiii. the Community Services Block Grant Act;
- xiv. demographic statistics and analysis programs conducted by the Bureau of the Census under Title 13, United States Code;
- xv. the Rehabilitation Act of 1973;
- xvi. the Developmental Disabilities and Bill of Rights Act; and
- xvii. the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, established under Part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750-3766(b)).

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:931 to R.S. 46:935, R.S. 14:403.2, OAA Sections 203, 305, 307 and 731, and 45 CFR 1321.

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 25:2199 (November 1999).

### **§1103. The Louisiana Executive Board on Aging**

#### **A. Composition, Appointment and Tenure**

1. The Louisiana Executive Board on Aging, hereafter referred to as "the board," shall consist of fifteen members appointed as follows:

- a. the President of the Senate shall appoint five members, one from each of the five districts of the Public Service Commission;
- b. the Speaker of the House shall appoint five members of Representatives, one from each of the five districts of the Public Service Commission; and
- c. the governor shall appoint five members, one from each of the five districts of the Public Service Commission. Each appointment by the governor shall be submitted to the Senate for confirmation.

#### **2. Qualifications**

a. Members of the board shall have a recognized interest in and knowledge of the problems of aging. None of the members of the board shall be elected officials or paid employees of the state of Louisiana. Preference shall be given to persons sixty years of age and older.

b. A person is not eligible for appointment to the board if the person or the person's spouse either:

- i. is employed by a business entity or other organization regulated by or receiving funds from GOEA; or
- ii. owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from GOEA.

#### **3. Nominations and Appointments**

a. Nominations for the board shall be solicited from:

- i. the Louisiana Association of Councils on Aging, the Louisiana State Medical Society;
- ii. the Louisiana State Bar Association;
- iii. the National Association of Social Workers - Louisiana Chapter;
- iv. the American Association of Retired Persons;
- v. the Louisiana Association of Business and Industry;
- vi. the AFL-CIO;
- vii. the Louisiana Geriatric Education Center;
- viii. the Louisiana Interchurch Conference; and
- ix. other entities as appropriate.

b. Appointments shall be made from the list of names submitted in accordance with §1111.A.3.

#### **4. Terms of Office**

a. The terms of office of members of the board shall be five years except that the appointing authority shall appoint the original members as follows:

- i. five members for a term of one year;
- ii. five members for a term of two years; and
- iii. five members for a term of three years.

b. Vacancies shall be filled by appointment by the governor only for the remainder of the unexpired terms.

#### **B. Functions of the Louisiana Executive Board on Aging**

1. To advise and report to the GOEA executive director on matters of general importance and relevance to the planning, monitoring, coordination, and delivery of services to the elderly in Louisiana.

2. To advise the GOEA executive director on matters of policy and on all rules and regulations promulgated by the office.

3. To review and recommend the revocation of the charter of any parish voluntary council on aging for noncompliance with law, policies and/or regulations.

#### **C. Organization of the Board**

1. The board shall meet and organize immediately after appointment of the members and shall elect from its membership a slate of officers other than chairperson, whom the governor shall appoint. The board shall elect any officers, other than the chairperson, it deems necessary. The duties of such officers shall be those customarily performed by such officers.

2. The board shall meet at least once per quarter of the fiscal year, and as often thereafter as deemed necessary by the chairperson. A majority of members of the board shall constitute a quorum.

3. The board shall adopt rules for the transaction of its business and shall keep a record of its resolutions, transactions, findings, and determinations.

#### **D. Duties and Responsibilities**

1. The board shall adopt rules governing the functions of the Governor's Office of Elderly Affairs (GOEA), including rules that prescribe the policies and procedures followed by the board and GOEA in the administration of its programs, all in accordance with the Administrative Procedure Act.

2. The board shall review and make recommendations to the GOEA executive director on matters of general importance and relevance to the planning, monitoring, coordination, and delivery of services to the elderly of the state.

3. The board shall approve matters of policy and all rules and regulations promulgated by the board or GOEA which pertain to elderly affairs and voluntary parish councils on aging.

4. The board shall prepare and submit an annual report to the legislature and to the governor sixty days prior to the legislative session.

5. The board by rule or its order may delegate any portion of its rights, powers, and duties to the executive director of the office.

6. The board may recommend discharge of the GOEA executive director.

## E. Compensation

1. Members shall serve without salary, but shall be reimbursed at the established per diem rate for attendance at board and committee meetings.

2. Members shall be reimbursed for actual travel and other expenses incurred while in the performance of their duties in accordance with the division of administration regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:932, R.S. 46:935 and OAA Sections 305(a)(1) and 307(a)(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), LR 25:2204 (November 1999).

### §1105. State Plan on Aging

A. Definition. The state plan on aging is the document submitted to the Administration on Aging to obtain the State's allotment of federal funds allocated under the Older Americans Act of 1965, as amended. It identifies the actions which the Governor's Office of Elderly Affairs (GOEA) will take in carrying out federal and state responsibilities. GOEA shall not make expenditures under a new plan or amendment requiring approval until it is approved.

#### B. Content of the State Plan:

1. identification by the State of the sole State agency that has been designated to develop and administer the plan;

2. statewide program objectives to implement the requirements under Title III and Title VII of the Older Americans Act and any objectives established by the Administration on Aging through the rulemaking process;

3. a resource allocation plan indicating the proposed use of all Title III funds administered by GOEA, and the distribution of Title III funds to each planning and service area;

4. identification of geographic boundaries of each planning and service area and of area agencies designated for each planning and service area;

5. provision of prior Federal fiscal year information related to low income minority and rural older individuals as required by Section 307 of the Older Americans Act; and

6. each of the provisions and assurances required in Sections 305 and 307 of the Older Americans Act, and provisions that the State meets the requirements under 45 CFR Part 1321.

#### C. Development and Amendment of the State Plan

1. The state plan may be developed for a two-, three-, or four-year period, determined by the State agency, with such annual updates and/or amendments as are necessary. GOEA shall use its own judgement as to the format to use for the plan, and how to collect information for the plan. The plan's resource allocation, including allotments to area agencies, shall be prepared annually and as available allotments change.

2. In the process of developing the state plan, GOEA shall reevaluate the configuration of planning and service areas (PSAs) in the state. Applications for PSA designation will be accepted in accordance with §1107.A.2 of this manual at that time.

3. GOEA shall amend the state plan whenever necessary to reflect:

- a. new or revised Federal statutes or regulations;

- b. a material change in any law, organization, policy or State agency operation; or

- c. information required annually by the Older Americans Act.

4. GOEA shall promulgate the state plan and all amendments in the Louisiana Administrative Code in accordance with the Administrative Procedure Act.

5. GOEA shall submit the state plan and all amendments requiring approval to the Administration on Aging.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:931, R.S. 49:432, OAA Section 203(b), OAA Section 307, OAA Section 731, and 45 CFR 1321.

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 25:2205 (November 1999).

### §1107. Planning and Service Area Designation

#### A. General Rules

1. In accordance with Section 305 of the Older Americans Act (the Act), GOEA shall divide the State into distinct planning and service areas (PSAs) after considering the geographical distribution of individuals aged sixty and older in the State; the incidence of the need for supportive services, nutrition services, multipurpose senior centers, and legal assistance; the distribution of older individuals who have greatest economic need (with particular attention to low-income minority individuals) residing in such areas; the distribution of older individuals who have greatest social need (with particular attention to low-income minority individuals) residing in such areas; the distribution of older Indians residing in such areas; the distribution of resources available to provide such services or centers; the boundaries of existing areas within the State that were drawn for the planning or administration of supportive service programs; the location of units of general purpose local government within the State; and any other relevant factors.

2. Starting with the state plan on aging beginning October 1, 2002, GOEA shall accept applications for PSA designation received from eligible applicants on or before November 1 of the year immediately preceding the final year of the state plan period. Any designation so approved shall become effective on the first day of the next area plan and shall remain in effect throughout the duration of the approved area plan.

3. GOEA may include in any planning and service area such additional areas adjacent to the unit of general purpose local government, region, metropolitan area, or Indian reservation so designated as GOEA determines to be necessary for, and will enhance the effective administration of the programs authorized by Title III of the Older Americans Act.

4. GOEA may include the area covered by the appropriate economic development district involved in any planning and service area designated and may include all portions of an Indian reservation within a single planning and service area.

B. Eligible Applicants. The governing body of any unit of general purpose local government, region within the State recognized for areawide planning, metropolitan area, or Indian reservation may apply for its geographical area of jurisdiction to be a designated planning and service area.

### C. Application Procedure for PSA Designation

1. Eligible applicants requesting PSA designation shall submit applications based upon a uniform format prescribed by GOEA. Each such application shall include:

a. a signed resolution by the governing body of the applicant organization authorizing the request for designation of the unit of general purpose local government, region within the State recognized for areawide planning, metropolitan area, or Indian reservation as a planning and service area;

b. a narrative and statistical description of:

i. the number of individuals aged sixty and older in the proposed PSA;

ii. the number of older individuals who have the greatest economic need (including low-income minority individuals) residing in the proposed PSA;

iii. the number of older individuals who have the greatest social need (including low-income minority individuals) residing in the proposed PSA;

iv. the number of older individuals who are Indians residing in the proposed PSA;

c. the incidence of need for supportive services, nutrition services, multipurpose senior centers, and legal assistance in the proposed PSA;

d. the distribution of resources available to provide such services or centers in the proposed PSA;

e. the boundaries of existing areas within the proposed PSA drawn for the planning or administration of supportive and/or nutrition services programs;

f. the location of units of general purpose local government within the proposed PSA; and

g. a list of multipurpose senior centers and agencies providing supportive and/or nutrition services in the proposed PSA including services supported by Title III of the Older Americans Act.

2. If the proposed PSA's boundaries are either a combination or subdivision of existing planning and service areas, the application shall address the basis of need for the merger or separation.

3. Applications from units of general purpose local government shall include a statement of whether the unit desires to exercise the right to first refusal of an area agency on aging designation. If the unit chooses not to exercise this right, the application shall include a statement of preference for another agency or organization to be the designated area agency on aging for the proposed PSA.

4. Applications for PSA designation shall be signed by the chief elected official representing the unit of general purpose local government, region within the State recognized for areawide planning, metropolitan area, or Indian reservation.

### D. Criteria for Approval of PSA Designation Applications

1. The application must be received by GOEA within the time frame prescribed in §1107.A.2.

2. The application must be completed, including all required documentation and signatures. Incomplete applications may be returned and refused for reconsideration at the discretion of the GOEA executive director.

3. The application must clearly demonstrate that the designation of the proposed PSA is necessary for, and will

enhance, the effective administration of the programs authorized by Title III of the Older Americans Act.

### E. Procedure for Due Process to Affected Parties

1. GOEA shall approve or disapprove any application received under §1107.C.1.

2. Any applicant under §1107.B whose application for designation as a PSA is denied by GOEA may appeal the denial under the procedures specified in LAC 4:VII.1269.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:932.

**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 25:2205 (November 1999).

### §1109. Area Agency on Aging Designation

#### A. General Rules

1. The Governor's Office of Elderly Affairs (GOEA) shall designate a public or private nonprofit agency or organization as the area agency on aging (AAA) for each planning and service area (PSA) after consideration of the views offered by the unit or units of general purpose local government in each such PSA.

2. GOEA shall not designate any regional or local office of the State as an AAA.

3. Whenever GOEA designates a new AAA, GOEA shall give the right of first refusal to a unit of general purpose local government if such unit can meet the requirements of Sec. 305 (c) of the Older Americans Act and the boundaries of such a unit and the boundaries of the PSA are reasonably contiguous.

4. If the unit of general purpose local government chooses not to exercise the right of first refusal, GOEA shall publicly solicit applications for designation as an area agency on aging and shall give preference to an established office on aging as defined in §1109.B.1.a.

5. GOEA shall take into account the views of recipients of supportive services or nutrition services, or individuals using multipurpose senior centers provided under the state plan when designating AAAs.

#### B. Eligible Applicants for AAA Designation

1. Any of the following may apply for designation as an AAA:

a. an established office on aging which is operating within the PSA. The term "established office on aging" means a public or private nonprofit agency/organization that has functioned for at least one year for the purpose of planning, developing or administering aging service programs. The agency/organization must be capable of functioning effectively throughout the PSA designated by GOEA;

b. any office or agency of a unit of general purpose local government, which is designated to function only for the purpose of serving as an AAA by the chief elected official of such unit;

c. any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act only in behalf of such combination for the purpose of serving as an AAA;

d. any other public or private nonprofit agency in a PSA, or any separate organizational unit within such agency, which is under GOEA's supervision or direction for this

purpose and which can and will engage only in the planning or provision of a broad range of supportive services, or nutrition services within such PSA.

#### C. Application Procedure for AAA Designation

1. Eligible Applicants for AAA designation shall submit a written application in the format prescribed by GOEA.

2. Applications for AAA designation shall include:

- a. the legal basis upon which the agency is organized;
- b. a list of members serving on the governing body and the agencies/organizations they represent;
- c. a copy of the agency's most recent audit;
- d. a copy of the agency's current approved financial plan;
- e. an organizational chart depicting the manner in which the agency's staff will be divided to fulfill its AAA responsibilities;
- f. job descriptions reflecting the proposed AAA's intent to carry out the advocacy, planning, coordination, inter-agency linkages, information sharing, brokering, monitoring and evaluation functions;
- g. assurances that the agency, once designated, shall provide for an adequate and qualified staff to perform all of the AAA functions prescribed in the Older Americans Act; and
- h. such other information as GOEA deems necessary.

#### D. Criteria for Approval of Applications for AAA Designation

1. The application must be submitted in a timely manner, including all required documentation. Incomplete applications may be returned and refused for reconsideration at the discretion of the GOEA executive director.

2. The agency applying for AAA designation shall provide an opportunity for on-site review and assessment by GOEA to ensure that said organization has the capacity to perform the functions of an AAA.

3. Applications must demonstrate that the agency, if designated, will have the ability to fulfill the mission of an AAA.

#### E. Procedure for Due Process to Affected Parties

1. GOEA shall approve or disapprove any application received under §1109.C.1.

2. Any applicant under §1109.B whose application for designation as an AAA is denied by GOEA may appeal the denial under the procedures specified in LAC 4:VII.1267.

#### F. Duration of AAA Designation

The designated AAA shall function in that capacity for the duration of the area plan unless the AAA informs GOEA that it no longer wishes to carry out the responsibilities of an AAA or GOEA withdraws the designation as provided in §1109.G.

#### G. Withdrawal of AAA Designation

1. The Governor's Office of Elderly Affairs shall withdraw the AAA designation whenever GOEA, after reasonable notice and opportunity for a hearing, finds that:

- a. the AAA does not meet the requirements of 45 CFR 1321; or
- b. the plan or plan amendment is not approved; or

c. there is substantial failure in the provisions or administration of an approved area plan to comply with any provision of 45 CFR 1321 or the GOEA Policy Manual; or

d. activities of the AAA are inconsistent with the statutory mission prescribed in the Act or in conflict with the requirement that it function only as an AAA.

2. If GOEA withdraws the AAA's designation, it shall:

a. provide a plan for the continuity of AAA functions and services in the affected planning and service area; and

b. designate a new AAA in a timely manner.

3. If necessary to ensure continuity of service in a planning and service area, GOEA may, for a period up to 180 days after its final decision to withdraw the designation of an AAA:

a. perform the responsibilities of the AAA; or

b. assign the responsibilities of the AAA to another agency in the planning and service area.

4. The Assistant Secretary of the Administration on Aging may extend the 180-day period if GOEA:

a. notifies the Assistant Secretary in writing of its action;

b. requests an extension; and

c. demonstrates to the satisfaction of the Assistant Secretary a need for the extension.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:932, R.S. 46:935 and OAA Section 305(a)(1).

**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 25:2206 (November 1999).

### **§1111. Repealed.**

#### **Subchapter F. Hearing Procedures**

##### **§1265. General Hearing Provisions**

A. Purpose. The Governor's Office of Elderly Affairs (GOEA) shall provide the opportunity for a hearing, on request, to area agencies on aging submitting plans under Title III of the Older Americans Act, to any provider of a service under such a plan, or to any applicant to provide a service under such a plan; and to any unit of general purpose local government, region within the state recognized for area wide planning, metropolitan area, or Indian reservation that applies for designation as a planning and service area when GOEA initiates certain types of action or proceedings. This Section specifies the timing and procedures for the hearings.

##### B. Definitions

*Act*—is the Older Americans Act (42 United States Code Section 3001 et seq.).

*Administration on Aging*—an agency of the U.S. Department of Health and Human Services, Office of Human Development Services. It is the Federal focal point and advocate for older persons and their concerns.

*Area Agency on Aging*—is the agency designated by the Governor's Office of Elderly Affairs in a planning and service area to develop and administer the area plan for a comprehensive and coordinated system of services for older persons.

*Area Plan*—is the document submitted by an area agency to the Governor's Office of Elderly Affairs in order to receive contracts from the Governor's Office of Elderly Affairs.

*Assistant Secretary for Aging*—the head of the Administration on Aging.

*Contract*—is an award of financial assistance by the Governor's Office of Elderly Affairs to an eligible recipient.

*Director*—is the director of the Governor's Office of Elderly Affairs.

*Governor's Office of Elderly Affairs*—is the single state agency designated to develop and administer the state plan and be the focal point on aging in the State of Louisiana.

*Hearing Examiner*—is an impartial person designated to preside at the hearing and render a proposed final decision.

*Interested Person*—is any person who has a justifiable and clearly identifiable interest in the decision being appealed.

*Party*—is any petitioner or the area agency or the Governor's Office of Elderly Affairs which proposed or decided the action being appealed.

*Person*—is an individual, partnership, corporation, association, governmental agency or subdivision, or public or private organization of any character.

*Petitioner*—is any person who has a right to a hearing under these rules and has filed a written request for a hearing.

*Planning and Service Area*—is a geographic area of the state that is designated by the State Agency for the purpose of planning, development, delivery, and overall administration of services under an area plan.

*Service Provider*—is an entity that is awarded a subcontract from an area agency to provide services under the area plan.

*State Agency*—is the single state agency designated to develop and administer the state plan and to be the focal point on aging in the state.

#### C. General Procedures for Hearing

1. **Decisions Unresolved on Effective Date of These Rules.** These rules shall be applicable to all cases involving actions in which the petitioner has filed a request for hearing within 30 days of the receipt of the notice of such action, and a hearing has not yet been held or informal disposition or arrangements made as specified in §1265.C.4.

2. **Computation of Time.** In computing any record of time prescribed by these rules, or by any applicable statute, the period shall begin on the day after the event or act cited in the rule or statute and conclude on the last day of the computed period, unless the last day be a Saturday, Sunday, or a legal holiday, in which case the period concludes on the next day which is neither a Saturday, Sunday, nor a legal holiday.

3. **Representation of Petitioner.** Any party may be assisted by an attorney at law authorized to practice law before the Supreme Court of the State of Louisiana. Any party may appear personally or be represented by an employee or officer, or other person authorized by the party to represent the party.

4. **Informal Disposition.** Informal disposition or arrangements may be made of any matters under these rules by written agreement between petitioner and the area agency or the Governor's Office of Elderly Affairs proposing or deciding the action that resolves the issue(s) that led to the hearing.

D. **Incorporation of Administrative Procedure Act.** There is hereby incorporated as a part of these rules, to the extent same be applicable and pertinent, the provisions of LA R.S.

49:951 et seq., the Louisiana Administrative Procedure Act, as amended.

**AUTHORITY NOTE:** Promulgated in accordance with OAA Section 305(b)(1), Section 307(a)(5) and 45 CFR 1321.43(e).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 11:618 (June 1985), amended LR 11:1078 (November 1985), amended LR 25:2207 (November 1999).

#### §1267. Hearing Procedures for Area Agencies

A. **Purpose.** The purpose of this Section is to establish procedures that Governor's Office of Elderly Affairs (GOEA) will follow to provide due process to affected AAAs whenever GOEA initiates particular types of action or proceedings.

B. **Right to a Hearing.** GOEA shall provide affected AAAs reasonable notice and opportunity for a hearing whenever GOEA initiates an action or proceeding to:

1. revoke the designation of an AAA;
2. designate an additional planning and service area in the State;
3. divide the State into different planning and service areas; or
4. otherwise affect the boundaries of the planning and service areas in the State.

#### C. Notice of Proposed Action

1. The Governor's Office of Elderly Affairs shall issue a written notice to the area agency which shall include:

- a. a statement of the proposed action;
- b. a short and plain statement of the reasons for the proposed action and the evidence on which the proposed action is based; and
- c. a reference to the particular sections of statutes, regulations, and rules involved.

2. The notice shall be sent by registered or certified mail, return receipt requested.

#### D. Request for Hearing

1. The request for hearing must be received by the Governor's Office of Elderly Affairs within 30 days following petitioner's receipt of the notice of the proposed action.

2. A request for hearing must be in writing and must state with specificity the grounds upon which the proposed action is appealed and all grounds upon which petitioner refutes the basis of the proposed action. The request must include:

- a. the dates of all relevant actions;
- b. the names of individuals or organizations involved in the proposed action;
- c. a specific statement of any section of the act or regulations believed to have been violated;
- d. a certified copy of the minutes or resolution in which petitioner's governing body requests a hearing and authorizes a person or persons to act in behalf of the agency or organization. The minutes or resolution shall indicate adoption by a majority of the quorum of the governing body of the agency or organization; and
- e. a request for a transcript of the hearing, if desired.

#### E. Notice of Hearing

1. Upon receipt of a request for hearing the director shall, within 10 days, set a date for the hearing.

2. The Governor's Office of Elderly Affairs shall issue a written notice to the petitioner and interested persons which shall include:

- a. a statement of time, date, and location of the hearing;
- b. a statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. a reference to the particular sections of statutes, regulations, and rules involved; and
- d. a short and plain statement of the reasons for the proposed action that is being appealed and the evidence on which the proposed action is based.

3. Petitioner and other parties shall be given no less than 10 days notice of the scheduled hearing. Notice shall be sent by registered or certified mail, return receipt requested.

F. Hearing Examiner. The director or his designated representative shall be the hearing examiner and preside at the hearing subject to the provisions of LA R.S. 49:960. The hearing examiner shall have authority to administer oaths, rule on motions and the admissibility of evidence, to recess any hearing from time to time, and rule on such other procedural motions as may be presented by the Governor's Office of Elderly Affairs or petitioner.

#### G. Rules of Evidence

1. In hearings, under these rules, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Objection to evidentiary offers may be made and shall be noted in the record.

2. Documentary evidence may be received by the hearing examiner in the form of a copy or excerpt if the original is not readily available. On request, either party shall be given an opportunity to compare the copy with the original.

3. If a hearing will be expedited and the interests of parties will not be prejudiced substantially, any part of the evidence may be received in written form or the parties may stipulate as to facts or circumstances or summarize same.

4. Either party may conduct cross-examination required for a full and true disclosure of the facts.

5. Official notice may be taken by the hearing examiner of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the Governor's Office of Elderly Affairs specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data; and afforded an opportunity to contest the material so noticed. The special skills or knowledge of the Governor's Office of Elderly Affairs and its staff may be utilized in evaluating the evidence.

6. Formal exceptions to rulings of the hearing examiner during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the hearing examiner, the action desired. When testimony is excluded by the hearing examiner, the party offering such evidence shall be permitted

to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review. The hearing examiner may ask such questions of the witness as he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof.

H. Ex Parte Consultations. Communications between the hearing examiner and any party or interested person or their representatives shall be governed by LA R.S. 49:960.

I. Depositions and Subpoenas. The taking and use of depositions and the issuance of subpoenas shall be governed by R.S. 49:956(5)-(8).

#### J. Hearing

1. Petitioner shall open and present its evidence to establish its position on the matters involved. Interested persons shall follow and present their evidence; then the Governor's Office of Elderly Affairs shall present its evidence. Petitioner may thereafter present rebuttal evidence only, such evidence to be confined to issues raised in petitioner's opening presentation and Governor's Office of Elderly Affairs following presentation or that of others. Petitioner shall be given the opportunity to offer final argument, but no additional presentation of evidence.

2. The hearing shall be completed within 120 days of the date the request for hearing was received.

K. Transcript. The proceedings of the hearing shall be transcribed on request of any party or person. The cost of transcription will be borne by the person requesting the transcript, unless otherwise provided by law. The Governor's Office of Elderly Affairs may require a deposit in the form of a certified check or cashier's check in an amount reasonably determined by the Governor's Office of Elderly Affairs to be adequate to cover all costs of transcription. In the event that transcription is not requested, the Governor's Office of Elderly Affairs, at its option, may produce a summary record of the proceedings of the hearing; provided that if such a summary record is produced by Governor's Office of Elderly Affairs, it shall provide the area agency with notice of the fact that such summary record was prepared and with the opportunity to copy or inspect same.

#### L. Final Decision

1. All final decisions shall be in writing and shall be rendered and acted upon by the director within 60 days of the close of the hearing. The area agency shall comply with the final decision. A copy of the decision shall be sent immediately to the parties by registered or certified mail, return receipt requested.

2. Procedures for rehearing and appeal shall be governed by R.S. 49:959 and 965.

M. Record. The record in a hearing under these rules includes:

1. all pleadings, motions, and intermediate rulings;
2. evidence received or considered, or a resume thereof if not transcribed, except matters so obvious that a statement of them would serve no useful purpose;
3. a statement of matters officially noted;
4. offers of proof, objections and rulings on them;
5. proposed findings and exceptions; and
6. any decision, opinion, or report by the hearing examiner presiding at the hearing.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 307(a)(5).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 11:618 (June 1985), amended LR 11:1078 (November 1985), LR 25:2208 (November 1999).

### **§1269. Hearing Procedures for Applicants for Planning and Service Area Designation**

A. Purpose. The Governor's Office of Elderly Affairs is required to provide an opportunity for a hearing to any qualified applicant for designation as a planning and service area (PSA) whose application is denied by the Governor's Office of Elderly Affairs.

B. Right to a Hearing. The Governor's Office of Elderly Affairs shall provide an opportunity for a hearing, and issue a written decision to any unit of general purpose local government; region within the state recognized for purposes of areawide planning which includes one or more such units of general purpose local government; metropolitan area; or Indian reservation whose application for designation as a planning and service area is denied.

#### C. Request for Hearing

1. The request for a hearing must be received by the Governor's Office of Elderly Affairs within 30 days following petitioner's receipt of the notice of the adverse decision.

2. A request for hearing must be in writing and must state with specificity the grounds upon which the Governor's Office of Elderly Affairs decision is appealed and all grounds upon which petitioner refutes the basis of the adverse decision. The request must include:

- a. the dates of all relevant actions;
- b. the names of individuals or organizations involved in the action;
- c. a specific statement of any section of the act or regulations believed to have been violated;
- d. a certified copy of the minutes or resolution in which the applicant's governing body requests a hearing and authorizes a person or persons to act in behalf of the agency or organization. The minutes or resolution shall indicate adoption by a majority of a quorum of the governing body of the agency or organization; and
- e. a request for a transcript of hearing, if desired.

3. Petitioners shall be given no less than ten days notice of the scheduled hearing. Notice shall be sent by registered or certified mail, return receipt requested.

#### D. Notice of Hearing

1. Upon receipt of a request for hearing, the director shall, within 10 days, set a date for the hearing.

2. The Governor's Office of Elderly Affairs shall issue a written notice to the petitioner, which shall include:

- a. a statement of time, date, location, and nature of the hearing;
- b. a statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. a reference to the particular section of statutes, regulations, and rules involved; and
- d. a short and plain statement of the reasons for the decision that is being appealed and the evidence on which the decision was based.

3. If the Governor's Office of Elderly Affairs is unable to state in detail the evidence and reasons for the decision at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, a more definite and detailed statement shall be furnished not less than three days prior to the date set for the hearing.

4. Petitioner shall be given no less than 10 days notice of the scheduled hearing. Notice shall be sent by registered or certified mail, return receipt requested.

E. Hearing Examiner. The director or his designated representative shall be the hearing examiner and preside at the hearing, subject to the provisions of LA R.S. 49:960. The hearing examiner shall conduct the hearing in an orderly fashion and in accordance with the procedures outlined herein. It is the responsibility of the hearing examiner to fully consider information relevant to the complaint and draft a fair decision based on such information.

F. Rules of Evidence. The rules of evidence for hearings held under §1269 of this manual shall be as provided in §1267.G.

G. Ex Parte Consultations. Communications between the hearing examiner and any party or interested person or his representative shall be governed by LA R.S. 49:960, the Louisiana Administrative Procedure Act.

H. Depositions and Subpoenas. The taking and use of depositions and the issuance of subpoenas shall be governed by R.S. 49:956 (5)-(8) of the Louisiana Administrative Procedure Act.

I. Hearing. The procedure to be followed for hearings held under §1269 shall be as provided in §1267.J.

J. Transcript. The rules governing transcripts for hearings held under §1269 shall be as provided in §1267.J.

K. Final Decision. All decisions shall be in writing and shall be rendered and acted upon by the director within 60 days of the close of the hearing. A copy of the decision shall be sent immediately to the applicant by registered or certified mail, return receipt requested.

L. Rehearing. Procedures for rehearings shall be governed by LA R.S. 49:959.

M. Record. The record in a hearing under this Section shall consist of the materials listed in §1267.M.

N. Appeal to Assistant Secretary for Aging. Any eligible applicant for PSA designation, whose application has been denied, and who has been provided a written decision by the GOEA, may appeal the denial to the c Assistant Secretary for Aging in writing within thirty days following receipt of the State agency's decision. Such appeal shall be governed by the procedures outlined in the federal regulations issued by the Assistant Secretary for Aging.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 305(b)(1), (4), and 45 CFR 1321.47.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 11:618 (June 1985), amended LR 11:1078 (November 1985), LR 25:2210 (November 1999).

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

9910#077

**RULE**

**Office of the Governor  
Office of Veterans Affairs**

Members and Travel (LAC 4:VII.905 and 911)

In accordance with Act 268 of the 1999 Regular Legislative Session, the Louisiana Department of Veterans Affairs advertises its intent to amend LAC 4:VII.905 and 977 pertaining to payment of per diem and traveling expenses for members of the Veterans' Affairs Commission.

**Title 4**

**ADMINISTRATION**

**Part VII. Governor's Office**

**Chapter 9. Veterans' Affairs**

**Subchapter A. Veterans' Affairs Commission**

**§905. Members**

A. Each member shall be paid \$75 each day devoted to the work of the commission, but not more than \$1500 in any one fiscal year.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:253.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 7:486 (October 1981), amended LR 20:48 (January 1994), LR 25:2211 (November 1999).

**§911. Travel**

A. Travel will only be authorized on days that per diem is paid, unless prior approval is granted by the chairman or his designated representative. Travel must be for official state business.

B. All travel vouchers for the commission members shall be authorized by the chairman or his designated representative, the director of the Office of Veterans Affairs, with ultimate responsibility held by the chairman, in accordance with adopted rules relating to travel.

C. The director, as secretary of the commission, shall keep the chairman and all members of the commission apprised of the availability or nonavailability of travel monies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:253.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 7:486 (October 1981), amended LR 20:48 (January 1994), amended LR 24:936 (May 1998), LR 25:2211 (November 1999).

Joey Strickland  
Executive Director

9911#010

**RULE**

**Office of the Governor  
Office of Veterans Affairs**

State Aid Eligibility (LAC 4:VII.917)

In accordance with Act 1031 of the 1999 Regular Legislative Session, the Louisiana Department of Veterans Affairs advertises its intent to amend LAC 4:VII.917.A.2 and 8, pertaining to eligibility requirements for the State Aid Program.

**Title 4**

**ADMINISTRATION**

**Part VII. Governor's Office**

**Chapter 9. Veterans' Affairs**

**Subchapter B. State Aid Program**

**§917. Eligibility**

A. Application must be made through the Parish Veterans Service Office. In order to be eligible, the following criteria must be met:

\* \* \*

2. the veteran must be rated 90 percent or above service-connected disabled or who has been determined to be unemployable as a result of a service-connected disability by evaluation of the United States Department of Veterans Affairs Rating Schedule.

\* \* \*

8. the eligible student may attend any state college or university, including institutions under the jurisdiction of the Board of Supervisors of Community and Technical Colleges; all entrance requirements for such institution must be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:288.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 7:485 (October 1981), amended LR 13:743 (December 1987), LR 19:1565 (December 1993), LR 23:1685 (December 1997), LR 25:2211 (November 1999).

