

# Notices of Intent

## NOTICE OF INTENT

### Department of Agriculture and Forestry Horticulture Commission

Definitions, Licenses, and Permits  
(LAC 7:XXIX.102, 117, and 121)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Horticulture Commission, hereby proposes to amend regulations regarding the required standards of practice for the landscape architect license and the re-issuance of suspended, revoked or un-renewed license or permit.

The Department of Agriculture and Forestry, Horticulture Commission intends to adopt these rules and regulations for the purpose of defining arborist and landscape architect as well as amending the landscape architect license requirements and the re-issuance of suspended, revoked or un-renewed license or permit.

These rules are enabled by R.S. 3:3801 and R.S. 3:3814.

#### Title 7

#### AGRICULTURE and ANIMALS

#### Part XXXIX. Horticulture Commission

#### Chapter 1. Horticulture

#### §102. Definitions

*Arborist* any person trained in the care and removal of shade and ornamental trees. Shade and ornamental trees may be defined as those on an existing homesite or commercial property and those on property permitted for development for commercial or residential purposes. This definition shall also apply to any tree within 100 feet of any improvements on these properties.

*Landscape Architect* any person that applies creative and technical skills and scientific, cultural and political knowledge in the planned arrangement of natural and constructed elements on the land with a concern for the stewardship and conservation of natural, constructed and human resources.<sup>1</sup>

<sup>1</sup>American Society of Landscape Architects (ASLA) Definition of Landscape Architecture, ASLA Member Handbook, adopted November 18, 1983.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801 and R.S. 3:3814.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 26:

#### §117. Required Standards of Practice

A.4. - B.4. ...

5. Prior to renewal of a landscape architect license, the licensee must provide the commission with certifiable evidence of completion of 12 continuing education units, approved by the commission, per year. Evidence of completion must be submitted on forms approved by the commission's staff. Licensees will be allowed to carry over a maximum of 12 continuing education units from one year to the next year.

a. Educational activities must be submitted for approval prior to license renewal on a form approved by the commission staff. Activities that will be considered for approval include annual professional meetings, lectures, seminars, workshops, conferences, university or college courses, in-house training, and self directed activities. Any questions of eligibility of educational activities will be reviewed by a standing committee of the Louisiana Chapter of the American Society of Landscape Architects and the commission's staff.

b. Licensees failing to fulfill minimum hourly requirement will have six months additional time to make up deficiencies without recourse. After this six month period, the license will be automatically suspended until fulfillment of the requirements and payment of the late fee required under L.R.S 3:3806(E).

5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3808 and R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:185 (April 1982), amended LR 9:410 (June 1983), LR 11:317 (April 1985), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:8 (January 1988), LR 20:640 (June 1994), amended LR 26:

#### §121. Re-issuance of Suspended, Revoked or un-renewed License or Permit

A. - C.5. ...

D. Whenever a licensee fails to renew a license:

1. If the period of non-renewal is more than three years, but less than or equal to five years, the license may be re-issued upon payment of fees required under L.R.S. 3:3807 (D).

2. If the period of non-renewal is more than five years, he or she must either retake the appropriate exam or petition the commission for re-issuance of the license. The holder of the un-renewed license must provide evidence that they have been active in the appropriate profession during the period of non-renewal. If the commission approves the re-issuance of the license, the license will be re-issued only after payment of fees under L.R.S. 3:3807 (D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 26:

All interested persons may submit written comments on the proposed rules through January 24, 2000, to Craig Roussel, Department of Agriculture and Forestry, 5825 Florida Blvd., Baton Rouge, LA 70806. A public hearing will be held on these rules on January 25, 2000 at 9:30 a.m. at the address listed above. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at the hearing. No preamble concerning the proposed rules is available.

### Family Impact Statement

The proposed amendments to rules LAC XXIX.102, 117 and 121 regarding the required standards of practice for the landscape architect license and the re-issuance of suspended, revoked or un-renewed license or permit should not have any known or foreseeable impact on any family as defined by R.S. 49:972 D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed rule.

Bob Odom  
Commissioner

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Definitions, Licenses, and Permits

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

There will be no implementation costs or savings to state or local governmental units. The Louisiana Department of Agriculture and Forestry intends to amend the rules and regulations for the purpose of clarifying the law to require that landscape architects obtain 12 approved continuing education units each year prior to being eligible to renew their licenses.

Definitions are being added to clarify certain professions that require licenses. Also, clarification is being added for requirements to reinstate licenses which have lapsed for more than three years and more than five years.

Any increase in paperwork will be minimal and will be handled by existing staff of the Horticulture Commission.

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

There will be no effect on state or local governmental units.

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

The cost for landscape architects to complete continuing education requirements will vary depending on the method chosen. The estimated average cost is \$200-\$300 per year. However, most landscape architects already attend meetings, seminars, etc. that would fulfill this requirement.

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

There will be no significant effect on competition and employment.

Skip Rhorer  
Assistant Commissioner  
9912#041

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Economic Development Office of Commerce and Industry Business Incentives Division

University Research and Development  
Parks Program (LAC 13:I.Chapter 9)

Under the authority of R.S. 17:3389, the Department of Economic Development and the Board of Commerce and Industry intends to repeal all pre-existing rules in Chapter 15, and adopt the Louisiana University Research and Development Parks Program rules, Title 13, Part 1, Chapter 15. These rules are for clarity and define existing verbiage. There is no known impact on family formation, stability, and autonomy as set forth in R.S. 49:972.

#### Title 13

#### ECONOMIC DEVELOPMENT

#### Part I. Financial Incentive Programs

#### Chapter 15. Louisiana University Research and Development Parks Program

#### §1501. General

A. Intent of Law. To provide for the reduction in taxes for concerns located in research and development parks operating in association with a public or regionally accredited independent university in the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

#### §1503. Definitions

A. For purposes of these rules, the following terms shall have the meaning hereafter ascribed to them, unless the context clearly indicates otherwise:

*Concern* means any technology-driven or innovative, growth-oriented company engaged in the application of science, especially to industrial or commercial objectives. Such companies should be engaged in the development, manufacture, assembly or sale of products or services that emerge from or depend upon the practical application of scientific or technological advances.

*Construction Period* begins the first day on which foundations are started, or where foundations are unnecessary, the first day that materials or equipment for that project are received, and ends the day that construction is completed or operations begin, whichever is later.

*Develop* means to aid in the growth of or bring into being.

*Innovative Growth-Oriented* means utilizing new concepts or ideas to induce or sustain growth.

*Manufacturing Establishment* for the purposes of receiving benefits under this program shall mean those engaged in the mechanical or chemical transformation of materials or substances into new products, or assembling

component parts if the finished product is neither a structure nor other fixed improvement.

*Park Area* means the area included in any research and development park which is operated in association with a public or regionally accredited independent university in the state.

*Park Developer*

means person(s) or entity responsible for preparing the park area for use.

*Program* means the Louisiana University Research and Development Parks Program.

*Research* means a scientific or scholarly investigation process.

*Technology* means the application of science, especially to industrial or commercial objectives and the whole body of methods and materials used to achieve such objectives.

*University Research and Development Park* includes nonprofit or for-profit research and development parks that have established a relationship with a university or are part of a university. The relationship may be a contractual one including joint ventures or actual operation of a research and development park by a university, or it may take the shape of a formal operational relationship including cooperative or sponsored ventures between a research park and university. A University Research and Development Park shall have:

- a. existing or planned land and buildings primarily designed for private and public research and development facilities, technology driven and science-based companies relating to manufacturing, assembly, or support services;
- b. a contractual and/or operational relationship(s) with a university or other institution of higher education;
- c. a role in promoting research and development by the university in partnership with industry, assisting in the growth of new ventures, and promoting economic development;
- d. a role in aiding the transfer of technology and business skills between the university and industry tenants;
- e. a resolution from the affiliated university describing its participation in the program.

B. Park developer must submit a resolution to the Office of Commerce and Industry as soon as a park has been established. The resolution must give the following information:

1. specific location and boundaries of the park;
2. documentation of university affiliation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

**§1505. Criteria**

To qualify for the Louisiana University Research and Development Parks Program tax incentives an applicant must be a *concern*, as defined in §903.A, must provide documentation evidencing its location in a University Research and Development Park, must document its association with a Louisiana public or regionally accredited independent university, and must demonstrate, by written statement, its viability to contribute to the improved scientific information and technology available to the citizens of Louisiana and its ability, through improved economic conditions, to stimulate the creation of jobs and

the development of the park area. The statement should include all factors which are relevant to the continued and expanded operations of the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

**§1506. Resolution from Local Governmental Subdivision**

The local governmental authority must file with the Board of Commerce and Industry a resolution for each park located within the jurisdiction of its political subdivision, adopted by the governing authority, which provides for participation by that governmental subdivision in the program. The resolution by the local governing authority shall authorize the Board of Commerce and Industry to grant rebates and/or exemptions on eligible sales taxes of the local political subdivision as outlined in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

**§1507. Filing of Applications**

A. An advance notification of intent to file an application for the Louisiana University Research & Development Parks tax incentives shall be filed prior to the beginning of construction, acquisition of equipment, or occupation of existing facilities. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form. Any purchases made prior to the filing of the advance notification may not be eligible for exemption and/or credit. Applications must be filed with the Office of Commerce and Industry, P.O. Box 94185, Baton Rouge, LA 70804-9185 on the prescribed form, along with any required additional information, within six months after the beginning of construction or three months before completion of construction or the beginning of operations, whichever occurs later.

B. An application must be submitted to the Office of Commerce and Industry at least 60 days prior to the Board of Commerce and Industry meeting where it will be heard. An application fee shall be submitted with the application based on 0.2 percent of the estimated total amount of taxes to be rebated, exempted, or credited. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000 per project. A fee of \$50 shall be charged for the renewal of a contract. An estimated five year income and franchise tax liability must be provided to the Board of Commerce and Industry. This information will be requested on the application form and is to be used to estimate the economic impact of the project to the state.

C. A copy of any application requesting rebate of and/or exemption from taxes of any political subdivision shall be transmitted by the applicant to the governing authority of each political subdivision levying any such taxes. Rebates made by local governing subdivisions may include all of those sales taxes that are not dedicated to the repayment of bonded indebtedness.

D. Within six months after construction has been completed, the applicant from the establishment shall file, on the prescribed form, an affidavit of final cost showing

complete cost of the project, together with a fee of \$100 for the plant inspection which will be conducted by the Office of Commerce and Industry. Upon request by the Office of Commerce and Industry, a map showing the location of all facilities claiming exemptions in the project will be submitted in order that the property for which rebates are claimed may be clearly identified.

E. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemptions or the fee submitted is incorrect. The document may be resubmitted with the correct fee and/or information. Documents will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees for advance notifications, applications, renewals, or affidavits of final cost which have been accepted, will not be refundable.

F. The applicant proposing a project with a construction period greater than two years must file a separate application for each construction phase. An application fee shall be submitted with each application filed, based on the fee schedule in §907 B above.

G. The Office of Commerce and Industry is authorized to grant a six-month extension for filing of the application. An authorized representative of the Board of Commerce and Industry must approve a further extension. All requests for extension must be in writing and must state why the extension is requested.

H. In addition to the information contained in the application, the applicant shall make available any additional relevant information pertinent to the application that the secretary of the Department of Economic Development or the Board of Commerce and Industry may request.

I. Please make checks payable to: Louisiana Office of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

#### **§1509. Recommendations of the Secretaries of Economic Development and Revenue**

The Office of Commerce & Industry shall forward the application with its recommendations to the secretary of Economic Development and the secretary of Revenue for their review. Within 30 days after the receipt of the application the secretaries of Economic Development and Revenue shall submit their recommendations (the secretary of Revenue shall submit a Letter of no objection in lieu of a letter of recommendation) in writing to the assistant secretary of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

#### **§1511. Application Shall be Presented to the Board of Commerce and Industry**

The Office of Commerce & Industry shall present an agenda of applications to the Board of Commerce & Industry with the written recommendations of the secretaries of Economic Development and Revenue, an endorsement

resolution of the local taxing authorities, and shall make recommendations to the Board based upon its findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

#### **§1513. Contract Approvals**

The Board of Commerce and Industry, after acting on the application, shall forward its recommendation, together with all supporting documentation and the recommendations of the Department of Economic Development and the Department of Revenue, to the Governor and the Joint Legislative Committee on the Budget. When the Governor and Joint Legislative Committee on the Budget find that a concern satisfies the requirements of the law and these rules, they shall advise the Board of Commerce and Industry that it may enter into a contract with such a concern providing for tax rebates, exemptions, and/or credits as allowed by La.R.S. 17:3389. The contract shall be under the terms and conditions as deemed to be in the best interest of the state. A copy of the contract shall be forwarded to the Department of Revenue, to the local governmental subdivision's tax authority, and the tax collecting officer or agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

#### **§1515. Tax Incentives Available Under Contract**

A. Tax exemptions may be granted for any of the following:

1. state corporate franchise tax;
2. state corporate income tax;
3. any other tax imposed directly by the state on the applicant.

B. The contract will not authorize the applicant to make tax-free purchases from vendors. Rebates of taxes paid may be granted for any of the following:

1. sales and use taxes imposed by the state or local governmental subdivisions on:
  - a. machinery and equipment used by the applicant;
  - b. materials and building supplies used in the repair, reconstruction, modification, or construction of a plant or facility;
  - c. a tax credit may be granted against the tax liability due to the state for the corporate income tax and the corporate franchise tax, provided however, that such credit shall not exceed the cost of purchase by the concern of machinery and scientific equipment used on the premises of the concern located in the park area;
  - d. materials and supplies necessary for or used in the manufacturing or assembly of the applicant's product, or delivery of services but not on goods or materials that become an integral part of the product or process;
  - e. any other goods and services used or consumed by the applicant's facility in the park.

C. State sales and use tax rebates shall be filed according to official Department of Revenue procedures.

D. Local sales and use tax rebates shall be filed in the manner prescribed by the local governmental subdivision taxing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

#### **§1516. Tax Relief Granted**

A. The amount of state tax rebates and/or exemptions granted to a concern may be a maximum of 30% of the tax liability for state corporate franchise, income, and state sales and use taxes of the concern during the fiscal year preceding the fiscal year for which the rebates and/or exemptions are granted, or the amount established by contract. In the case of companies that have no prior fiscal year, the first fiscal year will be used.

B. The amount of the local governmental subdivision tax rebates granted to a concern may be a maximum of 100% of the tax liability for sales taxes due to that local governmental subdivision by the concern during the fiscal year preceding the fiscal year for which the rebates are granted, or the amount established by contract. In the case of companies that have no prior fiscal year, the first fiscal year will be used.

C. Companies are eligible to receive tax benefits, under this chapter, for only facilities located within the park.

D. Tax rebates are available for machinery and equipment when used inside the park by the applicant for research or in the manufacturing, assembly of a product, or delivery of a service. Machinery and equipment shall not be leased, rented, moved, or used, outside the physical premises of the concern receiving the tax benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

#### **§1517. Violations of Rules, Statutes, or Documents**

On the initiative of the Board of Commerce and Industry or whenever a written complaint of violation of the terms of the rules, the contract documents or the statutes is received, the assistant secretary for the Office of Commerce and Industry shall cause to be made a full investigation on behalf of the board, and shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractors. If the investigation substantiates a violation, the assistant secretary may present the subject contract to the board for formal cancellation. The businesses with contracts shall then remit any and all taxes that would have been imposed but for the issuance of a contract. If the contract is canceled, the Board of Commerce and Industry shall notify the Department of Revenue, the local governmental subdivision and the agency collecting the local taxes, of the cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

#### **§1518. Contract Renewals**

The initial contract may be entered into for a period up to a maximum of five years under such terms and conditions the Board deems to be in the best interest of the state. Each contract may be renewed for a period of up to five years, provided that the total number of years of a contract shall not

exceed ten years, the terms and conditions of which shall be deemed in the best interest of the state. Any renewal contract shall become effective only if the local governmental subdivision levying the tax approves of the renewal prior to the action by the Board of Commerce and Industry to renew the contract. The applicant shall receive and submit the approval of the local governmental subdivision to the Board of Commerce and Industry along with the request for a contract renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

#### **§1519. Annual Review**

On February 15, of each year, the contractee shall file an affidavit with the Office of Commerce and Industry certifying that the business still qualifies under §905. If the affidavit shows the company no longer qualifies under this rule, the Board of Commerce and Industry shall cancel the contract and no further rebates or credits will be granted. The Department of Economic Development will notify the Department of Revenue within 30 days after revocation of a contract. On February 15, of each year, the contractee shall provide the Department of Economic Development with a copy of its most recent research and development report from the previous year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

#### **§1521. Appeals and Petition Procedures**

A. Applicants who wish to appeal the action of the Board of Commerce and Industry must submit their appeals along with any necessary documentation to the Office of Commerce and Industry at least 30 days prior to the meeting of the screening committee of the Board of Commerce and Industry during which their appeals will be heard.