Joey Strickland  
Executive Director

9911#009

**RULE**

**Department of Health and Hospitals  
Board of Medical Examiners**

Respiratory Therapists—Licensing and Practice  
(LAC 46:XLV.2501-2569, 5501-5519)

Notice is hereby given, in accordance with R.S. 49:953, that the Louisiana State Board of Medical Examiners

(Board), pursuant to the authority vested in the Board by the Louisiana Respiratory Therapy Practice Act, R.S. 37:3351-3361, and particularly 37:3355(3), the Louisiana Medical Practice Act, 37:1270(B)(6), and the provisions of the Louisiana Administrative Procedure Act, had amended its rules governing the licensure of respiratory therapists, LAC 46:XLV, Chapter 25, §§2501-2569, and Chapter 55, §§5501-5519, to conform such rules to the definitional and credentialing changes implemented by the national certifying board for respiratory therapists, the National Board for Respiratory Care, Inc., and to provide for other substantive modifications and technical corrections. The rule amendments are set forth below.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XLV. Medical Professions**

##### **Subpart 1. General**

#### **Chapter 25. Respiratory Therapists**

##### **Subchapter A. General Provisions**

##### **§2501. Scope of Chapter**

The rules of this chapter govern the licensing of certified and registered respiratory therapists in the State of Louisiana.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2212 (November 1999).

##### **§2503. Definitions**

A. As used in this Chapter, unless the context clearly states otherwise, the following terms and phrases shall have the meanings specified:

*Applicant*—a person who has applied to the board for licensure as a licensed registered respiratory therapist or a licensed certified respiratory therapist.

*Board*—the Louisiana State Board of Medical Examiners.

*Certified Respiratory Therapist*—also known as Certified Respiratory Therapy Technician, prior to July 1, 1999, means one who has successfully completed the entry level examination or its successor administered by the National Board for Respiratory Care.

*Chest Pulmonary Therapy (CPT)*—chest percussion, postural drainage, chest clapping, chest vibrations, bronchopulmonary hygiene and cupping, positive expiratory therapy (PEP), deep breathing/cough exercise, and inspiratory muscle training.

*Good Moral Character*—as applied to an applicant, means that an applicant has not, prior to or during the pendency of an application to the board, been guilty of any act, omission, condition or circumstance which would provide legal cause under R.S. 37:3358 for the denial, suspension or revocation of respiratory care licensure; the applicant has not, prior to or in connection with his application, made any representation to the board, knowingly or unknowingly, which is in fact false or misleading as to material fact or omits to state any fact or matter that is material to the application; and the applicant has not made any representation or failed to make a

representation or engaged in any act or omission which is false, deceptive, fraudulent or misleading in achieving or obtaining any of the qualifications for a license required by this chapter.

*Licensed Respiratory Therapist*—a person who is licensed by the board and has the lawful authority to engage in the practice of respiratory care in the state of Louisiana, only under the qualified medical direction and supervision of a licensed physician, as evidenced by certificate duly issued by and under the official seal of the board. The term *licensed respiratory therapist* shall signify both certified respiratory therapist and registered respiratory therapist.

*Medical Gases*—gases commonly used in a respiratory care department in the calibration of respiratory care equipment (nitrogen, oxygen, compressed air and carbon dioxide), in the diagnostic evaluation of diseases (carbon monoxide, nitrogen, carbon dioxide, helium and oxygen) and in the therapeutic management of diseases (nitrogen, carbon dioxide, helium, oxygen and compressed air).

*National Board for Respiratory Care*—the official credentialing board of the profession, or its successor.

*Nontraditional Respiratory Care Education Program*—a program of studies primarily through correspondence with tutorial assistance and with a clinical component comparable to a traditional program.

*Physician*—a person who is currently licensed by the board to practice medicine in the state of Louisiana.

*Registered Respiratory Therapist*—one who has successfully completed the Advanced Practitioner Examination or its successor administered by the National Board for Respiratory Care.

*Respiratory Care*—the allied health specialty practiced under the direction, supervision and approval of a licensed physician involving the treatment, testing, monitoring, and care of persons with deficiencies and abnormalities of the cardiopulmonary system. Such therapy includes, but is not limited to, the following activities conducted upon written prescription or verbal order of a physician and under his supervision:

- a. application and monitoring of oxygen, ventilatory therapy, bronchial hygiene therapy, cardiopulmonary rehabilitation, and resuscitation;
- b. insertion and care of airways as ordered by a physician;
- c. institution of any type of physiologic monitoring applicable to respiratory care;
- d. administration of drugs and medications commonly used in respiratory care that have been prescribed by a physician to be administered by qualified respiratory care personnel;
- e. initiation of treatment changes and testing techniques required for the implementation of respiratory care protocols as directed by a physician;
- f. administration of medical gases and environmental control systems and their apparatus;
- g. administration of humidity and aerosol therapy;
- h. application of chest pulmonary therapy;
- i. the institution of known and physician-approved patient driven protocols relating to respiratory care under physician approval in emergency situations in the absence of immediate direction by a physician;

j. application of specific procedures and diagnostic testing as ordered by the physician to assist in diagnosis, monitoring, treatment, and research, including those procedures required and directed by the physician for the drawing of blood samples to determine acid-base status and blood gas values, the collection of sputum for analysis of body fluids, and the measurement of cardiopulmonary functions as commonly performed in respiratory therapy, and the starting of intravenous lines for the purpose of administering fluids as pertinent to the practice of respiratory care under the supervision of a licensed physician;

k. supervision of other respiratory therapy personnel; and

l. transcription and implementation of the written and verbal orders of a physician.

*Respiratory Therapy Practice Act or the Act*—Acts 1985, Number 408, as amended, R.S. 37:3351-3361;

*United States Government*—any department, agency or bureau of the United States Armed Forces or Veterans Administration.

B. Respiratory care shall also include teaching patient and family respiratory care procedures as part of a patient's ongoing program and consultation services or for health, educational, and community agencies under the order of a licensed physician.

C. Masculine terms wherever used in this chapter shall also be deemed to include the feminine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:744 (June 1993), LR 25:2212 (November 1999).

### **Subchapter B. Requirements and Qualifications for Licensure**

#### **§2505. Scope of Subchapter**

The rules of this Subchapter govern and prescribe the requirements, qualifications and conditions requisite to eligibility for licensure as a licensed respiratory therapist in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2213 (November 1999).

#### **§2507. Requirements for Licensure of Registered Respiratory Therapist**

A. To be eligible and qualified to obtain a registered respiratory therapist license, an applicant shall:

1. be at least 18 years of age;
2. be of good moral character;
3. be a high school graduate or have the equivalent of a high school diploma;
4. possess current credentials as a registered respiratory therapist granted by the National Board of Respiratory Care, or its successor organization or equivalent approved by the board, on the basis of written examination;
5. be a citizen of the United States or possess valid and current legal authority to reside and work in the United States duly issued by the Commissioner of Immigration and

Naturalization Service of the United States under and pursuant to the Immigration and Nationality Act (66 Stat. 163) and the commissioner's regulations thereunder (8 C.F.R.);

6. satisfy the applicable fees as prescribed by Chapter 1 of these rules;

7. satisfy the procedures and requirements for application provided by §§2515 to 2519 of this Chapter; and

8. not be otherwise disqualified for licensure by virtue of the existence of any grounds for denial of licensure as provided by the law or in these rules.

B. The burden of satisfying the board as to the qualifications and eligibility of the applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualification in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended LR 14:87 (February 1988), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 15:271 (April 1989), LR 17:479 (May 1991), LR 25:2213 (November 1999).

#### **§2509. Requirements for Licensure of Certified Respiratory Therapists**

A. To be eligible and qualified to obtain a certified respiratory therapist license, an applicant shall:

1. be at least 18 years of age;
2. be of good moral character;
3. be a high school graduate or have the equivalent of a high school diploma;
4. have successfully completed:
  - a. a traditional respiratory care education program then accredited by the Commission on Accreditation of Allied Health Education Programs, or its successor, in collaboration with the Committee on Accreditation for Respiratory Care; or
  - b. a nontraditional respiratory care education program then accredited by the Commission on Accreditation of Allied Health Education Programs, or its successor, in collaboration with the Committee on Accreditation for Respiratory Care which was conducted in accordance with the provisions of §2510 of this chapter;
5. possess at least one of the following credentials:
  - a. current credentials as a certified respiratory therapist granted by the National Board for Respiratory Care, or its successor organization or equivalent approved by the board, on the basis of written examination; or
  - b. have taken and successfully passed the examination administered by the board as further detailed in §§2521 to 2537 of this chapter; provided, however, that an applicant who has failed such examination four times shall not thereafter be eligible for licensure in Louisiana; or
  - c. a temporary license in accordance with the provisions of §2547 of these rules and who has taken and passed the licensing examination administered by the board; provided, however, that an applicant who has failed such examination four times shall not thereafter be eligible for licensure in Louisiana;
6. be a citizen of the United States or possess valid and current legal authority to reside and work in the United

States duly issued by the Commissioner of Immigration and Naturalization Service of the United States under and pursuant to the Immigration and Nationality Act (66 Stat. 163) and the Commissioner's regulations thereunder (8 C.F.R.);

7. satisfy the applicable fees as prescribed by Chapter 1 of these rules;

8. satisfy the procedures and requirements for application provided by §§2515 to 2519 of this Chapter and, if applicable, the procedures and requirements for examination provided by §2521 to §2537 of this Chapter; and

9. not be otherwise disqualified for licensure by virtue of the existence of any grounds for denial of licensure as provided by the law or in these rules.

B. The burden of satisfying the board as to the qualifications and eligibility of the applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualification in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended LR 14:87 (February 1988), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 15:271 (April 1989), LR 17:479 (May 1991), LR 19:755 (June 1993), LR 25:2213 (November 1999).

#### **§2510. Conduct of Nontraditional Training Programs**

A. To qualify an applicant for licensure as a certified respiratory therapist pursuant to §2509.A.4.b, a nontraditional respiratory care education program must be conducted in accordance with the following standards.

1. A certified respiratory therapist student participating in such a program must be concurrently enrolled in a respiratory care education program of a school or college accredited by the Commission on Accreditation of Allied Health Education Programs, or its successor, in collaboration with the Committee on Accreditation for Respiratory Care.

2. The hospital furnishing tutorial assistance, testing, clinical training and similar services for the benefit of the student must:

a. have a written affiliation agreement with the accredited program;

b. designate a training coordinator who shall have had prior experience in a formal respiratory care educational environment with at least five years clinical experience in respiratory care and who shall be a licensed respiratory therapist or a physician who actively practices respiratory care;

c. provide for tutorial assistance and supervision of the student's clinical activities to be provided by a licensed respiratory therapist or a physician who actively practices respiratory care; and

d. be able to provide students with an opportunity to observe and participate in respiratory care procedures adequate in number and type to support the clinical training of entry level therapists relative to the number of students admitted to and participating in such training.

3. A student providing respiratory care to patients as permitted by R.S. 37:3361(3) in the course of a student's

clinical training shall be supervised in accordance with the provisions of §5515 of these rules and shall be identified to patients and licensed practitioners by title or otherwise which clearly designates the student's status as a student or trainee.

B. A nontraditional respiratory care education program which does not conform to and apply the standards prescribed in §2510.A shall not be considered by the board to qualify as an applicant for licensure under §2509.A.4.b.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:746 (June 1993), amended LR 25:2214 (November 1999).

#### **§2511. Licensure by Reciprocity**

A. A person who possesses and meets all of the qualifications and requirements for licensure specified in §2507 of this Chapter, save for possessing current credentials as a registered respiratory therapist as prescribed in §2507.A.4, shall nonetheless be deemed qualified for licensure, as a registered respiratory therapist, provided that such person presents proof of current licensure as a registered respiratory therapist in another state, the District of Columbia, a territory of the United States, or another country which requires standards for licensure considered by the board to exceed or to be equivalent to the requirements for licensure under this chapter, provided such state, district, territory, or country accord similar privileges of licensure to persons who have been granted their licenses under the provisions of this chapter.

B. A person who possesses and meets all of the qualifications and requirements for licensure specified by §2509, save for successfully passing the licensure examination administered by the board or save for possessing current credentials as a certified respiratory therapist as prescribed in §2509.A.4.a, shall nonetheless be deemed qualified for licensure as a certified respiratory therapist provided that such person presents proof of current licensure as a certified respiratory therapist in another state, the District of Columbia, a territory of the United States, or another country which requires standards for licensure considered by the board to exceed or to be equivalent to the requirements for licensure under this chapter, provided such state, district, territory, or country accord similar privileges of licensure to persons who have been granted their licenses under the provisions of this chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2214 (November 1999).

#### **§2513. Temporary License**

The board may issue a temporary license as a licensed respiratory therapist to an applicant who possesses and meets all of the qualifications and requirements specified in §2547.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-61.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health

and Hospitals, Board of Medical Examiners, LR 25:2214 (November 1999).

### **Subchapter C. Application**

#### **§2515. Purpose and Scope**

The rules of this subchapter govern the procedures and requirements applicable to application to the board for licensure of a licensed respiratory therapist in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended, Department of Health and Hospitals, Board of Medical Examiners, LR 25:2215 (November 1999).

#### **§2517. Application Procedure**

A. Application for licensure shall be made upon forms prescribed and supplied by the board.

B. If application is made for licensure of a certified respiratory therapist on the basis of examination to be administered by the board, an initial application must be received by the board not less than 90 days prior to the scheduled date of the examination for which the applicant desires to sit (see Subchapter D of this Chapter respecting dates and places of examination). A completed application must be received by the board not less than 60 days prior to the scheduled date of such examination.

C. Application for licensure as a certified respiratory therapist based upon qualifications not requiring written examination administered by the board, or an application for licensure as a registered respiratory therapist may be made at any time.

D. Application forms and instructions pertaining thereto may be obtained upon personal request at or written request directed to the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Application forms will be mailed by the board within 30 days of the board's receipt of a request therefor. To ensure timely filing and completion of applications, forms must be requested not later than 40 days prior to the deadlines for initial applications specified in §2517.B.

E. An application for licensure under this Chapter shall include:

1. proof, documented in a form satisfactory to the board, that the applicant possesses the qualifications for licensure set forth in this chapter;
2. one recent photograph of the applicant; and
3. such other information and documentation as is referred to or specified in this chapter or as the board may require to evidence qualification for licensure.

F. An application for licensure of a certified respiratory therapist on the basis of examination shall include all documents prescribed by the National Board for the Respiratory Care entry level examination and any other information and documentation deemed necessary by the board.

G. All documents required to be submitted to the board must be the original thereof. For good cause shown, the board may waive or modify this requirement.

H. The board may refuse to consider any application which is not complete in every detail, including submission of every document required by the application form. The board may, at its discretion, require a more detailed or

complete response to any request for information set forth in the application form as a condition to consideration of an application.

I. Each application submitted to the board shall be accompanied by the applicable fee, as provided in Chapter 1 of these rules as established by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2215 (November 1999).

#### **§2519. Effect of Application**

A. The submission of an application for licensure to the board shall constitute and operate as an authorization by the applicant to each educational institution at which the applicant has matriculated, each governmental agency to which the applicant has applied for any license, permit, certificate or registration, each person, firm, corporation, organization or association by whom or with whom the applicant has been employed as a registered respiratory therapist or certified respiratory therapist, each physician whom the applicant has consulted or seen for diagnosis or treatment, and each professional or trade organization to which the applicant has applied for membership, to disclose and release to the board any and all information and documentation concerning the applicant which the board deems material to consideration of the application. With respect to any such information or documentation, the submission of an application for licensure to the board shall equally constitute and operate as a consent by the applicant to disclosure and release of such information and documentation as a waiver by the applicant of any privileges or right of confidentiality which the applicant would otherwise possess with respect thereto.

B. By submission of an application for licensure to the board, an applicant shall be deemed to have given his consent to submit to physical or mental examinations if, when, and in the manner so directed by the board if the board has reasonable grounds to believe that the applicant's capacity to act as a registered respiratory therapist or certified respiratory therapist with reasonable skill or safety may be compromised by physical or mental condition, disease or infirmity, and the applicant shall be deemed to have waived all objections as to the admissibility or disclosure of findings, reports or recommendations pertaining thereto on the grounds of privileges provided by law.

C. The submission of an application for licensure to the board shall constitute and operate as an authorization and consent by the applicant to the board to disclose any information or documentation set forth in or submitted with the applicant's application or obtained by the board from other persons, firms, corporations, associations or governmental entities pursuant to this section, to any person, firm, corporation, association or governmental entity having a lawful, legitimate and reasonable need therefor, including, without limitation, the respiratory care licensing authority of any state, the National Board for Respiratory Care, the Louisiana Department of Health and Hospitals, state, county or parish and municipal health and law enforcement agencies and the armed services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2215 (November 1999).

#### **Subchapter D. Examination**

##### **§2521. Purpose and Scope**

The rules of this Subchapter govern the procedures and requirements applicable to the examination as administered by the board for the licensure of certified respiratory therapists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2216 (November 1999).

##### **§2523. Designation of Examination**

The examination administered and accepted by the board pursuant to R.S. 37:3354 is the National Board for Respiratory Care entry level examination or its successor, developed by the National Board for Respiratory Care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2216 (November 1999).

##### **§2525. Eligibility for Examination**

To be eligible for examination by the board, an applicant shall possess all qualifications for licensure as a certified respiratory therapist prescribed by this chapter save for having successfully completed the examination; provided, however, that an applicant who has completed, or prior to the next scheduled examination will complete the traditional respiratory care program required by §2509.A.4 of this Chapter, but who does not yet possess evidence of such completion shall be deemed eligible for examination upon submission to the board of a letter subscribed by the director of the approved program certifying that the applicant has completed the applicable program or will have completed such program prior to the board's next scheduled examination and specifying the date on which such curriculum will be completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2216 (November 1999).

##### **§2527. Dates, Places of Examination**

The board's licensure examination is administered at least annually by the National Board for Respiratory Care in the city of New Orleans. The applicants shall be advised of the specific date, time and location of the next scheduled examination upon application to the board and may obtain such information upon inquiry to the office of the Louisiana State Board of Medical Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2216 (November 1999).

##### **§2529. Administration of Examination**

A. The board's licensure examination is administered by a chief proctor, appointed by the board, and one or more assistant proctors. The chief proctor is authorized and directed by the board to obtain positive photographic identification from all applicants appearing and properly registered for the examination, to establish and require examinees to observe an appropriate seating arrangement, to provide appropriate instructions for taking the examination, to fix and signal the time for beginning and ending the examination or the section thereof, to prescribe such additional rules and requirements as are necessary or appropriate to the taking of the examination in the interest of the examinees or the examination process, and to take all necessary and appropriate actions to secure the integrity of the examination and the examination process, including, without limitation, excusing an applicant for the examination or changing an applicant's seating location at any time during the examination.

B. An applicant who appears for examination shall:

1. present to the chief proctor or his designated assistant proctor proof of registration for the examination and positive personal photographic identification in the form prescribed by the board; and

2. fully and promptly comply with any and all rules, procedures, instructions, directions or requests made or prescribed by the chief proctor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by Department of Health and Hospitals, Board of Medical Examiners, LR 25:2216 (November 1999).

##### **§2531. Subversion of Examination Process**

A. An applicant-examinee who engages or attempts to engage in conduct which subverts or undermines the integrity of the examination process shall be subject to the sanctions specified in §2535 of this Chapter.

B. Conduct which subverts or undermines the integrity of the examination process shall be deemed to include:

1. refusing or failing to fully and promptly comply with any rules, procedures, instructions, directions or requests made by the chief proctor or an assistant proctor.

2. removing from the examination room or rooms any of the examination materials;

3. reproducing or reconstructing, by copying, duplication, written notes or electronic recording, any portion of the licensure examination;

4. selling, distributing, buying, receiving, obtaining or having unauthorized possession of a future, current, or previously administered licensure examination;

5. communicating in any manner with any other examinee or any other person during the administration of the examination;

6. copying answers from another examinee or permitting one's answers to be copied by another examinee during the administration of the examination;

7. having in one's possession during the administration of the examination any materials or objects other than the examination materials distributed, including, without limitation, any books, notes, recording devices, or other written, printed or recorded materials or data of any kind;

8. impersonating an examinee by appearing for and as an applicant and taking the examination for, as and in the name of an applicant other than himself;

9. permitting another person to appear for and take the examination on one's behalf and in one's name; or

10. engaging in any conduct which disrupts the examination or the taking thereof by other examinees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2216 (November 1999).

### **§2533. Finding of Subversion**

A. When, during the administration of examination, the chief proctor or any assistant proctor has reasonable cause to believe that an applicant-examinee is engaging or attempting to engage, or has engaged or attempted to engage, in conduct which subverts or undermines the integrity of the examination process, the chief proctor shall take such action as he deems necessary or appropriate to terminate such conduct and shall report such conduct in writing to the board.

B. In the event of suspected conduct described in 2531.B.5 or 6, the subject applicant-examinee shall be permitted to complete the examination, but shall be removed at the earliest practical opportunity to a location precluding such conduct.

C. When the board, upon information provided by the chief proctor, an assistant proctor, an applicant-examinee or any other person, has probable cause to believe that an applicant has engaged or attempted to engage in conduct which subverts or undermines the integrity of the examination process, the board shall so advise the applicant in writing, setting forth the grounds for its finding of probable cause, specifying the sanctions which are mandated or permitted for such conduct by §2535 of this Subchapter and provide the applicant with an opportunity for hearing pursuant to R.S. 49:9955-58 and applicable rules of the board governing administrative hearings. Unless waived by the applicant, the board's findings of fact, conclusions of law under these rules, and its decision as to the sanctions, if any, to be imposed shall be made in writing and served upon the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2217 (November 1999).

### **§2535. Sanctions for Subversion of Examination**

A. An applicant who is found by the board, prior to the administration of the examination, to have engaged in conduct or to have attempted to engage in conduct which subverts or undermines the integrity of the examination

process shall be permanently disqualified from taking the examination and from licensure in the state of Louisiana.

B. An applicant-examinee who is found by the board to have engaged or to have attempted to engage in conduct which subverts or undermines the integrity of the examination process shall be deemed to have failed the examination. Such failure shall be recorded in the official records of the board with reasons given for such failure.

C. In addition to the sanctions permitted or mandated by §2535.A and B, as to an applicant-examinee found by the board during the examination to have engaged or to have attempted to engage in conduct which subverts or undermines the integrity of the examination process, the board may:

1. revoke licensure issued to such applicant;

2. disqualify the applicant, permanently or for a specified period of time, from eligibility for licensure in the state of Louisiana; or

3. disqualify the applicant, permanently or for a specified number of subsequent administrations of the examination, from eligibility for examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2217 (November 1999).

### **§2536. Restrictions, Limitation on Examination**

With respect to any written examination administered by the board the successful passage of which is a condition to any license or permit issued under this chapter, an applicant having failed to obtain a passing score upon taking any such examination four times shall not thereafter be considered eligible for licensing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended LR 14:87 (February 1988), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:479 (May 1991), LR 25:2217 (November 1999).

### **§2537. Passing Score, Reporting of Examination Scores**

An applicant will be deemed to have successfully passed the examination if he attains a score equivalent to that required by the National Board for Respiratory Care as a passing score; provided, however, that with respect to any given administration of the examination, the board may determine to accept a lower or higher score as passing. Applicants for licensure shall be required to authorize the National Board for Respiratory Care to release their test scores to the board each time the applicant-examinee attempts the examination according to the procedures for such notification established by the National Board for Respiratory Care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2217 (November 1999).

### **§2539. Lost, Stolen or Destroyed Examinations**

The submission of an application for examination by the board shall constitute and operate as an acknowledgment and agreement by the applicant that the liability of the board, its members, committees, employees and agents, and the state of Louisiana to the applicant for the loss, theft or destruction of all or any portion of an examination taken by the applicant, prior to the reporting of scores, thereon by the board or the National Board for Respiratory Care, shall be limited exclusively to the refund of the fees paid for examination by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2218 (November 1999).

### **Subchapter E. Licensure Issuance, Termination, Renewal, Temporary Issuance and Reinstatement**

#### **§2540. Issuance of License**

A. If the qualifications, requirements and procedures prescribed or incorporated by §§2507, 2509 or 2511 are met to the satisfaction of the board, the board shall issue to the applicant a license evidencing the applicant's licensure as a registered respiratory therapist or a certified respiratory therapist in the state of Louisiana.

B. A license issued by the board on the basis of examination by the board shall be issued by the board within 30 days following the reporting of the applicant's license examination scores to the board. A license issued to an applicant not required to be examined by the board shall be issued by the board within 15 days following the meeting of the board next following the date on which the applicant's application, evidencing all requisite qualifications, is completed in every respect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2218 (November 1999).

#### **§2541. Expiration of License**

A. Every license issued by the board under this chapter to be effective on or after January 1, 1999, and each year thereafter, shall expire, and thereby become null, void and to no effect the following year on the first day of the month in which the licensee was born.

B. The timely submission of an application for renewal of a license as provided by §2543 hereof shall operate to continue the expiring license in force and effect pending the board's issuance, or denial of issuance, of the renewal license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1218 (December 1996), LR 24:1502 (August 1998), LR 25:2218 (November 1999).

#### **§2543. Renewal of License**

A. Every license issued by the board under this subchapter shall be renewed annually on or before the date

of its expiration by submitting to the board an application or renewal, upon forms supplied by the board, together with the applicable renewal fee prescribed in Chapter 1 of these rules and documentation of satisfaction of the continuing professional education requirements prescribed by subchapter G of these rules.

B. Every license issued by the board under this chapter to be effective on or after January 1, 1999, shall be renewed in the year 2000, and each year thereafter, on or before the first day of the month in which the licensee was born. Renewal fees shall be prorated for the transition to birth month licensure. An application for renewal of license shall be mailed by the board to each person holding a license issued under this chapter at least 30 days prior to the expiration of the license each year. Such form shall be mailed to the most recent address of each licensed respiratory therapist as reflected in the official records of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1218 (December 1996), LR 24:1502 (August 1998), LR 25:2218 (November 1999).

#### **§2545. Reinstatement of License**

A. A license which has expired without renewal may be reinstated by the board if application for reinstatement is made not more than two years from the date of expiration and subject to the conditions and procedures hereinafter provided.

B. An application for reinstatement shall be made upon forms supplied by the board and accompanied by two letters of recommendation, one from a reputable licensed physician and one from a reputable licensed respiratory therapist with whom the applicant has been associated in the applicant's most recent place of employment, together with the applicable renewal fee, plus a penalty equal to twice the renewal fee.

C. With respect to an application for reinstatement made more than one year after the date on which the license expired, as a condition of reinstatement, the board may require that the applicant complete a statistical affidavit upon a form provided by the board, provide the board with a recent photograph, and/or possess a current, unrestricted license issued by another state, evidencing satisfaction of the requirements of Chapter 25, Subchapter G with respect to continuing professional education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1218 (December 1996), LR 25:2218 (November 1999).

#### **§2547. Temporary License**

A. The board may issue a 12-month temporary license as a registered respiratory therapist or a certified respiratory therapist under the following terms and conditions.

1. To be eligible for a 12-month temporary license as a registered respiratory therapist or a certified respiratory therapist, an applicant shall:

a. be qualified for licensure under §2507.A or §2509.A, save for having taken and passed a required licensing examination;

b. have successfully completed a respiratory care educational program accredited by the Commission on Accreditation of Allied Health Education Programs or its successor, in collaboration with the Committee on Accreditation for Respiratory Care;

c. have taken, or made application to take, the required written examination and be awaiting the administration and/or reporting of scores thereon; and

d. have applied within one year of the applicant's date of graduation from an accredited respiratory care education program. Exceptions to §2547.A.1.d, may be made at the discretion of the board with the advice of the Advisory Committee, provided that such request is submitted within the initial one year period from the date of graduation.

2. A temporary license issued under this subsection shall be effective for 12 months and shall, in any event, expire and become null and void on the earlier of:

a. the date on which the board takes action on the application following notice of the applicant's scores on the licensing examination; or

b. the first date of the examination if the applicant fails to appear for or complete the examination.

3. A temporary license may be extended only once, for a 6 month period, provided the applicant submits a written request for extension to the board. All such requests for a 6 month extension will be referred to the Advisory Committee for review and recommendation to the board. The Advisory Committee or the board may require additional documents from the licensee, such as:

a. licensing examination results for all attempts;

b. evidence of having attended entry level examination review courses; or

c. proof of extenuating circumstances preventing the licensee from attempting the licensing examination.

4. A temporary license so renewed under this subsection shall be effective for not more than 6 months and shall, in any event, expire and become null and void on the earlier of:

a. the date on which the board takes action on the application following notice of the applicant's scores on the licensing examination; or

b. the first date of the examination if the applicant fails to appear for or complete the examination.

B. The board may grant a permit to practice, effective for a period of 60 days, to an applicant who has made application to the board for a license as a registered respiratory therapist, who provides satisfactory evidence of registration by the National Board for Respiratory Care pursuant to written examination administered by the NBRC, and who is not otherwise demonstrably ineligible for licensure under §2507 of these rules. A permit issued under this subsection may not be extended or renewed beyond its initial term.

C. The board may grant a permit to practice, effective for a period of 60 days, to an applicant who has made application to the board for a license as a certified respiratory therapist, who provides satisfactory evidence of having successfully completed a respiratory care educational

program approved by the Committee on Accreditation for Respiratory Care or its successor organization, and who is not otherwise demonstrably ineligible for licensure under §2509 of these rules. A permit issued under this Subsection may not be extended or renewed beyond its initial term.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 15:271 (April 1989), LR 17:480 (May 1991), LR 19:746 (June 1993), LR 25:2218 (November 1999).

## **Subchapter F. Advisory Committee on Respiratory Care**

### **§2549. Organization; Authority and Responsibilities**

A. The Advisory Committee on Respiratory Care (the "committee"), as established, appointed and organized pursuant to R.S. 37:3356 of the Act is hereby recognized by the board.

B. The committee shall:

1. have such authority as is accorded it by the Act;

2. function and meet as prescribed by the Act;

3. serve as a clearinghouse for nontraditional respiratory care education and training programs conducted in the state of Louisiana;

4. advise the board on issues affecting the licensing of registered and certified respiratory therapists and on the regulation of respiratory care in the state of Louisiana;

5. perform such other functions and provide such additional advice and recommendations as may be requested by the board;

6. provide advice and recommendations to the board respecting the modification, amendment and supplementation of rules and regulations, standards, policies and procedures respecting respiratory care licensure and practice;

7. serve as liaison between and among the board, licensed respiratory therapists, and professional organizations; and

8. have authority to review and advise the board on requests for extension of temporary licenses and license reinstatement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:747 (June 1993), amended LR 25:2219 (November 1999).

### **§2551. Delegation of Authority**

A. Authority is hereby delegated to the Advisory Committee on Respiratory Care to:

1. survey, by site visit or otherwise, each hospital or other institution located in this state which is affiliated with and at which is conducted a nontraditional respiratory care education and training program for the purpose of reporting to the board as provided by §2351.B;

2. assist the board in the review of applicant's satisfaction of continuing education requirements for renewal of licensure under this chapter as provided in §2551.D.

B. The committee shall annually report to the board, in writing, on each such nontraditional respiratory care education and training program conducted in this state and,

with respect to each such program, advise the board with respect to:

1. such program's compliance with the provisions of these rules relating to the conduct of such programs;

2. the number of students enrolled and participating in such program during the preceding year;

3. the number of graduates of such program having taken the National Board of Respiratory Care entry-level examination and the number of such graduates having successfully passed such examination; and

4. any recommendations the committee may have with respect to the future conduct of such program and regulation of the same by the board.

C. In discharging the responsibilities provided for by this section, the committee shall have authority to:

1. periodically request and obtain necessary and appropriate information from hospitals or other institutions located in this state which are affiliated with and at which are conducted a nontraditional respiratory care education and training programs, from the coordinators of such program, and from students enrolled in such programs; and

2. periodically conduct visits of the hospitals or other institutions at which such programs are conducted in this state.

D. To carry out its duties of §2551.A.2, the Advisory Committee is authorized by the board to advise and assist the board in the review and approval of continuing professional education programs and licensee satisfaction of continuing professional education requirements for renewal of licensure, as prescribed by Chapter 25, Subchapter G, including the authority and responsibility to:

1. evaluate organizations and entities providing or offering to provide continuing professional education programs for all licensed respiratory therapists and provide recommendations to the board with respect to the board's recognition and approval of such organizations and entities as sponsors of qualifying continuing professional education programs and activities pursuant to §2559 of these rules; and

2. review documentation of continuing professional education by licensed respiratory therapists, verify the accuracy of such documentation, and evaluation of and make recommendations to the board with respect to whether programs and activities evidenced by applicants for renewal of licensure comply with and satisfy the standards for such programs and activities prescribed by these rules; and

3. request and obtain from applicants for renewal of licensure such additional information as the Advisory Committee may deem necessary or appropriate to enable it to make the evaluations and provide the recommendations for which the committee is responsible.