B. Petitions, and all documentation, on matters not yet presented to or ruled on, by the Board, must be submitted to the Board's staff at least 30 days prior to the meeting of the Board in which the petition will be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

#### **§1525. Hearing Procedures**

A. Applicants and/or their representatives will be notified of the date of the Board of Commerce and Industry meeting at which their application will be considered. The applicant should have a representative present who is able to answer any questions the Board of Commerce and Industry may have about the information contained in the application. In the event there is not a representative present, the application may be deferred.

B. The local governing authority of the political subdivision levying taxes within the park shall be notified of the date of the Board of Commerce and Industry meeting at which any application for benefits under this Program will be considered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

**§1527. Contract Execution Procedures**

A. When an application is approved, a contract is supplied to the applicant by the Office of Commerce and Industry. The applicant must execute the contract and return it within 30 days of receipt. Certified copies will then be forwarded to the proper local governmental taxing authority and to the Department of Revenue.

B. The taxing authorities of the local governmental subdivision issuing an endorsement resolution should be contacted by the applicant to determine their procedure for rebating their sales/use tax.

C. Applicants will be contacted by the staff of the Department of Revenue who will advise the proper procedures to follow in order to obtain the state sale/use tax rebate.

D. Notification of any change which may affect the contract should be made to the Office of Commerce and Industry. This includes any changes in the ownership or operational name of the firm holding a contract or the abandonment of operation. Failure to report can constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:

R. Paul Adams  
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: University Research and Development  
Parks Program**

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

The proposed rules will not result in any implementation costs (or savings) to the state or local governmental units other than those one-time costs directly associated with the publication of these rules. The rule changes are to clarify and define existing verbiage. These rules are consistent with the current interpretation and practices of the incentive program.

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

There is no estimated effect on revenue collections of state or local governmental units associated with this proposed rule.

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

There will be no cost or economic benefits to directly affected persons or nongovernmental groups. The rule changes are to clarify and define existing verbiage.

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

There will be no effect on competition or employment associated with these proposed rules. The proposed rules merely clarifies and defines existing verbiage.

Harold Price  
Assistant Secretary  
9912#028

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Economic Development  
Racing Commission**

Parlay Wagering (LAC 35:XIII.Chapter 119)

The Louisiana State Racing Commission hereby gives notice that it intends to adopt LAC 35:XIII.Chapter 119 "Parlay Wagering" because it will provide for an additional wagering format, give patrons more betting opportunities, and help to stimulate pari-mutuel wagering.

This proposed rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

The text of this proposed rule may be viewed in its entirety in the emergency rule section of this issue of the *Louisiana Register*.

The domicile office of the Louisiana State Racing Commission is open from 8am to 4pm and interested parties may contact C. A. Rieger, assistant director, at (504) 483-4000 (FAX 483-4898), holidays and weekends excluded, for more information. All interested persons may submit written comments relative to this proposed rule through January 7, 2000, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, Louisiana 70119-5100.

Albert M. Stall  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Parlay Wagering**

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

There are no costs to implement this action.

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

The anticipated effect on revenue collections is positive, but cannot be measured.

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

Economic benefits/costs will be to patrons and racing associations, but cannot be measured.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

This action has no effect on competition nor employment.

Albert M. Stall  
Chairman  
9912#007

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

Web Mastering	1/2
Independent Study in Technology Applications	1

Interested persons may submit written comments until 4:30 p.m., February 8, 2000 to Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 741 $\text{\textcircled{C}}$  Louisiana Handbook for School Administrators $\text{\textcircled{C}}$  Computer/Technology Education (LAC 28:I.901)

In accordance with R. S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, an amendment to Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The proposed amendment revises (1) the title of the Computer Education secondary program of studies "Computer/Technology Education"; (2) adds nine additional computer/technology electives to the Computer Education program of studies; and (3) changes the title of Computer Literacy to "Computer/Technology Literacy."

**Title 28  
EDUCATION**

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

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

A. Bulletin 741

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), (15); R.S. 17:7(5), (7), (11); R.S. 17:10, 11; R.S. 17:22(2), (6); R.S. 17:151.1; R.S. 17:151.3; R.S. 17:176; R.S. 17:232; R.S. 17:191.11; R.S. 17:1941; R.S. 17:2007; R.S. 17:2050; R.S. 17:2501-2507; P.L. 94-142; R.S. 17:154(1); R.S. 17:402.

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 26:

**Bulletin 741 $\text{\textcircled{C}}$  Louisiana Handbook for School Administrators**

2.105.02 Computer/technology education course offerings shall be as follows:

Course Title	Unit(s)
Computer Applications	1
Computer Architecture	1
Computer Science I	1
Computer Science II	1
Computer Systems and Networking I	1
Computer Systems and Networking II	1
Computer/Technology Literacy	1/2
Desktop Publishing	1/2
Digital Graphics & Animation	1/2
Multimedia Productions	1

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

**RULE TITLE: Bulletin 741 $\text{\textcircled{C}}$  Louisiana Handbook for School Administrators $\text{\textcircled{C}}$  Computer/Technology Education**

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

The implementation of changes requires no cost or savings to state or local governmental units.

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no effects on competition and employment.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
9912#043

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 746 $\text{\textcircled{C}}$  Louisiana Standards for State Certification of School Personnel $\text{\textcircled{C}}$  Admission Requirement for Alternate Post-Baccalaureate Certification Programs (LAC 28:I.903)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, an amendment to Bulletin 746, Louisiana Standards for State Certification of School Personnel, referenced in LAC 28:I.903.A. The proposed rule change revises the qualifications for entrance into an alternate post-baccalaureate certification program by deletion of the current requirement of a 2.5 Grade Point Average (GPA) on a 4.0 scale and addition of the required scores on the PRAXIS PreProfessional Skills Tests in Reading, Writing, and Mathematics. The scores are those required for teacher certification: PPST-Reading: 172; PPST-Writing: 171; and PPST Mathematics: 170.

In response to Act 836 of the 1984 Louisiana Legislature, the Board of Regents adopted the recommendation of the Louisiana Council of Deans of Education that required scores on the NTE General Knowledge (644) and Communications Skills (645) tests be used as the standard for admission into teacher education programs. Since that time, those tests have been replaced by the PRAXIS tests indicated above; and they are now used as a standard for admission to traditional undergraduate teacher education programs.

Additionally, the current guidelines for alternate certification programs do not include a required GPA upon completion of the program. This proposed rule includes the addition of a 2.5 GPA upon completion which is consistent with the requirement of the undergraduate teacher education programs.

## 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

##### A. Bulletin 746

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975); amended LR 24:283 (February 1997); LR 24:1091 (June 1998); LR 25:422 (March 1999); LR 26:

#### **Alternate Post-Baccalaureate Certification Program Elementary Education (Grades 1-8)**

The State Alternate Post-Baccalaureate Certification Program provides opportunities for individuals with non-education degrees to become certified public school teachers. Candidates for admission must have an earned baccalaureate degree from a regionally accredited institution and must have achieved the required scores on the PRAXIS Pre-Professional Skills test in Reading (172), Writing (171), and Mathematics (170)

Individuals seeking certification under this program must submit an official transcript for evaluation to a Louisiana college or university with an approved teacher education program. Alternative certification programs may be offered by a college or university only in those certification areas in which that institution has an approved teacher education program.

Certification requirements are as follows:

##### 1. General Education

a. The general education component of the candidate's baccalaureate degree must meet the state minimum requirements as specified in *Bulletin 746, Louisiana Standards for State Certification of School Personnel*.

##### 2. Specialized Academic Education

a. The specialized academic education component of *Bulletin 746, Louisiana Standards for State Certification of School Personnel*, must be satisfied. A baccalaureate degree from a regionally accredited institution will satisfy

six hours of the specialized academic education requirements of *Bulletin 746*.

##### 3. Professional Education

a. Twenty-four semester hours of coursework in pedagogy (professional education) appropriate to the level of certification as prescribed by the school/department/college of education are required. The professional education component should include courses in theories of teaching and learning, student achievement and evaluation, human growth and development, methods of instruction, reading diagnosis and remediation, and exceptionalities of children or at-risk children.

##### 4. Student Teaching

a. Candidates for certification must complete one of the following requirements

##### i. Student teaching

OR

ii. One-year internship in the area(s) of certification with supervision provided by the faculty in the college of education of a regionally accredited institution.

#### **PRAXIS/NTE**

a. The applicant must have attained scores on the PRAXIS/NTE (National Teacher Examinations) that meet state requirements for certification.

**NOTE:** Upon completion of the alternate program, the applicant must have earned a grade point average (GPA) of 2.5 (4.0 point scale)

No final grade below a "C" will be accepted for student teaching or any professional or specialized academic education course which is required for certification. In addition, no final grade below a "C" will be accepted for any other course specified as a deficiency under this plan.

The State Department of Education, Office of Certification and Higher Education, has the authority to waive the student teaching upon verification of three years of successful teaching experience in the area of certification.

Mandatory for individuals meeting certification requirements after August 31, 2000.

#### **Alternate Post-Baccalaureate Certification Program Lower Elementary Education**

The State Alternate Post-Baccalaureate Certification Program provides opportunities for individuals with non-education degrees to become certified public school teachers. Candidates for admission must have an earned baccalaureate degree from a regionally accredited institution and must have achieved the required scores on the PRAXIS Pre-Professional Skills test in Reading (172), Writing (171), and Mathematics (170).

Individuals seeking certification under this program must submit an official transcript for evaluation to a Louisiana college or university with an approved teacher education program. Alternative certification programs may be offered by a college or university only in those certification areas in which that institution has an approved teacher education program.

Certification requirements are as follows:

##### 1. General Education

a. The general education component of the candidate's baccalaureate degree must meet the state minimum requirements as specified in *Bulletin 746, Louisiana Standards for State Certification of School Personnel*.

## 2. Specialized Academic Education

a. The specialized academic education component of *Bulletin 746, Louisiana Standards for State Certification of School Personnel*, must be satisfied. A baccalaureate degree from a regionally accredited institution will satisfy nine hours of the specialized academic education requirements of *Bulletin 746*.

## 3. Professional Education

a. Twenty-four semester hours of coursework in pedagogy (professional education) appropriate to the level of certification as prescribed by the school/department/college of education are required. The professional education component should include courses in theories of teaching and learning, student achievement and evaluation, human growth and development, methods of instruction, reading diagnosis and remediation, and exceptionalities of children or at-risk children.

## 4. Student Teaching

a. Candidates for certification must complete one of the following requirements:

i. Student teaching

OR

ii. One-year internship in the area(s) of certification with supervision provided by the faculty in the college of education at a regionally accredited institution.

## 5. PRAXIS/NTE

a. The applicant must have attained scores on the PRAXIS/NTE (National Teacher Examinations) that meet state requirements for certification.

NOTE: Upon completion of the alternate program, the applicant must have earned a grade point average (GPA) of 2.5 (4.0 point scale)

No final grade below a "C" will be accepted for student teaching or any professional or specialized academic education course which is required for certification. In addition, no final grade below a "C" will be accepted for any other course specified as a deficiency under this plan.

The State Department of Education, Office of Certification and Higher Education, has the authority to waive the student teaching upon verification of three years of successful teaching experience in the area of certification.

### **Alternate Post-Baccalaureate Certification Program Upper Elementary Education**

The State Alternate Post-Baccalaureate Certification Program provides opportunities for individuals with non-education degrees to become certified public school teachers. Candidates for admission must have an earned baccalaureate degree from a regionally accredited institution and must have achieved the required scores on the PRAXIS Pre-Professional Skills test in Reading (172), Writing (171), and Mathematics (170).

Individuals seeking certification under this program must submit an official transcript for evaluation to a Louisiana college or university with an approved teacher education program. Alternative certification programs may be offered by a college or university only in those certification areas in which that institution has an approved teacher education program.

Certification requirements are as follows:

### 1. General Education

a. The general education component of the candidate's baccalaureate degree must meet the state

minimum requirements as specified in *Bulletin 746, Louisiana Standards for State Certification of School Personnel*.

## 2. Specialized Academic Education

a. The specialized academic education component of *Bulletin 746, Louisiana Standards for State Certification of School Personnel*, must be satisfied. A baccalaureate degree from a regionally accredited institution will satisfy six hours of the specialized academic education requirements of *Bulletin 746*.

## 3. Professional Education

a. Twenty-one semester hours of coursework in pedagogy (professional education) appropriate to the level of certification as prescribed by the school/department/college of education are required. The professional education component should include courses in theories of teaching and learning, student achievement and evaluation, human growth and development, methods of instruction, and reading diagnosis and remediation.

## 4. Student Teaching

a. Candidates for certification must complete one of the following requirements:

i. Student teaching

OR

ii. One-year internship in the area(s) of certification with supervision provided by the faculty in the college of education at a regionally accredited institution.

## 5. PRAXIS/NTE

a. The applicant must have attained scores on the PRAXIS/NTE (National Teacher Examinations) that meet state requirements for certification.

NOTE: Upon completion of the alternate program, the applicant must have earned a grade point average (GPA) of 2.5 (4.0 point scale).

No final grade below a "C" will be accepted for student teaching or any professional or specialized academic education course which is required for certification. In addition, no final grade below a "C" will be accepted for any other course specified as a deficiency under this plan.

The State Department of Education, Office of Certification and Higher Education, has the authority to waive the student teaching upon verification of three years of successful teaching experience in the area of certification.

### **Alternate Post-Baccalaureate Certification Program Secondary**

The State Alternate Post-Baccalaureate Certification Program provides opportunities for individuals with non-education degrees to become certified public school teachers. Candidates for admission must have an earned baccalaureate degree from a regionally accredited institution and must have achieved the required scores on the PRAXIS Pre-Professional Skills test in Reading (172), Writing (171), and Mathematics (170).

Individuals seeking certification under this program must submit an official transcript for evaluation to a Louisiana college or university with an approved teacher education program. Alternative certification programs may be offered by a college or university only in those certification areas in which that institution has an approved teacher education program.

Certification requirements are as follows:

### 1. General Education

a. A baccalaureate degree from a regionally accredited institution will fulfill the general education requirements.

2. Specialized Academic Education

a. The candidate must have a degree (major) in the area of certification or meet the state minimum requirements as specified in *Bulletin 746, Louisiana Standards for State Certification of School Personnel*.

3. Professional Education

a. Eighteen semester hours of coursework in pedagogy (professional education) appropriate to the level of certification as prescribed by the school/department/college of education are required. The professional education component should include courses in theories of teaching and learning, student achievement and evaluation, human growth and development, and methods of instruction.

4. Student Teaching

a. Candidates for certification must complete one of the following requirements:

i. Student teaching

OR

ii. One-year internship in the area(s) of certification with supervision provided by the faculty in the college of education at a regionally accredited institution.

5. PRAXIS/NTE

a. The applicant must have attained scores on the PRAXIS/NTE (National Teacher Examinations) that meet state requirements for certification.

NOTE: Upon completion of the alternate program, the applicant must have earned a grade point average (GPA) of 2.5 (4.0 point scale).

No final grade below a "C" will be accepted for student teaching or any professional or specialized academic education course which is required for certification. In addition, no final grade below a "C" will be accepted for any other course specified as a deficiency under this plan.

The State Department of Education, Office of Certification and Higher Education, has the authority to waive the student teaching upon verification of three years of successful teaching experience in the area of certification.

**Alternate Post-Baccalaureate Certification Program  
Special Education**

The State Alternate Post-Baccalaureate Certification Program provides opportunities for individuals with non-education degrees to become certified public school teachers. Candidates for admission must have an earned baccalaureate degree from a regionally accredited institution and must have achieved the required scores on the PRAXIS Pre-Professional Skills test in Reading (172), Writing (171), and Mathematics (170).

Individuals seeking certification under this program must submit an official transcript for evaluation to a Louisiana college or university with an approved teacher education program. Alternative certification programs may be offered by a college or university only in those certification areas in which that institution has an approved teacher education program.

Certification requirements are as follows:

1. General Education

a. A baccalaureate degree from a regionally accredited institution will fulfill the general education requirements.

2. Specialized Academic Education

a. The candidate must have a degree (major) in the area of certification or meet the state minimum requirements as specified in *Bulletin 746, Louisiana Standards for State Certification of School Personnel*.

3. Professional Education

a. Eighteen semester hours of coursework in pedagogy (professional education) appropriate to the level of certification as prescribed by the school/department/college of education are required. The professional education component should include courses in theories of teaching and learning, student achievement and evaluation, human growth and development, and methods of instruction.

4. Student Teaching

a. Candidates for certification must complete one of the following requirements:

i. Student teaching

OR

ii. One-year internship in the area(s) of certification with supervision provided by the faculty in the college of education at a regionally accredited institution.

5. PRAXIS/NTE

The applicant must have attained scores on the PRAXIS/NTE (National Teacher Examinations) that meet state requirements for certification.

NOTE: Upon completion of the alternate program, the applicant must have earned a grade point average (GPA) of 2.5 (4.0 point scale)

No final grade below a "C" will be accepted for student teaching or any professional or specialized academic education course which is required for certification. In addition, no final grade below a "C" will be accepted for any other course specified as a deficiency under this plan.

The State Department of Education, Office of Certification and Higher Education, has the authority to waive the student teaching upon verification of three years of successful teaching experience in the area of certification.

Interested persons may submit comments until 4:30 p.m., February 8, 2000 to: Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

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

**RULE TITLE: Bulletin 746 Louisiana Standards for  
State Certification of School Personnel Admission  
Requirements for Alternate Post-Baccalaureate  
Certification Programs**

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

The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

Persons who seek entrance into an alternate post-baccalaureate certification program will be directly affected by the proposed action. The scores on the PRAXIS Pre-Professional Skills Tests in Reading(172), Writing(171), and Mathematics(170) would be required for admission to the program, and the 2.5 GPA would be required upon completion of the program rather than for admission. The same PRAXIS scores are required for admission to undergraduate teacher education programs and are required for teacher certification. A 2.5 GPA is also required upon completion of an undergraduate teacher education program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
9912#047

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 746~~6~~ Louisiana Standards for State Certification of School Personnel~~6~~ GPA for Entrance to Teacher Education Programs (LAC 28:I.903)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, an amendment to Bulletin 746, Louisiana Standards for State Certification of School Personnel, referenced in LAC 28:I.903.A. The proposed amendment revised the qualifications for entrance into a teacher education program relative to the applicant's grade point average. The required 2.20 average on a 4.00 scale no longer must be computed on the basis of "all course work attempted." This change will enable universities to delete in the computation of the GPA any course(s) which a student has repeated.

**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  
A. Bulletin 746**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 24:283 (February 1997), LR 24:1091 (June 1998), LR 25:422-424 (March 1999), LR 26:

**Bulletin 746: Teacher Certification Standards and Regulations**

\* \* \*

Louisiana Revised Statute 17:7.1A (Act 756 of 1977) requires that (1) the applicant shall have attained a 2.20 average on a 4.00 scale as a condition for entrance into a teacher education program; and (2) the applicant shall have achieved a 2.50 average on a 4.00 scale at graduation from an approved program.

\* \* \*

Interested persons may submit comments until 4:30 p.m., February 8, 2000 to Nina Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

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

**RULE TITLE: Bulletin 746~~6~~ Louisiana Standards for State Certification of School Personnel~~6~~ GPA for Entrance to Teacher Education Programs**

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

The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

The proposed rule change revises the qualifications for entrance into a teacher education program relative to the applicant's grade point average. The required 2.20 average on a 4.00 scale no longer must be computed on the basis of "all course work attempted." This change will enable universities to delete in the computation of the GPA any course(s) which a student has repeated.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The policy may increase slightly the number of students entering teacher education programs and, therefore, the number of certified teachers available for employment.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
9912#046

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 1213~~6~~ Minimum Standards for School Buses~~6~~ Used School Buses (LAC 28:XXV.303)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for

advertisement a revision to Bulletin 1213 promulgated in LR 2:187 (June 1976), referenced in LAC 28:1.915.B, readopted in codified format, LR 25:643-653 (April, 1999). The amendment adds to the policies that govern the purchase of used school buses. The revision provides a process for the removal of older buses, taking into consideration the concerns of current school bus drivers (contractors) who may be required to buy a newer bus within a few years of retirement. The proposed revision holds harmless those operators retiring within three years after the effective date of the rule, which is September 1, 2000.

**Title 28**

**EDUCATION**

**Part XXV. Minimum Standards for School Buses**

**Chapter 3. General Provisions**

**§303. Used School Buses**

A. - C. . . .

D. Replacement of school buses, at the time of purchase, must be ten (10) or fewer model years old for veteran owner/operator, school district and newly hired owner/operator. The number of years will be figured from the date of introduction of the model year. (Example, a 1988 model school bus is considered 10 model years old as of 1998.)

E. School buses used to transport students, including activity and backup buses, cannot be more than twenty-five years old.

F. Individual owners (Contractors) of school buses will be held harmless from the maximum age of school buses provision if the individual retires within three years after the effective date of the provisions.

G. This Provision becomes effective September 1, 2000, with the hold harmless provision expiring September 1, 2003.

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 25:644 (April, 1999), amended LR 26:

Interested persons may submit written comments until 4:30 p.m., February 8, 2000 to Nina Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

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

**RULE TITLE: Bulletin 1213 Minimum Standards for  
School Buses**

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

A survey conducted last year suggested that twelve school districts were operating 95 school buses that were manufactured in 1977 or before. The proposed ruling mandates that school buses used to transport students can not be more than twenty-five years old. Replacements, at the time of purchase, must be ten or fewer models years old. School bus drivers retiring within three years of the effective date of the rule (September 1, 2000) will be held harmless.

Based on information provided by a local school bus dealer, a 61 passenger, ten year old school bus will cost between \$14,000 and \$15,000. If we assume replacement will be buses ten years old, there will be an implementation cost to the districts totaling approximately 1.4 million dollars during the three year period.

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

We do not anticipate this action will result in any increase in the collection of revenues by state or local governmental units.

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

School bus drivers owning buses twenty-five years old or older will be directly affected by the proposed ruling. The survey mentioned in Paragraph I also suggested that contract drivers were operating 334 buses that were manufactured in 1977 or before. The ruling mentioned in Paragraph I also applies to these drivers. Assuming 10 percent of the drivers will retire during the same period, that will leave 303 drivers that will need to buy a replacement that is ten or less years old. During the three year period, these drivers would have spent 4.4 million dollars in the purchase of 303 buses we have assumed to be ten years old and will cost between \$14,000 and \$15,000 each.

Everyone involved in pupil transportation will benefit from the proposed action. Buses manufactured in 1977 and in prior years do not have the safety features found in school buses manufactured in 1978 and after. Students will be riding in safer buses. Owners of newer school buses will also benefit by operating buses that are safer, require less maintenance and operate more efficiently.

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

The proposed action should create competition among the local school bus dealers. A market will be developing within the state for the sale of an additional 400 buses over a three year period. There will be no impact on employment in the public and private sectors.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
9912#042

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Secondary and Elementary Education**

Bulletin 1706 Regulation for Implementation  
of the Children with Exceptionalities Act  
(LAC 28:XLIII.Chapters 1-10)

In accordance with R.S. 49:950 et seq., the Administrative Procedures Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to Bulletin 1706, the Regulations for Implementation of the Children with Exceptionalities Act ( R.S. 1941 et seq.). This present revision is being published in codified form, hence historical notes will reflect a history, by section, from this time forward.

These regulations are necessary to implement changes made in the federal regulations for the Assistance to States for the Education of Children with Disabilities program

under IDEA - Part B and C and changes made in the Louisiana Revised Statutes at R.S. 17:1941 et seq.

## **Title 28**

### **EDUCATION**

#### **Part XLIII. Bulletin 1706 Regulations for Students with Disabilities**

(Editor's Note: Bulletin 1706 was adopted by the Board of Elementary and Secondary Education in LR 4:337 (September 1978) in an uncodified format, amended LR 7:407, 484, 625 (August, October, December 1981); LR 8:63, 323 (February, July 1982); LR 9:130, 549, 835, 836 (March, August, December 1983); LR 10:7 (January 1984); LR 11:252 (March 1985); LR 12:763 (November 1986); LR 14:11, 609 (January, September 1988); amended LR 16:297, 496 (April, June 1990); LR 17:956, 957 (October 1991); LR 18:310 1148 (April, November 1992); LR 19:171, 1131, 1416 (February, September, November 1993); LR 20:161 (February 1994); LR 21:550 (June 1995); LR 22:190 (March 1996). This present revision is being published in codified form, hence historical notes will reflect a history by section from this time forward.)

#### **Chapter 1. Responsibilities of the State Board of Elementary and Secondary Education**

##### **§101. Free Appropriate Public Education (FAPE)**

A. The Louisiana State Board of Elementary and Secondary Education (the State Board) shall be responsible for the assurance of a free appropriate public education to all students with disabilities - ages three through twenty-one years, including students with disabilities who have been suspended or expelled from school - and, at the discretion of the local educational agency (LEA) and with parental consent, to students with disabilities before age three years if their third birthday occurs during the school year; and it shall exercise supervision and control of public elementary and secondary education.

B. The State Board shall be directly responsible for the provision of a free appropriate public education to students with disabilities, ages three through twenty-one years, who are within the jurisdiction of either Special School District or in a State Board Special School (Louisiana School for Visually Impaired, Louisiana School for the Deaf, or Louisiana Special Education Center).

C. The State of Louisiana shall ensure the use of whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of these regulations. For example, if it is necessary to place a student with a disability in a residential facility, the State could use joint agreements among the agencies involved for sharing the cost of that placement.

1. Nothing in this requirement relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a student with a disability.

2. The State of Louisiana ensures that there is no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to the student has yet been determined.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

##### **§102. Issuance of Regulations**

A. The State Board shall adopt, amend, or repeal rules, regulations, standards, and policies necessary or proper for

the provision of a free appropriate public education developed pursuant to L.R.S.17:1942.1.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

##### **§103. Compliance with Federal Rules**

A. The State Board has not only the responsibility of complying with rules and regulations governing grants for educational purposes from the Federal government or from any other person or agency, which are not in contravention to the Constitution and laws, but also the authority to take all action necessary to achieve compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

##### **§104. Approval of Private Schools**

A. The State Board shall approve each participating private school that provides special education in accordance with standards established by the State Board.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

##### **§105. Approval of IDEA - Part B Application**

A. The State Board will review and approve the State application described in §330 of these Regulations before its submission to the U.S. Department of Education.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

##### **§106. Notification of LEA in Case of Ineligibility**

A. The State Board shall provide a reasonable notice and an opportunity for a hearing according to procedures set out in Education Division General Administrative Regulations (EDGAR) at 45 CFR 100b.401d before the State Department of Education (Department) disapproves any LEA application for federal entitlement funds for special education under IDEA - Part B or before the Department finds that an LEA is failing to comply with any requirements of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

##### **§107. - 129. Reserved**

##### **§130. State Advisory Panel (Panel)**

A. The Advisory Panel shall be appointed and approved by the State Board and shall be representative of the state population. Procedures shall follow existing State Board procedures for appointing such panels (councils).

B. Membership of the Panel will be composed of persons involved in or concerned with the education of students with disabilities and shall include at least one person representing each of the following groups. A majority of the members of the panel shall be individuals with disabilities or parents of students with disabilities.

1. Individuals with disabilities.
2. Teachers.
3. Representatives of private schools and public charter schools.
4. Parents of students with disabilities.

5. State and local education officials.
  6. Administrators of programs for students with disabilities.
  7. Representatives of other state agencies involved in the financing or delivery of related services to students with disabilities.
  8. Representatives from the state juvenile and adult corrections agencies.
  9. Representatives of institutions of higher education that prepare special education and related service personnel.
  10. At least one representative of a vocational, community, or business organization concerned with the provision of transition services to students with disabilities.
- C. The Panel shall perform prescribed duties in matters concerning the education of students with disabilities.
1. The Panel shall advise the State Board and the Department of unmet needs within the state in the education of students with disabilities.
  2. The Panel shall comment publicly on rules or regulations proposed by the State Board and the Department regarding the education of students with disabilities.
  3. The Panel shall assist the State Board and the Department in developing and reporting of data.
  4. The Panel shall advise the State Board and the Department in developing corrective action plans to address findings identified in federal monitoring reports.
  5. The Panel shall advise the State Board and the Department in developing and implementing policies related to the coordination of services for students with disabilities.
  6. The Panel shall advise the State Board and the Department on the education of eligible students with disabilities who have been convicted as adults and incarcerated in adult prisons.
  7. The Panel shall consider items referred by the State Board as well as items initiated by the panel and approved by the Board through its regular procedures.
  8. The Panel shall make recommendations regarding not only the disbursement of certain special education discretionary funds but also the procedures for distribution of funds under IDEA-Part B.
- D. The Advisory Panel shall conduct its activities according to procedures prescribed by the State Board.
1. The Panel shall meet as often as necessary to conduct its business.
  2. By July 1 of each year, the Panel shall submit an annual report of its activities, including its recommendations to the Department. This report shall be made available to the public in a manner consistent with other public reporting requirements of these Regulations.
  3. Official minutes shall be kept on all Panel meetings and shall be made available to the public on request.
  4. All Panel meetings and agenda items shall be announced in a timely manner in advance of the meeting to afford interested parties a reasonable opportunity to attend. Meetings shall be open to the public.
  5. Interpreters and other necessary services shall be provided at Panel meetings for Panel members or participants. The State Board may pay for these services from funds under IDEA - Part B, State Administration.
  6. The Panel shall serve without compensation, but the State Board shall reimburse the Panel members for reasonable and necessary expenses for attending meetings

and performing duties. The State Board may use funds under IDEA - Part B, State Administration for this purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**Chapter 2. Responsibilities of the Superintendent of Public Elementary and Secondary Education and of the Department of Education**

**§201. General Responsibilities and Authorities**

A. The State Superintendent of Public Elementary and Secondary Education (the Superintendent) and the State Department of Education shall administer those programs and policies necessary to implement L.R.S.17:1941 et seq. Responsibilities of the State Superintendent and the Department are listed below.

1. The Department shall approve, in accordance with standards approved by the State Board, each public school program that delivers special education.

2. The Department shall recommend to the State Board, in accordance with standards approved by the State Board, the approval of each participating private school program that delivers special education.

3. The Department shall receive, administer, and direct distribution of Federal funds for the education of students with disabilities, except those federal funds received directly by LEAs.

4. The Department shall recover any funds made available under IDEA-B for services to any student who has been determined to be classified erroneously as eligible to be counted as a student with a disability.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§202. - 204. Reserved**

**§205. Preparation of Annual Budget**

A. The Department shall prepare and submit to the State Board for review and approval for the next fiscal year a comprehensive budget that at a minimum proposes the appropriations by the Louisiana Legislature of whatever State funds are needed by the Department, Special School District, and city/parish LEAs to comply fully with all of the requirements established by the *Regulations for the Implementation of the Children with Exceptionalities Act* (with due regard to Federal maintenance of effort, nonsupplanting, commingling, comparability, and excess cost requirements).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§206. Preparation of Reports**

A. The Department shall prepare, publish and submit all reports as required under 34 CFR 300.139 and 300.750-755.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§207. - 219. Reserved**

**§220. Personnel Standards**

A. The Department shall develop, as needed, Louisiana standards for all personnel who provide special education,

administrative, ancillary, pupil appraisal and related services to students with disabilities (birth through age 21) under Part B and Part C of IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§221. - 229. Reserved**

**§230. Review of Enforcement Recommendations**

A. The State Superintendent, after review of the recommendations from the Division of Special Populations, shall submit to the State Board at its next regularly scheduled meeting all recommendations of the Department to withhold State or Federal funds for special education or to take other necessary enforcement action in accordance with the procedures described in 34 CFR 76.401.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§231. - 239. Reserved**

**§240. Impartial Hearing Officers**

A. The Department and each LEA shall maintain a list of qualified and impartial hearing officers. The list shall include a statement of the qualifications of each of those persons and, to the extent possible, include representation from all regions of the state. The Department shall ensure that these hearing officers have successfully completed an inservice training program approved by the Department and that they meet all other criteria established by the Department. Additional inservice training shall be provided by the Department whenever warranted by changes in applicable legal standards or educational practices.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§241. - 250. Reserved**

**§251. Relationship Between Special Education and Competency-Based Education**

A. No provision of the Louisiana competency-based education program shall be construed to interfere with the provision of a FAPE to students with disabilities under these Regulations (R.S.17:24.4(D)). All students with disabilities shall be included in the Louisiana Competency-Based Education Program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§252. Louisiana Educational Assessment Program**

A. Students with disabilities shall be included in the Louisiana Educational Assessment Program with appropriate accommodations and modifications in administration, if necessary, as documented in the students' IEPs.

B. Alternate assessments shall be provided for and administered to only those students with disabilities who meet specific eligibility criteria. A determination of whether any student meets the eligibility criteria shall be made by the student's IEP team.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§253. - 259. Reserved**

**§260. Full Educational Opportunity Goal**

A. The Department shall ensure that all LEAs strive to meet the goal of providing full educational opportunity to all students with disabilities residing in the area served by the LEAs, by the year 2010.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§261. Program Options**

A. The Department shall ensure that each LEA shall take steps to ensure that the students with disabilities residing in the area served by the LEA have available to them the variety of educational programs and services available to nondisabled students, including but not limited to art, music, industrial arts, consumer and homemaking education, and vocational education.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§262. - 269. Reserved**

**§270. Interagency Agreements and Methods for Ensuring Services**

A. The Department is authorized to enter into any agreement developed with another public or private agency, or agencies, which is in accordance with prescribed guidelines.