E. In discharging the functions authorized under this section the Advisory Committee and the individual members thereof shall, when acting within the scope of such authority, be deemed agents of the board. All information obtained by the Advisory Committee members pursuant to §§2551.A.2 and D shall be considered confidential. Advisory Committee members are prohibited from communicating, disclosing or in any way releasing to anyone, other than the board, any information or documents obtained when acting as agents of the board without first obtaining written authorization from the board.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3351-3361, R.S. 37:1270(B)(6) and R.S. 37:3357.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:747 (June 1993), amended LR 22:1219 (December 1996), LR 25:2219 (November 1999).

### **Subchapter G. Continuing Professional Education** **§2553. Scope of Subchapter**

The rules of this subchapter provide standards for the continuing professional education requisite to the annual renewal of licensure as a licensed respiratory therapist, as required by §2543 and §2555 of these rules, and prescribe the procedures applicable to satisfaction and documentation of continuing professional education in connection with application for renewal of licensure.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3357(D) and R.S. 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1219 (December 1996), amended LR 25:2220 (November 1999).

### **§2555. Continuing Professional Educational Requirement**

A. Subject to the exceptions specified in §2569 of this subchapter, to be eligible for renewal of licensure for 1998 and thereafter, a registered respiratory therapist or certified respiratory therapists shall, within each year during which he holds licensure, evidence and document, upon forms supplied by the board, successful completion of not less than 10 hours, or 1.0 continuing education unit (CEU) of continuing education courses sanctioned by the American Association of Respiratory Care, the Respiratory Care Advisory Committee to the board, or their successors.

B. One Continuing Education Unit (CEU) constitutes and is equivalent to 10 hours of participation in organized continuing professional education programs approved by the board and meeting the standards prescribed in this subchapter. One hour of continuing education credit is equivalent to 50 minutes of instruction.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3357(D) and R.S. 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1219 (December 1996), amended LR 25:2220 (November 1999).

### **§2557. Qualifying Continuing Professional Education Programs**

A. To be acceptable as qualifying continuing professional education under these rules, a program shall:

1. have significant and substantial intellectual or practical content dealing principally with matters germane and relevant to the practice of respiratory care;

2. have pre-established written goals and objectives, with its primary objective being to maintain or increase the participant's competence in the practice of respiratory care;

3. be presented by persons whose knowledge and/or professional experience is appropriate and sufficient to the subject matter of the presentation and is up to date;

4. provide a system or method for verification of attendance or course completion; and

5. be a minimum of 50 continuous minutes in length.

B. Other approved continuing education activities include:

1. earning a grade of "C" or better in a college or university course required to earn a degree in cardiopulmonary science or respiratory care, or grade of "pass" in a pass/fail course. One credited semester hour will be deemed to equal 15 contact hours or 1.5 CEUs;

2. programs on advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS) or Neonatal Advanced Life Support (NALS), or their successors each of which will equal 10 contact hours;

3. successfully completing a recredentialing examination for the highest credential held by the registered respiratory therapist or the certified respiratory therapist including certified respiratory therapist (CRT), registered respiratory therapist (RRT), certified pulmonary function technologist (CPFT), registered pulmonary function technologist (RPFT), registered cardiovascular technologist (RCVT), and certified cardiovascular technologist (CCVT), with each such recredentialing examination equal to 10 contact hours;

4. initial certification as a CPFT, RPFT Perinatal/Pedi Specialist, RCVT or CCVT and each such certification will equal 10 hours;

5. any accredited home study/correspondence program approved by the American Association for Respiratory Care (AARC) or the Respiratory Care Advisory Committee;

6. any initial instructor course taken in preparation for teaching ACLS, PALS, Basic Life Support (BLS) or NALS or their successors; and

7. successful completion by a certified respiratory therapist of the advanced practitioner examination (Registry examination).

C. None of the following programs, seminars or activities shall be deemed to qualify as acceptable CEU programs under these rules:

1. any program not meeting the standards prescribed by §2557.A;

2. independent/home study correspondence programs not approved or sponsored by the AARC or the Louisiana Respiratory Care Advisory Committee;

3. in-service education provided by a sales representative;

4. teaching, training or supervisory activities not specifically included in §2557.B;

5. holding office in professional or governmental organizations, agencies or committees;

6. participation in case conferences, informal presentations, or in service activities;

7. giving or authorizing verbal or written presentations, seminars or articles or grant applications;

8. passing basic cardiac life support (BCLS); and

9. any program, presentation, seminar, or course not providing the participant an opportunity to ask questions or seek clarification of matters pertaining to the presented content.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1220 (December 1996), amended LR 25:2220 (November 1999).

### **§2559. Approval of Program Sponsors**

A. Any program, course, seminar, workshop or other activity meeting the standards prescribed by §2557 shall be deemed approved for purposes of satisfying continuing education requirements under this subchapter, if sponsored or offered by the American Association for Respiratory Care (AARC), the Louisiana Hospital Association, the Louisiana Nurses Association, the American Lung Association, the American Heart Association, the American College of Chest Physicians, the American Thoracic Society, the American Nursing Association, the American Society of Cardiovascular Professionals, the American Medical Association, the American College of Cardiology, the Louisiana Association of Cardiovascular and Pulmonary Rehabilitation, the Louisiana State Medical Society, the American Board of Cardiovascular Perfusion, the American Nursing Credentialing Center, the Society for Diagnostic Medical Sonographers, any hospital or agency belonging to the Louisiana Hospital Association, any hospital or agency accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), and Cardiovascular Credentialing International.

B. Upon the recommendation of the Advisory Committee, the board may designate additional organizations and entities whose programs, courses, seminars, workshops, or other activities shall be deemed approved by the board for purposes of qualifying as an approved continuing professional education program under §2557.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1220 (December 1996), amended LR 25:2221 (November 1999).

### **§2561. Approval of Program**

A. A continuing professional education program or activity sponsored by an organization or entity not deemed approved by the board pursuant to §2559.A may be pre-approved by the board as a program qualifying and acceptable for satisfying continuing professional education requirements under this subchapter upon written request to the board therefore, upon a form supplied by the board, providing a complete description of the nature, location, date, content and purpose of such program and such other information as the board or Advisory Committee may request to establish the compliance of such program with the standards prescribed by §2557. Any such requests for pre-approval respecting a program which makes and collects a charge for attendance shall be accompanied by a nonrefundable processing fee of \$30.00.

B. Any such written request shall be referred by the board to the Advisory Committee for its recommendation. If the recommendation is against the approval, the board shall give notice of such recommendation to the person or organization requesting approval and such person or organization may appeal to the board by written request delivered to the board within 10 days of such notice. The board's decision with respect to approval of any such activity shall be final. Persons and organizations requesting pre-

approval of continuing professional education programs should allow not less than 60 days for such requests to be processed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1221 (December 1996), amended LR 25:2221 (November 1999).

### **§2563. Documentation Procedure**

A. A form for annual documentation and certification of satisfaction of the continuing professional education requirements prescribed by these rules shall be mailed by the board to each licensed respiratory therapist subject to such requirements with the application for renewal of licensure form mailed by the board pursuant to §2543 of these rules. Such form shall be completed and delivered to the board with the licensee's renewal application.

B. A licensed respiratory therapist shall maintain a record or certificate of attendance for at least four years from the date of completion of the continuing education program.

C. The board or Advisory Committee shall randomly select for audit no fewer than three percent of the licensees each year for an audit of continuing education activities. In addition, the board or Advisory Committee has the right to audit any questionable documentation of activities. Verification shall be submitted within 30 days of the notification of audit. A licensee's failure to notify the board of a change of mailing address will not absolve the licensee from the audit requirement.

D. Any certification of continuing professional education not presumptively approved by the board pursuant to these rules, or pre-approved by the board in writing, shall be referred to the Advisory Committee for its evaluation and recommendations pursuant to §2551.D.1.

E. If the Advisory Committee determines that a program or activity certified by an applicant for renewal in satisfaction of continuing education requirements does not qualify for recognition by the board or does not qualify for the number of CEU's claimed by the applicant, the board shall give notice of such determination to the applicant for renewal and the applicant may appeal the Advisory Committee's recommendation to the board by written request delivered to the board within 10 days of such notice. The board's decision with respect to approval and recognition of such program or activity shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1221 (December 1996), amended LR 25:2222 (November 1999).

### **§2565. Failure to Satisfy Continuing Professional Education Requirements**

A. An applicant for renewal of licensure who fails to evidence satisfaction of the continuing professional education requirements prescribed by these rules shall be given written notice of such failure by the board. The license of the applicant shall remain in full force and effect for a period of 90 days following the mailing of such notice, following which it shall be deemed expired, unrenewed and subject to revocation without further notice, unless the applicant shall have, within 90 days, furnished the board satisfactory evidence, by affidavit, that:

1. the applicant has satisfied the applicable continuing professional education requirements;

2. the applicant is exempt from such requirements pursuant to these rules; or

3. the applicant's failure to satisfy the continuing professional education requirements was occasioned by disability, illness or other good cause as may be determined by the board pursuant to §2567.

B. The license of a registered respiratory therapist or a certified respiratory therapist whose license has expired by nonrenewal or has been revoked for failure to satisfy the continuing professional education requirements of these rules may be reinstated by the board upon written application to the board accompanied by payment of a reinstatement fee, in addition to all other applicable fees and costs of \$50, together with documentation and certification that the applicant has, for each calendar year since the date on which the applicant's license lapsed, expired, or was revoked, completed an aggregate of 10 contact hours (1.0 CEU) of qualifying continuing professional education.

C. Any licensee who falsely certifies attendance and/or completion of the required continuing education requirement will be subject to disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1221 (December 1996), amended LR 24:1502 (August 1998), LR 25:2222 (November 1999).

### **§2567. Waiver of Requirements**

The board may, in its discretion upon the recommendation of the Advisory Committee, waive all or part of the continuing professional education required by these rules in favor of a certified respiratory therapist or a registered respiratory therapist who makes written requests for such waiver to the board and evidences to the satisfaction of the board a permanent physical disability, illness, financial hardship or other similar extenuating circumstances precluding the individual's satisfaction of continuing professional education requirements. Any licensed respiratory therapist submitting a CEU waiver request is required to do so on or before the date specified for the renewal of the licensee's license by §2543. Any request received by the Board past the date for the renewal of the licensee's licensure will not be considered for waiver but, rather, in accordance with the provisions of §2565.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1222 (December 1996), amended LR 25:2222 (November 1999).

### **§2569. Exceptions to the Continuing Professional Education Requirements**

The continuing professional education requirements prescribed by this subchapter as requisite to renewal of licensure shall not be applicable to:

1. a registered respiratory therapist or a certified respiratory therapist employed exclusively by, or at an institution operated by the United States Government; or

2. a registered respiratory therapist or a certified respiratory therapist who has held an initial Louisiana license on the basis of examination for less than one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1222 (December 1996), amended LR 25:2222 (November 1999).

## **Chapter 55. Respiratory Therapists**

### **Subchapter A. General Provisions**

#### **§5501. Scope of Chapter**

The rules of this Chapter govern the practice of respiratory care in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2223 (November 1999).

#### **§5503. General Definitions**

A. As used in this Chapter, unless the context clearly states otherwise, the following terms and phrases shall have the meanings specified:

*Applicant*—a person who has applied to the board for licensure as a licensed registered respiratory therapist or a licensed certified respiratory therapist.

*Board*—the Louisiana State Board of Medical Examiners.

*Certified Respiratory Therapist*—also known as Certified Respiratory Therapy Technician, prior to July 1, 1999, means one who has successfully completed the entry level examination or its successor administered by the National Board for Respiratory Care.

*Course of Study*—an accredited, recognized or approved program which leads to a degree or certification of completion within four years, enabling a student to be eligible for registry or certification in respiratory care.

*Good Moral Character*—as applied to an applicant, means that an applicant has not, prior to or during the pendency of an application to the board, been guilty of any act, omission, condition or circumstance which would provide legal cause under R.S. 37:3358 for the denial, suspension or revocation of respiratory care licensure; the applicant has not, prior to or in connection with his application, made any representation to the board, knowingly or unknowingly, which is in fact false or misleading as to material fact or omits to state any fact or matter that is material to the application; and the applicant has not made any representation or failed to make a representation or engaged in any act or omission which is false, deceptive, fraudulent or misleading in achieving or obtaining any of the qualifications for a license required by Subpart 2 of these rules.

*License*—the lawful authority of a registered respiratory therapist or a certified respiratory therapist to engage in the health specialty of respiratory therapy in the state of Louisiana, as evidenced by a license duly issued by and under the official seal of the board.

*Licensed Respiratory Therapist*—a person who is licensed by the board and has the lawful authority to engage in the practice of respiratory care in the state of Louisiana, only under the qualified medical direction and supervision of a licensed physician, as evidenced by certificate duly issued by and under the official seal of the board. The term

"licensed respiratory therapist" shall signify both certified respiratory therapist and registered respiratory therapist.

*Medical Gases*—gases commonly used in a respiratory care department in the calibration of respiratory care equipment (nitrogen, oxygen, compressed air and carbon dioxide), in the diagnostic evaluation of diseases (carbon monoxide, nitrogen, carbon dioxide, helium and oxygen) and in the therapeutic management of diseases (nitrogen, carbon dioxide, helium, oxygen and compressed air).

*National Board for Respiratory Care*—the official credentialing board of the profession or its successor.

*Physician*—a person who is currently licensed by the board to practice medicine in the state of Louisiana.

*Registered Respiratory Therapist*—one who has successfully completed the Advanced Practitioner Examination or its successor administered by the National Board for Respiratory Care.

*Respiratory Care*—the allied health specialty practiced under the direction, supervision and approval of a licensed physician involving the treatment, testing, monitoring, and care of persons with deficiencies and abnormalities of the cardiopulmonary system. Such therapy includes, but is not limited to, the following activities conducted upon written prescription or verbal order of a physician and under his supervision:

- a. application and monitoring of oxygen, ventilatory therapy, bronchial hygiene therapy, cardiopulmonary rehabilitation and resuscitation;
- b. insertion and care of airways as ordered by a physician;
- c. institution of any type of physiologic monitoring applicable to respiratory care.
- d. administration of drugs and medications commonly used in respiratory care that have been prescribed by a physician to be administered by qualified respiratory care personnel;
- e. initiation of treatment changes and testing techniques required for the implementation of respiratory care protocols as directed by a physician;
- f. administration of medical gases and environmental control systems and their apparatus;
- g. administration of humidity and aerosol therapy;
- h. application of chest pulmonary therapy;
- i. the institution of known and physician-approved patient driven protocols relating to respiratory care under physician approval in emergency situations in the absence of immediate direction by a physician;
- j. application of specific procedures and diagnostic testing as ordered by the physician to assist in diagnosis, monitoring, treatment, and research, including those procedures required and directed by the physician for the drawing of blood samples to determine acid-base status and blood gas values, the collection of sputum for analysis of body fluids, the measurement of cardiopulmonary functions as commonly performed in respiratory therapy, and the starting of intravenous lines for the purpose of administering fluids as pertinent to the practice of respiratory care under the supervision of a licensed physician;
- k. supervision of other respiratory therapy personnel; and

1. transcription and implementation of the written and verbal orders of a physician.

*Respiratory Therapy Practice Act or the Act—Acts* 1985, Number 408, as amended, R.S. 37:3351-3361;

*United States Government*—any department, agency or bureau of the United States Armed Forces or Veterans Administration.

B. Respiratory care shall also include teaching patient and family respiratory care procedures as part of a patient's ongoing program and consultation services or for health, educational, and community agencies under the order of a licensed physician.

C. Masculine terms wherever used in this chapter shall also be deemed to include the feminine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:747 (June 1993), LR 25:2223 (November 1999).

### **Subchapter B. Unauthorized Practice, Exemptions, and Prohibitions**

#### **§5505. Unauthorized Practice**

A. No person shall engage in the practice of respiratory care in the state of Louisiana unless he has in his possession a current license or temporary license duly issued by the board under Subpart 2 of these rules.

B. No person shall hold himself out to the public, an individual patient, a physician, dentist or podiatrist, or to any insurer or indemnity company or association or governmental authority as a registered respiratory therapist or certified respiratory therapist, nor shall he directly or indirectly identify or designate himself as a respiratory therapist or licensed respiratory therapist, nor use in connection with his name the letters "CRT" (Certified Respiratory Therapist), "RRT" (Registered Respiratory Therapist), or any other words, letters, abbreviations, insignia, or signs tending to indicate or imply that the person is a registered respiratory therapist or a certified respiratory therapist or that the services provided by such person constitute respiratory care, unless such person possesses a current license or temporary license duly issued by the board under Subpart 2 of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:747 (June 1993), LR 25:2224 (November 1999).

#### **§5507. Exemptions**

A. The prohibitions of §5505 of this Chapter shall not apply to a person employed exclusively by, or at an institution operated by the United States Government when acting within the course and scope of such employment.

B. The prohibitions of §5505 of this Chapter shall not apply to a person acting under and within the scope of a license issued by another licensing agency of the state of Louisiana.

C. The prohibitions of §5505 of this chapter shall not apply to a person pursuing a "course of study" leading to registry or certification in respiratory care at an institution whose program is accredited, recognized or approved by an

agency recognized by the Commission on Accreditation of Allied Health Education Programs and approved by the Louisiana State Board of Medical Examiners and who is designated by a title which clearly indicates his status as a student.

D. The prohibitions of §5507 of this Chapter shall not apply to a person not licensed as a respiratory therapist or in accordance with the provisions of these rules but who may be employed in a pulmonary laboratory or physician's office to administer treatment confined to that laboratory or office under the direction and immediate supervision of a licensed physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended, by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2224 (November 1999).

#### **§5509. Prohibitions**

A. A licensed respiratory therapist shall not:

1. undertake to perform or actually perform any activities as described in §5503, definition or "Respiratory care," except under the written prescription or verbal order of a physician and under his supervision;

2. administer any drugs or medications except as dispensed by a pharmacist and prescribed by a physician or dispensed by a physician; or

3. perform any surgical incisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2224 (November 1999).

### **Subchapter C. Supervision of Students**

#### **§5511. Scope of Subchapter**

The rules of this Subchapter prescribe certain restrictions on and requirements for supervision of students pursuing a "course of study" as that term is defined in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2224 (November 1999).

#### **§5515. Supervision of Student**

A. A person pursuant to a "course of study" leading to registry or certification in respiratory care shall engage in the practice of respiratory care only under the supervision of a licensed respiratory therapist or a physician who actively practices respiratory care, as provided in this Section.

B. A licensed respiratory therapist or a physician who undertakes to supervise a student shall:

1. undertake to concurrently supervise not more than four students;

2. personally evaluate every patient prior to the provision of any respiratory care treatment or procedure by a student;

3. assign to a student only such respiratory care measures, treatments, procedures and functions as such licensed respiratory therapist or physician has documented

that the student by education and training is capable of performing safely and effectively;

4. provide continuous and immediate on-premises direction to and supervision of a student and be readily available at all times to provide advice, instruction, and assistance to the student and to the patient during respiratory care treatment given by a student;

5. not permit a student to perform any invasive procedure or any life-sustaining or critical respiratory care, including therapeutic, diagnostic or palliative procedures, except under the direct and immediate supervision, and in the physical presence of, the supervising therapist and/or physician; and

6. provide and perform periodic evaluation of every patient administered to by a student and make modifications and adjustments in the patient's respiratory care treatment plan, including those portions of the treatment plan assigned to the student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:748 (June 1993), LR 25:2224 (November 1999).

#### **Subchapter D. Grounds for Administrative Action**

##### **§5517. Causes for Administrative Action**

The board may refuse to issue or renew, or may suspend, revoke or impose probationary conditions and restrictions on the license or temporary license of any registered respiratory therapist or certified respiratory therapist, if the licensee or applicant for license has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:886 (September 1991), LR 25:2225 (November 1999).

##### **§5519. Causes for Action; Definitions; Unprofessional Conduct**

A. As used herein and in R.S. 37:3358, "unprofessional conduct" by a registered respiratory therapist or a certified respiratory therapist shall mean:

1. conviction of a crime or entry of a plea of guilty or *nolo contendere* to a criminal charge constituting a felony under the laws of the state of Louisiana, of the United States or of the state in which such conviction or plea was entered;

2. conviction of a crime or entry of a plea of guilty or *nolo contendere* to any criminal charge arising out of or in connection with the practice of respiratory care;

3. perjury, fraud, deceit, misrepresentation or concealment of material facts in obtaining a license to practice respiratory care;

4. providing false testimony before the board or providing false sworn information to the board;

5. habitual or recurring abuse of drugs, including alcohol, which affect the central nervous system and which are capable of inducing physiological or psychological dependence;

6. solicitation of patients or self-promotion through advertising or communication, public or private, which is fraudulent, false, deceptive or misleading;

7. making or submitting false, deceptive or unfounded claims, reports or opinions to any patient, insurance company or indemnity association, company, individual, or governmental authority for the purpose of obtaining anything of economic value;

8. cognitive or clinical incompetence;

9. continuing or recurring practice which fails to satisfy the prevailing and usually accepted standards of respiratory care practice in this state;

10. knowingly performing any act which in any way assists an unlicensed person to practice respiratory care, or having professional connection with or lending one's name to an illegal practitioner;

11. paying or giving anything of economic value to another person, firm or corporation to induce the referral of patients to the registered respiratory therapist or certified respiratory therapist;

12. interdiction by due process of law;

13. inability to practice respiratory care with reasonable competence, skill or safety to patients because of mental or physical illness, condition or deficiency, including but not limited to deterioration through the aging process and excessive use or abuse of drugs, including alcohol;

14. refusal to submit to examination and inquiry by an examining committee of physicians appointed by the board to inquire into the licensee's physical and/or mental fitness and ability to practice respiratory care with reasonable skill or safety to patients;

15. practicing or otherwise engaging in any conduct or functions beyond the scope of respiratory care as defined by the Act or these rules;

16. the refusal of the licensing authority of another state to issue or renew a license, permit, or certificate to practice respiratory care in that state or the revocation, suspension or other restriction imposed on a license, permit, or certificate issued by such licensing authority which prevents, restricts or conditions practice in that state, or the surrender of a license, permit or certificate issued by another state when criminal or administrative charges are pending or threatened against the holder of such license, permit or certificate;

17. violation of the code of ethics adopted and published by the American Association for Respiratory Care;

18. demonstrating a lack of "good moral character" as defined in §5503.A; or

19. violation of any rules and regulations of the board, or any provisions of the Act, as amended, R.S. 37:3351-3361.

B. Denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a licensee may be ordered by the board in a decision made after a hearing in accordance with the Administrative Procedure Act and the applicable rules and regulations of the board. One year after the date of the revocation of a license, application may be made to the board for reinstatement. The board shall have discretion to accept or reject an application for reinstatement but shall hold a hearing to consider such reinstatement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and R.S. 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:886 (September 1991), LR 25:2225 (November 1999).

Delmar Rorison  
Executive Director

9911#014

## RULE

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

Disciplinary Procedures  
(LAC 46:LXXXV.101, 105, 106, 815, 816,  
1001, 1215, 1216, and 1401-1425)

The Louisiana Board of Veterinary Medicine hereby amends LAC 46:LXXXV.101, 105, 106, 815, 1001, and 1215 and adopts 46:LXXXV.816, 1216, and 1401-1425. These proposed changes pertain to disciplinary procedures and are offered in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Veterinary Practice Act, La. R.S. 37:1518 et seq.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXXXV. Veterinarians

#### Chapter 1. Operations of the Board of Veterinary Medicine

#### §101. Information, Agency Office, Request for Rules or Action

A. - D. ...

E. Reports to Licensees. The board shall provide a regular report, which shall include, but not be limited to, notices of changes in policy, procedure, regulations, and/or statutes by the board or other governmental entities and dispositions of disciplinary cases. Other information deemed by the board to be pertinent in its mission of protecting the public health, safety, and welfare in the practice of veterinary medicine shall be printed and mailed to all licensees and other interested parties who have requested in writing to receive this report. The report shall be published not less than one time per fiscal year and may be published more frequently as the president of the board shall order.

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 8:66 (February 1982), amended LR 19:1328 (October 1993), LR 23:966 (August 1997), LR 25:2226 (November 1999).

#### §105. Appeals and Review

A. ...

B. Persons Aggrieved by a Decision of the Board

1. Any person aggrieved by a decision of the board may, within 30 days of notification of the board's action or decision, petition the board for a review of the board's actions.

2. - 4. ...

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 8:65 (February 1982), amended LR 19:345 (March 1993), LR 23:966 (August 1997), LR 23:1529 (November 1997), LR 25:2226 (November 1999).

#### §106. Disciplinary Proceedings

Any person against whom disciplinary proceedings have been instituted and against whom disciplinary action has been taken by the board pursuant to R.S. 37:1526 and/or 37:1531 and/or the board's rules, shall have rights of review and/or rehearing and/or appeal in accordance with the terms and provisions of the Administrative Procedure Act and §1401 et seq. of the board's rules.

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 19:345 (March 1993), amended LR 23:967 (August 1997), LR 24:940 (May 1998), LR 25:2226 (November 1999).

#### Chapter 8. Registered Veterinary Technicians

#### §815. Appeals and Review

A. ...

B. Persons Aggrieved by a Decision of the Board

1. Any person aggrieved by a decision of the board, other than a holder of certificate of approval against whom disciplinary proceedings have been brought pursuant to R.S. 37:1544-1548, may, within 30 days of notification of the board's action or decision, petition the board for a review of the board's actions.

2. A petition shall be in the form of a letter, signed by the person aggrieved, and mailed to the board at its principal office located in Baton Rouge, Louisiana.

3. Upon receipt of such petition, the board then may proceed to take such action as it deems expedient or hold such hearings as may be necessary, and may review such testimony and/or documents and/or records as it deems necessary to dispose of the matter, but the board shall not, in any event, be required to conduct any hearings or investigations, or consider any offerings, testimony, or evidence unless so required by statute or other rules or regulations of the board.

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 16:26 (March 1990), amended LR 25:2226 (November 1999).

#### §816. Disciplinary Proceedings

Any registered veterinary technician against whom disciplinary proceedings have been instituted and against whom disciplinary action has been taken by the board pursuant to R.S. 37:1544-1548 and/or the board's rules, shall have rights of review and/or rehearing and/or appeal in accordance with the terms and provisions of the Administrative Procedure Act and §1401 et seq. of the board's rules.

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 25:2226 (November 1999).

## **Chapter 10. Rules of Professional Conduct**

### **§1001. Purpose and Scope**

A. The Rules of Professional Conduct shall govern the professional conduct of the members of the veterinary profession in the state of Louisiana. These rules of professional conduct shall be cumulative of all laws of the state of Louisiana relating to the professional conduct of veterinarians and to the practice of veterinary medicine in this state, and shall include the American Veterinary Medical Association's Principles of Veterinary Medical Ethics. In the event the Principles of Veterinary Medical Ethics contradict the Louisiana Veterinary Practice Act and/or the board's rules, the latter shall govern.

B. ...

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 16:228 (March 1990), amended LR 25:2227 (November 1999).

## **Chapter 12. Certified Animal Euthanasia Technicians**

### **§1215. Appeals and Review**

A. ...

B. Persons Aggrieved by a Decision of the Board

1. Any certified animal euthanasia technician aggrieved by a decision of the board, other than a holder of a certificate of approval against whom disciplinary proceedings have been brought pursuant to R.S. 37:1551 et seq. may, within 30 days of notification of the board's action or decision, petition the board for a review of the board's actions.

2. A petition shall be in the form of a letter, signed by the person aggrieved, and mailed to the board at its principal office.

3. Upon receipt of such petition, the board may proceed to take such action as it deems expedient or hold such hearings as may be necessary, and may review such testimony and/or documents and/or records as it deems necessary to dispose of the matter, but the board shall not, in any event, be required to conduct any hearings or investigations, or consider any offerings, testimony, or evidence unless so required by statute or other rules or regulations of the board.

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 19:1424 (November 1993), amended LR 25:2227 (November 1999).

### **§1216. Disciplinary Proceedings**

Any CAET against whom disciplinary proceedings have been instituted and against whom disciplinary action has been taken by the board pursuant to R.S. 37:1551 et seq. and/or the board's rules, shall have rights of review and/or rehearing and/or appeal in accordance with the terms and provisions of the Administrative Procedure Act and §1401 et seq. of the board's rules.

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 25:2227 (November 1999).

## **Chapter 14. Disciplinary Procedures**

### **§1401. Causes for Administrative Action**

The board, after due notice and hearing as set forth herein and the Louisiana Administrative Procedure Act, LSA R.S.

49:950 et seq., may deny, revoke or suspend any license, temporary permit, or certification issued or applied for or otherwise discipline a licensed veterinarian, registered veterinary technician or certified animal euthanasia technician on a finding that the person has violated the Louisiana Veterinary Practice Act, any of the rules and regulations promulgated by the board, the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association, or prior final decisions and/or consent orders involving the licensed veterinarian, registered veterinary technician or certified animal euthanasia technician or applicant. Sometimes hereinafter in this Chapter, where the context allows, a licensed veterinarian, registered veterinary technician or certified animal euthanasia technician or applicant may be referred to as "person."

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 25:2227 (November 1999).

### **§1403. Disciplinary Process and Procedures**

A. The purpose of the following rules and regulations is to supplement and effectuate the applicable provisions of the Louisiana Administrative Procedure Act, LSA R.S. 49:950 et seq., regarding the disciplinary process and procedures incident thereto. These rules and regulations are not intended to amend or repeal the provisions of the Louisiana Administrative Procedure Act, and to the extent any of these rules and regulations are in conflict therewith, the provisions of the Louisiana Administrative Procedure Act shall govern.

B. A disciplinary proceeding, including the formal hearing, is less formal than a judicial proceeding. It is not subject to strict rules and technicalities, but must be conducted in accordance with considerations of fair play and constitutional requirements of due process.

C. The purpose of a disciplinary proceeding is to determine contested issues of law and fact; whether the person did certain acts or omissions and, if he did, whether those acts or omissions violated the Louisiana Veterinary Practice Act, the rules and regulations of the board, the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association, or prior Final Decisions and/or Consent Orders involving the veterinarian, registered veterinary technician or certified animal euthanasia technician or applicant and to determine the appropriate disciplinary action.

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 25:2227 (November 1999).

### **§1405. Initiation of Complaints**

A. Complaints may be initiated by any person or by the board on its own initiative.

B. All complaints shall be addressed confidential and shall be sent to the board office. The investigating board member, with benefit of counsel, shall decide to investigate the charges or deny the charges. If the charges are denied, a letter of denial is prepared and forwarded to the complainant and the person accused of wrongdoing. If the investigating board member decides to investigate, the person shall be notified that allegations have been made that he may have

committed a breach of statute, rule and regulation, the American Veterinary Medical Association's Principles of Veterinary Medical Ethics, and/or prior final decisions or consent orders and that he must respond in writing to the board within a specified time period. The response is to be made to the board office address. The complaint letter of alleged violations shall not be given initially to the person. However, sufficiently specific allegations shall be conveyed to the person for his response. Once the person has answered the complaint, and other pertinent information, if available, is reviewed, a determination by the investigating board member, with benefit of counsel, will be made if a disciplinary proceeding is required.

C. Pursuant to its authority to regulate the industry, the board through its investigating board member, may issue subpoenas to secure evidence of alleged violations of the Louisiana Veterinary Practice Act, any of the rules and regulations promulgated by the board, the American Veterinary Medical Association's Principles of Veterinary Medical Ethics, or prior final decisions and/or consent orders involving the licensed veterinarian, registered veterinary technician or certified animal euthanasia technician or applicant.

D. "Counsel" referenced in this Chapter shall mean the board's General Counsel who will be assisting in the investigation and prosecution of an administrative action. Said counsel shall not provide any legal advices or act as legal counsel to the board or its members, other than the investigating board member, regarding a pending administrative action during the investigation, prosecution and resolution of such disciplinary action by the board.

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 25:2227 (November 1999).

#### **§1407. Informal Disposition of Complaints**

A. Some complaints may be settled informally by the board and the person accused of a violation without a formal hearing. The following types of informal dispositions may be utilized.

1. Disposition by Correspondence. For complaints less serious, the investigating board member may write to the person explaining the nature of the complaint received. The person's subsequent response may satisfactorily explain the situation, and the matter may be closed. If the situation is not satisfactorily explained, it shall be pursued through an informal conference or formal hearing.

##### **2. Informal Conference**

a. The investigating board member may hold a conference with the person in lieu of, or in addition to, correspondence in cases of less serious complaints. If the situation is satisfactorily explained in conference, a formal hearing is not scheduled.

b. The person shall be given adequate notice of the conference, of the issues to be discussed, and of the fact that information brought out at the conference may later be used in a formal hearing. Board members, other than the investigating board member, may not be involved in informal conferences.

3. Settlement. An Agreement worked out between the person making the complaint and the person accused of a violation does not preclude disciplinary action by the board.

The nature of the offense alleged and the evidence before the board must be considered.

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 25:2228 (November 1999).

#### **§1409. Formal Hearing**

A. The board has the authority, granted by LSA R.S. 37:1511 et seq., to bring administrative proceedings against persons to whom it has issued a license, temporary permit or certification or any applicant requesting a license, temporary permit or certification. The person has the right to appear and be heard, either in person or by counsel; the right of notice; a statement of what accusations have been made; the right to present evidence and to cross-examine; and the right to have witnesses subpoenaed.

B. If the person does not appear, either in person or through counsel, after proper notice has been given, the person may be considered to have waived these rights and the board may proceed with the hearing without the presence of the person.

C. The process of administrative action shall include certain steps and may include other steps as follows.

1. The board receives a complaint alleging that a person has acted in violation of the Louisiana Veterinary Practice Act, the rules and regulations of the Board, or the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association. Communications from the complaining party shall not be revealed to any person until and unless a formal complaint is filed except those documents being subpoenaed by a court.

2.a. The complaint is investigated by the investigating board member or board attorney to determine if there is sufficient evidence to warrant disciplinary proceedings. No board member, other than the investigating board member, may communicate with any party to a proceeding or his representative concerning any issue of fact or law involved in that proceeding.

b. A decision to initiate a formal complaint or charge is made if one or more of the following conditions exists:

- i. the complaint is sufficiently serious;
- ii. the person fails to respond to the board's correspondence concerning the complaint;
- iii. the person's response to the board's letter or investigation demand is not convincing that no action is necessary; or
- iv. an informal approach is used, but fails to resolve all of the issues.

3. A sworn complaint is filed, charging the violation of one or more of the provisions of the Louisiana Veterinary Practice Act, the rules and regulations promulgated thereto, the American Veterinary Medical Association's Principles of Veterinary Medical Ethics, or prior final decisions and/or consent orders involving the person.

4. A time and place for a hearing is fixed by the chairman or an agent of the board.

5.a. At least twenty days prior to the date set for the hearing, a copy of the charges and a notice of the time and place of the hearing are sent by certified mail to the last known address of the person accused. If the mailing is not returned to the board, it is assumed to have been received. It

is the person's obligation to keep the board informed of his whereabouts.

b. The content of the charges limits the scope of the hearing and the evidence which may be introduced. The charges may be amended at any time up to ten days prior to the date set for the hearing.

c. If the board is unable to describe the matters involved in detail at the time the sworn complaint is filed, this complaint may be limited to a general statement of the issues involved. Thereafter, upon the person's request, the board shall supply a more definite and detailed statement to the person.

6. Except for extreme emergencies, motions requesting a continuance of a hearing shall be filed at least five days prior to the time set for the hearing. The motion shall contain the reason for the request, which reason must have relevance to due process.

7.a. The chairman, or an authorized agent of the board, issues subpoenas for the board for disciplinary proceedings, and when requested to do so, may issue subpoenas for the other party. Subpoenas include:

i. a subpoena requiring a person to appear and give testimony; and

ii. a subpoena duces tecum, which requires that a person produce books, records, correspondence, or other materials over which he has custody.

b. A motion to limit or quash a subpoena may be filed with the Board, but not less than seventy-two hours prior to the hearing.

8.a. The hearing is held, at which time the board's primary role is to hear evidence and argument, and to reach a decision. Any board member who, because of bias or interest, is unable to assure a fair hearing, shall be recused from the particular proceeding. The reasons for the recusal are made part of the record. Should the majority of the board members be recused for a particular proceeding, the governor shall be requested to appoint a sufficient number of pro tem members to obtain a quorum for the proceeding;

b. The board is represented by its agent who conducted the investigation and presents evidence that disciplinary action should be taken against the person and/or by the board's attorney. The person may present evidence personally or through an attorney, and witnesses may testify on behalf of the person;

c. Evidence includes the following:

i. oral testimony given by witnesses at the hearing, except that, for good cause, testimony may be taken by deposition (cost of the deposition is borne by requesting party);

ii. documentary evidence, i.e., written or printed materials including public, business, institutional records, books and reports;

iii. visual, physical and illustrative evidence;

iv. admissions, which are written or oral statements of a party made either before or during the hearing;

v. facts officially noted into the record, usually readily determined facts making proof of such unnecessary; and/or

vi. other items or things allowed into evidence by the Louisiana Evidence Code or applicable statutory law or jurisprudence.

d. All testimony is given under oath. If the witness objects to swearing, the word "affirm" may be substituted.

9. The chairman of the board presides and the customary order of proceedings at a hearing is as follows:

a. the board's representative makes an opening statement of what he intends to prove, and what action, he wants the board to take;

b. the person, or his attorney, makes an opening statement, explaining why he believes that the charges against him are not legally founded;

c. the board's representative presents the case against the person;

d. the person, or his attorney, cross-examines;

e. the person presents evidence;

f. the board's representative cross-examines;

g. the board's representative rebuts the person's evidence;

h. both parties make closing statements. The board's representative makes the initial closing statement and the final statement.

10. Motions may be made before, during, or after a hearing. All motions shall be made at an appropriate time according to the nature of the request. Motions made before or after the hearing shall be in writing. Those made during the course of the hearing may be made orally since they become part of the record of the proceeding.

11.a. The record of the hearing shall include:

i. all papers filed and served in the proceeding;

ii. all documents and/or other materials accepted as evidence at the hearing;

iii. statements of matters officially noticed;

iv. notices required by the statutes or rules; including notice of the hearing;

v. affidavits of service or receipts for mailing or process or other evidence of service;

vi. stipulations, settlement agreements or consent orders, if any;

vii. records of matters agreed upon at a prehearing conference;

viii. reports filed by the hearing officer, if one is used;

ix. orders of the board and its final decision;

x. actions taken subsequent to the decision, including requests for reconsideration and rehearing;

xi. a transcript of the proceedings, if one has been made, or a tape recording or stenographic record.

b. The record of the proceeding shall be retained until the time for any appeal has expired, or until the appeal has been concluded. The record is not transcribed unless a party to the proceeding so requests, and the requesting party pays for the cost of the transcript.

12.a. The decision of the board shall be reached according to the following process:

i. determine the facts at issue on the basis of the evidence submitted at the hearing;

ii. determine whether the facts in the case support the charges brought against the person; and

iii. determine whether charges brought are in violation of the Louisiana Veterinary Practice Act, rules and regulations of the board, and/or the American Veterinary Medical Association's Principles of Veterinary Medical Ethics.

b. Deliberation

i. The board will deliberate in closed session.

ii. The board will vote on each charge as to whether the charge has been supported by the evidence. The standard will be "preponderance of the evidence."

iii. After considering each charge, the board will vote on a resolution to dismiss the charges, deny, revoke or suspend any license, temporary permit or certification issued or applied for or otherwise discipline a person or applicant. An affirmative vote of a majority of the quorum of the board shall be needed to deny, revoke, or suspend any license, temporary permit or certification issued or applied for in accordance with the provisions of this Chapter or otherwise discipline a person or applicant. The investigating board member shall not be involved in or present during deliberation, nor shall he be included in the quorum or allowed to vote on the outcome of the proceeding.

c. Sanctions against the person who is party to the proceeding are based upon findings of fact and conclusions of law determined as a result of the hearing, and will be issued by the board in accordance with applicable statutory authority. The party is notified by mail of the final decision of the Board.

d. In addition to the disciplinary action or fines assessed by the board against a licensed veterinarian or temporary permittee, the board may assess all costs incurred in connection with the proceedings, including but not limited to investigators', stenographers', attorney's fees and court costs.

e. With regards to a registered veterinary technician, the board may, as a probationary condition or as a condition of the reinstatement of any certification suspended or revoked hereunder, require the holder to pay all costs of the Board proceedings, including investigators', stenographers', secretaries', attorney's fees and court costs.

f. With regards to a certified animal euthanasia technician, the Board may require the holder to pay all costs of the Board proceedings, including investigators', stenographers', secretaries', attorney's fees, and court costs.

13. Every order of the board shall take effect immediately on its being rendered unless the board in such order fixes a stay of execution of a sanction for a period of time against an applicant or licensee, temporary permittee or holder of a certificate. Such order, without a stay of execution, shall continue in effect until expiration of any specified time period or termination by a court of competent jurisdiction. The board shall notify all licensees, temporary permittees or holders of certificates of any action taken against him and may make public its orders and judgment in such manner and form as allowed by law.

14.a. The board may reconsider a matter which it has decided. This may involve rehearing the case, or it may involve reconsidering the case on the basis of the record. Such reconsideration may occur when a party who is dissatisfied with a decision of the board files a motion requesting that the decision be reconsidered by the board.

b. The board shall reconsider a matter when ordered to do so by a higher administrative authority or when the case is remanded for reconsideration or rehearing by a court to which the board's decision has been appealed.

c. A motion by a party for reconsideration or rehearing must be in proper form and filed within ten days

after notification of the Board's decision. The motion shall set forth the grounds for the rehearing, which include one or more of the following:

i. the board's decision is clearly contrary to the law and evidence;

ii. there is newly discovered evidence by the party since the hearing which is important to the issues and which the party could not have discovered with due diligence before or during the hearing;

iii. there is a showing that issues not previously considered ought to be examined in order to dispose of the case properly; or

iv. it would be in the public interest to further consider the issues and the evidence.

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 25:2228 (November 1999).

**§1411. Consent Order**

An order involving a type of disciplinary action may be made to the board by the investigating board member with the consent of the person. To be accepted, a consent order requires formal consent of a majority of the quorum of the board. Such quorum does not include the investigating board member. It is not the result of the board's deliberation; it is the board's acceptance of an agreement reached between the board and the person. A proposed consent order may be rejected by the board in which event a formal hearing will occur. The consent order, if accepted by the board, is issued by the board to carry out the parties' agreement.

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 25:2230 (November 1999).

**§1413. Withdrawal of a Complaint**

If the complainant wishes to withdraw the complaint, the inquiry is terminated, except in cases where the investigating board member judges the issues to be of such importance as to warrant completing the investigation in its own right and in the interest of public welfare.

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 25:2230 (November 1999).

**§1415. Refusal to Respond or Cooperate with the Board**

A. If the person does not respond to the original inquiry within a reasonable period of time as requested by the board, a follow-up letter shall be sent to the person by certified mail, return receipt requested.

B. If the person refuses to reply to the board's inquiry or otherwise cooperate with the board, the board shall continue its investigation. The board shall record the circumstances of the person's failure to cooperate and shall inform the person that the lack of cooperation may result in action which could eventually lead to the denial, revocation or suspension of his license, temporary permit or certification, or application for licensure, temporary permit or certification, or otherwise issue appropriate disciplinary sanction.

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 25:2230 (November 1999).

#### **§1417. Judicial Review of Adjudication**

Any person whose license, temporary permit or certification, or application for licensure, temporary permit or certification, has been denied, revoked or suspended or otherwise disciplined by the board shall have the right to have the proceedings of the board reviewed by the state district court for the parish of East Baton Rouge, provided that such petition for judicial review is made within thirty days after the notice of the decision of the board. If judicial review is granted, the board's decision is enforceable in the interim unless the court orders a stay.

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 25:2231 (November 1999).

#### **§1419. Appeal**

A person aggrieved by any final judgment rendered by the state district court may obtain a review of said final judgment by appeal to the appropriate circuit court of appeal. Pursuant to the applicable section of the Louisiana Administrative Procedure Act, LSA R.S. 49:950 et seq., this appeal shall be taken as in any other civil case.

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 25:2231 (November 1999).

#### **§1421. Reinstatement of Suspended or Revoked License**

Any person whose license is suspended or revoked may, at the discretion of the board, be relicensed or reinstated at any time without an examination by majority vote of the board on written application made to the board showing cause justifying relicensing or reinstatement.

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 25:2231 (November 1999).

#### **§1423. Declaratory Statements**

The Board may issue a declaratory statement in response to a request for clarification of the effect of the provisions contained in the Louisiana Veterinary Practice Act, LSA R.S. 37:1511 et seq., the rules and regulations promulgated by the board and/or the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association.

A. A request for declaratory statement is made in the form of a petition to the board. The petition should include at least:

1. the name and address of the petitioner;
2. specific reference to the statute, rule and regulation, or the American Veterinary Medical Association's Principles of Veterinary Medical Ethics to which the petitioner relates; and

3. a concise statement of the manner in which the petitioner is aggrieved by the statute, rules and regulations, or provision of the American Veterinary Medical Association's Principles of Veterinary Medical Ethics by its potential application to him in which he is uncertain of its effect.

B. The petition shall be considered by the board within a reasonable period of time taking into consideration the nature of the matter and the circumstances involved.

C. The declaratory statement of the board in response to the petition shall be in writing and mailed to the petitioner at the last address furnished to the board.

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 25:2231 (November 1999).

#### **§1425. Injunction**

A. The board or any citizen of this state may bring an action to enjoin any person from practicing veterinary medicine without a currently valid license or temporary permit.

B. If the court finds that the person is violating, or is threatening to violate, this Chapter it shall enter an injunction restraining him from such unlawful acts.

C. The successful maintenance of an action based on any one of the remedies set forth in this rule shall in no way prejudice the prosecution of an action based on any other of the remedies.

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 25:2231 (November 1999).

Kimberly B. Barbier  
Administrative Director

9911#055

### **RULE**

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

Licensure and Examinations  
(LAC 46:LXXXV.301 and 303)

The Louisiana Board of Veterinary Medicine hereby amends LAC 46:LXXXV.301 and 303 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Veterinary Practice Act, La. R.S. 37:1518 et seq.

#### **Title 46**

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

#### **Part LXXXV. Veterinarians**

#### **Chapter 3. Licensure Procedures**

#### **§301. Applications for Licensure**

A. ...

B. In addition to the above requirements, the board may also require that any applicant furnish the following information:

1. ...

2. a copy of the applicant's diploma from a veterinary medical school or college accredited or approved by the American Veterinary Medical Association;

3. - 8. ...

C. - E. ...

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 8:66 (February 1982), amended LR 10:464 (June 1984), LR 16:224 (March 1990), LR 19:343 (March 1993); LR 23:964 (August 1997), LR 25:2231 (November 1999).

**§303. Examinations**

- A. ...
  - 1. - 3. ...
  - 4. A candidate for examination must be:
    - a. a graduate of a school or college of veterinary medicine accredited or approved by the American Veterinary Medical Association; or
    - b. - c. ...
- B. - 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 8:66 (February 1982), amended LR 19:344 (March 1993), LR 19:1327 (October 1993), LR 23:964 (August 1997), LR 25:2232 (November 1999).

Kimberly B. Barbier  
Administrative Director

9911#060

**RULE**

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

**Accounting Regulations  
(LAC 42:XIII.Chapter 27)**

The Gaming Control Board hereby adopts amendments to LAC 42:XIII.2701, 2703, 2705, 2707, 2709, 2711, 2713, 2716 2717, 2719, 2721, 2723, 2724, 2725, 2727, 2729, 2730, 2731, 2735, 2736, 2737, 2739, 2741, 2743, 2744, 2745, and 2747, in accordance with R.S. 27:14 and 24 and the Administrative Act, R.S. 49:950 et seq.

[Note: The amendments to LAC 42:XIII.2701 et seq. were published as a notice of intent on February 20, 1999. Public comment was requested and a hearing was held on April 20, 1999. Changes to the proposed rules were approved by the Gaming Control Board at a public meeting held on July 20, 1999 pursuant to the provisions of R.S. 49:968 H. 2. A report, prepared pursuant to R.S. 49:968 D. (1) (b), was delivered to the oversight committees on July 26, 1999 and contained copies of the proposed changes and final version of the proposed rules. On September 21, 1999 the Gaming Control Board adopted the proposed rules as amended subsequent to publication of the notice of intent. By error the rules submitted to the Office of the State Register for publication in the October 20, 1999 issue of the Louisiana Register did not contain the changes approved by the Gaming Control Board on July 20, 1999, but rather replicated the original notice of intent published on February 20, 1999. Accordingly, the rule published in Vol. 25, No. 10, beginning at page 1876 shall be considered null, void and without effect and the following rules, amending LAC 42:XIII.2701 et seq. shall become effective upon the date of publication hereof.]

**Title 42**

**LOUISIANA GAMING**

**Part XIII. Riverboat Gaming**

**Chapter 27. Accounting Regulations**

**§2701. Procedure for Reporting and Paying Gaming Revenues and Fees**

A. All Daily Fee Remittance Summary reports, together with all necessary subsidiary schedules, required under the Act shall be submitted to the Division no later than forty-eight hours from the end of the licensee's specified gaming day. For reporting purposes, licensee's specified gaming day (beginning time to ending time) shall be submitted in writing to the Division prior to implementation. For licensees which offer 24-hour gaming, gaming day is the 24-hour period by which the casino keeps its books and records for business, accounting, and tax purposes. Each licensee shall have only one gaming day, common to all its departments. Any change to the gaming day shall be submitted to the Division ten (10) days prior to implementation of the change. All license and franchise fees related thereto must be electronically transferred to the State's designated bank account as directed by the Division. In addition to any other administrative action, civil penalties, or criminal penalties, licensees who are late in electronically transferring these fees may retroactively be assessed late penalties of fifteen percent (15%) of the amount due per annum after notice and opportunity for a hearing held in accordance with the Administrative Procedure Act. Interest may be imposed on the late payment of fees at the daily rate of .00041 multiplied by the amount of unpaid fees for each day the payment is late.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2232 (November 1999).

**§2703. Accounting Records**

A. The following requirements shall apply throughout all of Chapter 27.

1. Each licensee, in such manner as the Division may approve or require, shall keep accurate, complete, legible, and permanent records of all transactions pertaining to revenue that is taxable or subject to fees under the Act. Each licensee shall keep records of all transactions impacting the financial statements of the licensee, including, but not limited to, contracts or agreements with suppliers/vendors, contractors, consultants, attorneys, accounting firms; accounts/trade payable files; insurance policies; bank statements, reconciliations and canceled checks. Each licensee that keeps permanent records in a computerized or microfiche fashion shall upon request immediately provide agents of the Division with a detailed index to the microfiche or computer record that is indexed by casino department and date, as well as access to a microfiche reader. Only documents which do not contain original signatures may be kept in a microfiche or computerized fashion.

2. Each licensee shall keep general accounting records on a double entry system of accounting, with transactions recorded on a basis consistent with generally accepted

accounting principles, maintaining detailed, supporting, subsidiary records, including but not limited to:

a. detailed records identifying admissions to gaming excursions by excursion and day, revenues by day, expenses, assets, liabilities, and equity for each establishment;

b. detailed records of all markers, IOU's, returned checks, hold checks, or other similar credit instruments;

c. individual and statistical game records to reflect drop, win, and the percentage of win to drop by table for each table game, and to reflect drop, win, and the percentage of win to drop for each type of table game, for each day or other accounting periods approved by the Division and individual and game records reflecting similar information for all other games, including slots;

d. slot analysis reports which, by each machine, compare actual hold percentages to theoretical hold percentages;

e. for each licensee, the records required by the licensee's system of internal control;

f. journal entries and all workpapers (electronic or manual) prepared by the licensee and its independent accountant;

g. records supporting the accumulation of the costs for complimentary services and items. A complimentary service or item provided to patrons in the normal course of an owner's business shall be expensed at an amount based upon the full cost of such services or items to the licensee;

h. detailed gaming chip and token perpetual inventory records which identify the purchase, receipt, and destruction of gaming chips and tokens from all sources as well as any other necessary adjustments to the inventories. The recorded accountability shall be verified periodically via physical counts. The Division shall have an agent, or its designee, present during destruction of any gaming chips or tokens;

i. workpapers supporting the daily reconciliation of cash and cash equivalent accountability;

j. financial statements and supporting documents; and

k. any other records that the Division specifically requires be maintained.

3. Each licensee shall create and maintain records sufficient to accurately reflect gross income and expenses relating to its gaming operations.

4. If a licensee fails to keep the records used by it to calculate gross and net gaming revenue, or if the records kept by the licensee to compute gross and net gaming revenue are not adequate to determine these amounts, the Division may compute and determine the amount of taxable revenue based on an audit conducted by the Division, any information within the Division's possession, or upon statistical analysis.

5. The Division may review or take possession of records at any time upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2232 (November 1999).

## §2705. Records of Ownership

A. - A.10. ...

11. a schedule of all salaries, wages, and other remuneration (including perquisites), direct or indirect, paid during the calendar or fiscal year, by the corporation, to all officers, directors, and stockholders with an ownership interest at any time during the calendar or fiscal year, equal to five percent (5%) or more of the outstanding capital stock of any class of stock.

B. Each limited liability company licensee shall keep on the premises of its gaming establishment the following documents pertaining to the company:

1. a certified copy of the articles of organization and any amendments;

2. a copy of the "Initial Report" setting forth location and address of registered office and agent(s);

3. a copy of required records to be maintained at the registered office of the LLC, including current list of names and addresses of members and managers;

4. a copy of the operating agreement and amendments; and

5. a copy of the certificate of organization issued by the Louisiana Secretary of State evidencing that the limited liability company has been organized.

C. Each partnership licensee shall keep on the premises of its gaming establishment the following documents pertaining to the partnership:

1. a copy of the partnership agreement and, if applicable, the certificate of limited partnership;

2. a list of the partners including their names, birth date, social security number, addresses, the percentage of interest held by each, the amount and date of each capital contribution of each partner, and the date the interest was acquired;

3. a record of all withdrawals of partnership funds or assets; and

4. a schedule of salaries, wages and other remuneration (including perquisites), direct or indirect, paid to each partner during the calendar or fiscal year.

D. Each sole proprietorship licensee shall keep on the premises of its gaming establishment:

1. a schedule showing the name, birth date, social security number and address of the proprietor and the amount and date of the proprietor's original investment and of any additions and withdrawals;

2. a schedule of salaries, wages and other remuneration (including perquisites), direct or indirect, paid to the proprietor during the calendar or fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2233 (November 1999).

## §2707. Record Retention

A. Upon request, each licensee shall provide the Division, at a location approved by the Division, with the records required to be maintained by Chapter 27. Each licensee shall retain all such records for a minimum of five (5) years in a parish approved by the Division. In the event of a change of ownership, records of prior owners shall be

retained in a parish approved by the Division for a period of five (5) years unless otherwise approved by the Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2233 (November 1999).

#### **§2709. Standard Financial Statements**

A. The Division shall prescribe a uniform chart of accounts including account classifications in order to insure consistency, comparability, and appropriate disclosure of financial information. The prescribed chart of accounts shall be the minimum level of detail to be maintained for each accounting classification by the holder of an owner's license. All licensees shall prepare their financial statements in accordance with this chart or in a similar form that reflects the same information.

B. Each licensee shall furnish to the Division on a form, as prescribed by the Division, a quarterly financial report. The quarterly financial report shall present all data on a monthly basis as well. Monthly financial reports shall include reconciliation of general ledger amounts with amounts reported to the Division. The quarterly financial report shall be submitted to the Division no later than 60 days following the end of each quarter.

C. Each licensee shall submit to the Division one copy of any report, including but not limited to Forms S-1, 8-K, 10-Q, and 10-K, required to be filed by the licensee with the Securities and Exchange Commission or other domestic or foreign securities regulatory agency, within ten (10) days of the time of filing with such commission or agency or the due date prescribed by such commission or regulatory agency, whichever comes first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2234 (November 1999).

#### **§2711. Audited Financial Statements**

A. Each licensee shall submit to the Division, postmarked by the United States Postal Service or deposited for delivery with a private or commercial interstate carrier, audited financial statements reflecting all financial activities of the licensee's establishment prepared in accordance with generally accepted accounting principles and subjected to an examination conducted according to generally accepted auditing standards by an independent Certified Public Accountant (CPA). The CPA shall incorporate the guidelines established by the Division into current procedures for preparing audited financial statements. The submitted audited financial statements required under this part shall be based on the licensee's business year as approved by the Division. If the licensee or a person controlling, controlled by, or under common control with the licensee owns or operates food, beverage or retail facilities or operations on the riverboat, or any related shore terminals, facilities or buildings, the financial statement must further reflect these operational records.

B. The reports required to be filed pursuant to this Section shall be sworn to and signed by:

1. if from a corporation:
  - a. Chief Executive Officer; and either the
  - b. Financial Vice President; or
  - c. Treasurer; or
  - d. Controller;
2. if from a partnership, by a general partner and financial director;
3. if from a sole proprietorship, by the proprietor; or
4. if from any other form of business association, by the Chief Executive Officer.

C. All of the audits and reports required by this Section shall be prepared at the sole expense of the licensee.

D. Each licensee shall engage an independent Certified Public Accountant (CPA) licensed by the Louisiana State Board of Certified Public Accountants. The CPA shall examine the statements in accordance with generally accepted auditing standards. The licensee may select the independent CPA with the Division's approval. Should the independent CPA previously engaged as the principal accountant to audit the licensee's financial statements resign or be dismissed as the principal accountant, or if another CPA is engaged as principal accountant, the licensee shall file a report with the Division within ten (10) days following the end of the month in which the event occurs, setting forth the following:

1. - 2. ...
3. whether the principal accountant's report on the financial statements for any of the past two (2) years contained an adverse opinion or a disclaimer of opinion or was qualified. The nature of such adverse opinion or a disclaimer of opinion, or qualification shall be described; and
4. a letter from the former accountant furnished to the licensee and addressed to the Division stating whether he agrees with the statements made by the licensee in response to this Section of the licensee's submission of accounting and internal control.

E. Unless the Division approves otherwise in writing, the statements required must be presented on a comparative basis. Consolidated financial statements may be filed by commonly owned or operated establishments, but the consolidated statements must include consolidating financial information or consolidated schedules presenting separate financial statements for each establishment licensed to conduct gaming by the Division. The CPA shall express an opinion on the consolidated financial statements as a whole and shall subject the accompanying consolidating financial information to the auditing procedures applied in the examination of the consolidated financial statements.

F. Each licensee shall submit to the Division two (2) originally signed copies of its audited financial statements and the applicable CPA's letter of engagement not later than one-hundred twenty (120) days after the last day of the licensee's business year. In the event of a license termination, change in business entity, or a change in the percentage of ownership of more than twenty percent (20%), the licensee or former licensee shall, not later than one hundred twenty (120) days after the event, submit to the Division two (2) originally signed copies of audited statements covering the period between the filing of the last financial statement and the date of the event. If a license termination, change in business entity, or a change in the percentage of ownership

of more than twenty percent (20%) occurs within one-hundred twenty (120) days after the end of the business year for which a statement has not been submitted, the licensee may submit statements covering both the business year and the final period of business.

G. If a licensee changes its fiscal year, the licensee shall prepare and submit to the Division audited financial statements covering the period from the end of the previous business year to the beginning of the new business year not later than one-hundred twenty (120) days after the end of the period or incorporate the financial results of the period into the statements for the new business year.

H. Reports that directly relate to the independent CPA's examination of the licensee's financial statements must be submitted within one-hundred twenty (120) days after the end of the licensee's business year. The CPA shall incorporate the guidelines established by the Division into current procedures for preparing the reports.

I. Each licensee shall engage an independent CPA to conduct a quarterly audit of the net gaming proceeds. Two (2) signed copies of the auditor's report shall be forwarded to the Division not later than sixty (60) days after the last day of the applicable quarter. For purposes of this part, quarters are defined as follows: January through March, April through June, July through September and October through December. The CPA shall incorporate the guidelines established by the Division into current procedures for preparing the quarterly audit.

J. The Division may request additional information and documents from either the licensee or the licensee's independent CPA, through the licensee, regarding the financial statements or the services performed by the accountant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2234 (November 1999).

### **§2713. Cash Reserve and Bonding Requirements; General**

A. Each licensee shall maintain in cash or cash equivalent amounts sufficient to protect patrons against defaults in gaming debts owed by the holder of an owner's license as defined below:

GAMES: All Table Games

Number of games X table limit average X \$50 =  
\* \* \*

B. For the purposes of this Section, *table limit average* shall be defined as the sum of the highest table limit set for each and all tables during the calendar month, divided by the total number of tables. All tables shall be included in the calculation whether they are opened or closed.

C. Each licensee may submit its own procedure for calculating its cash reserve requirement which shall be approved by the Division in writing prior to implementation. Such procedure shall be implemented after the licensee receives the Division's written approval.

D. Each licensee shall submit monthly calculations of its cash reserve to the Division no later than thirty (30) days following the end of each month.

E. Cash equivalents are defined as all highly liquid investments with an original maturity of 12 months or less and available unused lines of credit issued by a federally regulated financial institution as permitted in Chapter 25 and approved pursuant to that Chapter. Approved lines of credit shall not exceed fifty percent (50%) of the total cash reserve requirement. Any changes to the initial computation submitted to the Division shall require the licensee to resubmit the computation with all changes delineated therein including a defined time period for adjustment of the cash reserve account balance (e.g. monthly, quarterly, etc.)

F. Pursuant to Louisiana R.S. 27:52.2.b, each licensee shall be required to secure and maintain a bond from a surety company licensed to do business within the State of Louisiana that ensures specific performance under the provisions of the Act for the payment of fees, fines and other assessments. The amount of the bond shall be set at \$250,000 unless the Division determines that a higher amount is appropriate. The licensee shall submit the surety bond to the Division prior to the commencement of gaming operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2235 (November 1999).

### **§2715. Internal Control; General**

A. Each licensee shall establish and implement beginning the first day of operations administrative and accounting procedures for the purpose of determining the licensee's liability for revenues and fees under the Act and for the purpose of exercising effective control over the licensee's internal fiscal affairs. Each licensee shall adhere to the procedures established and implemented under the requirements of this Section of the Administrative Rules and Regulations. The procedures shall be implemented to reasonably ensure that:

1. - 2. ...

3. transactions are performed only in accordance with the licensee's internal controls as approved by the Division;

4. ...

5. access to assets is permitted only in accordance with the licensee's internal controls as approved by the Division;

6. - 7. ...

8. sensitive keys are maintained in a secure area that is subject to surveillance as follows:

a. all restricted sensitive keys shall be stored in an immovable dual lock box;

b. one key shall open only one lock on the dual lock box;

c. a dual key system shall be implemented wherein both keys are required to open the dual lock box and shall not be issued to different employees in the same department;

d. an employee shall be issued only a single key to the dual lock box; and

e. there shall be a surveillance camera monitoring the dual lock box at all times;

9. restricted sensitive keys are properly secured. Restricted sensitive keys shall be defined as those keys which can only be reproduced by the manufacturer of the

lock or its authorized agent. These keys shall be stored in a dual lock box, with the exception of the cages, change banks/booths and the dual lock box keys. All restricted sensitive keys shall be inventoried and accounted for on a quarterly basis. These keys include but are not limited to:

- a. slot drop cabinet keys;
- b. bill validator release keys;
- c. bill validator contents keys;
- d. table drop release keys;
- e. table drop contents keys;
- f. count room keys;
- g. high level Caribbean Stud key;
- h. vault entrance key;
- i. CCOM (processor) keys;
- j. card and dice storage keys;
- k. slot office storage box keys;
- l. dual lock box keys;
- m. change bank/booth keys;
- n. secondary chip access keys;
- o. weigh calibration key;

10. all other sensitive keys not listed in §2715.A.9 are listed in the licensee's internal controls and are controlled as prescribed therein;

11. all damaged sensitive keys are disposed of timely and adequately. The licensee shall notify the Division of the destruction. Notification shall include type of key(s), number of key(s), and the place and manner of disposal;

12. all access to the count rooms and the vault is documented on a log maintained by the count team and vault personnel respectively. Such logs shall be kept in the count rooms and vault room respectively, such logs shall be available at all times, and such logs shall contain entries with the following information:

- a. name of each person entering the room;
- b. reason each person entered the room;
- c. date and time each person enters and exits the room;
- d. date, time and type of any equipment malfunction in the room;
- e. a description of any unusual events occurring in the room; and
- f. such other information required in the licensee's internal controls as approved by the Division;

13. only transparent trash bags are utilized in restricted areas.