1. The agreement shall be consistent with Chapter 8 of these Regulations.

2. The agreement shall be essential to the achievement of full compliance with these Regulations.

3. The agreement shall be designed to achieve or accelerate the achievement of the full educational goal for all students with disabilities.

4. The agreement shall be necessary to provide maximum benefits appropriate in service, quality, and cost to meet the full educational opportunity goal in the State.

5. The agreement shall be necessary to promote the successful transition of youths with disabilities into adult services and agencies.

B. The Department through the Governor shall ensure that an interagency agreement or other mechanism is in effect between each noneducational public agency to ensure a FAPE is provided, including the provision of these services during the pendency of disputes. The agreement shall include prescribed components.

1. An identification of or a method for defining the financial responsibility of each agency for providing services shall be provided.

2. Conditions and terms of the reimbursement for which an LEA shall be reimbursed by other agencies shall be explained fully.

3. Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) shall be delineated.

4. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services shall be described in detail.

C. The requirements of this section may be met through only the legal documents that are listed below.

1. state statute or regulation;
2. signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
3. other appropriate written methods as determined by the Governor or designee.

D. The State shall have on file with the Secretary of Education at the U. S. Department of Education information to demonstrate that the requirements of this section have been met.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§271. Nondiscrimination**

A. The Department shall, in the operation of programs funded by the IDEA, comply with all statutes and regulations prohibiting discrimination on the basis of race, color, national origin, sex, disability and age.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§272. - 299. Reserved**

**Chapter 3. Responsibilities and Activities of the Division of Special Populations**

**§301. General Supervision**

A. The Division of Special Populations (Division) is established within the Department to provide general supervision of all education programs for students with disabilities within the State, including all participating private school programs and all education programs administered by other State or local agencies. *General Supervision* is defined as the responsibility to perform functions prescribed by the State Board.

1. The Division shall ensure that all necessary State standards for implementation of the IDEA are established. Any State standard affecting other State agencies and established under the general supervision requirement shall be developed in cooperation with such agencies.

2. The Division shall disseminate such standards and revisions to all public and private agencies bound by them and provide parents and all citizens with information requested regarding implementation of such State standards.

3. The Division shall provide technical assistance to all public and private agencies bound by such standards in their proper implementation.

4. The Division shall monitor according to written procedures the implementation of State standards in each public agency and in each participating private agency. Such monitoring shall include not only child identification, but also programmatic, administrative, and fiscal issues.

5. The Division shall institute a system for complaint management and investigation regarding the implementation of State standards.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§302. Monitoring, Complaint Management and Investigation**

A. The Division is authorized to establish a system of monitoring, complaint management, and investigatory provisions of these Regulations.

B. The Division shall monitor in accordance with the procedures established in the *Compliance Monitoring Procedures Handbook* all public and participating private schools and other education agencies for compliance with these and other applicable federal regulations, state statutes and standards.

C. The Division shall receive and review complaints concerning suspected noncompliance of regulations concerning the education of students with disabilities. It shall conduct this requirement through prescribed procedures.

1. The Division shall investigate allegations of failure to comply with any provision of these regulations and other applicable State or Federal laws, regulations or state standards.

2. The Division shall conduct hearings in accordance with provisions of IDEA and the Louisiana Administrative Code.

3. The Division, in carrying out its investigatory responsibilities, may require LEAs and participating private education agencies to keep certain records and submit to the Division complete and accurate reports at such time, in such form and containing such information as are determined necessary to enable the Division to fulfill its responsibilities for ensuring compliance.

D. The Division shall perform the following responsibilities prescribed below when students with disabilities are placed or referred by an LEA in a private school or facility.

1. The Division shall ensure that a student with a disability who is placed in or referred to a private school or facility by an LEA is provided special education and related services in conformance with an IEP that meets the requirements of §440-446 of these Regulations; and at no cost to the parent, is provided an education that meets the standards that apply to education provided by the LEA; and has all rights of a student with a disability served by the LEA.

2. The Division shall monitor compliance of this subsection through written procedures; disseminate copies of applicable standards to each private school and facility to which a student with a disability has been referred or placed; and provide opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

E. The monitoring of least restrictive environment (LRE) requirements shall be a responsibility of the Division.

1. The Division shall carry out activities to ensure that the LRE requirements as found in §446 of these Regulations are implemented by each LEA. If there is evidence that an LEA has made placements that are inconsistent with §446, the Division shall review the LEA's justification of its actions and assist in planning and implementing any necessary corrective actions.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§303. Approval of Out of District Placement**

A. The Division shall approve or disapprove each request made by an LEA to place or refer a student with a disability outside the geographic boundaries of that LEA unless the placement in another LEA is by mutual agreement of the two agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§305. - 328. Reserved**

### **§329. State Eligibility under the Individuals with Disabilities Education Act**

A. The Division shall prepare for submission to the State Board the State policies and procedures required under IDEA according to applicable Federal requirements for such policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§330. The State Policies and Procedures: Public Notice and Participation**

A. In the preparation of the policies and procedures required by states under IDEA - Part B, the Division shall ensure that prescribed activities are performed.

1. The Division shall receive input from the State Advisory Panel regarding proposed changes in policies and procedures.

2. The Division shall submit proposed revisions of policies and procedures to the State Board of Elementary and Secondary Education for advertisement, and as appropriate, as a Notice of Intent in the Louisiana Register.

3. The Division shall publish in newspapers of general circulation throughout the state, other media, or both, the timetable for final approval, the procedures for submitting written comments, and a list of the dates, times and places of public meetings to be held; the proposed policies and procedures shall be available for comment for at least forty-five calendar days following the date of the notice.

4. The Division shall distribute to interested parties and shall post the policies and procedures on the Department's official Internet Website for public comment for a period of at least forty-five calendar days.

5. The Division shall hold a series of open public meetings in which parents and other interested persons throughout the State are afforded a reasonable opportunity to comment on the proposed policies and procedures.

6. The Division shall review and consider all public comments that might warrant modification of the policies or procedures.

7. The Division shall attach a summary of the comments made during the public meetings or received by the State Board to the proposed final policies or procedures submitted to the State Board.

B. Upon approval, the Division shall distribute to interested parties and shall post the final policies and procedures on the Department's official Internet Website.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§331. - 339. Reserved**

### **§340. Review and Approval of Annual Applications of LEAs**

A. The Division shall establish submission requirements for eligibility for Federal and/or State funds.

B. The Division, in concert with other Divisions within the Department, shall review each LEA's application to ensure that the use of funds is in compliance with all applicable Federal and State requirements. Written notice shall be provided to the agency within forty-five days of receipt of the application as to whether an application is or is not in substantially approvable form (and if not, the reason(s) shall be stated).

C. If the State educational agency determines that an LEA is not eligible under IDEA, the Department shall notify the LEA of that determination and shall provide such LEA with reasonable notice and an opportunity for a hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§341. Provisions for FAPE by the Department**

A. When the Department does not distribute IDEA - Part B funds to an LEA in accordance with §230 and §373.B, the Division shall use those funds to ensure the provision of a free appropriate public education to students with disabilities residing in the area served by the LEA either directly, by contract, or through other arrangements.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§342. - 354. Reserved**

### **§355. Confidentiality of Records**

A. The Division shall comply with all of the requirements of §517 pertaining to confidentiality of personally identifiable information contained in educational records.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§356. Notification of Child Identification Effort**

A. Notice of the child identification effort regularly undertaken by the Department and LEAs shall be published or announced in newspapers or other media with circulation adequate to notify parents throughout the state.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§357. Performance Goals and Indicators**

A. The Division's goals for the performance of students with disabilities shall be consistent, to the maximum extent appropriate, with other goals and standards established by the State for all students.

B. The Division's performance indicators shall assess progress toward achieving the goals that, at a minimum, address the performance of students with disabilities on assessment, dropout rates, and graduation rates.

C. The Division shall report to the public every two years on the progress toward meeting the goals.

D. The Division shall revise its State Improvement Plan as needed to improve its performance.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§358. - 368. Reserved**

**§369. Personnel Standards**

A. Personnel of State and local public and private educational agencies, including local agency providers, who deliver special education services (including instructional, appraisal, related, administrative, and support services) to children and youth with disabilities (birth through twenty-one) shall meet appropriate entry level requirements that are based on the highest requirements in Louisiana applicable to the profession or discipline in which the person is providing special education or related services.

1. *The highest requirements in Louisiana applicable to a specific profession or discipline* means the highest entry-level academic degree needed for any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline. *Profession or discipline* means a specific occupational category that provides special education or related services to students with disabilities under these regulations, that has been established or designated by the State, and that has a required scope of responsibility and degree of supervision.

2. *State-approved or State-recognized certification, licensing, registration, or other comparable requirements* means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession of discipline in the state.

B. The Department shall have on file with the U.S. Secretary of Education policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of these Regulations are appropriately and adequately prepared and trained. These policies and procedures shall be consistent with subsection A. above.

C. To the extent that the Department's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the Department shall provide the steps and the procedures for notifying public agencies and personnel of those steps and the time lines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.

D. The Department shall determine, based on current information that accurately describes each profession or discipline in which personnel are providing special education or related services, whether the applicable standards in all State statutes are consistent with the highest requirements in the state for that profession or discipline. The determination shall be on file in the Department and available to the public.

E. Para-educators, paraprofessionals, and assistants who are appropriately trained and supervised in accordance with

the State law, regulations, or written policy in meeting the requirements may be used to assist in the provision of special education and related services.

F. The Department shall require LEAs and other public and private agencies providing services to children and youth with disabilities to make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services. In geographic areas of the state where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet established standards may be hired as entry level personnel, consistent with State law, but shall attain appropriate certification credentials within three years.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§370. Comprehensive System of Personnel Development**

A. The Department shall develop and implement a comprehensive system of personnel development that meets the requirements of a State Improvement Plan; that is designed to ensure an adequate supply of qualified special education, general education, and related services personnel, and early intervention service providers; and that meets the requirements of §371 and §372 below. The needs assessment for personnel development, under this section, shall be updated (at least) every five years.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§371. Adequate Supply of Qualified Personnel**

A. The Department shall analyze state and local needs for professional development for personnel to serve students with disabilities: the number of personnel providing special education and related services; relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals with temporary certification); and to the extent possible, the training or retraining necessary to eliminate the shortages based, to the maximum extent possible, on existing assessments of personnel needs.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§372. Improvement Strategies**

A. The Department shall describe the strategies the State shall use to address the needs identified. The strategies will include how the State will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with students with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of students with disabilities. The plan will include a description of how the Department will accomplish this goal.

1. The Department shall prepare general and special education personnel with the content knowledge and

collaborative skills needed to meet the needs of students with disabilities, including how the State will work with other States on common certification criteria.

2. The Department shall prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with special needs.

3. The Department shall work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with students with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs.

4. The Department shall develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single state to justify support or development of such a program of preparation.

5. The Department shall work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in credentialing of teachers and other personnel.

6. The Department shall enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of students with disabilities that impedes the learning of students with disabilities and others.

7. The Department shall acquire and disseminate to teachers, administrators, school board members, and related services personnel significant knowledge derived from educational research and other sources, and describe how the State will, if appropriate, adopt promising practices, materials, and technology.

8. The Department shall encourage LEAs to recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are under represented in the fields of regular education, special education, and related services.

9. The Department shall develop a plan that is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training.

10. The Department shall provide for the joint training of parents and special education, related services, and general education personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§373. Administration of Funds**

A. The Division shall use any funds it retains in accordance with 34 CFR 300.602., 300.620-621., and 300.370.

B. The Division, in concert with other Divisions within the Department shall ensure the proper receipt and disbursement of all State and Federal funds administered by the Department specifically for the provision of special education and related services for students with disabilities. The Federal funds shall be distributed in accordance with 34 CFR 300.620-624. and at §106 of these Regulations.

C. Funds shall not be distributed to an LEA in any fiscal year if the Department determines that the LEA has not complied with the State or Federal mandates concerning the education of students with disabilities. The reasons are listed below.

1. The LEA has not submitted an annual application that meets the requirements of §487 of these Regulations. AND/OR

2. The LEA is unable to establish and maintain programs of free appropriate public education. AND/OR

3. The LEA is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain those programs. AND/OR

4. The LEA has one or more students who can best be served by a regional or state program or service delivery system designed to meet the needs of these students.

D. Fiscal review and compliance monitoring shall be conducted in accordance with the *Compliance Monitoring Procedures* and with auditing procedures established by the Department.

E. Determination of eligibility of students shall be accomplished through the verification procedures of the Department regarding the accuracy of the Child Count as detailed in §491. In order to verify the accuracy of each Count submitted, the Division will conduct prescribed activities:

1. The current Child Count from each school system shall be compared with the previous count.

2. The current Child Count incidence figures from each school system shall be compared with incidence figures from the previous State Child Count.

3. An on-site Child Count review shall be conducted in accordance with the *Compliance Monitoring Procedures*. If necessary, each system may be monitored for previous years to verify the accuracy of the Child Count. During fiscal monitoring of each school system, the monitors will randomly select at least ten, but not more than twenty, cells from the Child Count report. For each cell, the school system shall provide the student name, date of birth, evaluation report, IEP, class rolls, and any other information that may be necessary to verify the accuracy of the Count.

4. Administrative on-site reviews shall be conducted in accordance with the *Compliance Monitoring Procedures*. Any multidisciplinary evaluation reviewed and found not to be in compliance with State guidelines, to the extent that it cannot be determined that the student is disabled, shall result in the exclusion of that student from the Child Count.

5. If a student's IEP is monitored during the on-site administrative review process and it is determined that the student has not been receiving all the special education and related services specified on the IEP, the student shall be excluded from Child Count.

6. The LEA shall be afforded an opportunity to present supportive or explanatory documentation to refute the Department and shall be formally accepted. If the evidence cannot justify the Count, the Count shall be disallowed.

F. If the LEA has received funds based on an erroneous Child Count and the Division has documented the extent of the error, the Department shall reduce the grant award if the error occurred in the current budget and all of the funds have not been expended or shall request that the LEA return such

funds. Recovery of funds will follow the procedures in accordance with the *Compliance Monitoring Procedures*.

G. The monitoring of disproportionality shall be responsibility of the Department.

1. The Division shall collect and analyze data to determine whether significant disproportionality based on race exists in the State with respect to a particular impairment and with respect to the placement in particular educational settings of these students.

2. When a significant disproportionality is determined, the Division shall provide for the review and, if necessary, the revision of its policies, procedures and practices or require the affected LEA to revise its policies, procedures and practices to ensure it complies with these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§374. Nonbias of Testing and Evaluation Materials**

A. The Division shall, with the approval of the SBESE, establish procedures as found in §434 to ensure that testing and evaluation materials used for evaluation and placement are free of racial, cultural, and/or sexual bias.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§375. Suspension and Expulsion Rates**

A. The Division shall examine data to determine whether there are significant discrepancies in the rate of long-term suspensions and expulsions of students with disabilities among the LEAs and compared with the rates for nondisabled students within the LEAs.

B. If significant discrepancies are determined, the Division shall review and, if appropriate, revise its policies, procedures, and practices or require the affected LEA to revise its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards to ensure they comply with these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§376. - 399. Reserved**

## **Chapter 4. Responsibilities of Local Educational Agencies**

### **§401. Responsibilities of LEAs**

A. Each LEA shall identify, locate, and evaluate each student suspected to have disabilities (regardless of the severity of the disabilities), birth through twenty-one years of age, residing within its jurisdiction.

B. Each LEA is responsible for providing or causing to be provided a free appropriate public education to each eligible exceptional student, three through twenty-one years of age, who resides within its jurisdiction except those students enrolled by their parents in a private school program.

C. *Free appropriate public education (FAPE)* means special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet SBESE standards, including these

Regulations and all applicable bulletins approved by the SBESE (i.e., *Bulletin 741, Bulletin 746, Bulletin 1508*); that include preschool, elementary school, or secondary school education in the state; and that are provided in conformity with an individualized education program (IEP) that meet the requirements at §440-445.

1. Nothing in these Regulations shall relieve in any way an insurer, similar third party, or other public State or local agency from an otherwise valid obligation to provide or to pay for services to which a student with a disability is entitled as a client or beneficiary of such third party under State or Federal entitlement or laws or under policies or contracts. This regulation does not prohibit the use of insurance payments or private donations for use in the provision of a free appropriate public education as described in §497 of these Regulations.

2. Whatever State, local, Federal, and private sources of support are available may be used to provide a free appropriate public education, including the use of joint agreements between agencies for sharing the costs of those services.

3. Consistent with §440 and §443 of these Regulations, the LEA shall implement a student's IEP with no delay, including any case in which the payment source for providing or paying for special education and related services to the student has yet to be determined.

D. *Jurisdiction* is the right of an LEA to exercise authority over all students residing within its geographic area and over each student placed by the LEA in an educational program within the geographic area of another LEA or in an approved educational program out of the state.

1. For city/parish school systems, the geographic area is the boundary of the school district as defined in the Louisiana Revised Statutes.

2. For SSD, the geographic area is the boundary of the State-operated treatment and care residential facilities.

3. For a State Board Special School, the geographic area is the boundary of the educational facility.

4. For a charter school that is considered an LEA, the geographic area is the boundary of the educational facility.

5. If there is a transfer of jurisdiction from one system to another for the provision of a free appropriate public education initiated by an LEA, this action is indicated by using the word "referral." According to these Regulations, such a referral culminates in the establishment of responsibility for a FAPE for the student by the receiving LEA. All transfers of jurisdiction are considered significant changes in placement.

6. If there is a placement of a student in another LEA or an approved private school, the student so placed remains within the jurisdiction of the placing LEA. The responsibility for a FAPE remains with the placing LEA and, in the case of placement in an approved private school or facility, also with the State Board.

E. Students who are eligible to receive a free appropriate public education are described below.

1. Free appropriate public education shall be available to all students with disabilities reaching the age of three years, regardless of when the birthday occurs during the school year; an IEP shall be in effect by that date. If a student's third birthday occurs during the summer, the student's IEP team shall determine the date when services

under the IEP will begin. At the discretion of the LEA and with parental approval, a FAPE may be provided to an eligible student before age three years if his or her third birthday occurs during the school year.

2. A student with a disability shall remain eligible until reaching age twenty-two unless such student has graduated from high school with a regular high school diploma. A student with a disability whose twenty-second birthday occurs during the course of the regular school year (as defined by the LEA) shall be allowed to remain in school for the remainder of the school year.

3. Free appropriate public education shall be available to students expelled or suspended in accordance with §519.D. of these Regulations.

4. A student with a disability who needs special education and related services shall remain eligible, even though he or she is advancing from grade to grade.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§402. Reserved**

#### **§403. Students with Disabilities in Public Charter Schools**

A. Students with disabilities who attend public charter schools and their parents shall retain all rights under these Regulations.

B. If the public charter school is an LEA, as defined in §904, and receives funding under §487, the charter school shall be responsible for ensuring that the requirements of these Regulations are met.

C. If the public charter school is a school of an LEA that receives funding under §487 and includes other public schools, the LEA shall be responsible for ensuring that the requirements of these Regulations are met. The LEA shall ensure it will serve students with disabilities attending these schools in the same manner as it serves students with disabilities in its other schools and shall provide funds under the Regulations to these schools in the same manner as it provides those funds to its other schools.

D. If the public charter school is not an LEA receiving funding under §487 or is not a school that is part of an LEA receiving funding under §487, the Department shall be responsible for ensuring that the requirements of these Regulations are met by assigning initial responsibility for ensuring the requirements of these Regulations are met to another entity; however, the Department shall maintain the ultimate responsibility for ensuring compliance with these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§404. Reserved**

#### **§405. Special Education and Early Intervention Services for Infants and Toddlers with Disabilities Less Than Three Years of Age**

A. LEAs may provide special education and early intervention services to infants and toddlers with disabilities who are from birth to three years of age. The ratios established in Chapter 10 shall be used for those programs serving infants and toddlers with disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§406. - 410. Reserved**

#### **§411. Child Search (Child Find) Activities**

A. Each LEA, in accordance with the requirements of this subpart, shall document that the effort of ongoing identification activities is conducted to identify and locate each student who is under its jurisdiction, suspected of being exceptional, in need of special education and related services, and meets the criteria listed below:

1. is enrolled in an educational program operated by an LEA;

2. is enrolled in a private school program;

3. is enrolled in a public or private preschool or day care program; or

4. is not enrolled in a school, except for students who have graduated with a regular high school.

B. On-going identification activities apply to highly mobile students with disabilities (such as migrant and homeless students) and to students who are suspected of having disabilities and in need of special education, even though they are advancing from grade to grade.

C. If, in the process of implementing these Regulations, any LEA locates a student who is suspected of being in need of treatment, care, or habilitation and rehabilitation, the LEA should request that the agency designated by the State to provide such assistance explore this suspected need with the parents.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§412. Responsibilities of the Child-Search Coordinator**

A. Each LEA shall designate an individual as a Child-Search Coordinator who shall be held accountable for certain responsibilities prescribed by the SBESE, as listed below.

1. The Child-Search Coordinator shall ensure that the progress of referrals and evaluation activities required by §411, §413-414, and §430-436 for each student suspected of being exceptional is tracked and that the collection and use of data to meet these requirements are subject to the confidentiality requirements in §517 of these Regulations.

2. The Child-Search Coordinator shall ensure that the parent of each student initially identified as suspected of being disabled and in need of special educational services is provided a copy of all safeguards as defined in §504 of these Regulations. The parents shall also be afforded an opportunity for an explanation of these rights.

3. The Child-Search Coordinator shall ensure the activities assigned under IDEA - Part C are performed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§413. Students in an Educational Program Operated by the LEA**

A. An LEA shall identify a student as suspected of being disabled by the School Building Level Committee (SBLC). This committee shall coordinate and document the results, as appropriate, of educational screening, sensory screening,

health screening, speech and language screening, or motor screening, and the results of the intervention efforts as defined in the *Pupil Appraisal Handbook*.

B. The SBLC, with the parent as an invited participant, shall review all screening results to reach a decision whether to refer the student to pupil appraisal for an individual evaluation. Parents shall be provided a report or summary by the SBLC on the status of the referral intervention at least once each grading period until a decision has been reached. If the parents disagree with the SBLC decision, the parents shall be provided a copy of their rights, which include a right to a due process hearing.

C. The SBLC's referral to pupil appraisal for an evaluation, which determines eligibility for services under IDEA, shall be made through the principal or designee for pupil appraisal services and shall include documentation of all screening activities. An immediate referral may be made to pupil appraisal services for an individual evaluation of any student suspected of a severe or low-incidence impairment or for whom there is substantial documentation that the student is likely to injure himself or others. Screening activities - such as educational, sensory, health, speech and language screening, and motor screening - should be completed as part of the evaluation for these students.

D. Within ten business days after receipt of the referral by the pupil appraisal office for an individual evaluation, pre-referral activities as listed in the *Pupil Appraisal Handbook* under "Initial Responsibilities of the Evaluation Coordinator" shall be conducted.

E. For an initial evaluation and the re-evaluation, the LEA shall obtain informed parental consent according to §505 of these Regulations. Receipt of parental consent for an individual evaluation by pupil appraisal begins the sixty business-day time line.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§414. Child Find for Students in Private School Programs**

A. Students enrolled in private school programs shall be identified, according to the procedures NOTE: d in §413 A. and §462.A., of these Regulations and shall be referred to the school system's Child Search Coordinator.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§415. Students Out of School and/or Former Special Education Students Residing in the State**

A. Students out of school, including students ages birth through five years who are suspected of having a disability and former special education students who have left a public school without completing their public education by obtaining a State diploma, shall be referred to the school system's Child Search Coordinator, who shall locate and offer enrollment in the appropriate public school program and refer them for an individual evaluation, if needed. Students may be enrolled with the development of an interim IEP based on their individual need following the enrollment process in §416 below. If the Louisiana evaluation is current,

students may be enrolled with the development of a review IEP within five school days.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§416. Students with a Documented Severe or Low-Incidence Impairment; Students Who May Be Transferring from Out of State; or Infants and Toddlers with Disabilities**

A. Students who have a documented severe or low-incidence impairment documented by a qualified professional shall be initially enrolled in a special education program concurrent with the conduct of the evaluation according to the requirements of *Bulletin 1508*. This enrollment process, from the initial entry into the LEA to placement, shall occur within ten school days and shall include the steps, as listed below.

1. A review of all available evaluation information by pupil appraisal personnel

2. Approval by the school system's special education administrator

3. The development of an interim IEP in accordance with §440-446

4. Informed parental consent for the interim placement

5. The duration of the completion of the evaluation and the interim placement shall not exceed the evaluation time lines specified in §436, with the initial IEP/Placement document developed within thirty calendar days from the date of dissemination of the written evaluation report to the school system's special education administrator.

B. Students who have been receiving special education services in another state may be initially enrolled in a special education program, on an interim IEP, concurrent with the conduct of the evaluation according to the requirements of *Bulletin 1508*. The enrollment process shall be the same as in §416.A.

1. If no mutually agreeable placement can be determined, the LEA is not obligated to adopt the former IEP or to provide the former services. Pending the resolution of the dispute, placement should be in regular education in accordance with the "stay-put" provisions at §514 of these Regulations.

C. Any infant or toddler who moves to Louisiana and who has an Individualized Family Service Plan (IFSP) shall be referred to the LEA that is responsible for assisting the family in identifying and accessing Family Service Coordination. During the conduct of the evaluation, which shall include a review of the existing evaluation, an interim IFSP may be developed to prevent a disruption in services. The enrollment process shall occur within ten school days from receipt of referral.

1. For toddlers transitioning from ChildNet/Part C programs to preschool special education programs, the LEA shall follow federally mandated time lines and procedures to ensure a smooth and effective transition between programs. The LEA is required to participate in transition planning conferences at least ninety days, and at the discretion of the parties, up to six months prior to the age the student is eligible for preschool special education services. The purpose of this conference is to discuss services the student

may receive after his or her third birthday. The LEA shall have the multidisciplinary evaluation completed and the IEP developed for all eligible students for implementation by the student's third birthday to ensure the continuity of services.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§417. Students with Disabilities Transferring from one LEA to another LEA Within Louisiana**

A. Students who have been receiving special education in one LEA in Louisiana and who transfer to another LEA within Louisiana shall be enrolled in the appropriate special education program in the new LEA with the current IEP or the development of a review IEP within five school days of the transfer.

B. Infants and toddlers with disabilities who have an Individualized Family Service Plan (IFSP) and who receive services from an LEA and transfer to another LEA shall receive appropriate services from the LEA in which the children reside or shall be referred to a Family Service Coordinator to receive appropriate services.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§418. Evaluation and Re-evaluation**

A. A full and individual evaluation shall be conducted for each student being considered for special education and related services under these Regulations to determine whether the student is a "student with a disability" as defined in these Regulations and to determine the educational needs of the student. The evaluation shall be conducted following the procedures in the *Pupil Appraisal Handbook*; and, if it is determined the student is a "student with a disability," the results of the evaluation shall be used by the student's IEP team.

B. A re-evaluation of each student with a disability shall be conducted following the procedures in *Bulletin 1508, the Pupil Appraisal Handbook*; and the results of any re-evaluations shall be addressed by the student's IEP team in reviewing and, as appropriate, revising the student's IEP.

C. Informed parental consent shall be obtained before conducting an evaluation or a re-evaluation according to prior notice and consent at §504 and §505 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§419. - 429. Reserved**

#### **§430. Pupil Appraisal Personnel**

A. LEAs shall regularly employ pupil appraisal personnel to conduct individual evaluations.

B. LEAs may, when necessary, use qualified examiners who are available from the Department of Health and Hospitals, the Department of Public Safety and Corrections, the State Board Special Schools, or other public agencies.

C. LEAs may, when necessary, contract with individuals or organizations to provide specialized assessments needed to provide a comprehensive individual evaluation of an identified student.

D. LEAs may, when necessary, use a combination of the approaches listed above.

E. Regardless of the approach used for conducting individual evaluations, LEAs retain full responsibility. Any failure by an employee or contractor to meet any requirements of this section shall constitute a failure by the LEA to comply with these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§431. Required Individual Evaluation**

A. An initial evaluation shall be conducted whenever the student is not enrolled in special education and at least one of the following conditions exists.

1. Informed parental consent for the initial evaluation has been requested and received by the LEA. If a request was made for an evaluation during the time period in which the student is subject to disciplinary measures, the evaluation shall be conducted in an expedited manner as NOTE: d in §519.K.4.

2. A direct request for an individual evaluation of an enrolled student from sources other than the SBLC shall be routed through the SBLC for the collection of the required screening information and the conduct of the pre-referral procedures. If the LEA suspects that the student is exceptional, an evaluation shall be conducted. If the LEA disagrees with the referral source and does not suspect that the student is exceptional, it may refuse to conduct an evaluation. When the LEA refuses to initiate an evaluation upon parental request, the parent shall be provided a copy of all procedural safeguards, which include the right to a due process hearing.

3. A final written decision has been issued by a court of competent jurisdiction requiring that an individual evaluation be conducted.

4. A written request for an individual evaluation has been issued by a hearing officer or the State Level Review Panel.

B. An individual re-evaluation shall be conducted by the IEP Team and the evaluation coordinator if conditions warrant, but at least every three years whenever the student is enrolled in special education and at least one of the following occurs:

1. it is requested in writing by the student's teacher or by the local school system's special education supervisor/director;

2. it is requested in writing by the student's parent(s);

3. a significant change in educational placement of a student is proposed by the LEA, the parent, or both;

4. a final written decision has been issued by a court of competent jurisdiction requiring that an individual re-evaluation be conducted; or

5. a student is suspected of no longer having a disability and no longer in need of services.

C. An LEA is not required to conduct a re-evaluation of students with disabilities who transfer with a current evaluation into its jurisdiction from another jurisdiction in Louisiana.

D. In the event a parent has privately obtained an independent educational evaluation, the LEA shall consider the individual evaluation in accordance with §503. of these Regulations.

E. Transitional needs shall be addressed as part of all evaluations occurring after the 14th birthday of a student with disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§432. Reserved**

#### **§433. Evaluation Coordination**

A. Upon identification of a student suspected of being exceptional, a qualified pupil appraisal staff member shall be designated as evaluation coordinator.

B. The evaluation coordinator shall ensure that the evaluation is conducted in accordance with all requirements in the *Pupil Appraisal Handbook* including the following: initial responsibilities following receipt of referral, selection of participating disciplines, procedural responsibilities, and mandated time lines.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§434. Evaluation Process and Procedures**

A. Individual evaluations shall be conducted according to the "Procedures for Evaluation" for each exceptionality as listed in the *Pupil Appraisal Handbook*.

B. The determination of a disability shall be based upon the "Criteria for Eligibility" established in the *Pupil Appraisal Handbook* before the initial delivery of special education and related services.

C. All evaluations shall be conducted according to the prescribed standards, as listed below.

1. Tests and other evaluation materials used to assess a student under these Regulations shall be selected and administered so as not to be discriminatory on a racial or cultural basis and shall be provided and administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so.

2. Materials and procedures used to assess a student with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student's English language skills.

3. A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the student, including information provided by the parent and information related to enabling the student to be involved in and progress in the general curriculum (or for a preschool student, to participate in appropriate activities). Such tools and strategies may assist in determining whether the student is a student with a disability and what content should be included in the student's IEP.

4. Any standardized tests that are given to a student shall have been validated for the specific purpose for which they are used and shall be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) shall be included in the evaluation report.

5. Tests and other evaluation materials shall include those tailored to assess specific areas of educational need, not merely those that are designed to provide a single general intelligence quotient. In no event shall IQ scores be reported or recorded in any individual student's evaluation report or cumulative folder.

6. Tests shall be selected and administered so as best to ensure that - if a test is administered to a student with impaired sensory, manual, or speaking skills - the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

7. No single procedure shall be used as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student.

8. The student shall be assessed in all areas related to the suspected exceptionality, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

9. In evaluating each student with a disability according to established procedures, the evaluation shall be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the exceptionality category in which the student has been classified.

10. Technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors, shall be selected.

11. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student shall be selected.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§435. Determination of Eligibility and Placement**

A. In interpreting evaluation data for the purpose of determining whether a student is a student with a disability and what are the educational needs of the student, the multidisciplinary team shall comply with prescribed procedures.

1. The team shall draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.

2. The team shall ensure that information obtained from all of these sources has been documented and carefully considered.

B. Upon completing the administration of tests and other evaluation materials, the multidisciplinary team and the parent of the student shall determine whether the student is a student with a disability, as defined in these Regulations; and the LEA shall provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

C. A student may not be determined to be eligible under these Regulations, if the determinant factor for that eligibility determination is a lack of instruction in reading or

mathematics or limited English proficiency; and the student does not otherwise meet the eligibility criteria.

D. If a determination has been made that a student has a disability and needs special education and related services, an IEP shall be developed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§436. Time Lines**

A. There shall be no more than ten business days from the date of receipt of the referral for an individual evaluation of an identified student by pupil appraisal to the date when the request is made for parental approval to conduct the individual evaluation.