B. Each licensee and each applicant for a license shall describe, in such manner as the Division may approve or require, its administrative and accounting procedures in detail in a written system of internal control. Each licensee and applicant for a license shall submit a copy of its written system of internal controls to the Division for approval prior to commencement of the licensee's operations. Each written system of internal control shall include:

1. an organizational chart depicting appropriate segregation of functions and responsibilities;
2. a description of the duties, responsibilities, and access to sensitive areas of each position shown on the organizational chart;
3. a detailed, narrative description of the administrative and accounting procedures designed to satisfy the requirements of §2715.A and §2325.C;

4. a flow chart illustrating the information required in Paragraphs 1, 2 and 3 above;

5. a written statement signed by an officer of the licensee or a licensed owner attesting that the system satisfies the requirements of this Section;

6. other information as the Division may require.

C. The licensee may not implement its initial system of internal control procedures unless the Division, in its sole discretion, determines that the licensee's proposed system satisfies §2715.A., and approves the system in writing. In addition, the licensee must engage an independent CPA to review the proposed system of internal control prior to implementation. The CPA shall forward two (2) signed copies of the report reflecting the results of the evaluation of the proposed internal control system prior to implementation.

D. A separate internal audit department (whose primary function is performing internal audit work and who is independent with respect to the departments subject to audit) shall be maintained by either the licensee, the parent company of the licensee, or be contracted to an independent CPA firm. The internal audit department or independent CPA firm shall develop quarterly reports providing details of all exceptions found and subsequent action taken by management. All material exceptions resulting from internal audit work shall be investigated and resolved. The results of the investigation shall be documented and retained within the State of Louisiana for five (5) years.

E. Each licensee shall require the independent CPA engaged by the licensee for purposes of examining the financial statements to submit to the licensee two (2) originally signed copies of a written report of the continuing effectiveness and adequacy of the licensee's written system of internal control one hundred fifty (150) days after the end of the licensee's fiscal year. Using the guidelines and standard internal control questionnaires and procedures established by the Division, the independent CPA shall report each event and procedure discovered by or brought to the CPA's attention which the CPA believes does not satisfy the internal control system approved by the Division. Not later than one hundred fifty (150) days after the end of the licensee's fiscal year, the licensee shall submit an originally signed copy of the CPA's report and any other correspondence directly relating to the licensee's system of internal control to the Division accompanied by the licensee's statement addressing each item of noncompliance as noted by the CPA and describing the corrective measures taken.

F. Before adding or eliminating any game; adding any computerized system that affects the proper reporting of gross revenue; adding any computerized system of betting at a race book; or adding any computerized system for monitoring slot machines or other games, or any other computerized equipment, the licensee shall:

1. amend its accounting and administrative procedures and its written system of internal control;
2. submit to the Division a copy of the amendment of the internal controls, signed by the licensee's Chief Financial Officer or General Manager, and a written description of the amendments;

3. comply with any written requirements imposed by the Division regarding administrative approval of computerized equipment; and

4. after compliance with Paragraphs 1-3 and approval has been obtained from the Division, implement the procedures and internal controls as amended.

G. Any change or amendment in procedure including any change or amendment in the licensee's internal controls previously approved by the Division shall be submitted to the Division for prior written approval as provided in Chapter 29 of these rules.

H. If the Division determines that a licensee's administrative or accounting procedures or its internal controls do not comply with the requirements of this Section, the Division shall so notify the licensee in writing. Within thirty (30) days after receiving the notification, the licensee shall amend its procedures and written system accordingly, and shall submit a copy of the internal controls as amended and a description of any other remedial measures taken.

I. The Division can observe unannounced the transportation and count of each of the following: electronic gaming device drop, all table game drops, tip box and slot drops, slot fills, fills and credits for table games, as well as any other internal control procedure(s) implemented. For purposes of these procedures, *unannounced* means that no officers, directors or employees of the holder of the owner's license are given advance information, regarding the dates or times of such observations.

J. Except as otherwise provided in this Section, no licensee shall make any loan, or otherwise provide or allow to any person any credit or advance of anything of value or which represents value to enable any person to take part in gaming activity. The failure to deposit for collection a negotiable instrument by the second banking day following receipt shall be considered an extension of credit.

K. A licensee may extend credit to a patron only in the manner(s) provided in its internal control system approved by the Division.

L. The internal control system shall provide that:

1. each credit transaction is promptly and accurately recorded in appropriate credit records;

2. coupon redemption and other complimentary distribution program transactions are promptly and accurately recorded; and

3. credit may be extended only in a commercially reasonable manner considering the assets, liabilities, prior payment history and income of the patron.

M. No credit shall be extended beyond thirty (30) days. In the event that a patron has not paid a debt created under this Section within thirty (30) days, a holder of an owner's license shall not further extend credit to the patron while such debt is outstanding.

N. A licensee shall be liable as an insurer for all collection activities on the debt of a patron whether such activities occur in the name of the owner or a third party.

O. The licensee shall provide to the Division a quarterly report detailing all credit outstanding from whatever source, including nonsufficient funds checks, collection activities taken and settlements, of all disputed markers, checks and

disputed credit card charges pertaining to gaming. The report required under this Part shall be submitted to the Division within fifteen (15) days of the end of each quarter.

P. Each licensee shall submit to the Division, on a quarterly basis, a report of all vendors who have received \$5,000 or more from the licensee during the previous quarter, or \$50,000 or more during the immediate past twelve (12) month period as payment for providing goods and/or services to the licensee. This report shall include vendor name, address, type of goods/services provided, permit number (if applicable), federal tax identification number and the total amount of payments made by the licensee or person(s) acting on behalf of the licensee to each vendor during the previous (4) quarters. For each provider of professional services listed in this report, each licensee shall also submit a brief statement describing the nature and scope of the professional service rendered by each such provider, the number of hours of work performed by each such provider and the total amounts paid to each such provider by the licensee or any person(s) acting on behalf of the licensee during the previous quarter. For purposes of this section, providers of professional services include, but are not limited to, accountants, architects, attorneys, consultants, engineers and lobbyists, when acting in their respective professional capacities. This report shall be received by the Division not later than the last day of the month following the quarter being reported.

Q. The value of chips or tokens issued to a patron upon the extension of credit, the receipt of a check or other instrument or via a complimentary distribution program shall be included in the computation of net gaming proceeds.

R. The licensee shall have a continuing duty to review its internal controls to ensure the internal controls remain in compliance with the Act and the Division's rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2235 (November 1999).

#### **§2716. Clothing Requirements**

A. All authorized persons accessing any count room when unaudited funds are present shall wear clothing without any pockets or other compartments with the exception of Division Agents, Security, Internal Audit, and External Audit.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2237 (November 1999).

#### **§2717. Internal Controls; Table Games**

A. Table Games Fill and Credit Slip Requirements (Computerized and Manual). Each licensee shall utilize fill/credit slips to document the transfer of chips and tokens to and from table games. All table game fill/credit slips shall be safeguarded in their distribution, use, and control as follows:

1. Fill/credit slips shall, at a minimum, be in triplicate form, in a continuous numerical series, pre-numbered by the computer in a form utilizing the alphabet and only in one series at a time. The alphabet need not be used if the numerical series is not repeated during the business year.

a. Each slip shall be clearly and correctly marked *Fill* or *Credit*, whichever applies, and shall contain the following:

- i. correct date and time;
- ii. shift;
- iii. table number;
- iv. game type;
- v. amount of fill/credit by denomination and in total;
- vi. sequential slip number (manual slips may be issued in sequential order by location); and
- vii. identification code of the requestor, in stored data only.

b. All fill slips shall be distributed as follows.

i. One part shall be transported to the pit with the fill and, after the appropriate signatures are obtained, deposited in table drop box by the dealer/boxperson. The part that is placed in the drop box shall be of a different color for fills than that used for credits;

ii. One part shall be retained in the cage for reconciliation of the cashier bank;

iii. One part shall be forwarded to accounting or retained internally within the computer. This computer copy shall be known as the 'restricted copy' and shall not be accessible to cage or pit employees. The stored data shall not be susceptible to change or removal by cage or pit personnel after preparation of a fill, with the exception of voids. Accounting shall be given access to the restricted copies of the fill slips.

c. All credit slips shall be distributed as follows.

i. One part shall be retained in the cage for reconciliation of the cashier bank upon completion of the credit transaction;

ii. One part shall be transported to the pit by the security officer who brought the chips, tokens, markers or monetary equivalents from the pit to the cage, and after the appropriate signatures are obtained, deposited in the table drop box by the dealer/boxperson. The part that is placed in the drop box shall be of different color for credits than that used for fills.

iii. One part shall be forwarded to accounting or retained internally within the computer. This computer copy shall be known as the *restricted copy* and shall not be accessible to cage or pit employees. The stored data shall not be susceptible to change or removal by cage or pit personnel after preparation of a credit, with the exception of voids. Accounting shall be given access to the restricted copies of the credit slips.

2. Processed slips shall be signed by at least the following individuals to indicate that each has counted the amount of the fill/credit and the amount agrees with the slip:

a. cashier who prepared the slip and issued the fill or received the items transferred from the pit;

b. Runner, who shall be a gaming employee independent of the transaction, who carried the chips, tokens, or monetary equivalents to or from the table;

c. dealer/boxperson who received the fill or had custody of the credit prior to the transfer; and

d. pit supervisor who supervised the fill/credit.

3. Fill/credit slips that are voided shall be clearly marked *Void* across the face of all copies. On manual slips, the first and second copies shall have *Void* written across the face. The cashier shall print his employee number and sign his name on the voided slip. A brief statement of why the void was necessary shall be written on the face of all copies. The pit or cage supervisor who approves the void shall print his employee number and sign his name and shall print or stamp the date and time the void is approved. All copies shall be forwarded to accounting for accountability and retention on a daily basis.

4. Access to slips and slip processing areas shall be restricted to authorized personnel.

a. All unissued fill/credit slips shall be securely stored under the control of the accounting or security department.

b. All unissued fill/credit slips shall be controlled by a log which the accounting department shall agree to fill or credit slips purchase documents monthly.

5. The accounting department shall account for all slips daily and investigate all missing slips within ten (10) days. The investigation shall be documented and the documentation retained for a minimum of five (5) years.

B. Computerized Table Game Fill Procedures. Computerized Table Fill transactions shall be:

1. initiated by a pit supervisor and the order acknowledged by a cage cashier prior to the issuance of a fill slip and transportation of the chips, tokens, and monetary equivalents. The pit supervisor or pit clerk shall process the order for fill by entering the following information into the computer:

- a. correct date and time (computer may automatically generate);
- b. shift;
- c. table number;
- d. game type;
- e. amount of fill by denomination and in total; and
- f. identification code of preparer, in stored data only;

2. transported and deposited on the table only when accompanied by a legitimately executed fill slip;

3. physically transported from the cage by a gaming employee from a department independent of the transaction;

4. broken down or verified by the dealer/boxperson in public view before the dealer/boxperson places the fill in the tray;

5. acknowledged by the pit clerk or cage personnel via computer upon completion of the fill.

6. finalized by the cage cashier who shall complete the transaction via computer entry.

C. Cross-fills. Cross-fills between tables shall not be permitted.

D. Computerized Table Game Credit Procedures. Computerized Table Credit transactions shall be:

1. initiated by a pit supervisor and the order acknowledged by a cage cashier prior to the issuance of a credit slip and transportation of the chips, tokens, and monetary equivalents. The pit supervisor or pit clerk shall

process the order for credit by entering the following information into the computer:

- a. correct date and time (computer may automatically generate);
- b. shift;
- c. table number;
- d. game type;
- e. amount of credit by denomination and in total;

and

f. identification code of preparer, in stored data only;

2. broken down or verified by the dealer/boxperson in public view before the dealer/boxperson places the credit in racks for transfer to the cage;

3. transacted and transferred from the table to the cage only when accompanied by a legitimately executed credit slip;

4. physically transported from the table by a gaming employee from a department independent of the transaction;

5. acknowledged by the pit clerk or cage personnel via computer upon completion of the credit.

6. finalized by the pit clerk or cage cashier who shall complete the transaction via computer entry.

E. Alternate Internal Control Procedures for Non-Computerized Table Games Transactions. For any non-computerized table games systems, alternate documentation and/or procedures which provide at least the level of control required by the above standards for fills and credits will be acceptable. Such procedures must be enumerated in the licensee's internal controls and approved by the Division.

F. Table Games Inventory Procedures. All table games shall be counted each gaming day simultaneously by a dealer/boxperson and a pit supervisor, or two pit supervisors. The count shall be conducted at the end of the gaming day except for tables which are counted and closed before the end of the gaming day. These tables do not have to be recounted at the end of the gaming day if they remained closed. At the beginning and end of each gaming day, each table's chip, token, and coin inventory shall be counted and recorded on a table inventory form. Additionally, tables which have remained closed after crediting the entire inventory back to the cage will be exempt from conducting a daily count; however, the zero balance shall be documented in the table games paperwork for each day that they maintain a zero balance.

1. Table inventory forms shall be prepared, verified and signed by the dealer/boxperson and a pit supervisor, or two pit supervisors.

2. If the table banks are maintained on an imprest basis, a final fill or credit shall be made to bring the bank back to par.

3. If final fills are not made, beginning and ending inventories shall be recorded on the master game sheet for win calculation purposes.

4. Table inventory forms shall be placed in the drop box by someone other than a pit supervisor.

#### G. Credit Procedures in the Pit

1. Prior to the issuance of gaming credit to a player, the employee extending the credit shall determine if credit is available by entering the patron's name or account number into the computer. A password shall be used to access such

information. Once availability is established, credit shall be extended only on the remaining balance authorized.

2. ...

3. Amount of credit extended in the pit shall be communicated to the cage or another independent source with the amount documented to update the manual and/or computerized system within a reasonable time subsequent to each issuance.

4. The following information shall be maintained either manually or in the computer system:

a. the signature or initials of the individual(s) approving the extension of credit (unless such information is contained elsewhere for each issuance);

b. the name of the individual receiving the credit;

c. the date and shift granting the credit;

d. the table on which the credit was extended;

e. the amount of credit issued;

f. the marker number;

g. the amount of credit remaining after each issuance or the total credit available for all issuances;

h. the amount of payment received and nature of settlement (e.g., credit slip number, cash, chips, etc.); and

i. the signature or initials of the individual receiving payment/settlement.

5. Marker preparation shall be initiated and other records updated within approximately one hand of play following the initial issuance of credit to the player.

6. All credit extensions shall be initially evidenced by marker buttons which shall be displayed on the table in public view and placed there by supervisory personnel.

7. Marker buttons shall be removed only by the dealer or boxperson employed at the table upon completion of a marker transaction.

8. The marker slip shall, at a minimum, be in triplicate form, pre-numbered by the printer, and utilized in numerical sequence whether marker forms are manual or computer-generated. Manual markers may be issued in numerical sequence by location. The three parts shall be utilized as follows:

a. original, maintained in the pit until settled or transferred to the cage;

b. payment slip, sent immediately to the cage; accompanied by the original and a transfer slip; or maintained in the pit until:

i. the marker is paid, including partial payments; at which time it shall be placed in the drop box;

ii. the end of gaming day; at which time it shall be sent immediately to the cage; accompanied by the original and a transfer slip;

c. issue slip, inserted into the appropriate table drop box when credit is extended or when the player has signed the original.

9. The original marker shall contain at least the following information:

a. preprinted number;

b. player's name and signature;

c. date; and

d. amount of credit issued.

10. The issue slip or stub shall include the same preprinted number as the original, the table number, date and time of issuance, and amount of credit issued. The issue slip

or stub also shall include the signature of the individual extending the credit, and the signature or initials of the dealer at the applicable table, unless this information is included on another document verifying the issued marker.

11. The payment slip shall include the same preprinted number as the original. When the marker is paid in full in the pit, it shall also include the table number where paid, date and time of payment, nature of settlement (cash, chips, etc.) and amount of payment. The payment slip shall also include the signature of a pit supervisor acknowledging payment, and the signature or initials of dealer/boxperson receiving payment, unless this information is included on another document verifying the payment of the marker.

12. The pit shall notify the cage via computer when the transaction is completed.

13. Markers (computer-generated and manual) that are voided shall be clearly marked *Void* across the face of all copies. The supervisor who approves the void shall print his employee number and sign his name, print or stamp the date and time the void is approved, and print the reason for the void. All copies of the voided marker shall then be forwarded to accounting for accountability and retention for a minimum of five (5) years.

14. Marker documentation shall be inserted in the drop box by the dealer/box person at the table.

15. When partial payments are made in the pit, a new marker shall be completed reflecting the remaining balance and the marker number of the marker originally issued.

16. When partial payments are made in the pit, the payment slip of the marker which was originally issued shall be properly cross-referenced to the new marker number and inserted into the drop box.

17. The cashier's cage or another independent source shall be notified when payments (full or partial) are made in the pit so that cage records can be updated for such transactions. Notification shall be made no later than when the patron's play is completed or at shift end, whichever is earlier.

18. All portions of markers, both issued and unissued, shall be safeguarded and procedures shall be employed to control the distribution, use and access to the forms.

19. An investigation shall be performed, by the accounting department, immediately following its notice of missing forms or any part thereof, to determine the cause and responsibility for loss whenever marker credit slips, or any part thereof, are missing, and the result of the investigation shall be documented, by the accounting department. The Division shall be notified in writing of the loss, disappearance or failure to account for marker forms within ten (10) days of such occurrence.

20. When markers are transferred to the cage, marker transfer slips shall be utilized and such documents shall include, at a minimum, the date, time, shift, marker number(s), table number(s), amount of each marker, the total amount transferred, signature of pit supervisor releasing instruments from pit, and instruments at the cage.

21. Markers shall be transported to the cashier's cage by an individual who is independent of the marker issuance and payment functions (pit clerks may perform this function).

22. Marker log documentation shall be maintained by numerical sequence, indicating marker number, name of

patron, date marker issued, date paid, method of payment (if combination, i.e. chips/cash, amount paid by each method), and amount of credit remaining. This marker log documentation shall also be maintained by patron name in order to determine that credit was not extended beyond thirty (30) days.

#### H. Nonmarker Credit Play

1. - 8. ...

9. Nonmarker credit extensions shall be settled at the end of each hand of play by the preparation of a marker, repayment of credit extended, or payoff of the wager.

I. Call Bets. Call bets shall be prohibited. A call bet is a wager made without chips, tokens, or cash.

J. Table Games Drop Procedures. The drop process shall be conducted at least once each gaming day according to a schedule submitted to the Division setting forth the specific times for such drops. Each licensee shall notify the Division of any changes to such schedules prior to the implementation of the change. Emergency drops which require removal of the table drop box require written notification to the Division within 24 hours. The drop process shall be conducted as follows.

1. All locked drop boxes shall be removed from the tables by an individual independent of the pit shift being dropped. Surveillance shall be notified when the drop process begins. The entire drop process shall be videotaped by surveillance. At least one surveillance employee shall monitor the drop process at all times. This employee shall record on the surveillance log the times that the drop process begins and ends, as well as any exceptions or variations to established procedures observed during the drop including each time the count room door is opened.

2. Upon removal from the tables, the drop boxes are to be placed in a drop box storage rack and locked therein for transportation directly to the count area or other secure place approved by the Division and locked in a secure manner until the count takes place.

3. The transporting of drop boxes shall be performed by a minimum of two individuals, at least one of whom is a security officer.

4. Access to all drop boxes regardless of type, full or empty, shall be restricted to authorized members of the drop and count teams.

K. Table Games Count Procedures. The counting of table game drop boxes shall be performed by a soft count team with a minimum of three persons. Count tables shall be transparent to enhance monitoring. Surveillance shall be notified when the count process begins and the count process shall be monitored in its entirety and video taped by surveillance. At least one surveillance or internal audit employee shall monitor the count process at least one (1) randomly selected day per calendar week. This employee shall record any exceptions or variations to established procedures observed during the count. Surveillance shall notify count team members immediately if surveillance observes the visibility of hands or other activity is consistently obstructed in any manner. Testing and verification of the accuracy of the currency counter shall be conducted and documented quarterly. This test shall be witnessed by someone independent of the count team members.

1. Count team members shall be:

- a. rotated on a routine basis. Rotation is such that the count team is not the same three individuals more than four days per week;
  - b. independent of transactions being reviewed and counted and the subsequent accountability of soft drop proceeds.
2. Soft count shall include:
- a. a test count of the currency counter prior to the start of each count;
  - b. the emptying and counting of each drop box individually, daily;
  - c. the recordation of the contents of each drop box on the count sheet in ink or other permanent form prior to commingling the funds with funds from other boxes;
  - d. the display of empty drop boxes to another member of the count team or to surveillance;
  - e. the comparison of table numbers scheduled to be dropped to a listing of table numbers actually counted, as reflected on the Master Gaming Report, to ensure that all table game drop boxes are accounted for during each drop period;
  - f. the correction of information originally recorded by the count team on soft count documentation by crossing out the error, entering the correct figure, and then obtaining the initials of at least two count team members who verified the change;
  - g. the signature of all members of the soft count team on the count sheet attesting to the accuracy of table games drop after the count sheet has been reconciled to the currency;
  - h. the transfer of all monies and monetary equivalents that were counted to the cage cashier who is independent of the count team or to an individual independent of the revenue generation and the count process for verification. This individual certifies by signature as to the accuracy of the monies delivered and received from the soft count team; if a pass-through window between the count room and the vault is not utilized, transfer of monies shall be accomplished in a locked transport cart;
  - i. the delivery of the count sheet, with all supporting documents, promptly to the accounting department by a count team member. Alternatively, it may be adequately secured (e.g., locked in a container to which only accounting personnel can gain access) until retrieved by the accounting department;
  - j. access to drop boxes, full or empty, shall be restricted to authorized members of the drop and count teams;
  - k. access to the count room during the count shall be restricted to members of the drop and count teams, agents of the Division, authorized observers as approved by the Division and supervisors for resolution of problems. Authorized maintenance personnel shall enter only when accompanied by security. A log shall be maintained in the count room and shall contain the following information:
    - i. name of each person entering the count room;
    - ii. reason each person entered the count room;
    - iii. date and time each person enters and exits the count room;
    - iv. date, time and type of any equipment malfunction in the count room; and

v. a description of any unusual events occurring in the count room.

3. Accounting/Auditing shall perform the following functions:

- a. match the original and first copy of the fill/credit slips;
- b. match orders for fills/credits to the fill/credit slips;
- c. examine fill and credit slips for correctness and recordation on the Master Gaming Report;
- d. trace or record pit marker issue and payment slips to the Master Gaming Report by the count team, unless other procedures are in effect which assure that issue and payment slips were placed into the drop box in the pit;
- e. examine and trace or record the opening/closing table and marker inventory forms to the Master Gaming Report;
- f. review accounting exception reports for the computerized table games on a daily basis for propriety of transactions and unusual occurrences. Documentation of the review and its results shall be retained for five (5) years.

L. Table Games Key Control Procedures. The keys used for table game drop boxes and soft count keys shall be controlled as follows.

1. Drop box release keys shall be maintained by a department independent of the pit department. Only the person authorized to remove drop boxes from the tables shall be allowed access to the release keys. Count team members may have access to the release keys during the soft count in order to reset the drop boxes. Persons authorized to remove the table game drop boxes are precluded from having access to drop box contents keys. The physical custody of the keys needed for accessing full drop box contents requires involvement of persons from three separate departments. The involvement of at least two individuals independent of the cage department is required to access empty drop boxes.
2. Drop box storage rack keys shall be maintained by department independent of the pit department. Someone independent of the pit department shall be required to accompany such keys and observe each time drop boxes are removed from or placed in storage racks. Persons authorized to obtain drop box storage rack keys shall be precluded from having access to drop box contents keys with the exception of the count team.
3. Drop box contents keys shall be maintained by a department independent of the pit department. Only count team members are allowed access to the drop box contents keys. This control is not applicable to emergency situations which require drop box access at other than scheduled count times. At least three persons from separate departments, including management, must participate in these situations. The reason for access must be documented with the signatures of all participants and observers.
4. The issuance of soft count room keys and other count keys shall be witnessed by two gaming employees, who shall be from different departments. Neither of these two employees shall be members of the soft count team.
5. All duplicate keys shall be maintained and issued in a manner which provides the same degree of control over drop boxes as is required for the original keys.
6. Sensitive keys shall not be removed from the vessel unless to an extension of the vessel as previously approved

by the Division. Access to the keys addressed in this Section shall be documented on key access log forms.

a. The logs shall contain the date and time of issuance, the key or ring of keys issued, the printed name, signature and employee number of the person to whom the key is issued, the printed name, signature and employee number of the person issuing the key the date and time of the key return, and reason for access to the secure area. If key rings are used, there shall be a listing with the key log specifying each key on each ring. Accountability is required.

b. Keys shall be logged out and logged in on a per shift basis. The employee who logs out the key shall be the employee who logs in the key. If a different employee logs in the key, surveillance shall be notified and surveillance shall monitor the entire log-in process including the return of the key to the key box. The videotape of the log-in process shall be retained for thirty (30) days.

M. Security of Cards and Dice. Playing cards and dice, not yet issued to the pit, shall be maintained in a secure location to prevent unauthorized access and reduce the possibility of tampering. Perpetual inventory records of the card and dice inventory are to be maintained according to parameters established by §4321 and §4325.

N. Supervisory Controls. Pit supervisory personnel with authority equal to or greater than those being supervised shall provide supervision of all table games.

O. Table Games Records. Each licensee shall maintain records and reports reflecting drop, win and drop hold percentage by table and type of game by day, cumulative month-to-date, and cumulative year-to-date. The reports shall be presented to and reviewed by management independent of the pit department on at least a monthly basis. The independent management shall investigate any unusual statistical fluctuations with pit supervisory personnel. At a minimum, investigations are performed for all statistical percentage fluctuations from the base level for a month in excess of plus or minus three percentage points. The *base level* is defined as the licensee's statistical win to statistical drop percentage for the previous business year. The results of such investigations are documented in writing and maintained for at least five (5) years by the licensee.

P. Accounting and MIS Functions. Accounting and MIS personnel who perform table game computer functions shall be adequately trained.

#### 1. Backup and Recovery

a. MIS shall perform tape backup of system data daily. Backup and recovery procedures shall be written and distributed to all applicable personnel. These policies shall include information and procedures (e.g., a description of the system, systems manual, etc.) that ensure the timely restoration of data in order to resume operations after a hardware or software failure.

b. MIS shall maintain either hard or disk copies of system-generated edit reports, exception reports, or transaction logs.

#### 2. Access to Software/Hardware

a. MIS shall establish Security Groups based on each employee's job requirements. These Groups will determine the access level of the employee. This information shall be maintained (by MIS) which includes the employee's name, position, identification number, and the date

authorization is granted. These files shall be updated as employees or the functions they perform change.

b. MIS shall print and review the computer security access report at the end of each month. Discrepancies shall be investigated, documented, and maintained for five (5) years.

c. Only authorized personnel shall have physical access to the computer software/hardware.

d. All changes to the system and the name of the individual who made the change shall be documented.

e. Reports and other output generated by the system shall only be available and distributed to authorized personnel.

#### 3. Computer Control

a. The pit credit system shall be secured, such that only authorized users can access it.

b. The delete option within an individual program shall be secured, such that only authorized users can execute it, i.e., delete a record.

c. The licensee shall change passwords periodically, as specified in the licensee's internal controls, to ensure security against false entry by unauthorized personnel.

d. The *secured copies* and the necessary documents shall be retained for five (5) years.

e. The Division shall have access to all information pertaining to table games (e.g., restricted copies of slips so accuracy can be verified).

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2237 (November 1999).

#### §2719. Internal Controls; Handling of Cash

A. Each gaming employee, owner, or licensee who receives currency of the United States from a patron in the gaming area of a gaming establishment shall promptly place the currency in the lock box in the table or, in the case of a cashier, in the appropriate place in the cashiers' cage, or on those games which do not have a lock box or on poker tables, in an appropriate place on the table, in the cash register, or other repository approved by the Division.

B. No cash wagers shall be allowed to be placed at any gaming table. Such cash shall be converted to chips or tokens prior to acceptance of a wager. All wagers other than those made with the licensee's approved chips and tokens are expressly prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2242 (November 1999).

#### §2721. Internal Controls; Tips or Gratuities

A. - C.1 ...

2. accounted for by a recorded count conducted by randomly selected dealer and a randomly selected employee who is independent of the tokens being counted, excluding the employees referenced in §2721.A;

3. placed in a pool for pro rata distribution among the dealers on a basis that coincides with the normal pay period,

with a distribution approved by the Division. Tips or gratuities from this pool shall be deposited into the licensee's payroll account. Distributions to dealers from this pool shall be made following the licensee's payroll accounting practices and shall be subject to all applicable state and federal withholding taxes; and

4. ...

a. Each dealer shall have a locked transparent box that has been marked with their name or otherwise coded for identification. Keys to these boxes shall be maintained by the cage department. When not in use, these boxes shall be stored in a locked storage cabinet or other approved lockable storage medium in the poker room itself. Keys to the storage cabinet shall be maintained by a poker room supervisor, hereinafter referred to as the keyholder.

b. - d. ...

f. The licensee shall maintain a minimum level of supervision over the poker room tables. Surveillance shall have the capabilities to monitor and shall continuously record open poker tables.

D. Upon receipt from a patron of a tip or gratuity, a dealer assigned to the gaming table shall extend his arm in an overt motion, and deposit such tip or gratuity in the transparent locked box reserved for such purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 24:1503 (August 1998), LR 25:2242

### §2723. Internal Controls; Slots

A. Any reference to slot machines or slots in this Section includes all Electronic Gaming Devices.

B. Whenever a patron wins a jackpot that is not totally and automatically paid directly from the electronic gaming device, a slot attendant shall prepare and process according to the licensee's internal controls, a request for jackpot payout form. A request for jackpot payout form is not required if all of the following conditions are met:

1. a slot representative manually inputs the jackpot information into the computer;

2. a jackpot slip is generated through the computer system; and

3. the cashier uses this information to pay the jackpot.

C. The request for jackpot payout form (if required) shall contain, at a minimum, the following information:

1. date and time the jackpot was processed;

2. the electronic gaming device machine number and location number;

3. the denomination of the electronic gaming device;

4. number of coins/tokens played;

5. combination of reel characteristics;

6. on short pays, amount the machine paid; and

7. amount of hand-paid jackpot.

D. Each licensee shall use multi-part jackpot payout slips as approved by the Division to document any jackpot payouts or short pays. The jackpot slips shall be in a continuous numerical series, pre-numbered by the printer in a form utilizing the alphabet, and only in one series at a time. The alphabet need not be used if the numerical series is not repeated during the business year. Manual jackpot slips may be utilized in numerical sequence by location.

1. A three-part jackpot payout slip which is clearly marked *jackpot* shall be utilized. The third copy may be the secured copy retained in the computer or whiz machine. Each jackpot slip shall include the following information:

a. date and time the jackpot was processed;

b. denomination;

c. machine and location number of the electronic gaming device on which the jackpot was registered;

d. number of coins/tokens played;

e. dollar amount of payout in both alpha and numeric. Alpha is optional if another unalterable method is used for evidencing the amount of the jackpot or fill;

f. game outcome including reel symbols, card values and suits, etc. for jackpot payouts;

g. pre-printed or concurrently-printed sequential numbers;

h. signature of the cashier;

i. signature of two slot attendants verifying and witnessing the payout if the jackpot is less than \$1200; Signature of one slot attendant and security officer verifying and witnessing the payout if the jackpot is \$1200 or greater.

2. Jackpot slips that are voided shall be clearly marked *Void* across the face of all copies. On manual slips, the first and second copies shall have Void written across the face. The cashier and slot or cage supervisor shall print their employee numbers and sign their names on the voided slip. The supervisor who approves the void shall print or stamp the date and time the void is approved. A brief statement of why the void was necessary shall be written on the face of all copies. All copies shall be forwarded to accounting for accountability and retention on a daily basis.

3. Computerized jackpot/payout systems shall be restricted so as to prevent unauthorized access and fraudulent payouts by an individual.

4. Jackpot payout forms shall be controlled and routed in a manner that precludes any one individual from producing a fraudulent payout by forging signatures, or by altering the amount paid subsequent to the payout, and misappropriating the funds. One copy of the jackpot payout slip shall be retained in a locked box located outside the change booth/cage where jackpot payout slips are executed or as otherwise approved by the Division.

5. Jackpot overrides shall have the notation *override* printed on all copies. Jackpot override reports shall be run on a daily basis.

6. Jackpot payout slips shall be used in sequential order.

E. If a jackpot is \$1,200 or greater in value, the following information shall be obtained by the slot attendant prior to payout and for preparation of a form W-2G:

1. valid ID;

2. name, address, and social security number (if applicable) of the patron;

3. amount of the jackpot; and

4. any other information required for completion of the form W-2G.

F. If the jackpot is \$5,000 or more, a surveillance photograph shall be taken of the winner and the payout form shall be signed by a slot supervisor or casino shift manager in addition to Subsection D and E.

G. If the jackpot is \$10,000 or more, the slot attendant shall notify a slot technician who shall remove the electronic

board housing the EPROM's. A surveillance photograph of the Division seal covering the EPROM shall be taken before the jackpot is paid. This photograph shall be attached to the jackpot payout form. This is in addition to requirements as stated in Subsection D, E and F.

H. If the jackpot is \$100,000 or more, the licensee shall notify the Division immediately. A Division agent shall be present prior to the opening of the electronic gaming device. Surveillance shall constantly monitor the electronic gaming device until payment of the jackpot has been completed or until otherwise directed by a Division Agent. Once a Division Agent is present, the electronic board housing the EPROM's shall be removed by a slot technician, the EPROM's shall be inspected and tested in a manner prescribed by the Division. There shall be conformance to procedures as mentioned in Subsection D, E, F, and G. The payout form shall also be signed by a casino shift manager.

I. Each licensee shall use multi-part slot fill slips as approved by the Division to document any fill made to a slot machine hopper. The fill slips shall be in a continuous numerical series, pre-numbered by the printer in a form utilizing the alphabet, and only in one series at a time. The alphabet need not be used if the numerical series is not repeated during the business year. Manual fill slips may be utilized in numerical sequence by location.

1. A three-part slot fill slip which is clearly marked *fill* shall be utilized. The third copy may be the secured copy retained in the computer or whiz machine. Each fill slip shall include the following information:

- a. date and time;
- b. machine and location number;
- c. dollar amount of slot fill in both alpha and numeric. Alpha is optional if another unalterable method is used for evidencing the amount of the slot fill;
- d. signatures of at least two employees verifying and witnessing the slot fill; and
- e. pre-printed or concurrently-printed sequential number.

2. Computerized slot fill slips shall be restricted so as to prevent unauthorized access and fraudulent slot fills by one individual.

3. Hopper fill slips shall be controlled and routed in a manner that precludes any one individual from producing a fraudulent fill by forging signatures, or by altering the amount paid subsequent to the fill, and misappropriating the funds. One copy of the hopper fill slip shall be retained in a locked box located outside the change booth/cage where hopper fill slips are executed or as otherwise approved by the Division.

4. The initial slot fills shall be considered part of the coin inventory and shall be clearly designated as *slot loads* on the slot fill slip.

5. Slot fill slips that are voided shall be clearly marked *Void* across the face of all copies. On manual slips, the first and second copies shall have *Void* written across the face. The cashier and slot or cage supervisor shall print their employee numbers and sign their names on the voided slip. The supervisor who approves the void shall print or stamp the date and time the void is approved. A brief statement of why the void was necessary shall be written on the face of all copies. All copies shall be forwarded to accounting for accountability and retention on a daily basis.

6. Slot fill slips shall be used in sequential order.

J. Each licensee shall remove the slot drop from each machine according to a schedule, submitted to the Division, setting forth the specific times for such drops. All slot drop buckets, including empty slot drop buckets, shall be removed according to the schedule. Each licensee shall notify the Division at least five (5) days prior to implementing a change to this schedule, except in emergency situations. The Division reserves the right to deny a licensee's drop schedule with cause. Emergency drops, including those for maintenance and repairs which require removal of the slot drop bucket, require written notification to the Division within 24 hours. Prior to opening any slot machine, emptying or removing any slot drop bucket, security and surveillance shall be notified that the drop is beginning.

1. The slot drop process shall be monitored in its entirety and video taped by surveillance including transportation to the count room or other secured area as approved by the Division. At least one surveillance employee shall monitor the drop process at all times. This employee shall record on the surveillance log the time that the drop process begins and ends, as well as any exceptions or variations to established procedures observed during the drop.

2. Each licensee shall submit its drop transportation route from the gaming area to the count room to the Division prior to implementing or changing the route.

3. A minimum of three employees shall be involved in the removal of the slot drop, at least one of whom is independent of the slot department.

4. Drop team shall collect each drop bucket and ensure that the correct tag or number is added to each bucket.

5. Security shall be provided over the slot buckets removed from the slot drop cabinets prior to being transported to the count area. Slot drop buckets must be secured in a locked slot drop cabinet/cart during transportation to the count area.

6. If more than one trip is required to remove the slot drop from all of the machines, the filled carts or coins shall be either locked in the count room or secured in another equivalent manner as approved by the Division.

7. At least once per year, in conjunction with the regularly scheduled drop, a complete *sweep* shall be made of hopper and drop bucket cabinets for loose tokens and coins. Such tokens/coins should be placed in respective hoppers and drop buckets and not commingled with other machines.

8. Once all drop buckets are collected, the drop team shall notify security and surveillance that the drop has ended.

9. On the last gaming day of each calendar month, the licensee's drop shall include both drop buckets and currency acceptor drop boxes of all slot machines.

K. The contents of the slot drop shall be counted in a hard count room according to a schedule, submitted to the Division, setting forth the specific times for such counts.

1. The issuance of the hard count room key, shall be witnessed by two gaming employees, who shall be from different departments. Neither of these two employees shall be members of the count team.

2. Access to the hard count room during the slot count shall be restricted unless three count team members are present. All persons exiting the count room, with the exception of Division Agents, shall be wanded by Security with a properly functioning hand-held metal detector (wand). A log shall be maintained in the count room and shall contain the following information:

- a. name of each person entering the count room;
- b. reason each person entered the count room;
- c. date and time each person enters and exits the count room;
- d. date, time and type of any equipment malfunction in the count room; and
- e. a description of any unusual events occurring in the count room.

3. The slot count process shall be monitored in its entirety and videotaped by surveillance including transportation to the count room or other secured area as approved by the Division. At least one surveillance or internal audit employee shall monitor the count process at least two (2) randomly selected days per calendar month. This employee shall record on the surveillance log the times that the count process begins and ends, as well as any exceptions or variations to established procedures observed during the count, including each time the count room door is opened. If surveillance observes the visibility of the count team's hands or other activity is continuously obstructed at any time, surveillance shall immediately notify the count room employees.

4. Prior to each count, the count team shall perform a test of the weigh scale. The results shall be recorded and signed by at least two count team members. The initial weigh/count shall be performed by a minimum of three employees, who shall be rotated on a routine basis. The rotation shall be such that the count team shall not be the same three employees more than four days per week.

5. The slot count team shall be independent of the generation of slot revenue and the subsequent accountability of slot count proceeds. Slot department employees can be involved in the slot count and/or subsequent transfer of the wrap, if they perform in a capacity below the level of slot shift supervisor.

6. The following functions shall be performed in the counting of the slot drop.

a. The slot weigh and wrap process shall be controlled by a count team supervisor. The supervisor shall be precluded from performing the initial recording of the weigh/count unless a weigh scale with a printer is used.

b. Each drop bucket shall be emptied and counted individually. Drop buckets with zero drop shall be individually entered into the computerized slot monitoring system.

c. Contents of each drop bucket shall be recorded on the count sheet in ink or other permanent form prior to commingling the funds with funds from other buckets. If a weigh scale interface is used, the slot drop figures are transferred via direct line to computer storage media.

d. The recorder and at least one other count team members shall sign the slot count document or weigh tape attesting to the accuracy of the initial weigh/count.

e. At least three employees who participate in the weigh/count and/or wrap process shall sign the slot count document.

f. The coins shall be wrapped and reconciled in a manner which precludes the commingling of slot drop coin with coin for each denomination from the next slot drop.

g. Transfers out of the count room during the slot count and wrap process are either strictly prohibited; or if transfers are permitted during the count and wrap, each transfer is recorded on a separate multi-part prenumbered form (used solely for slot count transfers) which is subsequently reconciled by the accounting department to ensure the accuracy of the reconciled wrapped slot drop. Transfers, as noted above, are counted and signed for by at least two members of the count team and by someone independent of the count team who is responsible for authorizing the transfer.

h. If the count room serves as a coin room and coin room inventory is not secured so as to preclude access by the count team, then the next two requirements shall be complied with.

i. At the commencement of the slot count;

(a) the coin room inventory shall be counted by at least two employees, one of whom shall be a member of the count team and the other shall be independent of the weigh/count and wrap procedures.

(b) the above count shall be recorded on an appropriate inventory form.

ii. Upon completion of the wrap of the slot drop:

(a) at least two members of the count team independent from each other, shall count the ending coin room inventory;

(b) the above counts shall be recorded on a summary report(s) which evidences the calculation of the final wrap by subtracting the beginning inventory from the sum of the ending inventory and transfers in and out of the coin room.;

(c) the same count team members who counted the ending coin room inventory shall compare the calculated wrap to the initial weigh/count, recording the comparison and noting any variances on the summary report;

(d) a member of the cage/vault department counts the ending coin room inventory by denomination. This count shall be reconciled to the beginning inventory, wrap, transfers and initial weigh/count on a timely basis by the cage/vault or other department independent of the slot department and the weigh/wrap procedures;

(e) at the conclusion of the reconciliation, at least two count/wrap team members and the verifying employee shall sign the summary report(s) attesting to its accuracy.

i. If the count room is segregated from the coin room, or if the coin room is used as a count room and the coin room inventory is secured to preclude access by the count team, upon completion of the wrap of the slot drop:

i. at least two members of the count/wrap team shall count the final wrapped slot drop independently from each other;

ii. the above counts shall be recorded on a summary report;

iii. the same count team members as discussed above (or the accounting department) shall compare the final wrap to the weigh/count recording the comparison and noting any variances on the summary report;

iv. a member of the cage/vault department shall count the wrapped slot drop by denomination and reconcile it to the weigh/count;

v. at the conclusion of the reconciliation, at least two count team members and the cage/vault employee shall sign the summary report attesting to its accuracy;

vi. the wrapped coins (exclusive of proper transfers) are transported to the cage, vault or coin vault after the reconciliation of the weigh/count to the wrap.

j. The count team shall compare the weigh/count to the wrap count daily. Variances of two percent (2 %) or greater per denomination between the weigh/count and wrap shall be investigated by the accounting department on a daily basis. The results of such investigation shall be documented and maintained for five (5) years.

k. All slot count and wrap documentation, including any applicable computer storage media, is immediately delivered to the accounting department by other than the cashier's department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

l. Corrections on slot count documentation shall be made by crossing out the error, entering the correct figure, and then obtaining the initials of at least two count team employees. If a weigh scale interface is used, corrections to slot count data shall be made using either of the following:

i. crossing out the error on the slot document, entering the correct figure, and then obtaining the initials of at least two count team employees. If this procedure is used, an employee independent of the slot department and count team enters the correct figure into the computer system prior to the generation of a related slot report(s);

ii. during the count process, correct the error in the computer system and enter the passwords of at least two count team employees. If this procedure is used, an exception report is generated by the computer system identifying the slot machine number, the error, the correction and the count team employees testifying to the corrections.

m. At least three employees are present throughout the wrapping of the slot drop. If the slot count is conducted with a continuous mechanical count meter which is not reset during the count and is verified in writing by at least three employees at the start and end of each denomination count, then this requirement is not applicable.

n. If the coins are not wrapped immediately after being weighed/counted, they are secured and not commingled with other coin. The term *wrapped slot drop* includes wrapped, bagged (with continuous metered verification), and racked coin/tokens.

o. If the coins are transported off the property, a second (alternative) count procedure must be performed before the coins leave the property, and any variances are documented.

L. Each hard count area shall be equipped with a weigh scale to weigh the contents of each slot drop bucket.

1. A weigh scale calibration module shall be secured so as to prevent unauthorized access and shall have the

manufacturer's control to preserve the integrity of the device. Internal Audit shall test the accuracy of the weigh scale at a minimum of once per quarter and document the results of the test. The manufacturer shall calibrate the weigh scale at a minimum of once per year. Someone independent of the cage, vault, slot and count team functions shall be required to be present whenever the calibration module is accessed. Such access shall be documented and maintained. The controller or his designee shall be the only persons with access to the weigh calibration keys.

2. If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access.

3. If the weigh scale has a *zero adjustment mechanism*, it shall be either physically limited to minor adjustments or physically situated such that any unnecessary adjustments to it during the weigh process would be observed by other count team members.

4. The weigh scale and weigh scale interface shall be tested by the internal auditors or someone else who is independent of the cage, vault and slot departments and count team at least on a quarterly basis with the test results being documented.

5. During the slot count at least two employees shall verify the accuracy of the weigh scale with varying weights or with varying amounts of previously counted coin for each denomination to ensure the scale is properly calibrated.

6. The preceding weigh scale and weigh scale interface test results shall be documented and maintained.

7. If a mechanical coin counter is used (instead of a weigh scale), procedures equivalent to those described in §2723.L.4 and §2723.L.5 shall be utilized.

M. Each licensee shall maintain accurate and current records for each slot machine, including:

1. initial meter readings, both electronic and system, including coin in, coin out, drop, total jackpots paid, and games played for all machines. These readings shall be recorded prior to commencement of patron play for both new machines and machines changed in any manner other than changes in theoretical hold;

2. a report shall be produced at least monthly showing month-to-date and year-to-date actual hold percentage computations for individual machines and a comparison to each machine's theoretical hold percentage. If practicable, the report should include the actual hold percentage for the entire time the machine has been in operation. Actual hold equals dollar amount of win divided by dollar amount of coin in;

a. variances between theoretical hold and actual hold of greater than two percent (2%) shall be investigated, resolved and findings documented on an annual basis.

3. records for each machine which indicate the dates and type of changes made and the recalculation of theoretical hold as a result of the changes;

4. the date the machine was placed into service, the date the machine was removed from operation, the date the machine was placed back into operation, and any changes in machine numbers and designations;

5. system meter readings, recorded immediately prior to or subsequent to each slot drop. Electronic meter readings for coin-in, coin-out, drop and total jackpots paid shall be recorded at least once a month;

a. the employee who records the electronic meter reading shall be independent of the hard count team. Meter readings shall be randomly verified annually for all slot machines by someone other than the regular electronic meter reader;

b. upon receipt of the meter reading summary, the accounting department shall review all meter readings for reasonableness using pre-established parameters;

c. meter readings which do not appear reasonable shall be reviewed with slot department employees, and exceptions documented, so that meters can be repaired or clerical errors in the recording of meter readings can be corrected;

6. the statistical reports, which shall be reviewed by both slot department management and management employees independent of the slot department on a monthly basis;

7. theoretical hold worksheets, which shall be reviewed by both slot department management and management employees independent of the slot department semi-annually;

8. maintenance of the computerized slot monitoring system data files, which shall be performed by a department independent of the slot department. Alternatively, maintenance may be performed by slot supervisory employees if sufficient documentation is generated and it is randomly verified by employees independent of the slot department on a daily basis;

9. updates to the computerized slot monitoring systems to reflect additions, deletions or movements of slot machines, which shall be made immediately preceding the addition or deletion in conjunction with electronic meter readings and the weigh process.

N. When slot machines are removed from the floor, slot loads, including hopper fills, shall be dropped in the slot drop bucket and routed to the coin room for inclusion in the next hard count.

O. Keys to a slot machine's drop bucket cabinet shall be maintained by a department independent of the slot department. The issuance of slot machine drop bucket cabinet keys shall be observed by security and a person independent of the slot drop team. Security shall accompany the key custodian and such keys and observe each time a slot machine drop cabinet is accessed unless surveillance is notified each time the keys are checked out and surveillance observes the person throughout the period the keys are checked out. Keys shall be logged out and logged in on a per shift basis. The employee who logs out the key shall be the employee who logs in the key. If a different employee logs in the key, surveillance shall be notified and surveillance shall monitor the entire log-in process including the return of the key to the key box. The video tape of the log-in process shall be retained for thirty (30) days.

P. Sensitive keys shall not be removed from the vessel unless to an extension of the vessel as previously approved by the Division. Access to the keys shall be documented on key access log forms.

1. The logs shall contain the date and time of issuance, the key or ring of keys issued, the printed name, signature and employee number of the person to whom the key is issued, the printed name, signature and employee number of the person issuing the key, the date and time of

the key return and reason for access to the secure area. If key rings are used, there shall be a listing with the key log specifying each key on each ring. Accountability is required.

2. Keys shall be logged out and logged in per shift. The employee who logs out the key shall be the employee who logs in the key. If a different employee logs in the key, surveillance shall be notified and surveillance shall monitor the entire log-in process including the return of the key to the key box. The video tape of the log-in process shall be retained for thirty (30) days.

#### Q. Currency Acceptor Drop and Count Standards

1. Devices accepting U.S. currency for credit on, or change from, slot machines must provide a locked drop box whose contents are separately keyed from the drop bucket cabinet.

2. The currency acceptor drop box shall be removed by an employee independent of the slot department according to a schedule, submitted to the Division, setting forth the specific times for such drops. Emergency drops, including those for maintenance and repairs which require removal of the currency acceptor drop box, require written notification to the Division within 24 hours detailing date, time, machine number and reason. Prior to emptying or removing any currency acceptor drop box, the drop team shall notify security and surveillance that the drop is beginning.

3. The currency acceptor drop process shall be monitored in its entirety and videotaped by surveillance including transportation to the count room or other secured areas as approved by the Division. At least one surveillance employee shall monitor the drop process at all times. This employee shall record on the surveillance log the time that the drop begins and ends, as well as any exceptions or variations to established procedures observed during the drop, including each time the count room door is opened.

4. Each licensee shall submit its drop transportation route from the gaming area to the count room to the Division prior to implementing or changing the route.

5. Drop team shall collect each currency acceptor drop box and ensure that the correct tag or number is added to each box.

6. Security shall be provided over the currency acceptor drop boxes removed from the electronic gaming devices prior to being transported to the count area.

7. Upon removal, the currency acceptor drop boxes shall be placed in a drop box storage rack and locked therein for transportation directly to the count area or other secure place approved by the Division and locked in a secure manner until the count takes place.

8. The transporting of currency acceptor drop boxes shall be performed by a minimum of two employees, at least one of whom shall be a security officer.

9. Once all currency acceptor drop boxes are collected, the drop team or security shall notify surveillance and other appropriate personnel that the drop has ended.

10. The currency acceptor count shall be performed in the soft count room and shall be videotaped by surveillance. If at any time surveillance observes the visibility of the count team's hands or other activity is consistently obstructed, surveillance shall immediately notify count room employees. At least one surveillance or internal audit employee shall monitor the currency acceptor count process

at least two (2) randomly selected days per calendar month. This employee shall record any exceptions or variations to established procedures observed during the count.

11. The currency acceptor count shall be performed by a minimum of three employees consisting of a recorder, counter and verifier.

12. Currency acceptor count team members shall be rotated on a routine basis. Rotation shall be such that the count team shall not be the same three employees more than four days per week.

13. The currency acceptor count team shall be independent of transactions being reviewed and counted, and the subsequent accountability of currency drop proceeds.

14. Daily, the count team shall verify the accuracy of the currency counter by performing a test count. The test count shall be recorded and signed by at least two count team members.

15. The currency acceptor drop boxes shall be individually emptied and counted on the count room table.

16. As the contents of each box are counted and verified by the counting employees, the count shall be recorded on the count sheet in ink or other permanent form of recordation prior to commingling the funds with funds from other boxes.

17. Drop boxes, when empty, shall be shown to another member of the count team or to surveillance.

18. The count team shall compare a listing of currency acceptor drop boxes scheduled to be dropped to a listing of those drop boxes actually counted, to ensure that all drop boxes are accounted for during each drop period.

19. Corrections to information originally recorded by the count team on currency acceptor count documentation shall be made by crossing out the error, entering the correct figure, and then obtaining the initials of at least two count team members who verified the change.

20. After the count sheet has been reconciled to the currency, all members of the count team shall attest by signature to the accuracy of the currency acceptor drop count. Three verifying signatures on the count sheet shall be adequate if all additional count team employees sign a supplemental document evidencing their involvement in the count process.

21. All monies that were counted shall be turned over to the cage cashier (who shall be independent of the count team) or to an employee independent of the revenue generation and the count process for verification, who shall certify by signature as to the accuracy of the currency delivered and received.

22. Access to all drop boxes regardless of type, full or empty shall be restricted to authorized members of the drop and count teams.

23. Access to the soft count room and vault shall be restricted to members of the drop and count teams, agents of the Division, authorized observers as approved by the Division and supervisors for resolution of problems. Authorized maintenance personnel shall enter only when accompanied by security. A log shall be maintained in the soft count room and vault. The log shall contain the following information:

- a. name of each person entering the count room;
- b. reason each person entered the count room;

c. date and time each person enters and exits the count room;

d. date, time and type of any equipment malfunction in the count room; and

e. a description of any unusual events occurring in the count room.

24. The count sheet, with all supporting documents, shall be promptly delivered to the accounting department by someone other than the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

25. The physical custody of the keys needed for accessing full currency acceptor drop box contents shall be videotaped by surveillance at all times.

26. Currency acceptor drop box release keys are maintained by a department independent of the slot department. Only the employee authorized to remove drop boxes from the currency acceptor is allowed access to the release keys. (The count team members may have access to the release keys during the count in order to reset the drop boxes if necessary.) Employees authorized to drop the currency acceptor drop boxes are precluded from having access to drop box contents keys.

27. An employee independent of the slot department shall be required to accompany the currency acceptor drop box storage rack keys and observe each time drop boxes are removed from or placed in storage racks. Employees authorized to obtain drop box storage rack keys shall be precluded from having access to drop box contents keys (with the exception of the count team).

28. Only count team members shall be allowed access to drop box contents keys. This standard does not affect emergency situations which require currency acceptor drop box access at other than scheduled count times. At least three employees from separate departments, including management, shall participate in these situations. The reason for access shall be documented with the signatures of all participants and observers.

29. The issuance of soft count room and other count keys, including but not limited to acceptor drop box contents keys, shall be witnessed by two gaming employees, who shall be from different departments. Neither of these two employees shall be members of the count team. Keys shall be logged out and logged in on a per shift basis. The employee who logs out the key shall be the employee who logs in the key. If a different employee logs in the key, surveillance shall be notified and surveillance shall monitor the entire log-in process including the return of the key to the key box. The videotape of the log-in process shall be retained for thirty (30) days.

30. Duplicate keys shall be maintained and issued in such a manner as to provide the same degree of control over drop boxes as is required for the original keys.

31. Sensitive keys shall not be removed from the vessel unless to an extension of the vessel as previously approved by the Division and access to the keys shall be documented on key access log forms.

a. The logs shall contain the date and time of issuance, the key or ring of keys issued, the printed name, signature and employee number of the person to whom the

key is issued, the printed name, signature and employee number of the person issuing the key, the date and time of the key return and reason for access to the secure area. If key rings are used, there shall be a listing with the key log specifying each key on each ring. Accountability is required.

b. Keys shall be logged out and logged in on a per shift basis. The employee who logs out the key shall be the employee who logs in the key. If a different employee logs in the key, surveillance shall be notified and surveillance shall monitor the entire log-in process including the return of the key to the key box. The video tape of the log-in process shall be retained for thirty (30) days.

R. Computer Records. At a minimum, the licensee shall generate, review, document review, and maintain slot reports on a daily basis for the respective system(s) utilized in their operation as prescribed by the Division.

#### S. Management Information Systems (MIS) Functions

##### 1. Backup and Recovery

a. MIS shall perform tape backup of system data daily. Backup and recovery procedures shall be written and distributed to all applicable personnel. These policies shall include information and procedures (e.g., a description of the system, systems manual, etc.) that ensure the timely restoration of data in order to resume operations after a hardware or software failure.

b. MIS shall maintain either hard or disk copies of system generated edit reports, exception reports and transaction logs.

##### 2. Software/Hardware

a. MIS shall maintain a personnel access listing which includes, at a minimum the employee's name, position, identification number, and a list of functions the employee is authorized to perform including the date authorization is granted. These files shall be updated as employees or the functions they perform change.

b. MIS shall print and review the computer security access report at the end of each month. Discrepancies shall be investigated, documented and maintained for five (5) years.

c. Only authorized personnel shall have physical access to the computer software/hardware.

d. All changes to the system and the name of the individual who made the change shall be documented.

e. Reports and other output generated by the system shall only be available and distributed to authorized personnel.

##### 3. Application Controls

a. Application controls shall include procedures that prove assurance of the accuracy of the data input, the integrity of the processing performed, and the verification and distribution of the output generated by the system. Examples of these controls include:

i. proper authorization prior to data input (e.g. passwords);

ii. use of parameters or reasonableness checks; and

iii. use of control totals on reports and comparison of them to amounts input.

b. Documents created from the above procedures shall be maintained for five (5) years.

T. The accounting department shall perform the following audit procedures relative to slot operations:

1. collect jackpot and hopper fill slips (computerized and manual) daily from the locked Accounting box and the cashier cage or as otherwise approved by the Division;

2. review jackpot/fill slips daily for continuous sequence. Ensure that proper procedures were used to void slips. Investigate all missing slips and errors within ten (10) days. Document the investigation and retain the results for a minimum of five (5) years;

3. manually add, on a daily basis, all jackpot/fill slips and trace the totals from the slips to the system generated totals. Document all variances and retain documentation for five (5) years;

4. collect the hard count and currency acceptor count results from the count teams and compare the actual count to the system-generated meter reports on a daily basis;

5. prepare reports of their daily comparisons by device, by denomination and in total of the actual count for hard and soft count to system-generated totals. Report variance(s) of \$100 or greater to the slot department for investigation. Maintain a copy of these reports five (5) years;

6. compare a listing of slot machine numbers scheduled to be dropped to a listing of slot machine numbers actually counted to ensure that all drop buckets and currency acceptors are accounted for during each drop period;

7. investigate any variance of two percent (2%) or more per denomination between the weigh/count and wrap immediately. Document and maintain the results of such investigation for five (5) years;

8. compare ten percent (10%) of jackpot/hopper fill slips to signature cards for proper signatures one day each month;

9. compare the weigh tape to the system-generated weigh, as recorded in the slot statistical report, in total for at least one drop period per month. Resolve discrepancies prior to generation/distribution of slot reports to management;

10. review the weigh scale tape of one gaming day per quarter to ensure that:

a. all electronic gaming device numbers were properly included;

b. only valid identification numbers were accepted;

c. all errors were followed up and properly documented (if applicable);

d. the weigh scale correctly calculated the dollar value of coins; and

e. all discrepancies are documented and maintained for a minimum of five (5) years;

11. verify the continuing accuracy of the coin-in meter readings as recorded in the slot statistical report at least monthly;

12. compare the *bill-in* meter reading to the currency acceptor drop amount at least monthly. Discrepancies shall be resolved prior to generation/distribution of slot statistical reports to management;

13. maintain a personnel access listing for all computerized slot systems which includes at a minimum:

a. employee name;

b. employee identification number (or equivalent); and

c. listing of functions employee can perform or equivalent means of identifying same;

14. review Sensitive Key Logs. Investigate and document any omissions and any instances in which these keys are not signed out and signed in by the same individual, on a monthly basis;

15. review exceptions, jackpot overrides, and verification reports for all computerized slot systems, including tokens, coins and currency acceptors, on a daily basis for propriety of transactions and unusual occurrences. These exception reports shall include the following:

a. cash variance which compares actual cash to metered cash by machine, by denomination and in total;

b. drop comparison which compares the drop meter to weigh scale by machine, by denomination and in total;

U. Slot Department Requirements

1. The slot booths, change banks, and change banks incorporated in beverage bars (bar banks) shall be counted down and reconciled each shift utilizing appropriate accountability documentation.

2. The wrapping of loose slot booth and cashier cage coin shall be performed at a time or location that does not interfere with the hard count/wrap process or the accountability of that process.

3. A record shall be maintained evidencing the transfers of unwrapped coin.

4. Slot booth, change bank, and bar bank token and chip storage cabinets/drawers shall be constructed to provide maximum security of the chips and tokens.

5. Each station shall have a separate lock and shall be keyed differently.

6. Slot booth, change bank, and bar bank cabinet/drawer keys shall be maintained by the supervisor and issued to the Change employee assigned to sell chips and tokens. Issuance of these keys shall be evidenced by a key log, which shall be signed by the Change employee to whom the key is issued. All slot booth, change bank, and bar bank keys shall be returned to the supervisor at the end of each shift. The return of these keys shall be evidenced on the key log, which shall be signed by the Change employee to whom the key was previously issued. The key log shall include:

a. the Change employee's employee number and signature;

b. the date and time the key is signed out; and

c. the date and time the key is returned.

7. At the end of each shift, the outgoing and incoming Change employee shall count the bank. The outgoing employee shall fill out a Count Sheet, which shall include opening and closing inventories listing all currency, coin, tokens, chips and other supporting documentation. The Count Sheet shall be signed by both employees once total closing inventory is agreed to the total opening inventory.

8. In the event there is no incoming Change employee, the supervisor shall count and verify the closing inventory of the slot booth/change bank/bar bank.

9. Increases and decreases to the Slot booths, change banks, and bar banks shall be supported by written documentation signed by the cage cashier and the slot booth/change bank/bar bank employee.

10. The Slot Department shall maintain documentation of system related problems (i.e. system failures, extreme

values for no apparent reason, problem with data collection units, etc.) and note follow-up procedures performed. Documentation shall include at a minimum:

a. date the problem was identified;

b. description of the problem;

c. name and position of person who identified the problem;

d. name and position of person(s) performing the follow up;

e. date the problem was corrected; and

f. how the problem was corrected.

11. The Slot Department shall investigate all meter variances received from Accounting. Copies of these results shall be retained by the accounting department.

V. Progressive Slot Machines

1. Individual Progressive Slot Machine Controls

a. Individual slot machines shall have seven meters, including a Coin-in meter, drop meter, jackpot meter, win meter, manual jackpot meter, progressive manual jackpot meter and a progressive meter.

2. Link Progressive Slot Machine Controls

a. Each machine in the link group shall be the same denomination and have the same probability of hitting the combination that will award the progressive jackpot as every other machine in the group.

b. Each machine shall require the same number of tokens be inserted to entitle the player to a chance at winning the progressive jackpot and every token shall increment the meter by the same rate of progression as every other machine in the group.

c. When a progressive jackpot is hit on a machine in the group, all other machines shall be locked out, except if an individual progressive meter unit is visible from the front of the machine. In that case, the progressive control unit shall lock out only the machine in the progressive link that hit the jackpot. All other progressive meters shall show the current *current progressive jackpot amount*.

3. Each licensee shall submit to the Division detailed internal control procedures relative to progressive slot machines that incorporate the following, at a minimum:

a. defined jackpots that are to be paid by the casino and those paid from contributions to the multi-link vendor;

b. a schedule for the remittance of location contributions to the multi-link vendor;

c. a defined time period for receipt of contribution reports from the multi-link vendor;

d. contribution reports shall specifically identify the total amount of the licensee's contributions that can be deducted from the gross drop reported to the Division for progressive jackpot(s) that are hit during the reporting period. The licensee's contributions shall not be reported to the Division upon payout. Licensee's shall take their deductions, which are specified on the primary and secondary contribution reports from the manufacturer, on the fifteenth (15<sup>th</sup>) of every month for the previous month's jackpots;

e. detailed jackpot payout procedures for all types of jackpots;

f. service and maintenance parameters as set forth in contractual agreements between the licensee and the multi-link vendor.

W. Training

1. All personnel responsible for slot machine operation and related computer functions shall be adequately trained in a manner approved by the Division before they shall be allowed to perform maintenance or computerized functions.

2. The training shall be documented by requiring personnel to sign a roster during the training session(s).

3. Each licensee shall have a designated instructor responsible for training additional personnel during the interim period between training by the manufacturer. The designated instructor shall meet the following requirements:

a. shall be a full-time employee of the licensee; and

b. shall be certified as an instructor by the manufacturer and/or a licensee's representative.

4. The licensee shall have a continuing obligation to secure additional training whenever necessary to ensure that all new employees receive adequate training before they are allowed to conduct maintenance or computerized functions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2242 (November 1999).

#### **§2725. Internal Controls; Poker**

A. Supervision shall be provided during all poker games by personnel with authority equal to or greater than those employees conducting the games.

B. Poker area transfers between table banks and the poker bank or casino cage must be authorized by a gaming supervisor and evidenced by the use of a lammer button or other means approved by the Division. Such transfers shall be verified by the poker area dealer and the runner. A lammer is not required if the exchange of chips, tokens, and/or currency takes place at the table.