B. Each individual evaluation shall be completed and the evaluation report disseminated within sixty business days of receipt of parental approval.

C. Extensions of evaluation time lines shall be justified as defined in the *Pupil Appraisal Handbook*.

D. The required triennial re-evaluation shall be completed on or before the third year anniversary date and shall include the activities noted in the *Pupil Appraisal Handbook*.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§437. Determination of Needed Data for Re-evaluations**

A. In conducting re-evaluations under these Regulations, the IEP team and the evaluation coordinator shall comply with prescribed procedures as described below.

1. The team and the coordinator shall review existing evaluation data on the student, including evaluations and information provided by the parents of the student; current classroom-based assessments and observations; and observations by teachers and related services providers (the team may conduct its review without a meeting).

2. On the basis of that review and on the input from the student's parents, the team and the coordinator shall identify what additional data, if any, are needed to determine:

- a. whether the student continues to have such a disability;
- b. the present levels of performance and educational needs of the student;
- c. whether the student continues to need special education and related services; and
- d. whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general curriculum.

3. The team and the coordinator shall determine what tests and other evaluation materials shall be administered, as needed, to produce the data identified in 2. above.

4. The LEA shall notify the student's parents, if the determination under 2. above is that no additional data are needed to determine whether the student continues to be a student with a disability of that determination and the reasons for it; and of the right of the parents to request an assessment to determine whether, for purposes of services

under these Regulations, their child continues to be a student with a disability.

5. The LEA is not required to conduct the assessment described in 4. above unless requested to do so by the student's parents.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§438. Evaluating Students with Specific Learning Disabilities**

A. The procedures for evaluating a student suspected of having a specific learning disability including team members, criteria for eligibility, observation requirements, and the written report shall be conducted according to the *Pupil Appraisal Handbook*.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§439. Reserved**

#### **§440. IEP/Placement Responsibilities**

A. General Responsibilities for each LEA that develops and implements an IEP for each student with a disability served by that agency are described below.

1. Each LEA shall be responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a student with a disability in accordance with all the requirements of this subpart and *Louisiana's IEP Handbook*.

2. LEAs shall include on each IEP all special education and related services necessary to accomplish comparability of educational opportunity between students with disabilities and students without disabilities.

3. The IEP shall be developed using a format approved by the Department.

4. The LEA shall provide a copy of each completed IEP/Placement document signed by the officially designated representative of the LEA at no cost to the student's parent(s).

5. At the beginning of each school year, each LEA shall have in effect an IEP for every student with a disability who is receiving special education and related services in that LEA.

6. When the student's IEP is in effect, it shall be accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation.

7. Each teacher and service provider shall be informed of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that shall be provided for the student in accordance with the IEP.

8. An IEP shall be developed and implemented for eligible students by their third birthday that is consistent with a FAPE.

B. Each LEA shall comply with the prescribed time lines as described below.

1. Each initial IEP/Placement document shall be completed within thirty calendar days from the date of dissemination of the written evaluation report to the special education director/supervisor.

2. Implementation of educational placement shall begin as soon as possible, but no later than ten calendar days following receipt by the LEA of formal parental approval.

C. IEPs shall be reviewed and revised following prescribed procedures described below.

1. Each LEA shall ensure each IEP/Placement review meeting is conducted at least annually.

2. Each LEA shall ensure that the team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

3. Each LEA shall ensure the team revises the IEP, as appropriate, to address concerns in any areas NOTE: d in §444.

4. More than one IEP/Placement review meeting may be conducted at the discretion of the school system. If a parent makes a written request for an IEP/Placement review meeting, the school system shall respond in ten calendar days in writing to that request.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§441. IEP Team Participants**

A. Each LEA shall ensure that the IEP team for each student with a disability includes all of the required participants, as listed below:

1. one or both of the parents of the student;

2. at least one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); the teacher shall to the extent appropriate, participate in the development, review and revision of the student's IEP, including:

a. the determination of appropriate positive behavioral interventions and strategies for the student;

b. the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student; and

c. when a regular education teacher calls for a reconvening of the individualized education program team for any student with a disability assigned to his or her classroom on a full time basis in which the IEP requires an adjustment in the curriculum, instruction or services to be provided by the regular education teacher, this teacher shall participate on the IEP team and shall participate continuously thereafter for as long as the student is assigned to his or her classroom.

3. At least one special education teacher, or when appropriate, at least one special education provider of the student. For review IEP meetings, this participant should be a special education teacher of the student or a service provider of the student.

4. An officially designated representative of the LEA who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities; who is knowledgeable about the general curriculum; and who is knowledgeable about the availability of resources of the LEA. The LEA may designate another LEA member of the IEP team to serve also as the agency representative, if the above criteria are satisfied.

5. An individual who can interpret the instructional implications of evaluation results. This person may be a member of the team as described in 2, 3, 4, and 6. For the Re-evaluation/IEP meeting, the evaluation coordinator who conducted the activities for the re-evaluation of the student shall be present.

6. At the discretion of the parent or LEA, other individuals who have knowledge or special expertise regarding the student, including related service personnel as appropriate. The determination of the knowledge or special expertise of any individual shall be made by the parent or LEA who invited the individual to be a member of the IEP team.

7. If appropriate, the student.

a. The LEA shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of the student's transition service needs under §444.A.15.a., the needed transition services for the student under §444.A.15.b., or both.

b. If the student does not attend the IEP meeting involving transition planning, the LEA shall take other steps to ensure that the student's preferences and interests are considered.

c. Beginning at least one year before a student reaches the age of majority under State law, the student's IEP shall include a statement that the student has been informed of his or her rights under these Regulations, if any, that will transfer to the student on his or her reaching the age of majority, consistent with §518.

8. For LEAs planning transition services, a representative of any other agency that is likely to be responsible for providing or paying for transition services shall be invited. If an agency invited to send a representative to a meeting does not do so, the LEA shall take other steps to obtain the participation of the other agency in the planning of any transition services.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§442. Parent Participation**

A. LEAs shall take steps to ensure that one or both of the parents of the student with a disability are present at each IEP/Placement meeting or are afforded an opportunity to participate. LEAs shall contact the parent(s) in writing regarding each meeting early enough to ensure that they will have an opportunity to attend and schedule the meeting at a mutually agreed upon time and place.

1. This notice shall indicate the purpose, time, and location of the meeting; it shall also indicate who shall be in attendance.

2. This notice shall inform the parents of the participation of other individuals on the IEP team who have knowledge or special expertise about the student.

B. For a student with a disability beginning at age fourteen, or younger, if appropriate, the notice shall indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student and indicate that the LEA will invite the student.

C. For a student with a disability beginning at age sixteen, or younger, if appropriate, the notice shall indicate that a purpose of the meeting is the consideration of needed transition services for the student and indicate that the LEA will invite the student; the notice shall also identify any other agency that will be invited to send a representative.

D. If neither parent can attend a scheduled IEP/Placement meeting for which arrangements have been made in accordance with these Regulations, other methods shall be used by the LEA to ensure parental participation, including making individual or conference telephone calls.

E. The meeting may be conducted without a parent in attendance providing that certain procedures are followed, as described below:

1. another method for parental participation is used and documented; or

2. the LEA has documented attempts to arrange a mutually agreed on time and place, such as:

a. detailed records of telephone calls made or attempted and the results of those calls;

b. copies of correspondence sent to the parents and any responses received; and/or

c. detailed records of visits to the parents' home or place of employment and the results of those visits.

F. The LEA shall take whatever action is necessary to ensure that the parents understand the proceedings at a meeting, including arranging for an interpreter for parent(s) who are deaf or whose native language is other than English.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§443. Parental Approval of IEP/Placement**

A. When securing parental approval of the initial IEP/Placement document, prescribed procedures shall be followed, as described below.

1. Each LEA shall obtain informed parental consent prior to providing initial special education and related services. The IEP shall be considered in effect after the parent(s) provides formal written approval by signing the IEP/Placement document.

2. If the parent(s) withholds written approval of the educational placement, the LEA special education supervisor shall within ten business days either:

a. recommend a modified educational placement to which the parent(s) will provide approval; or

b. indicate to the parent(s) in writing that no placement modification will be made. In this case the student shall be maintained in the present placement or be offered placement in the LEA with approval of parent(s) until the matter is resolved.

3. The parent(s) may request a hearing in accordance with §507 of these Regulations in order to resolve any disagreement over the proposed IEP/Placement of the student.

4. If the LEA wishes to override the parental decision to withhold a formal written approval for the initial placement of the student in special education, the LEA may appeal to the appropriate State court within the time prescribed by State law.

B. In conducting a review of the IEP/Placement, the IEP team may make decisions without the involvement of the parents, when the LEA is unable to obtain the parents

participation in the decision. In this case, the public agency shall have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of §442.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§444. IEP Content and Format**

A. Each completed IEP shall contain a general overview of the student's instructional needs. Required components are listed below:

1. the student's strengths and support needs;

2. the concerns of the parents for enhancing the education of their child;

3. the results of the initial evaluation and/or most recent re-evaluation of the student;

4. as appropriate, the results of the student's performance on any general state or district wide assessment program;

5. the student's present levels of educational performance, including:

a. how the student's disability affects the student's involvement and progress in the general curriculum; and

b. for preschool students, as appropriate, how the disability affects the student's participation in appropriate activities.

B. The IEP team shall also consider the following special factors and include, if needed, a statement addressing these issues on the IEP:

1. in the case of a student whose behaviors impede his or her learning or that of others, if appropriate, strategies including positive behavioral intervention strategies and supports to address that behavior;

2. in the case of a student with limited English proficiency, the language needs of the student as those needs relate to the student's IEP;

3. in the case of a student who is blind or visually impaired, instruction in Braille and the use of Braille unless the IEP team determines - after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille) - that instruction in Braille or the use of Braille is not appropriate for the student;

4. the communication needs of the student; and in the case of a student who is deaf or hard-of-hearing, not only the student's language and communication needs, but also the opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; the LEA shall ensure that hearing aids worn in school by students with hearing impairments, including deafness, are functioning properly;

5. whether the student requires assistive technology devices and services based on assessment/evaluation results; if it is determined that the student requires assistive technology devices or assistive technology services, or both, they shall be made available to the student with a disability as a part of the student's special education services, as a related service, or as supplementary aids and services; on a

case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive a FAPE; and

6. in the case of a student who has health problems, needs to be met during the school day: such medical conditions as asthma; diabetes; seizures; or other diseases/disorders that may require lifting and positioning; diapering; assistance with meals, special diets; or other health needs;

C. if in considering the special factors described in B.1-6. above, the IEP team determines that a student needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the student to receive a FAPE, the IEP team shall include a statement to that effect in the student's IEP.

D. The IEP shall contain a statement of measurable annual goals, including benchmarks or short-term objectives, as listed below.

1. The statement shall relate to meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general curriculum.

2. The statement shall relate to meeting each of the student's other educational needs that result from the student's disability.

3. The statement shall relate to appropriate activities for the preschool-aged student.

E. The IEP shall contain a statement of the special education and related services and supplementary aids and services to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided for the student to achieve the following as listed below:

1. to advance appropriately toward attaining the annual goals;

2. to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and

3. to be educated and participate with other students with disabilities and students without disabilities in the activities.

F. The IEP shall contain an explanation of the extent, if any, to which the student will not participate with students without disabilities in the regular class and extracurricular and other nonacademic activities.

1. a statement of any individual modifications and accommodations in the administration of the State or district-wide assessments of student achievement that are needed in order for the student to participate in the assessment; and

2. if the IEP team determines that the student will not participate in a particular State or district wide assessment of student achievement (or part of an assessment), a statement of

i. why that assessment is not appropriate for the student, and

ii. how the student will be assessed.

G. The IEP shall contain the projected date for the beginning of the services and modifications and the

anticipated frequency, location, and duration of those services and modifications.

H. The IEP shall contain a statement of how the student's progress toward the annual goals will be measured.

I. The IEP shall contain the screening date(s) and criterion/criteria by which the student will be screened to determine extended school year program (ESYP) eligibility.

J. The IEP shall contain the type of physical education program to be provided for the student.

K. The IEP shall contain a statement of how the student's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled student's progress of

1. their child's progress toward the annual goals; and

2. the extent to which the progress is sufficient to enable the student to achieve goals by the end of the year.

L. For transition services, the IEP shall include the prescribed statements listed below.

1. For each student with a disability beginning at age fourteen and younger if appropriate, and updated annually, the IEP shall contain a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program).

2. For each student with a disability beginning at age sixteen (or younger, if determined appropriate by the IEP team), the IEP shall contain a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§445. IEP Accountability**

A. The LEA shall provide special education and related services to a student with a disability in accordance with the student's IEP.

B. The LEA shall make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed in the IEP.

C. Part B of IDEA does not require that any agency, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals, and objectives or benchmarks. However, IDEA does not prohibit a State or public agency from establishing its own accountability systems regarding teacher, school or agency performance.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§446. Least Restrictive Environment**

A. For each educational placement of a student with a disability, including a preschool student with a disability, the LEA shall ensure that prescribed placement procedures are implemented.

1. Placement shall be determined at least annually by a group of persons (including the parents and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options).

2. Placement shall be based on an IEP/Placement Document.

3. The special education program in which each educational placement is made, including a private school or facility, shall meet the standards of the State Board.

4. A continuum of alternative educational placements shall be available to the extent necessary to implement the IEP/Placement document for each student with disabilities. Instruction may take place in other settings such as the community and job sites. At a minimum, this continuum shall include (in order of restrictiveness as it applies to each student) the following:

- a. instruction in regular classes (Provisions shall be made for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement.);
- b. instruction in special classes;
- c. special schools;
- d. home instruction;
- e. instruction in hospitals and institutions.

5. A student with a disability shall not be removed from education in age appropriate regular classrooms solely because of needed modifications in the general curriculum.

6. Special class, separate schooling, or other removal of students with disabilities from the regular educational environment shall occur only when the nature or intensity of the individual's needs is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Reasons for selecting a more restrictive environment may not be based solely on category of disability, severity of disability, availability of educational or related services, administrative convenience or special equipment.

7. To the maximum extent appropriate, any alternative placement selected for the student outside the general educational setting shall provide opportunities for the student to interact with nondisabled peers.

8. Students with disabilities shall have available to them the variety of educational programs and activities available to nondisabled students in the area served by the LEA, including but not limited to art, music, industrial arts, consumer and homemaking education, and vocational education.

9. Nonacademic and extracurricular services and activities shall be provided in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities; and may include counseling services, recreational activities, athletics, transportation, health services, special interest groups or clubs sponsored by the LEA, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the LEA and assistance in making outside employment available.

10. Physical education services, in accordance with the IEP/Placement document, shall be provided to students with disabilities in the regular physical education program or in the adapted physical education program as specified in §904.

11. The Least Restrictive Environment rules shall not be waived by any party, including the parent(s).

B. Each completed IEP shall contain prescribed placement components.

1. The IEP shall identify the specific educational environment in which the student is to be placed. This placement shall be the least restrictive educational environment, whether in existence or not, which can meet the student's individual educational needs, including necessary resources.

2. In making placement decisions, IEP committees shall first consider the regular/general education class with the use of supplemental aids and services.

a. If a regular/general education class is not chosen as the least restrictive environment, IEP teams shall examine each alternative placement (in order of restrictiveness) to determine appropriate placement.

b. If the placement decision is not instruction in regular class/setting, the IEP team shall provide justification for each setting rejected and the reasons or educational benefit for choosing the appropriate placement.

3. The four assurances listed below shall be provided when site determination decisions are made by the LEA.

a. The placement shall be in the school which the student would attend if not disabled unless the IEP of the student required some other arrangement. If the placement is not in the school the student would normally attend, the placement shall be as close as possible to the student's home.

b. The school and the class shall be chronologically age appropriate for the student. No student shall be placed in a setting that violates the maximal pupil/teacher ratio or the three-year chronological age span.

c. The school/setting selected shall be accessible to the student for all school activities.

d. If the placement is other than regular/general education, the classroom shall be comparable to and integrated with regular classes.

4. Any deviation from the four assurances above shall be documented and justified on the IEP. In selecting an alternative placement, the LEA shall consider any potential harmful effect on the student with a disability or on the quality of services needed.

C. For the preschool-aged students with disabilities, three through five years of age, various alternative placements shall be available to the extent necessary to implement the IEP and for the student to receive these services in his or her LRE. Decisions regarding appropriate services shall be based on the individual needs of each student. The LEA shall make available center/school placements comparable in time to kindergarten age students if the student with a disability is kindergarten age. The frequency of services shall be flexible and dependent upon the needs of the individual student and family. The following placements, which do not reflect a continuum of least restrictive environment for the preschool aged student, should be considered;

1. instruction in the home;
2. instruction in a center/school;
  - a. regular preschool placement;
  - b. self-contained placement;
  - c. special school;
3. instruction in a hospital;
4. speech/language services only; or
5. adapted physical education only.