C. The amount of the main poker area bank shall be counted, recorded and reconciled on a shift basis by two gaming supervisors or two cashiers, who shall attest to the amount counted by signing the check-out form.

D. At least once per gaming day the table banks shall be counted by a dealer and a gaming supervisor or two gaming supervisors and shall be attested to by signatures of those two employees on the check-out form. The count shall be recorded and reconciled at least once per day.

E. The procedure for the collection of poker drop boxes and the count of the contents thereof shall comply with the internal control standards applicable to the table game drop boxes.

F. Playing cards, both used and unused, shall be maintained in a secure location to prevent unauthorized access and reduce the possibility of tampering.

G. Any computer application(s) that provide internal controls comparable to that contained in this Section may be acceptable upon Division approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2251 (November 1999).

#### **§2727. Race Book**

A. - NN. ...

OO. The book's computerized summary of events/results report shall be traced to an independent source for five (5) percent of all races to verify the accuracy of starting times (if available from an independent source) and final results.

PP. - UU. ...

VV. The results of such investigations shall be documented in writing and maintained for at least five (5) years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2251 (November 1999).

#### **§2729. Internal Controls; Cage, Vault and Credit**

A. Each licensee shall have a main bank which will serve as the financial consolidation of transactions relating to all gaming activity. Individuals accessing casino cages who are not employees assigned to cage areas shall sign a log maintained in each of these areas:

1. name of each person entering the cage;
2. reason each person entered the cage;
3. date and time each person enters and exits the cage;
4. date, time and type of any equipment malfunction in the cage; and
5. a description of any unusual events occurring in the cage.

B. All transactions that flow through the casino cage shall be summarized on a cage accountability form on a per shift basis and signed by the off-going and on-coming cashier. Variances of \$50 or greater shall be investigated and the results maintained for five (5) years.

C. ...

D. Open cage windows and vault including the coin room inventories shall be counted by outgoing and incoming cashiers and recorded at the end of each shift during which any activity took place, or at least once per gaming day. This documentation shall be signed by each person who counted the inventory. In the event there is a variance which cannot be resolved, a supervisor shall verify/sign the documentation.

E. All net changes in outstanding casino receivables shall be summarized on a cage accountability form or similar document on a daily basis.

F. Such information shall be summarized and posted to the accounting records at least monthly.

G. All cage paperwork shall be transported to accounting by an employee independent of the cage.

H. All cashier tips shall be placed in a transparent locked box located inside the cage and shall not be commingled with cage inventory.

I. A licensee shall be permitted to issue credit in its gaming operation.

J. Prior to the issuance of gaming credit to a player, the employee extending the credit shall determine if credit is available by entering the patron's name or account number into the computer. A password shall be used to access such information. Once availability is established, credit shall be extended only to the balance. If a manual system is used, the employee extending the credit shall, prior to the issuance of gaming credit to a player, contact the cashier or other independent source to determine if the player's credit limit

has been properly established and remaining credit available is sufficient for the advance.

K. Proper authorization of credit extension in excess of the previously established limit shall be documented.

L. Each licensee shall document, prior to extending credit, that it:

1. received information from a bona fide credit-reporting agency that the patron has an established credit history that is not entirely derogatory; or

2. received information from a legal business that has extended credit to the patron that the patron has an established credit history that is not entirely derogatory; or

3. received information from a financial institution at which the patron maintains an account that the patron has an established credit history that is not entirely derogatory; or

4. examined records of its previous credit transactions with the patron showing that the patron has paid substantially all of his credit instruments and otherwise documents that it has a reasonable basis for placing the amount or sum placed at the patron's disposal; or

5. informed by another licensee that extended gaming credit to the patron that the patron has previously paid substantially all of the debt to the other licensee and the licensee otherwise documents that it has a reasonable basis for placing the amount or sum placed at the patron's disposal; or

6. if no credit information is available from any of the sources listed in Paragraphs 1-5 for a patron who is not a resident of the United States, the licensee shall receive in writing, information from an agent or employee of the licensee who has personal knowledge of the patron's credit reputation or financial resources that there is a reasonable basis for extending credit in the amount or sum placed at the patron's disposal;

7. In the case of personal checks, examine and record the patron's valid driver's license or, if a driver's license cannot be obtained, some other document normally acceptable as a means of identification when cashing checks, or document one of the credit checks set forth in Paragraphs 1-6.

M. In the case of third party checks for which cash, chips, or tokens have been issued to the patron or which were accepted in payment of another credit instrument, the licensee shall examine and record the patron's valid driver's license, or if a driver's license cannot be obtained, some other document normally acceptable as a means of identification when cashing checks and, for the check's maker or drawer, perform and document one of the credit procedures set forth in Subsection L.

N. The following information shall be recorded for patrons who will have credit limits or are issued credit in an amount greater than \$1,000 excluding, cashier's checks and traveler's checks:

1. patron's name, current address, and signature;
2. identification verifications, including social security number or passport number if patron is a nonresident alien;
3. authorized credit limit;
4. documentation of authorization by an individual designated by management to approve credit limits;
5. credit issuances and payments.

O. Prior to extending credit, the patron's credit application, and/or other documentation shall be examined to determine the following:

1. properly authorized credit limit;
2. whether remaining credit is sufficient to cover the advance;
3. identity of the patron;
4. credit extensions over a specified dollar amount shall be authorized by personnel designated by management;
5. proper authorization of credit extension over ten (10) percent of the previously established limit or \$1,000, whichever is greater shall be documented;
6. if cage credit is extended to a single patron in an amount exceeding \$2,500, applicable gaming personnel shall be notified on a timely basis of the patrons playing on cage credit, the applicable amount of credit issued, and the available balance.

P. The following information shall be maintained either manually or in the computer system for cage-issued markers:

1. the signature or initials of the individual(s) approving the extension of credit (unless such information is contained elsewhere for each issuance);
2. the name of the individual receiving the credit;
3. the date and shift granting the credit;
4. the amount of credit issued;
5. the marker number;
6. the amount of credit remaining after each issuance or the total credit available for all issuances;
7. the amount of payment received and nature of settlement (e.g., credit slip number, cash, chips, etc.); and
8. the signature or initials of the individual receiving payment/settlement.

Q. The marker slip shall, at a minimum, be in triplicate form, pre-numbered by the printer, and utilized in numerical sequence whether marker forms are manual or computer-generated. Manual markers may be issued in numerical sequence by location. The three parts shall be utilized as follows:

1. original - maintained in the cage until settled;
2. payment slip - maintained until the marker is paid;
3. issue slip - maintained in the cage, until forwarded to accounting.

R. The original marker shall contain at least the following information:

1. patron's name and signature;
2. preprinted number;
3. date of issuance; and
4. amount of credit issued.

S. The issue slip or stub shall include the same preprinted number as the original, date and time of issuance, and amount of credit issued. The issue slip or stub also shall include the signature of the individual issuing the credit, unless this information is included on another document verifying the issued marker.

T. The payment slip shall include the same preprinted number as the original. When the marker is paid in full, it shall also include, date and time of payment, nature of settlement (cash, chips, etc.) and amount of payment. The payment slip shall also include the signature of the cashier receiving the payment, unless this information is included on another document verifying the payment of the marker.

U. Marker log documentation shall be maintained by numerical sequence, indicating marker number, name of patron, date marker issued, date paid, method of payment (if combination, i.e. chips/cash, amount paid by each method), and amount of credit remaining. This marker log documentation shall also be maintained by patron name in alphabetic sequence in order to determine that credit was not extended beyond thirty (30) days.

V. Markers (computer-generated and manual) that are voided shall be clearly marked *Void* across the face of all copies. The cashier and supervisor shall print their employee numbers and sign their names on the voided marker. The supervisor who approves the void shall print or stamp the date and time the void is approved. A brief statement of why the void was necessary shall be written on the face of all copies. All copies of the voided marker shall be forwarded to accounting for accountability and retention on a daily basis.

W. All portions of markers, both issued and unissued, shall be safeguarded and procedures shall be employed to control the distribution, use and access to the forms.

X. An investigation shall be performed, by the accounting department, immediately following its notice of missing forms or any part thereof, to determine the cause and responsibility for loss whenever marker credit slips, or any part thereof, are missing, and the result of the investigation shall be documented, by the accounting department. The Division shall be notified in writing of the loss, disappearance or failure to account for marker forms within ten (10) days of such occurrence.

Y. All payments received on outstanding credit instruments shall be permanently recorded on the licensee's records.

Z. When partial payments are made on a marker, a new marker shall be completed reflecting the original date, remaining balance, and number of the originally issued marker.

AA. Personal checks or cashier's checks shall be cashed at the cage cashier and subjected to the following procedures:

1. examine and record at least one item of patron identification such as a driver's license, etc.

BB. When travelers checks are presented:

1. the cashier must comply with examination and documentation procedures as required by the issuer;

2. checks in excess of \$100 shall not be cashed unless the requirements of §2729.BB are met.

CC. The routing procedures for payments by mail require that they shall be received by a department independent of credit instrument custody and collection.

DD. Receipts by mail shall be documented on a listing indicating the following:

1. customer's name;
2. amount of payment;
3. type of payment if other than a check;
4. date payment received; and
5. the total amount of the listing of mail receipts shall

be reconciled with the total mail receipts recorded on the appropriate accountability by the accounting department on a random basis for at least three days per month.

EE. Access to the credit information shall be restricted to those positions which require access and are so authorized

by management. This access shall be noted in the appropriate job descriptions pursuant to §2715.B.2.

FF. Access to outstanding credit instruments shall be restricted to persons authorized by management and shall be noted in the appropriate job descriptions pursuant to §2715.B.2.

GG. Access to written-off credit instruments shall further be restricted to individuals specified by management and shall be noted in the appropriate job descriptions pursuant to §2715.B.2.

HH. All extensions of pit credit transferred to the cage and subsequent payments shall be documented on a credit instrument control form.

II. Records of all correspondence, transfers to and from outside agencies, and other documents related to issued credit instruments shall be maintained.

JJ. Written-off credit instruments shall be authorized in writing. Such authorizations are made by at least two management officials which must be from a department independent of the credit transaction.

KK. If outstanding credit instruments are transferred to outside offices, collection agencies or other collection representatives, a copy of the credit instrument and a receipt from the collection representative shall be obtained and maintained until such time as the credit instrument is returned or payment is received. A detailed listing shall be maintained to document all outstanding credit instruments which have been transferred to other offices. The listing shall be prepared or reviewed by an individual independent of credit transactions and collections thereon.

LL. The receipt or disbursement of front money or a customer cash deposit shall be evidenced by at least a two-part document with one copy going to the customer and one copy remaining in the cage file.

1. The multi-part form shall contain the following information:

- a. same preprinted number on all copies;
- b. customer's name and signature;
- c. date of receipt and disbursement;
- d. dollar amount of deposit;
- e. type of deposit (cash, check, chips).

2. Procedures shall be established to:

a. maintain a detailed record by patron name and date of all funds on deposit;

b. maintain a current balance of all customer cash deposits which are in the cage/vault inventory or accountability;

c. reconcile this current balance with the deposits and withdrawals at least daily.

MM. The trial balance of casino accounts receivable shall be reconciled to the general ledger at least quarterly.

NN. An employee independent of the cage, credit, and collection functions shall perform all of the following at least three (3) times per year:

1. ascertain compliance with credit limits and other established credit issuance procedures;

2. randomly reconcile outstanding balances of both active and inactive accounts on the listing to individual credit records and physical instruments;

3. examine credit records to determine that appropriate collection efforts are being made and payments are being properly recorded;

4. for a minimum of five (5) days per month partial payment receipts shall be subsequently reconciled to the total payments recorded by the cage for the day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2251 (November 1999).

#### **§2730. Exchange of Tokens and Chips**

A. A licensee may exchange a patron's tokens and chips issued by another licensee only for its own tokens and chips. A licensee shall not exchange tokens and chips issued by another licensee for cash. A licensee shall document the exchange in a manner approved by the Division.

B. The exchange shall occur at a single casino cage designated by the licensee in its internal controls and approved by the Division.

C. ...

D. All tokens and chips received by a licensee as a result of an exchange authorized by this Section shall be returned to the issuing licensee for redemption within thirty (30) days of the date the tokens or chips were received as part of an exchange unless the Division approves otherwise in writing. Both licensees shall document the redemption in a manner approved by the Division.

E. A licensee shall not accept tokens or chips issued by another licensee in any manner other than authorized in this Section. A licensee shall not knowingly accept as a wager any token or chip issued by another licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2254 (November 1999).

#### **§2731. Currency Transaction Reporting**

A. - D. ...

E. For each required Currency Transaction Report, a clear surveillance photograph of the patron shall be taken and attached to the licensee's copy of the Currency Transaction Report. The employee consummating the transaction shall be responsible for contacting the surveillance department employee. If a clear photograph cannot be taken at the time of the transaction, a file photograph of the patron, if available, may be used to supplement the required photograph taken. The licensee shall maintain and make available for inspection all copies of Currency Transaction Reports, with the attached photographs, for a period of five (5) years.

F. One (1) legible copy of all Currency Transaction Reports for Casinos filed with the Internal Revenue Service shall be forwarded to the Division's Audit Section by the fifteenth (15th) day after the date of the transaction.

G. ...

H. The information required to be gathered by this Section shall be obtained from the individual on whose behalf the transaction is conducted, if other than the patron.

I. If a patron is unable or unwilling to provide any of the information required for currency transaction reporting, the transaction shall be terminated until such time that the required information is provided.

J. A transaction shall not be completed if it is known that the patron is seeking to avoid compliance with currency transaction requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2254 (November 1999).

#### **§2735. Net Gaming Proceeds Computations**

A. ...

B. For each slot machine, net gaming proceeds shall equal drops less fills to the machine and jackpot payouts, plus or minus the token float adjustment. The first step in the calculation of the token float adjustment shall be the daily token float calculation which shall be the total tokens received to date (i.e., the initial tokens received from vendors plus all subsequent shipments of tokens received) less the total day's token count (i.e., tokens in the hard count room plus tokens in the vault, cage drawers, change lockers, tokens in other locations and initial tokens in hoppers). The daily ending inventory token count shall at no time exceed the total amount of tokens in the total casino token accountability. Foreign tokens and slugs do not constitute a part of token inventory. If at any time the calculated daily token float is less than zero, the licensee shall adjust to reflect a zero current day token float. The initial hopper load is not a fill and does not affect gross revenue. Since actual hopper token counts from all machines are not feasible, estimates of the token float adjustment shall be done daily based on the assumption that the hoppers will maintain the same balance as the initial hopper fill. Once a year, a statistical sample of the hoppers will be inventoried for the purpose of calculating the token float. This should be performed during the annual audit so that the external auditors can observe the test performance results. Therefore, once per year, the token float adjustment shall be based upon a physical count of tokens.

C. ...

D. If in any day the amount of net gaming proceeds is less than zero, the licensee may deduct the excess in the succeeding days, until the loss is fully offset against net gaming proceeds.

E. Slot machine meter readings from the drop process shall not be utilized to calculate net gaming proceeds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2254 (November 1999).

#### **§2736. Treatment of Credit for Computing Net Gaming Proceeds**

A. Net gaming proceeds shall not include credit extended or collected by the licensee for purposes other than gaming. Net gaming proceeds shall include the amount of gaming credit extended to a patron when wagered.

B. Each licensee shall include in net gaming proceeds all or any portion of an unpaid balance on any credit instrument if the original credit instrument or a substituted credit instrument is not available to support the outstanding balance.

C. A licensee shall include in net gaming proceeds the unpaid balance of a credit instrument even if the licensee eventually settles the debt for less than its full amount. The settlement shall be authorized by a person designated to do so in the licensee's system of internal control, and a settlement agreement shall be prepared within ten (10) days of the settlement and the agreement shall include:

1. the patron's name;
2. the original amount of the credit instrument;
3. the amount of the settlement stated in words;
4. the date of the agreement;
5. the reason for the settlement;
6. the signatures of the licensee's employees who authorized the settlement; and
7. the patron's signature or in cases which the patron's signature is not on the settlement agreement, documentation which supports the licensee's attempt to obtain the patron's signature.

D. A licensee shall include in net gaming proceeds all money, and the net fair market value of property or services received by the licensee in payment of credit instruments unless the full dollar amount of the credit instrument was previously included in the calculation of net gaming proceeds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2254 (November 1999).

**§2737. Reserved.**

**§2739. Extension of Time for Reporting**

A. The Division in its sole and absolute discretion, may extend the time for filing any report or document required by this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2255 (November 1999).

**§2741. Petitions for Redetermination; Procedures**

A. A licensee filing a petition for redetermination with the Board shall serve a copy of the petition on the Division.

B. A licensee shall, within thirty (30) days after the petition is filed:

1. pay all fees, penalties, or interest not disputed in the petition and submit a schedule to the Division that contains its calculation of the interest due on non-disputed assessments;
2. file with the Board a memorandum of points and authorities in support of a redetermination, and serve a copy of the memorandum on the Division;
3. file with the Board a certification that it has complied with the requirements of Paragraphs 1 and 2.

C. The Division shall, within thirty (30) days after service of the licensee's memorandum, file a memorandum

of points and authorities in opposition to the licensee's petition and shall serve a copy on the licensee. The licensee may, within fifteen (15) days after service of the Division's memorandum, file a reply memorandum.

D. The Division and the licensee may stipulate to extend the time periods specified in this Section if their stipulation to that effect is filed with the Board before the expiration of the pertinent time period. The Board chairman may extend the time periods specified in this Section upon motion and for good cause shown.

E. The Board may, at its discretion, deny a petition for determination if the licensee fails to comply with the requirements of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2255 (November 1999).

**§2743. Claims for Refunds; Procedures**

A. A licensee filing a claim for refund with the Board shall serve a copy of the claim on the Division.

B. A licensee shall, within thirty (30) days after the claim is filed, file with the Board a memorandum of points and authorities in support of the claim, setting forth the legal basis and the licensee's calculations of the amount of the refund and any interest due thereon, and serve a copy of the memorandum on the Division, and file with the Board a certification that it has complied with the requirements of this Subsection.

C. The Division shall, within thirty (30) days after service of the licensee's memorandum, file a memorandum of points and authorities in opposition to the licensee's claim and shall serve a copy on the licensee. The licensee may, within fifteen (15) days after service of the Division's memorandum, file a reply memorandum.

D. The Division and the licensee may stipulate to extend the time periods specified in this Section if their stipulation to that effect is filed with the Board before the expiration of the pertinent time period. The Board chairman may extend the time periods specified in this Section upon motion and for good cause shown.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2255 (November 1999).

**§2744. Reserved.**

**§2745. Reserved.**

**§2747. Reserved.**

Hillary J. Crain  
Chairman

9910#016

## RULE

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

Donations to Public Schools; Problem Gambling  
(LAC 42:III.117 and 118)

The Louisiana Gaming Control Board hereby adopts LAC 42:III.117 and 118 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

#### Title 42

#### LOUISIANA GAMING

#### Part III. Gaming Control Board

#### Chapter 1. General Provisions

#### §117. Donations to Public Schools

A. The term "licensee" as used in this Section shall include all persons licensed pursuant to the provisions of the Gaming Control Law, R.S. 27:1 et seq. but shall not include establishments licensed to conduct video draw poker gaming operations as a restaurant, bar, lounge, hotel or motel. The term "permittee" as used in this Section shall include all persons permitted pursuant to the provisions of the Gaming Control Law, R.S. 27:1 et seq. but shall not include gaming employees or nongaming vendors.

B. No casino gaming operator, licensee or permittee shall offer to make donations or contributions to public, private or parochial elementary schools or youth groups without solicitation of the donation by the public, private or parochial elementary school or youth group.

C. No educational aid, clothing, recreational or amusement item or other article donated or otherwise provided by a casino gaming operator, licensee or permittee to any public, private or parochial elementary or secondary school shall contain a logo, symbol or language related to gaming or gambling or which bears the actual or commonly known name of the casino gaming operator, licensee or permittee.

D. No donations or contributions shall be made by a casino gaming operator, licensee or permittee to:

1. a public elementary or secondary school without prior written notification by the proposed donee or recipient to the school board having jurisdiction over the proposed donee or recipient;

2. a private or parochial elementary or secondary school without prior written notification by the proposed donee or recipient to the governing body of the proposed donee or recipient.

E. All donations and contributions made as provided in Subsection D shall be in compliance with all applicable school board or school governing body rules, regulations and policies concerning donations and contributions.

F. All donations or contributions made in conjunction with an "Adopt A School Program" shall be conducted in accordance and in compliance with all applicable school board or school governing body rules, regulations and policies concerning such programs, and other rules, regulations and policies concerning donations and contributions.

G. Failure of a casino gaming operator, licensee or permittee to comply with Subsections B through D or with the school board or school governing body rules, regulations or policies as provided in Subsections E and F shall

constitute a violation of these rules and subject the casino gaming operator, licensee or permittee to administrative action including but not limited to revocation, suspension or civil penalty.

H. A copy of this rule shall be provided to all school board and school governing bodies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2256 (November 1999).

#### §118. Programs to Address Problem Gambling

A. As used in this section "licensee" means each person who is licensed or otherwise authorized to conduct gaming operations.

B. Each licensee shall post or provide in conspicuous places in or near gaming areas and areas where cash or credit is made available to patrons including cash dispensing machines written materials concerning the nature and symptoms of problem gambling and the toll-free telephone number of the Louisiana Problem Gambling Hot Line or similar entity approved by the board.

C. All licensees other than video draw poker establishments shall implement procedures and training for all employees who directly interact with gaming patrons in gaming areas. Such training shall, at a minimum, consist of information concerning the nature and symptoms of problem gambling behavior and assisting patrons in obtaining information about problem gambling programs. This Subsection shall not be construed to require employees of licensees to identify problem gamblers. Each licensee shall designate personnel responsible for maintaining the program and addressing the types and frequency of such training and procedures. Training programs conducted or certified by the Office of Alcohol and Drug Abuse are presumed to provide adequate training for the period certified.

D. Licensed video draw poker establishments shall comply with procedures and training requirements developed by the division and approved by the board.

E. Each licensee that engages in the issuance of credit, check cashing, or the direct mail marketing of gaming opportunities, shall implement a program containing the elements described below, as appropriate, that allows patrons to self-limit their access to the issuance of credit, check cashing, or direct mail marketing by that licensee. As appropriate, such program shall contain, at a minimum, the following:

1. the development of written materials for dissemination to patrons explaining the program;

2. the development of written materials for dissemination to patrons explaining the Excluded Persons provisions of R.S. 27:1 et seq. and the administrative rules of the board;

3. the development of written forms allowing patrons to participate in the program;

4. standards and procedures that allow a patron to be prohibited from access to check cashing, the issuance of credit, and the participation in direct mail marketing of gaming opportunities;

5. standards and procedures that allow a patron to be removed from the licensee's direct mailing and other direct marketing regarding gaming opportunities at that licensee's location; and

6. procedures and forms requiring the patron to notify a designated office of the licensee within 10 days of the patron's receipt of any financial gaming privilege, material or promotion covered by the program.

F. The chairman may request that any licensee submit any of the elements of the licensee's program described in Subsections B, C, and E to the board for review. If the board makes an administrative determination that the licensee's program does not adequately address the standards as set forth in Subsections B, C and E above, then the board may issue such a determination identifying the deficiencies and specifying a time certain within which such deficiencies must be corrected.

G. Failure by the licensee to establish the programs set forth in Subsections C and E, to comply with the procedures and training requirements established under Subsection D, or to cure a deficiency identified pursuant to Subsection F, shall constitute a violation of these rules, and may result in administrative action including but not limited to revocation, suspension or civil penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2256 (November 1999).

Hillary J. Crain  
Chairman

9911#015

## RULE

### Department of Public Safety and Corrections Office of Motor Vehicles

License Plates, Registrations, and Related Matters  
(LAC 55:III.367, 381, 383, 385, 387, 389, 391, 393)

The Department of Public Safety and Corrections, Public Safety Services, Office of Motor Vehicles, hereby adopts rules pertaining vehicle registrations and related matters. The rules address the applicability of the Federal Driver Privacy Protection Act to vehicle registration records, and the collection of sales taxes in connection with the initial registration of certain commercial motor vehicles.

#### Title 55

#### PUBLIC SAFETY

#### Part III. Motor Vehicles

#### Chapter 3. License Plates

#### Subchapter B. Vehicle Registration License Tax

#### §367. Driver Privacy Protection Act

A. Every individual who is an applicant for a certificate of title, or a new or renewed motor vehicle registration, shall be given the opportunity to prohibit the disclosure of personal information as defined in LAC 55, Part III, Chapter 5, §553, Subchapter B, by completing the Department's approved form, and submitting the form to the Department as required in the instructions on the form. An individual may submit a properly completed form to the Department at anytime without having to transact any other business with the Department. A form which is incomplete or which is illegible shall not be processed and shall not be returned.

B. Until the Department receives a properly completed form from an individual, the personal information provided by the individual to the Department shall be considered a public record as provided in R.S. 44:1 et seq.

C. Upon receipt of a properly completed form, the Department will code the individual's record to reflect the proper disclosure code pursuant to the option chosen on the form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2257 (November 1999).

### Subchapter C. Tax Exemption for Certain Trucks and Trailers Used 80 Percent of the Time in Interstate Commerce

#### §381. Definitions

As used in Subchapter C, the following terms have the meanings described below.

*Base Plate State*—the state which issues an apportioned license plate pursuant to the International Registration Plan.

*Department*—Department of Public Safety and Corrections, Office of Motor Vehicles.

*Eligible Contract Carrier Buses*—those buses used at least 80 percent of the time in interstate commerce.

*Established Place of Business*—a physical structure, owned, leased, or rented by the applicant, which has a publicly listed telephone, and has persons physically located at the business location for the purpose of conducting business operations.

*Person*—includes person, corporation, partnership, limited liability company, firm, association or other legal entity formed to conduct business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.50 and R.S. 47:321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2257 (November 1999).

#### §383. Exemption from Sales Tax

A. Trucks with a minimum gross weight of twenty-six thousand pounds (26,000 lbs.), trailers, and contract carrier buses used at least eighty percent (80%) of the time outside the State of Louisiana in interstate commerce may claim a sales and use tax exemption.

B. The term "trucks" and "trailers" shall have the same meaning as the terms "truck, trailer, road tractor, or semi-trailer, tandem truck, tractor, and truck tractor" as defined in R.S. 47:451. The term "bus" shall mean a commercial vehicle with a minimum passenger capacity of thirty-five (35) persons and a minimum gross weight of twenty-six thousand pounds (26,000 lbs.). The term "contract carrier" shall mean any person transporting, other than as a common carrier, persons for hire, charge, or compensation.

C. Eligible trucks and trailers purchased or previously registered out of state and being titled using a tax date between July 1, 1996 through September 30, 1996 are exempt from partial state tax (1 percent Recovery District tax will be due) and all local parish/municipality tax. Those trucks and trailers purchased or previously registered out of state using a tax date on or after October 1, 1996, are exempt from all state and local parish/municipality tax. Business

must be conducted in two or more states with Louisiana being the base plate state, therefore, only trucks which are obtaining apportioned license plates are eligible to receive this exemption.

D. Eligible contract carrier buses which were purchased or previously registered out of state and being titled using a tax date on or after July 1, 1998 are also exempt from all state and local parish/municipality tax. These buses shall be issued hire-bus or hire-passenger plates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.50 and R.S. 47:321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2257 (November 1999).

### **§385. Exemption Certificate**

A. The exemption certificate must be completed by the applicant and submitted along with proper title documentation and applicable fees. A separate exemption certificate is required for each vehicle and must contain a complete description of the vehicle, including year, make, and vehicle identification number.

B. For contract carrier buses, the applicant must also present proof in the form of a common carrier certificate or permit issued by the Federal Highway Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.50 and R.S. 47:321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2258 (November 1999).

### **§387. Business Location in Louisiana**

A. If the vehicle is being titled in the name of a company, proof that the company has an established place of business in the State of Louisiana must be furnished. Unless it can be determined that the company has been issued an employer identification number (EIN) for a Louisiana-based company (EIN should begin with 72) and other vehicles have been registered in that company's name, two of the following items must be submitted as proof that the company has an established place of business:

1. A copy of the Tax Registration certificate issued by the Louisiana Department of Revenue indicating the Louisiana Tax Identification Number.

2. A copy of the Articles of Incorporation and the Initial Report as filed with the Louisiana Secretary of State. These documents should be photocopied and returned to the applicant in the event he wishes to purchase an apportioned license plate.

3. A Certificate of Authority issued by the Louisiana Secretary of State authorizing an out-of-state based corporation to transact business in the State of Louisiana.

4. A copy of the applicant's Occupational License.

5. A copy of a lease or rental agreement on property within the State of Louisiana, indicating the lessee is the same business as reflected on the exemption certificate.

B. If the vehicle is being titled in the name of an individual, proof must be furnished that the individual is a resident of the State of Louisiana. Unless it can be determined that the individual possesses a Louisiana driver's license and has other vehicles registered in his name, two of the following items must be submitted as proof that he is a resident of Louisiana:

1. A voter's registration card.

2. A receipt from the tax assessor's office in the parish where he resides, indicating the lessee is the same individual as shown on the exemption certificate.

3. A copy of a lease or rental agreement on property within the State of Louisiana, indicating the lessee is the same individual as shown on the exemption certificate.

4. Three utility statements (electric, gas, water, telephone, or cable vision) for consecutive months indicating the applicant's name and address.

C. The code "IH" must be entered in the no-tax field to allow the exemption of state and parish/municipality sales tax for interstate commerce carriers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.50 and R.S. 47:321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2258 (November 1999).

### **§389. Expiration of Exemption**

The exemption from sales and use taxes established in R.S. 47:305.50 is scheduled to expire effective June 30, 2000. All vehicles purchased after June 30, 2000 will be subject to all state and local parish/municipality tax. If the sales and use tax exemption provided in R.S. 47:305.50 is extended by the legislature, these rules shall remain in effect, subject to amendment and repeal by the Department, until such time as the legislature repeals or otherwise terminates the exemption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.50 and R.S. 47:321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2258 (November 1999).

### **§391. Administrative Actions**

A. The Department may suspend, cancel, or revoke any exemption granted pursuant to Subchapter C if the Department determines that the person does not meet the eligibility requirements for the exemption, or if the person has submitted false, incorrect, incomplete, or misleading information in connection with his application for an exemption.

B. Each applicant as well as each person granted an exemption pursuant to this Subchapter shall maintain the records establishing the person's eligibility for the exemption at the Louisiana business address given in the application. Each applicant as well as each person granted an exemption pursuant to this Subchapter shall make his records available for inspection and copying to any representative of the Department or of the Department of Revenue and Taxation during the hours of 8:00 a.m. to 5:00 p.m.. Monday through Friday and at any other time the person is conducting business at the location where the records are stored. Additionally, each applicant as well as each person granted an exemption pursuant to this Subchapter shall make his business premises available for inspection by any representative of the Department or of the Department of Revenue and Taxation during the hours of 8:00 a.m. to 5:00 p.m.. Monday through Friday and at any other time the person is conducting business.

C. Any request for an administrative hearing to review any action, order, or decision of the Department shall be in

writing and submitted to the Department within thirty days of the date the action, order or decision was mailed or hand delivered, as the case may be. The written request for a hearing shall be mailed to the Department of Public Safety and Corrections, Office of Motor Vehicles, Hearing Request, at P. O. Box 64886, Baton Rouge, Louisiana 70896-4886, or hand delivered to the Office of Motor Vehicle Headquarters in Baton Rouge, Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.50 and R.S. 47:321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2258 (November 1999).

### §393. Declaratory Orders

A.1. Any person desiring a ruling on the applicability of any statute, or the applicability or validity of any rule, to the regulation of the sales and use tax exemption of this Subchapter shall submit a written petition to the assistant secretary. The written petition shall cite all, constitutional provisions, statutes, ordinances, cases, and rules which are relevant to the issue presented or which the person wishes the assistant secretary to consider prior to rendering an order or ruling in connection with the petition. The petition shall be typed, printed or written legibly, and signed by the person seeking the ruling or order. The petition shall also contain the person's full printed name, the complete physical and mailing address of the person, and a daytime telephone number.

2. If the petition includes reference to a specific transaction handled by the Department, or if the petition relates to the grant or denial of a sales and use tax exemption, then the person submitting the petition shall also submit proof that he has notified all of the persons involved in the transaction or issuance, revocation, cancellation, granting, or denial of the exemption by certified mail, return receipt requested. If the person is unable to notify the involved person or persons after otherwise complying with the notice requirement, he shall so state in his petition.

B. The assistant secretary may request the submission of legal memoranda to be considered in rendering any order or ruling. The assistant secretary or his designee shall base the order or ruling on the documents submitted including the petition and legal memoranda. If the assistant secretary or his designee determines that the submission of evidence is necessary for a ruling, the matter may be referred to a hearing officer prior to the rendering of the order or ruling for the taking of such evidence.

C. Notice of the order or ruling shall be sent to person submitting the petition as well as the persons receiving notice of the petition at the mailing addresses provided in connection with the petition.

D. The assistant secretary may decline to render an order or ruling if the person submitting the petition has failed to comply with any requirement in §393 of this subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.50, R.S. 47:321, and R.S. 49:962.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2259 (November 1999).

Nancy Van Nortwick  
Undersecretary

9911#031

## RULE

### Department of Social Services Office of Family Support

General Administration—Hearings and Procedures  
(LAC 67:III.301-333 and 801)

The Department of Social Services, Office of Family Support, has amended the *Louisiana Administrative Code*, Title 67, Part III, Subpart 1, General Administrative Procedures.

Subsequent to the federal and state legislation commonly known as "welfare reform", the agency reorganized LAC 67:III.Chapter 3 to include and codify the entire Fair Hearing component of the Agency as operated under the Food Stamp Act, the Child Care and Development Block Grant, and Title IV-A of the Social Security Act.

The Agency also promulgated Chapter 8 to establish as part of LAC that the effective date of rules is generally the first of the month following the month of publication. This has been the policy of the Office of Family Support because of the difficulty in applying eligibility criteria other than on a monthly basis.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Office of Family Support

#### Subpart 1. General Administration

#### Chapter 3. Hearings

#### §301. 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:

*Administrative Disqualification Hearing*—is an administrative hearing to determine if an intentional program violation occurred.

*Administrative Law Judge (ALJ)*—is an impartial individual responsible for conducting a Fair Hearing and issuing a recommended or final decision on the issues in question.

*Advance Notice*—is notice informing the client of a proposed adverse action and the date that the future action will be taken.

*Advance Notice Period*—is the period from the date of the notice to the date the proposed action is to be taken.

*Adverse Notice*—is any written notice informing the client of any agency action which unfavorably affects his case and when that action is effective.

*Agency*—is any operating unit of the Office of Family Support such as local, regional, or state offices.

*Agency Conference*—is a meeting between the claimant and the agency where a supervisor or administrator explains the action that is being appealed. It may be conducted by telephone if the claimant agrees. The examiner/case manager/specialist may participate if the supervisor deems this appropriate and the claimant is in agreement.

*Appeal Decision*—is an official report which contains the substance of what transpired at the hearing and a summary of the case facts, identifies pertinent state or federal regulations and gives the reason for the decision. It is the

final written decision of the Department of Social Services (DSS), Bureau of Appeals, on the issue in question.

*Authorized Agent*—is any person acting on behalf of an applicant/recipient. This may include a friend, relative, attorney, paralegal, legal guardian, conservator, or foster care provider. For Food Stamp purposes, it may also mean an authorized representative or another household member.

*Benefits*—are any kind of assistance, payments or benefits made by the agency for Family Independence Temporary Assistance Program (FITAP), Refugee Cash Assistance, Food Stamps, FIND Work, or Child Care Assistance Programs.

*Claimant*—is an applicant or recipient who has requested a hearing.

*Concurrent Notice*—is notice informing the client of an action on his case which is being effected at the time the notice is given. The client is also informed of his right to request a Fair Hearing within an appropriate time-period.

*Date of Action*—is the intended date on which a termination, suspension, or reduction of benefits becomes effective.

*Directive*—is a written communication from the Bureau of Appeals to the agency giving specific instructions to be taken as a result of a hearing. This action shall be taken within 10 days and reported to the Bureau of Appeals within 14 days of the receipt of the directive.

*Fair Hearing*—is an administrative procedure during which a claimant (or a group of claimants) or his (or their) authorized agent may present a grievance and show why it is believed the agency action, proposed action, or inaction is not fair and should be corrected. A Fair Hearing meets the due process requirements set forth in the U.S. Supreme Court decision in *Goldberg vs. Kelly*.

*Official Hearing Record*—consists of a verbatim transcript or an official report summarizing what transpired at the hearing, all evidence and other material introduced at the hearing, the recommendations of the Administrative Law Judge, and the directive, if issued.

*Public Assistance Household*—is a food stamp household in which all members receive FITAP, RCA, or SSI.

*Request for a Fair Hearing*—is any clear expression (oral or written) by the claimant or his authorized agent that he wants to appeal an agency decision to a higher authority.

*Subpoena*—is an order commanding that a designated person or document be present at a Fair Hearing.

*Summary of Evidence*—is a document prepared by the agency stating the reason(s) the agency decided to take the action being appealed. Its purpose is to provide the claimant information needed to prepare his case for the hearing.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:689 (July 1985), amended by Department of Social Services, Office of Family Support, LR 25:2259 (November 1999).

### §303. General Rules and Principles

A. The DSS Bureau of Appeals is responsible for providing a system of hearings which must meet the due process standards set forth in Federal Regulations, State laws, and *Goldberg vs. Kelly* 397 US 245 (1970).

B. Each applicant is informed by the application form and by the appropriate notification forms (as decisions are made affecting his case) of his right to a hearing, of the method by which a hearing may be requested, and who may present his case. Detailed information concerning the Fair Hearing procedure is contained in the Fair Hearing Pamphlet, Form OFS 5F, which is provided by the DSS Bureau of Appeals when a Fair Hearing is requested.

C. The claimant may represent himself at the hearing or be represented by any authorized agent.

D. Minimum procedural safeguards necessary to accomplish the purpose of a Fair Hearing are:

1. a notice explaining the reason for the action and citing the policy reference;
2. an opportunity to defend by confronting adverse witnesses;
3. an opportunity to present arguments and evidence orally;
4. an opportunity to appear with counsel;
5. an impartial Administrative Law Judge;
6. a decision based solely on the legal rules and the evidence offered as proof at the hearing or obtained subsequent to the hearing; and
7. a statement explaining the reasons for the decision of the Administrative Law Judge and indicating the evidence on which the decision is based.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2260 (November 1999).

### §305. Right to Request a Fair Hearing

A. Every applicant/recipient who believes he has been unjustly treated regarding benefits or services under any program administered by the Office of Family Support may request a Fair Hearing.

B. The DSS Bureau of Appeals has the right to deny a request for a Fair Hearing when:

1. the request is outside of the jurisdiction of the DSS Bureau of Appeals;
2. the request for a hearing is made after the time limit has expired; or,
3. the sole issue is one of state or federal law or regulation requiring automatic adjustment in benefits for classes of recipients.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2260 (November 1999).

### §307. Time Limits for Requesting a Fair Hearing

A. When a decision is made on a case, the client is notified and is allowed the following number of days from the date of the notice to request a Fair Hearing:

FITAP	30 days
FIND Work Program	30 days
Child Care Assistance	30 days
Refugee Cash Assistance	30 days
Food Stamps	90 days

The client may appeal at any time during a certification period for a dispute of the current level of benefits.

B. An appeal is timely requested if the appeal request:

1. is delivered on or before the due date; or,
2. mailed on or before the due date. If the appeal request is received by mail on the first working day following the due date, there shall be a rebuttable presumption that the appeal was timely filed. In all cases where the presumption does not apply, the timeliness of the mailing shall be shown only by an official United States postmark or by official receipt or certificate from the United States Postal Service made at the time of mailing which indicates the date thereof. For purposes of this Section, "by mail" applies only to the United States Postal Service.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2260 (November 1999).

### §309. Time Limits for Decisions to be Rendered

A. A prompt, definitive and final decision must be provided within the number of days from the date of the Fair Hearing request as listed below:

FITAP	90 days
FIND Work Program	90 days
Child Care Assistance	90 days
Refugee Cash Assistance	90 days
Food Stamps	60 days*

\*or 90 days for Public Assistance households simultaneously appealing the same issue in Public Assistance and Food Stamp cases.

B. If the hearing is delayed at the request of the claimant or his authorized agent, the time limit for the rendering of a decision is extended for as many days as the hearing is delayed. However, the hearing cannot be delayed more than 30 days without good cause.

C. Limits for rendering a decision may be extended when the client wishes to present additional evidence. The limits are extended for the number of days it takes the client to submit the evidence.

D. Failure to meet the time limits in this section shall have no effect on the validity of the decision.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2261 (November 1999).

### §311. Expedited Food Stamp Hearings

A. The DSS Bureau of Appeals and the agency must expedite hearing decisions for Food Stamp households that plan to move from the jurisdiction of the hearing official before the hearing decision would normally be reached. Hearing requests from these households shall be expedited if necessary to enable them to receive a decision before they leave the area.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2261 (November 1999).

### §313. Continuation of Benefits

A. Recipients in all categories, except FIND Work and Child Care Assistance, who request a Fair Hearing prior to the expiration of the Advance Notice of Adverse Action or

within 13-days of the date of Concurrent Notice must have benefits continued at, or reinstated to, the benefit level of the previous month, unless:

1. the recipient indicates he does not want benefits continued;
2. a determination is made at the hearing that the sole issue is one of existing or changing state or federal law; or,
3. a change unrelated to the appeal issue affecting the client's eligibility occurs while the hearing decision is pending and the client fails to request a hearing after receiving the notice of change.

B. Benefits will continue at the prior level until the end of the certification period or until the resolution of the hearing, whichever is first. Such benefits are subject to recovery by the agency if the action is upheld.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2261 (November 1999).

### §315. Client Rights

A. The claimant or his authorized agent has the right to:

1. Agency assistance in filing and preparing his request or an explanation of how to file an appeal.
2. Specific case record documents or applicable policy necessary to determine whether a hearing should be requested and/or the documents or policy necessary to prepare for a hearing. This is provided upon request and without charge.
3. Information about, and referral to, available community legal services.
4. A verbal explanation of the hearing procedures in the appropriate language if the individual making the request does not speak English.
5. Review the case record. Upon request and at a reasonable time before the hearing, the claimant and/or his authorized agent must be allowed to review the claimant's case record or any documents to be used by the agency at the hearing in the presence of an agency representative.
  - a. Confidential records, including confidential medical records, must be withheld unless the records were used as the basis for the determination which is being appealed.
  - b. The client must provide written permission before anyone other than the client is allowed to view the case record.
6. Present his case himself or with the aid of others, including legal representation.
7. Request that a subpoena be issued. The DSS Bureau of Appeals will evaluate such requests and authorize the agency to serve the subpoena if appropriate.
8. Request a postponement prior to the hearing. The DSS Bureau of Appeals will decide if a postponement is to be granted based upon good cause. Regardless of good cause, requests for rescheduling an initial hearing for a Food Stamp appeal will be granted.
9. Submit evidence and bring witnesses to the hearing. The claimant has the right to advance arguments without undue interference and to question or refute any testimony or evidence, including the right to confront and cross examine witnesses.

10. Request a rescheduled hearing after failing to appear at the hearing. The DSS Bureau of Appeals will evaluate the requests to determine if good cause exists.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2261 (November 1999).

### **§317. Responsibility of DSS Bureau of Appeals When a Fair Hearing is Requested**

A. The Bureau of Appeals has the sole responsibility for accepting or rejecting all requests for a Fair Hearing.

B. The Bureau of Appeals must acknowledge Fair Hearing requests made directly to that office by or for a claimant, or requests submitted by the agency. All requests must be denied or accepted in writing. The agency will receive appropriate notification.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999).

### **§319. Scheduling**

A. The Bureau of Appeals will schedule all Fair Hearings. The claimant, his authorized agent, and the agency will be notified at least ten days in advance of the time, place and date of the hearing. Hearings will be scheduled during regular working hours and will normally be set in the agency office, unless there are reasons for scheduling in another location.

B. Any hearing which is required or permitted hereunder may be conducted utilizing remote telephonic communications if the record reflects that all parties have consented to conducting the hearing by use of such communications and that such procedure will not jeopardize the rights of any party to the hearing. A face-to-face hearing will be conducted if requested by the appellant.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999).

### **§321. Providing a Summary of Evidence to the Client**

A. The Bureau of Appeals will provide a copy of the Summary of Evidence to the claimant or to his authorized agent with the notice for scheduling the Fair Hearing.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999).

### **§323. Withdrawals**

A. The claimant may withdraw his request for a fair hearing at any time prior to the hearing. The Bureau of Appeals must send written notice to the client, the client's representative and the agency confirming the withdrawal.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999).

### **§325. Dismissal of a Request for a Fair Hearing**

A. A Fair Hearing request which is accepted by the Bureau of Appeals may be disposed of without a hearing and without a decision only when:

1. the request for a Fair Hearing is withdrawn; or
2. the claimant abandons his request for a hearing. If the claimant or his authorized agent fails to appear for a hearing and has made no contact with the agency or the Bureau of Appeals, the request for a Fair Hearing will be considered abandoned. If he later requests to reschedule, the request will be evaluated for good cause;
3. the issue is settled in the claimant's favor by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999).

### **§327. Group Hearings**

A. When an agency policy or regulation is the sole issue, the Bureau of Appeals may schedule a single group hearing to respond to a series of individual requests. Regulations governing individual Fair Hearings are followed. Each individual claimant must be permitted to present his case or be represented by an authorized agent. If a group hearing is arranged, an individual claimant must be given the right to withdraw from the group hearing in favor of an individual hearing.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999).

### **§329. Attendance**

A. Only persons directly concerned are permitted to attend the hearing. The claimant may be accompanied or represented by anyone he believes necessary or desirable to support his claim, including legal counsel if he so desires.

B. Appropriate agency representatives and service providers are required to attend the hearing.

C. The Administrative Law Judge has the authority to limit the number of persons in attendance.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999).

### **§331. Hearing Official**

A. Hearings shall be conducted by an impartial official(s) who:

1. does not have a personal involvement in the case;
2. was not directly involved in the initial determination of the action which is being contested; and
3. was not the immediate supervisor of the eligibility worker who took the action.

B. The hearing official shall be:

1. an employee of the Department of Social Services;
- or
2. an individual under contract with the Department of Social Services.

C. The hearing official shall:

1. administer oaths or affirmations;
2. insure that all relevant issues are considered;
3. request, receive and make part of the record all evidence determined necessary to decide the issues;
4. regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing;

5. order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the Department of Social Services;

6. provide a hearing record and recommendation for final decision by the hearing authority; or, if the hearing official is the hearing authority, render a hearing decision in the name of the Department of Social Services which will resolve the dispute.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999).

### §333. Hearing Authority

A. The hearing authority shall be the person designated to render the final administrative decision in a hearing.

B. Decisions of the hearing authority shall comply with State and Federal law and regulations and shall be based on the hearing record.

C. A decision by the hearing authority shall be binding on the Department of Social Services and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent State or Federal regulations. The decision shall become a part of the record. The household shall be notified in writing of the:

1. decision;
2. reasons for the decision;
3. available appeal rights; and
4. right to pursue judicial review of the decision.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2263 (November 1999).

## Chapter 8. General Administrative Procedures

### §801. Implementation of Regulations

Because of the nature of the eligibility programs administered by the agency, rules promulgated by the Office of Family Support are effective the first of the month following the publication of the final rule, unless otherwise stated within the rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2263 (November 1999).

Gwendolyn P. Hamilton  
Secretary

9911#052

### RULE

#### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Black Bass Regulations—Spanish Lake (LAC 76:VII.191)

The Wildlife and Fisheries Commission hereby establishes the following rule on black bass (*Micropterus spp.*) on Spanish Lake, located between the cities of New Iberia and Lafayette in Iberia and upper St. Martin Parishes, Louisiana.

## Title 76

### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 1. Freshwater Sports and Commercial Fishing

#### §191. Black Bass Regulations—Spanish Lake

The harvest regulations for black bass (*Micropterus spp.*) on Spanish Lake, located between the cities of New Iberia and Lafayette, in Iberia and upper St. Martin Parishes, Louisiana is as follows:

1. Size limit: 16 inch - 21 inch slot. A 16-21 inch slot limit means that it is illegal to keep or possess a black bass whose maximum total length is between 16 inches and 21 inches, both measurements inclusive.

2. Daily take: 8 fish of which no more than two fish may exceed 21 inches maximum total length.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6 (25)(a), R.S. 56:325(C) and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2263 (November 1999).

Bill A. Busbice, Jr.  
Chairman

9911#024

### RULE

#### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Turkey Hunting Season—2000 (LAC 76:XIX.113, 115, and 117)

In accordance with the Notice of Intent published in the July 1999 *Louisiana Register*, the Wildlife and Fisheries Commission, at its regular monthly meeting in November hereby ratifies regulation on open hunting season dates, bag limit, methods of taking, and rules and regulation on Department operated wildlife management areas for turkeys. Authority to establish regulations are vested in the Commission by §115 of Title 56 of the Louisiana Revised Statutes of 1950.

## Title 76

### WILDLIFE AND FISHERIES

#### Part XIX. Hunting

#### Chapter 1. Resident Game Hunting Season

#### §113. Turkey Hunting Regulations

A. Daily limit is one gobbler, three gobblers per season. Still hunting only. Use of dogs, baiting, electronic calling devices and live decoys is illegal. Turkeys may be hunted with shotguns, including muzzleloading shotguns, using shot not larger than #2 lead or BB steel shot, and bow and arrow but by no other means. Shooting turkeys from a moving or stationary vehicle is prohibited. Shotguns capable of holding more than three shells prohibited.

B. No person shall hunt, trap or take turkeys by the aid of baiting or on or over any baited area. Baiting means placing, exposing, depositing or scattering of corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed so as to constitute a lure, attraction or enticement to, on or over any areas where hunters are attempting to take turkeys.

C. A baited area is any area where corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed capable of luring, attracting or enticing turkeys is directly or indirectly placed, exposed, deposited, distributed or scattered. Such areas remain baited areas for 15 days following complete removal of all such corn, wheat or other grain, salt, or other feed.

D. Wildlife agents are authorized to close such baited areas and to place signs in the immediate vicinity designating closed zones and dates of closure.

E. The Department of Wildlife and Fisheries strongly discourages "feeding" agricultural grains to wild turkeys as this practice increases the risk of birds contracting potentially lethal diseases. Repeatedly placing grain in the same area may expose otherwise healthy birds to disease contaminated soils, grain containing lethal toxins and other diseased turkeys using the same feeding site. Properly distributed food plots (clovers, wheat, millet and chufa) are far more desirable for turkeys and have the added benefit of appealing to a wide variety of wildlife.

F. It is unlawful to take from the wild or possess in captivity any live wild turkeys or their eggs. No pen raised turkeys from within or without the state shall be liberated (released) within the state.

G. All licensed turkey hunters are required to have a Turkey Stamp in their possession while turkey hunting in addition to basic and big game licenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2263 (November 1999).

**§115. Statewide Turkey Hunting Areas—Resident Game Birds And Animals**

A. Shooting Hours: one-half hour before sunrise to one-half hour after sunset.

Species	Season Dates	Daily Bag Limit	Possession Limit
Turkey	See Schedule	1	3/season

B. 2000 Turkey Hunting Schedule

Area	Season Dates
A	March 25-April 23
B	April 1-16
C	March 25-April 2

C. 2000 Turkey Hunting Season—Open Only in the Following Areas

1. Area A - March 25-April 23

- a. All of the following parishes are open:
  - i. East Baton Rouge;
  - ii. East Feliciana;
  - iii. LaSalle;
  - iv. Livingston;
  - v. Natchitoches (Exception: See Kisatchie National Forest hunting schedule for National Forest dates);
  - vi. St. Helena;
  - vii. St. Tammany;
  - viii. Tangipahoa;
  - ix. Washington;
  - x. West Baton Rouge;
  - xi. West Feliciana (including Racourci Island).

- b. Portions of the following parishes are also open:
  - i. Allen: north of La. 26 from DeRidder to the junction of La. 104 and north of La. 104;
  - ii. Avoyelles: that portion bounded on the east by the Atchafalaya River northward from Simmesport, on the north by Red River to the Brouillette Community, on the west by La. 452 from Brouillette to La. 1 eastward to Simmesport, and that portion surrounding Pomme de Terre WMA, bounded on the north, east and south by La. 451, on the west by the Big Bend Levee from its junction at the Bayou des Glaise structure east of Bordelonville southward to its junction with La. 451;
  - iii. Beauregard: north of La. 26 east of DeRidder, north and east of U.S. 171-190 from the junction of La. 26 to DeRidder, and north of U.S. 190 from DeRidder to Texas state line;
  - iv. Caldwell: west of Ouachita River southward to Catahoula Parish line, east of La. 165 from LaSalle Parish line to the junction of La. 126, north of La. 126 westward to the Winn Parish line;
  - v. Catahoula: west of Ouachita River southward to La. 559 at Duty Ferry, north of La. 559 to La. 124, south and west of La. 124 from Duty Ferry to La. 8 at Harrisonburg and north of La. 8 to La. 126, north and east of La. 126. ALSO that portion lying east of La. 15;
  - vi. Concordia: that portion east of Hwy. 15 and west of Hwy. 65 from its juncture with Hwy. 15 at Clayton;
  - vii. Evangeline: north and west of La. 115, north of La. 106 from St. Landry to La. 13, west of La. 13 from Pine Prairie to Mamou and north of La. 104 west of Mamou;
  - viii. Franklin: that portion lying east of Hwy. 17 and east of Hwy. 15 from its juncture with Hwy. 17 at Winnsboro;
  - ix. Grant: all of the parish except that portion of land that lies north of the Red River between U.S. 71 and La. 8. Exception: see Kisatchie National Forest hunting schedule for season dates;
  - x. Iberville: west of La. Hwy. 1. Exception: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries;
  - xi. Madison: that portion lying west of U.S. Hwy. 65 and south of U.S. Hwy. 80;
  - xii. Pointe Coupee: all except that portion bounded on the west by La. 77 and La. 10, northward from U.S. 190 to La. 1 at Morganza, on the north and east by La. 1 to its junction with La. 78 and by La. 78 from Parlange to U.S. 190. Further Exception: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries;
  - xiii. Rapides: all of the parish except that portion of lands that lies north of the Red River and south of U.S. Hwy. 71 from its juncture with the Red River northward to the Grant Parish line. Exception: see Kisatchie National Forest hunting schedule for season dates;
  - xiv. Richland: that portion south of U.S. Hwy. 80 and east of Hwy. 17;
  - xv. Sabine: that portion north of Hwy. 6 from Toledo Bend Lake to Many; east of Hwy. 171 from Many to the Vernon Parish line;
  - xvi. St. Landry: that portion bounded on the north by U.S. 190, west by the West Atchafalaya Basin Protection Levee. ALSO that portion of the parish bounded on the north

by La. 10 from the West Atchafalaya Basin Protection Levee to Burton's Lake, on the east by Burton's Lake, on the south by Petite Prairie Bayou to its junction with the old O.G. Railroad right-of-way then by the O.G.R.R. right-of-way westward to U.S. 71 and on the west by the West Atchafalaya Guide Levee to its junction with La. 10, Except the Indian Bayou tract owned by the U.S. Corps of Engineers;

xvii. Upper St. Martin: all within the Atchafalaya Basin. Exception: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries;

xviii. Tensas: that portion west of Hwy. 65 from the Concordia Parish line to its juncture with Hwy. 128, north of La. 128 to St. Joseph; west and north of La. 605, 604 and 3078 northward to Port Gibson Ferry. Also all lands lying east of the main channel of the Mississippi River;

xix. Vernon: that portion east of Hwy. 171 from the Sabine Parish line to the junction of Hwy. 111, south of Hwy. 111 westward to Hwy. 392, and south of Hwy. 392 westward to the Sabine Parish line. Exception: See Kisatchie National Forest hunting schedule for season dates.

## 2. Area B—April 1-April 16

a. All of the following parishes are open:

- i. Bienville;
- ii. Bossier;
- iii. Claiborne;
- iv. Lincoln;
- v. Red River;
- vi. Webster, including Caney Ranger District of Kisatchie National Forest.

b. Portions of the following parishes are open:

i. Caddo: that portion north of La. 2 from the Texas state line to U.S. 71, east of U.S. 71 from La. 2 to I-20, south of I-20 from U.S. 71 to U.S. 171, and east of U.S. 171 to the DeSoto Parish line;

ii. DeSoto: that portion east of U.S. 171 from the Caddo Parish line to U.S. 84 and south of U.S. 84;

iii. East Carroll: east of U.S. 65 from Arkansas state line to Madison Parish line;

iv. Jackson: west of Parish Road 243 from Lincoln Parish line to Parish Road 238, west and south of Parish Road 238 to La. 144, west of La. 144 to La. 34, west of La. 34 to Chatham, north and west of La. 4 from Chatham to Weston, north and west of La. 505 from Weston to Wyatt, west of U.S. 167 from Wyatt to Winn Parish line;

v. Ouachita: east of La. 143 from Union Parish line to Bayou Darbonne, north of Bayou Darbonne to the Ouachita River, west of the Ouachita River from the mouth of Bayou Darbonne northward to the Union Parish line;

vi. Morehouse: west of U.S. 165 from the Arkansas line to Bonita, north and west of La. 140 to junction of La. 830-4 (Cooper Lake Road), west of La. 830-4 to Bastrop, north of U.S. 165 from Bastrop to Ouachita Parish line;

vii. Union: west of La. 15 from Ouachita Parish line to La. 33 west of Farmerville, north of La. 33 to La. 2 at Farmerville, north and east of La. 2 to La. 143 at Crossroads, east of La. 143 to the Ouachita Parish line.

## 3. Area C—March 25-April 2

a. All of the following parish is open:

i. Winn (Exception: see Kisatchie National Forest hunting schedule for season dates.)

b. Portions of the following parishes are open:

i. Ascension: all east of the Mississippi River;

ii. Allen: south of La. 26 from DeRidder to Oberlin, west of U.S. 165 south of Oberlin;

iii. Avoyelles: south of La. 1 to West Protection Levee, south to Avoyelles Parish line;

iv. Beauregard: south of La. 26 east of DeRidder, east of U.S. 171 from the junction of La. 26 to Ragley, south of La. 12 west to Ragley;

v. Calcasieu: south of La. 12 east of Dequincy, east of La. 27 from Dequincy to I-10, and north of I-10 east of Sulphur;

vi. Concordia: north and east of Sugar Mill Chute (Concordia Parish) from the state line westward to Red River, east of Red River northward to Cocodrie Bayou, east of Cocodrie Bayou northward to U.S. Hwy. 84, south of U.S. Hwy. 84 eastward to La. Hwy. 15 (Ferriday), east of La. Hwy. 15 northward to U.S. Hwy. 65 (Clayton), east of U.S. Hwy. 65 northward to Tensas Parish line;

vii. Iberville: all east of the Mississippi River;

viii. Jefferson Davis: west of U.S. 165 and north of I-10;

ix. Madison: south of Hwy. 80 and east of U.S. Hwy. 65 to Tensas Parish line and all lands lying east of the main channel of the Mississippi River;

x. St. Landry: that portion bounded on the south by La. 10, on the west by the West Atchafalaya Basin Protection Levee, on the east by La. 105, and on the north by the Avoyelles Parish line;

xi. Tensas: east and south of U.S. Hwy. 65 from Concordia Parish line to Hwy. 128, south of Hwy. 128 to St. Joseph, east and south of La. Hwy. 605, 604 and 3078 northward to Port Gibson Ferry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2264 (November 1999).

## §117. 2000 Wildlife Management Area Turkey—Hunting Regulations

### A. General

1. The following rules and regulations concerning management, protection and harvest of wildlife have been officially approved and adopted by the Wildlife and Fisheries Commission in accordance with the authority provided in Louisiana Revised Statutes of 1950, Section 109 of Title 56. Failure to comply with these regulations will subject the individual to citation and/or expulsion from the management area.

2. Only those Wildlife Management Areas listed are open to turkey hunting.

3. All trails and roads designated as ATV Only shall be closed to ATVs from March 1 through September 15. ATV off-road or trail travel is prohibited. Walk-in hunting only (bicycles permitted), unless opened by sign on trail.

4. Bag limits on WMAs are part of the season bag limit. The bag limit for turkeys on Wildlife Management Areas is two per area, not to exceed two per season for all WMAs. Only one turkey is allowed to be taken during special lottery hunts. The bag limit for turkeys is one gobbler

per day and three gobblers per season including those taken on WMAs.

**B. Permits**

1. Self-Clearing Permits. All turkey hunts, including lottery hunts, are self-clearing and all hunters must check in daily by picking up a permit from a self-clearing station. Upon completion of each daily hunt, the hunter must check out by completing the hunter report portion of the permit and depositing it in the check-out box at a self-clearing station before exiting the WMA.

2. Lottery Hunts: Bayou Macon, Dewey Wills, Georgia-Pacific, Loggy Bayou, Sabine, Sherburne, Sicily Island and Tunica Hills WMAs are restricted to those persons selected as a result of the pre-application lottery. Deadline for receiving applications is February 15, 2000. Application fee of \$5 must be sent with each application. Applicants may submit only one application and will be selected for one WMA Turkey Lottery Hunt annually. Submitting more than one application will result in disqualification. Contact any district office for applications. Hunters must abide by self-clearing permit requirements.

3. Requests for information on WMA regulations, permits, lottery hunt applications and maps may be directed to any district office: [District 1 — P.O. Box 915, Minden, 71055; 318/371-3050]; [District 2 — 368 Century Park Drive, Monroe, 71203; 318/343-4044]; [District 3 — 1995 Shreveport Hwy., Pineville, 71360; 318/487-5885]; [District 4 — P.O. Box 1640, Ferriday, 71334; 318/757-4571]; [District 5 — 1213 N. Lakeshore Dr., Lake Charles, 70601; 318/491-2575]; [District 6 — 5652 Highway 182, Opelousas, 70570; 318/948-0255]; [District 7 — P.O. Box 98000, Baton Rouge, 70898; 225/765-2360].

**C. Wildlife Management Area Turkey Hunting Schedule\***

WMA	Season Dates	Permit Requirements	Lottery Dates**
Bayou Macon	April 1-April 2	Self-clearing	April 1-2
Bens Creek†	March 25-April 16	Self-clearing	None
Big Lake	March 25-April 2	Self-clearing	None
Bodcau	April 1-April 16	Self-clearing	None
Boeuf	March 25-April 2	Self-clearing	None
Boise Vernon	March 25-April 16	Self-clearing	None
Camp Beauregard	March 25-April 9	Self-clearing	None
Dewey Wills	March 25-26 April 1-2	Self-clearing	March 25-26 April 1-2
Fort Polk	March 25-April 23	Self-clearing	None
Georgia-Pacific	April 1-April 9	Self-clearing	April 1-2
Grassy Lake	March 25-April 2	Self-clearing	None
Jackson-Bienville	April 1-April 16	Self-clearing	None

Little River	March 25-April 9	Self-clearing	None
Loggy Bayou	April 8-9 April 15-16	Self-clearing	April 8-9 April 15-16
Pearl River	March 25-April 9	Self-clearing	None
Peason Ridge	March 25-April 23	Self-clearing	None
Pomme de Terre	March 25-April 2	Self-clearing	None
Red River	March 25-April 2	Self-clearing	None
Sabine	March 25-March 26 April 1-April 2	Self-clearing	March 25-26 April 1-2
Sandy Hollow†	March 25-April 16	Self-clearing	None
Sherburne	March 25-April 2	Self-clearing	March 25-26 March 27-29
Sicily Island	March 25-26 April 1-2 April 8-9	Self-clearing	March 25-26 April 1-2 April 8-9
Three Rivers	March 25-April 2	Self-clearing	None
Tunica Hills Angola Tract	March 25-26 April 1-2 April 8-9 April 15-16	Self-clearing	March 25-26 April 1-2 April 8-9 April 15-16
Tunica Hills South Tract	March 25-26 April 1-2 April 8-9 April 15-16	Self-clearing	March 25-26 April 1-2 April 8-9 April 15-16

\*Only those Wildlife Management Areas listed have a turkey hunting season. All other areas are CLOSED. For seasons on other lands managed by the Department of Wildlife and Fisheries, contact the local district office.

\*\* The deadline for receiving applications for all Turkey Lottery Hunts on WMAs is February 15, 2000.

† No turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree.

Kisatchie National Forest (KNF) Turkey Hunting Schedule: Caney Ranger District, April 1-16; KNF lands in Winn Parish, March 25-April 2; All remaining KNF lands, March 25-April 16.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2265 (November 1999).

Bill A. Busbice, Jr.  
Chairman

9911#018