D. For infants and toddlers with special needs, birth through two years of age, who are receiving services through

ChildNet, the Individualized Family Service Plan (IFSP) shall reflect early intervention services in the natural environment to the maximum extent appropriate. Early intervention services may be provided in a setting other than the natural environment only if early intervention cannot be achieved satisfactorily for the child in a natural environment. For these infants and toddlers with special needs, service delivery settings that are appropriate for the preschool-aged student shall be used.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§447. Extended School Year Services**

A. *Extended school year programming (ESYP)* is the provision of special education and related services to students with disabilities in accordance with an IEP beyond the normal school year of the LEA.

B. LEAs shall provide educational and related services beyond the normal school year to students with disabilities when these students are determined to be in need of or eligible for such services for the provision of a FAPE. Student eligibility, which may not limit ESYP services to particular categories of disabilities, shall be determined in accordance with extended school year program eligibility criteria requirements in *Bulletin 1870: Determining Eligibility for Extended School Year Programs*.

C. The student's extended school year program is to be designed according to the standards in *Bulletin 1870/1871: Program Standards for Extended School Year Services*. The ESYP IEP team - in determining the duration, amount and type of extended school year services - shall not be bound or limited by any predetermined program or length. The extended school year services shall be determined by the IEP team on an individual basis for each student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§448. Change to Less Restrictive Environment**

A. During each IEP review or revision, the educational placement of the exceptional student shall be changed to a less restrictive environment, unless the LEA documents that the educational needs indicated on the updated IEP/Placement document indicate that a change in educational placement would cause a reduction in quality of services needed or have a potentially harmful effect on the student.

B. *Significant change in educational placement* is defined as moving a student from one alternative setting to another that is more restrictive or which transfers jurisdiction; such a change requires a re-evaluation. A re-evaluation is not required to precede a placement change to a less restrictive environment occurring as a result of an IEP/Placement document.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§449. IEP Declassification Placement**

A. When a re-evaluation indicates that a student with a disability currently enrolled in special education no longer meets all the criteria in the *Pupil Appraisal Handbook* for

classification as a student with a disability, the LEA shall either:

1. place the student in regular education if the student is still eligible for regular education and refer the student to the School Building Level Committee to determine eligibility for appropriate accommodations or modifications under Section 504 of the Rehabilitation Act of 1973, as amended; or

2. recommend that the student be placed in an appropriate alternative placement for up to a one-year period of special education programming; the declassification program shall be provided in accordance with an IEP/Placement document and shall include a regular education membership using resource or itinerant services, if needed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§450. IEP Interim Placement**

Refer to §416.

#### **§451. Requirements for Placed or Referred Students with Disabilities**

A. Before an LEA places, refers, or provides services to a student with a disability in another LEA, the LEA shall initiate and conduct a meeting to develop an IEP for the student in accordance with these Regulations.

1. In preparation for this IEP/Placement meeting, the LEA shall discuss with an authorized representative of the receiving LEA the following:

- a. the student's eligibility for admission;
- b. the education records necessary to determine eligibility for admission;
- c. the availability of services; and
- d. the likelihood of the student's being accepted by the system if the IEP/Placement meeting resulted in such a recommendation.

2. The LEA shall ensure that a representative of the other LEA attends the IEP/Placement meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the other LEA, including individual or conference telephone calls.

3. After conducting the IEP/Placement meeting, the LEA shall apply to the Division, in accordance with §451.B., for approval of placement out of the geographic attendance area of the LEA or for a transfer of jurisdiction. This procedure shall not be required when placement is in another LEA by mutual agreement.

4. For placement consideration which results in a referral to a State Board Special School, the proposed educational placement and supporting information shall be forwarded to the Division for its review and approval in accordance with §271 and a copy shall be forwarded to the appropriate State Board Special School for its review and agreement.

B. The Division, in determining whether to approve a request for referral or placement in an approved public or private day or residential school program located outside the geographic area of the LEA but within the State, will consider the following:

1. the short-term and long-term educational needs of the student;

2. the alternative educational placements available within the LEA or through a mutual agreement;

3. the potential for creating a new alternative educational placement within the LEA or by mutual agreement which would be less restrictive than the proposed placement; and

4. the proximity of the proposed placement to the residence of the student (e.g., greater metropolitan area).

C. The Division, in determining whether to approve a request for referral or for placement in an approved public or private day or residential school program located outside the State, in addition to considerations listed above, shall also consider the ability of the proposed educational program and facility to meet the minimum standards for special schools of Louisiana.

1. The private school shall be one approved by the SEA of the state in which it is located.

2. An on-site visit by Division personnel shall be conducted prior to placement.

3. The state in which the facility is located shall have an approved state plan for implementation of IDEA - Part B.

4. The public or private school shall provide necessary data to establish comparability of educational programs to similar programs operated in Louisiana.

D. If, during the review or revision of an IEP of a student, a change in placement in or a referral back to the placing or referring LEA is considered, a representative of both LEAs, in addition to other meeting participants required by §441, shall be involved in any decision about the student's IEP/Placement.

E. City/parish LEAs shall enroll students with disabilities currently enrolled in SSD or State Board Special Schools for provision of special education and related services in the least restrictive environment when the student is placed by SSD or State Board Special Schools. Such a student with a disability shall remain in the jurisdiction of SSD or the State Board Special Schools, which shall reimburse the city/parish LEA for any costs for providing such services based on an interagency agreement. An LEA that disagrees with such a placement may, on an individual basis, apply to the State Board for exemption from the State Board from this obligation.

F. A city/parish LEA or SSD that places students with severe or low-incidence disabilities in State Board Special Schools shall reimburse State Board Special Schools for any costs for providing such services based on an interagency agreement. The LEA that retains jurisdiction shall retain fiscal responsibility for funds not available to the other system from the State.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§452. - 459. Reserved**

**§460. Students with Disabilities in Private Schools Placed or Referred by LEAs**

A. Each LEA shall ensure that a student with a disability who is placed in or referred to a private school or facility by the LEA is provided special education and related services in conformance with an IEP that meets the requirements of §440 - 446 of these Regulations, at no cost to the parent; is provided an education that meets the standards that apply to

education provided by the LEA; and has all rights of a student with a disability served by the LEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§461. Students With Disabilities Enrolled by Their Parents in Private Schools when FAPE is at Issue**

A. An LEA shall not be required to pay for the cost of the education, including special education and related services, of a student with a disability enrolled at a private school or facility if that LEA made a FAPE available to the student and the parents elected to place the student in a private school or facility. The LEA shall include that student in the population whose needs are addressed in §462 of these Regulations.

B. Disagreements between a parent and the LEA regarding the availability of a program appropriate for the student and the question of financial responsibility are subject to the due process procedures in the §507 of these Regulations.

C. If the parent of a student with a disability, who previously received special education and related services from the LEA, enrolls the student in a private preschool, elementary, or secondary school without the consent of or referral by the LEA, a court or a hearing officer may require the LEA to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a FAPE available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or court, even if the placement does not meet the State standards that apply to education provided by the LEA or the State.

D. The cost of reimbursement described in the above paragraph may be reduced or denied under certain circumstances:

1. if at the most recent IEP meeting that the parents attended prior to removal of the student from the LEA, the parents did not inform the IEP team that they were rejecting the placement proposed by the LEA to provide a FAPE to the student, including stating their concerns and their intent to enroll their child in a private school at public expense; or

2. if at least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the LEA of the information in paragraph D.1. above; or

3. if prior to the parents' removal of the student from the public school, the LEA informed the parents through the notice requirements described in §504 of these Regulations, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

4. if upon judicial findings of unreasonableness with respect to actions taken by the parents.

E. Notwithstanding the notice requirement in paragraph D.1. of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if the parent is illiterate and cannot write in English, if compliance with paragraph D.1. of this section would likely result in

physical or serious emotional harm to the student, if the school prevented the parent from providing the notice, or if the parents had not received notice pursuant to §504 of these Regulations regarding the notice requirement in paragraph D.1. of this section.

**§462. Students with Disabilities Enrolled by their Parents in Private Schools**

A. As used in this section, *private school students* means students with disabilities enrolled by their parents in private school or facilities other than students with disabilities covered under §460. of these Regulations.

B. Private school students with disabilities shall be identified, located, and evaluated through prescribed procedures.

1. Each LEA shall locate, identify, and evaluate all private school students with disabilities, including religious-school students residing in the jurisdiction of the LEA. The activities undertaken to carry out this responsibility for private school students with disabilities shall be comparable to activities undertaken for students with disabilities in public schools.

2. Each LEA shall consult with appropriate representatives of private school students with disabilities on how to carry out the activities in paragraph B.1. above.

C. The provision of services to students with disabilities shall follow basic requirements.

1. To the extent consistent with their number and location in the state and within an LEA, provision shall be made for the participation of private school students with disabilities in the program assisted or carried out under Part B of the IDEA by providing them with special education and related services in accordance with Subsections C. - K. below.

2. Each LEA shall develop and implement a service plan, using a format approved by the Division, in accordance with paragraph B.1. above and Subsections C.- E. below, for each private school student with a disability who has been designated to receive special education and related service.

D. Expenditures for students with disabilities shall be determined by prescribed procedures.

1. To meet the provision of the service requirements of C.1. above, each LEA shall expend funds according to a prescribed formula.

a. For students aged three through twenty-one, the LEA shall fund an amount that is the same proportion of the LEA's total subgrant under section 611(g) of the IDEA as the number of private school students with disabilities aged three through twenty-one residing in its jurisdiction is to the total number of students with disabilities in its jurisdiction aged three through twenty-one.

b. For students aged three through five, the LEA shall fund an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the IDEA as the number of private school students with disabilities aged three through five residing in its jurisdiction is to the total number of students with disabilities in its jurisdiction aged three through five.

2. Child count shall follow prescribed procedures.

a. Each LEA shall consult with representatives of private school students regarding the annual child count of the number of private school students with disabilities and

shall ensure that the count is conducted on December 1 of each year.

b. The child count shall be used to determine the amount that the LEA shall spend on providing special education and related services to private school students with disabilities in the next subsequent fiscal year.

3. Expenditures for child-find activities may not be considered in determining whether the LEA has met the requirements of §462.D. of this Subsection.

4. LEAs are not prohibited from providing services to private school students with disabilities in excess of those required by this section and consistent with State law or local policy.

E. In determining services to private school students with disabilities, the LEA shall ensure prescribed requirements as follows.

1. No private school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if he or she were enrolled in a public school. Decisions about the services that will be provided to private school students with disabilities shall be made in accordance with the consultative and service plan requirements listed below.

2. In determining services, the LEA shall under prescribed guidelines consult with representatives of private school students with disabilities.

a. Each LEA shall consult, in a timely and meaningful way, with appropriate representatives of private school students with disabilities in light of the funding under D. above, for the number of private school students with disabilities, the needs of private school students with disabilities and their location to decide;

- i. which students will receive services;
- ii. what services will be provided;
- iii. how and where the services will be provided;

and

- iv. how the services will be evaluated.

b. Each LEA shall give appropriate representatives of private school students with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultative requirements.

c. The consultation required shall occur before the LEA makes any decision that affects the opportunities of private school students with disabilities to participate in these services.

d. The LEA shall make the final decision with respect to the services to be provided to eligible private school students.

3. If a student with a disability is enrolled in a religious or other private school and will receive special education or related services from an LEA, the LEA shall:

a. initiate and conduct meetings to develop, review and revise a services plan for the student in accordance with Subsection F. below; and

b. ensure that a representative of the religious or other private school attends each meeting; if the representative cannot attend, the LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

F. In providing services to students with disabilities, the LEA shall follow prescribed requirements.

1. Services provided to private school students with disabilities shall be provided by personnel meeting the same standards as personnel providing services in the public schools; private school students with disabilities may receive a different amount of service from students with disabilities in public schools; and no private school student with a disability is entitled to any service or to any amount of services that a student with disability would receive if enrolled in a public school.

2. Each private school student with a disability who has been designated to receive services shall have a service plan that describes the specific special education and related services the LEA will provide to the student in light of the services that the LEA has determined, through the consultative process, it will make available to private school students with disabilities. The service plan shall, to the extent appropriate, meet the IEP content requirements at §444. with respect to the services provided and be developed, reviewed, and revised consistent with IEP process procedures at §440 - 443.

G. In determining the location of services and transportation provisions, the following guidelines shall be followed.

1. Services provided to private school students with disabilities may be provided on-site at a student's private school, including a religious school to the extent consistent with law.

2. If necessary for the student to benefit from or participate in the services provided under this part, a private school student with a disability shall be provided transportation:

a. from the student's school or the student's home to a site other than the private school, and

b. from the service site to the private school or to the student's home depending on the timing of the services.

3. The LEA is not required to provide transportation from the student's home to the private school.

4. The cost of the transportation described in G.2. above may be included in calculating whether the LEA has met the requirements of §462.D.

H. Complaints are limited to the conditions listed below.

1. The due process procedures in §507 of these Regulations do not apply to complaints that an LEA has failed to meet the requirements of §462. of these Regulations, including the provision of services on the student's service plan.

2. The due process procedures in §507 of these Regulations do apply to complaints that an LEA has failed to meet the child-find requirements, including the procedures for evaluation and determination of eligibility found at §411 - 438. of these Regulations.

3. Complaints that an LEA has failed to meet the requirements of §462. of these Regulations may be filed under the procedure in §506.A. of these Regulations.

I. An LEA may not use funds available under section 611 or 619 of the IDEA for classes that are organized separately on the basis of school enrollment or religion of the students if:

1. the classes are at the same site, and

2. the classes include students enrolled in public schools and students enrolled private schools.

J. The LEA shall ensure that funds do not benefit a private school by following these prescribed guidelines.

1. An LEA may not use funds provided under section 611 or 619 of the IDEA to finance the existing level of instruction in a private school or otherwise to benefit the private school.

2. An LEA shall use funds provided under Part B of the IDEA to meet the special education and related services needs of students enrolled in private schools, but not for the needs of a private school or for the general needs of the students enrolled in the private school.

K. The LEA may use funds available under sections 611 and 619 to pay for the use of public and private personnel under the following prescribed guidelines.

1. An LEA may use funds available under sections 611 and 619 of the IDEA to make public school personnel available in other than public facilities to the extent necessary to provide services for private school students with disabilities, if those services are not normally provided by the private school.

2. An LEA may use funds available under section 611 or 619 of the IDEA to pay for the services of an employee of a private school to provide services to private school students with disabilities if the employee performs the services outside of his or her regular hours of duty and if the employee performs the services under public supervision and control.

L. The LEA shall follow prescribed requirements concerning property, equipment, and supplies for the benefit of private school students with disabilities.

1. An LEA shall keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under section 611 or 619 of the IDEA for the benefit of private school students with disabilities.

2. The LEA may place equipment and supplies in a private school for the period of time needed for the program.

3. The LEA shall ensure that the equipment and supplies placed in a private school:

a. are used for only Part B purposes; and

b. can be removed from the private school without remodeling the private school facility.

4. The LEA shall remove equipment and supplies from a private school if

a. they are no longer needed for Part B purposes or

b. removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

5. No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§463. Facility Accessibility**

A. Facilities used by LEAs, directly or through contractual arrangement, shall be accessible to and usable by exceptional persons. Architectural barriers shall not prevent a student with a disability from being educated in the least restrictive educational environment as defined in §446 of this Part.

B. New facilities or new parts of facilities shall be approved, designed, and constructed under prescribed conditions.

1. They may not be approved for construction unless and until the Department and the State Board give expressed written approval on the basis of a satisfactory showing by an LEA that adequate provision has been made for the necessary access of the students with disabilities.

2. They shall be designed and constructed in a manner that results in their being readily accessible to and usable by persons with disabilities.

3. They shall be constructed to at least meet the current level of accessibility provided by the Americans with Disabilities Act (ADA) Accessibility Guidelines for Building and Facilities.

C. Facilities that are altered for the use of LEAs shall be altered to the maximum extent feasible in a manner that results in the altered portion of the facility being readily accessible to and usable by exceptional persons.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§464. Program Accessibility**

A. Program accessibility shall be ensured within existing facilities and accomplished through one of the following

1. alteration of existing facilities; or

2. nonstructural changes: redesign of equipment; procurement of accessible educational technology; utilization of assistive technology; reassignment of classes or other services to accessible buildings; assignment of aides to students; home visits; and delivery of health, welfare, or other social services at alternative accessible sites.

B. In choosing among available methods for meeting the program availability requirement, an LEA shall give priority to those methods that offer programs and activities to persons with disabilities in integrated settings.

C. Structural changes in facilities do not need to be made where other methods effectively ensure program accessibility; where structural changes are necessary, they shall be made as expeditiously as possible.

D. All nonstructural changes necessary to ensure program accessibility shall be made immediately or as expeditiously as possible.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§465. Facility Comparability**

A. Facilities identifiable as being for students with disabilities and the services and activities provided therein shall meet the same standards and level of quality as do facilities, services, and activities provided to other students.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§466. Day Care and Adult Services**

A. LEAs that operate a preschool education or day care program or activity may not, on the basis of disability, exclude any students with disabilities and shall take into account the need(s) of such students in determining aids,

benefits, or services to be provided under the program or activity.

B. LEAs that operate an adult education program or activity may not, on the basis of disability, exclude persons with disabilities and shall take into account the need(s) of these persons in determining aids, benefits, or services to be provided under the program or activity.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§467. - 469. Reserved**

#### **§470. Local Advisory Panel**

A. A local advisory panel for the education of students with disabilities may be appointed by each LEA for the purpose of providing policy guidance with respect to special education and related services for students with disabilities in their school district, with the approval of its governing authority. Membership of the panel should appropriately represent the populations served.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§475. - 480. Reserved**

#### **§481. Appointment of a Supervisor/Director of Special Education**

A. Each LEA shall employ a certified supervisor/director of special education on a full- or part-time basis.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§482. Personnel Standards**

A. Personnel of local public and private educational agencies, including other local agency providers, who deliver special educational services (including instructional, appraisal, related, administrative, and support services) to students with disabilities (birth through age twenty-one) shall meet appropriate entry level requirements that are based on the highest requirements in Louisiana applicable to the profession or discipline in which a person is providing special education or related services. See §369 for more details.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§483. Comprehensive System of Personnel Development**

A. LEAs shall have on file with the Department information to demonstrate that all personnel necessary to carry out these regulations within the jurisdiction of the agency are appropriately and adequately prepared, consistent with the requirements of §482 above.

B. To the extent the LEA determines appropriate, it shall contribute to and use the comprehensive system of personnel development of the Department.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§484. - 485. Reserved**

**§486. Procedures for Determination of Eligibility for State or Federal Funds**

A. Each LEA requesting State or Federal funds administered by the Department shall do so according to the procedures established by the Department.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§487. Annual Eligibility for IDEA - Part B Funds**

A. Each LEA receiving assistance for the provision of education to students with disabilities within its jurisdiction shall have in effect policies, procedures, and programs that are consistent with the State's policies and procedures established pursuant to the Individuals with Disabilities Education Act (IDEA).

B. Each LEA shall have on file with the Department, policies and procedures that demonstrate compliance with the requirements of IDEA are consistent with State and Federal requirements.

C. Each LEA shall permit access by the staff of the Division during regular business hours of the LEA to any sources of information necessary to ascertain compliance with these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§488. - 489. Reserved**

**§490. Maintenance of Special Education Student Data**

A. Each LEA shall maintain and assure the accuracy of the required elements for each student record on the Louisiana Network of Special Education Records (LANSER), the automated special education tracking system and on the Student Information System (SIS).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§491. Child Counting**

A. Each LEA shall use LANSER for the purpose of tracking students with disabilities. Data from this system shall be used to produce the Annual Child Count, as of December 1, for the purpose of generating grant awards under IDEA-B and the Preschool Grants Program.

B. Each LEA/State agency shall determine the eligibility of each student for inclusion in the December 1 Child Count, which will generate funds under IDEA-B. It is the responsibility of the LEA/State agency to verify that each eligible student is receiving the special education and related services stated on the Individualized Education Program (IEP) or early intervention services, as stated on the Individualized Family Service Plan (IFSP).

C. If a student with a disability has more than one disability, the LEA shall adhere to the procedures prescribed below.

1. If a student has only two disabilities - deafness and blindness - and the student is not reported as having a developmental delay, that student shall be reported under the category "deaf-blindness".

2. A student who has more than one disability and who is not reported as having deaf-blindness or as having a

developmental delay shall be reported under the category "multiple disabilities."

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§492. Reserved**

**§493. Use of IDEA - Part B Flow-through Funds**

A. An LEA may only use IDEA - Part B funds for the excess cost of providing special education and related services for students with disabilities. The excess cost requirement prevents a LEA from using funds provided under IDEA - Part B to pay for all of the costs directly attributable to the education of a student with disabilities. However, the excess cost requirement does not prevent a LEA from using IDEA - Part B funds to pay for all of the cost directly attributable to the education of a student with disabilities in any of the ages of 3, 4, 5, 18, 19, 20, or 21 years, if no local or State funds are available for nondisabled students in that age range. However, the LEA shall comply with the non-supplanting and other requirements of this Part, providing the education and services. IDEA - Part B funds received shall not be commingled with State funds.

B. The LEA meets the excess cost requirement if it has spent at least at a minimum average amount determined under 34 CFR 300.184 for the education of each of its students with disabilities. This amount may not include capital outlay or debt service.

C. LEAs may not use IDEA - Part B funds to reduce the level of expenditures for the education of students with disabilities made by the LEA from local funds below the level of those expenditures for the preceding year. To determine whether that requirement is met, LEAs shall be able to demonstrate that the total amount, or average per capita amount, of State and local school funds budgeted for expenditures in the current fiscal year for the education of students with disabilities is at least equal to the total amount, or average per capita amount, of State and local school funds actually expended for the education of students with disabilities in the most recent preceding fiscal year for which the information is available. An LEA may reduce the level of expenditures by the LEA under IDEA-Part B below the level of those expenditures for the preceding fiscal year if the reduction is attributable to the following prescribed factors.

1. Voluntary departure by retirement or otherwise, or departure for just cause of special education or related services personnel, who are replaced by qualified, lower-salaried staff. In order for an LEA to invoke this exception, the LEA shall ensure that those voluntary retirements or resignations and replacements are in full conformity with:

- a. existing school board policies in the agency,
- b. the applicable collective bargaining agreement in effect at that time; and
- c. applicable State statutes.

2. A decrease in the enrollment of students with disabilities.

3. The termination of the obligation of the LEA, consistent with this section, to provide a program of special education for a particular student with a disability that is an exceptionally costly program, as determined by the SEA, because the student:

- a. has left the jurisdiction of the LEA;

b. has reached the age at which the obligation of the LEA to provide a FAPE to the student has terminated; or

c. no longer needs the program of special education.

D. LEAs shall use State and local funds to provide services to students with disabilities receiving IDEA - Part B funds which, taken as a whole, are at least comparable with services provided to other students without disabilities.

E. LEAs shall maintain records that demonstrate compliance with the excess cost, nonsupplanting, and comparability requirements.

F. An LEA may use funds received under IDEA Part B for any fiscal year to carry out a school-wide program under section 1114 of the Elementary and Secondary Education Act of 1965 under the following conditions:

1. the amount used in any school-wide program may not exceed the amount received by the LEA under Part B for that fiscal year, divided by the number of students with disabilities in the jurisdiction of the LEA, and multiplied by the number of students with disabilities participating in the school wide program; and

2. the LEA shall ensure that all students with disabilities receive services in accordance with a properly developed IEP and are afforded all the rights and services guaranteed to students with disabilities under the IDEA.

G. An LEA may use funds received under IDEA Part B for the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a student with a disability in accordance with the student's IEP, even if one or more nondisabled students benefit from these services.

H. An LEA may not use more than five percent of the amount it receives under Part B of the IDEA for any fiscal year, in combination with other amounts (which shall include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for students and families, including students with disabilities and their families.

I. An LEA, through authority granted by the Department, may use funds made available under Part B of the IDEA to permit a public school within the jurisdiction of the LEA to design, implement, and evaluate a school-based improvement plan for a period not to exceed three years in accordance with 34 CFR 300.245-250.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§494. Obligation of Noneducational Public Agencies**

A. If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy to provide or pay for any services that are also considered special education or related services (such as relating to assistive technology devices/ services, related services, supplementary aids and services, or transition services) that are necessary for ensuring a FAPE to students with disabilities within the State, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

B. A noneducational public agency may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

C. If a public agency other than an educational agency fails to provide or pay for the special education and related services in A. above, the LEA shall provide or pay for these services to the student in a timely manner. The LEA may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA in accordance with the terms of the interagency agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§495. Interagency Coordination**

A. Each LEA shall, upon request, assist the Department in the development and implementation of any interagency agreements designed to improve the delivery of special education and related services to students with disabilities.

B. Each LEA shall enter into interagency agreements in §830 to the extent necessary to comply with all provisions of these Regulations.

C. Each agreement shall be consistent with Chapter 8 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§496. Students with Disabilities Who are Covered by Public or Private Insurance**

A. An LEA may use the public insurance benefits of a student with a disability who is covered by public insurance only under certain prescribed conditions.

1. A public agency may use the Medicaid or other public insurance benefits programs in which a student participates to provide or pay for services required under this part, as permitted under the public insurance program, except as provided in paragraph (A)(2) of this section.

2. With regard to services required to provide a FAPE to an eligible student under this part, the public agency:

a. may not require parents to sign up for or enroll in public insurance programs in order for their child to receive a FAPE under Part B of the IDEA;

b. may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but may pay the cost that the parent otherwise would be required to pay; and

c. may not use a student's benefits under a public insurance program if that use would:

i. decrease available lifetime coverage or any other insured benefit;

ii. result in the family's paying for services that would otherwise be covered by the public insurance program and that are required for the student outside of the time the student is in school;

iii. increase premiums or lead to the discontinuation of insurance; or

iv. risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

B. The LEA may use the private insurance benefits of a student with a disability who is covered by private insurance only under certain prescribed conditions.

1. With regard to services required to provide a FAPE to an eligible student under these regulations, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent.

2. Each time the public agency proposes to access the parent's private insurance proceeds, it shall obtain parent consent and inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

C. Use of Part B Funds to pay for public or private insurance coverage is permissible under prescribed conditions.

1. If a public agency is unable to obtain parental consent to use the parent's private insurance or public insurance when the parent would incur a cost for a specified service to ensure a FAPE, the public agency may use its Part B funds to pay for the service.

2. To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay (e.g., the deductible or co-pay amounts.)

D. Proceeds from public or private insurance shall be considered according to prescribed guidelines.

1. Proceeds from public or private insurance shall not be treated as program income for purposes of 34 CFR 80.25.

2. If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds shall not be considered "State or local" funds for purposes of the maintenance of effort provisions.

E. Nothing in these requirements should be construed to alter the requirements imposed on a State Medicaid agency or on any other agency administering a public insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program.

#### **§497. - 499. Reserved**

### **Chapter 5. Procedural Safeguards**

#### **§501. General Responsibility**

A. Each Local Educational Agency (LEA) shall establish and implement procedural safeguards that meet the requirements of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§502. Opportunity to Examine Records and Parent Participation in Meetings**

A. Parents of a student with a disability shall be afforded, in accordance with §517.C. of these Regulations, an opportunity to inspect and review all educational records with respect to the identification, evaluation and educational placement of the student and with respect to the provision of a FAPE to the student.

B. Parents of a student with a disability shall be afforded an opportunity to participate in meetings with respect to the identification, evaluation and educational placement of the student and the provision of a free appropriate public education to the student.

1. Each LEA shall provide notice consistent with §504 of these Regulations to ensure that parents of an exceptional

student have the opportunity to participate in meetings described in paragraph 502.B. above.

2. A meeting does not include informal or unscheduled conversations involving LEA personnel and conversations on issues - such as teaching methodology, lesson plans, or coordination of service provision - if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities in which public agency personnel engage to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

3. Each LEA shall ensure that the parents of each exceptional student are members of any group that makes decisions on the educational placement of their child. (See §442 of these Regulations.)

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§503. Independent Educational Evaluation**

A. The parents of an exceptional student have a right to obtain an independent educational evaluation of the student subject to this section. The LEA shall provide to the parent, upon request for an IEE, information about where an independent educational evaluation may be obtained and the criteria by which it shall be conducted.

1. *Independent Educational Evaluation (IEE)* means an evaluation conducted by a qualified examiner who is not employed by the school system responsible for the education of the student in question.

2. *Public Expense* means that the school system either shall pay for the full cost of the evaluation or shall ensure that the evaluation is otherwise provided at no cost to the parent.

3. To avoid unreasonable charges for Independent Educational Evaluations (IEEs), an LEA may establish maximum allowable charges for specific tests. The maximum shall be established so that it allows parents to choose among the qualified professionals in the area and eliminates unreasonably excessive fees. The LEA shall allow parents the opportunity to demonstrate unique circumstances to justify an IEE that falls outside the district's criteria.

B. An IEE is provided at public expense to the parents if

1. the parent disagrees with an evaluation provided by the LEA, or

2. a hearing officer requests an IEE as part of a due process hearing.

C. When an LEA is notified in writing by the parent that the parent disagrees with the LEA's educational evaluation, the LEA has ten business days following the receipt of the notice to initiate a due process hearing to show that its evaluation is appropriate. If the LEA does not initiate a due process hearing within the ten business days, the IEE shall be at public expense.

1. The request for an IEE may be presented orally if the parent is illiterate in English or has a disability that prevents the production of a written statement.

2. If, in a due process hearing, the hearing officer finds that the LEA's evaluation is appropriate, the parent shall still have the right to an independent evaluation, but not at public expense.

3. If a parent requests an IEE, the LEA may ask for the parent's reasons why he or she objects to the public evaluation. However, the explanation by the parent may not

be required and the LEA may not unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend the public evaluation.

D. An IEE obtained at public expense shall meet the same criteria established by these Regulations and by the *Pupil Appraisal Handbook*. The LEA may not impose conditions on obtaining an IEE, other than the criteria contained in the *Pupil Appraisal Handbook*.

E. If the parents obtain an IEE at private expense and it meets the criteria in the *Pupil Appraisal Handbook*, the results of the evaluation shall be considered by the LEA in any decision made with respect to the provision of a free appropriate public education to the student; and they may be presented as evidence at a hearing as described in §507 of these Regulations regarding the student.

F. The LEA is not required to use the IEE obtained at private expense as its only criteria for deciding the content of the student's special education program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§504. Prior Notice and Procedural Safeguard Notice**

A. Written notice shall be given to the parents of a student with a disability a reasonable time before the LEA:

1. proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student; or

2. refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

B. The prior notice shall include prescribed information as listed below:

1. a description of the action proposed (or refused) by the school, an explanation of why the LEA proposes or refuses to take the action, and a description of any other options the LEA considered and reasons why those options were rejected;

2. a description of each evaluation procedure, test, record or report the LEA used as a basis for the proposed or refused action;

3. a description of any other factors that are relevant to the LEA's proposal or refusal;

4. a statement assuring that the parents of a student with a disability have protections under the procedural safeguards; and

5. sources for parents to contact to obtain assistance in understanding the provisions of the procedural safeguards.

C. The notice shall be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so; and

1. if the native language or other mode of communication of the parent is not a written language, the Department and the LEA shall take steps to ensure that:

a. the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

b. the parent understands the content of the notice;

c. the LEA shall maintain written evidence that the requirements of paragraph C. of this section have been met; and

D. notices scheduling Individualized Education Program (IEP) Team meetings shall contain not only a description of the purpose, date, time, and location of the meeting, but also a list of who will be in attendance.

E. If the notice relates to an action proposed by the LEA that also requires parental consent under §505 below, the LEA may give notice at the same time it requests parent consent.

F. Requirements for procedural safeguard notice are noted below.

1. A copy of the procedural safeguards (Louisiana's Educational Rights of Exceptional Children) shall be given to the parents of an exceptional student, at a minimum:

a. upon initial referral for evaluation;

b. upon each notification of an IEP meeting;

c. upon re-evaluation of the student; and

d. upon receipt of a request for a due process hearing.

2. The procedural safeguards notice shall include a full explanation of all procedural safeguards available under 34 C.F.R. 300.403, 300.500-300.529 and 300.560-300.577, including the State complaint procedures available in §506 of these Regulations.

3. The procedural safeguards notice shall meet the requirements of §504.C. of this section.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§505. Parental Consent**

A. Parental consent shall be obtained before the LEA conducts an initial evaluation or re-evaluation and before the LEA provides initial special education and related services to a student with a disability.

B. Consent for initial evaluation may not be construed as consent for initial placement described in A.2. above.

C. Parental consent is not required before the LEA reviews existing data as part of an evaluation or re-evaluation; or before the LEA administers a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

D. Whenever parental consent has been withheld, the LEA shall follow procedures to ensure a FAPE for the student.

1. If the parent's decision is to withhold consent for the initial evaluation or initial placement of the student in special education, the LEA may appeal to the appropriate State court. If the parent withholds consent for a re-evaluation, the LEA may request a due process hearing following the procedures outlined in §507 of these Regulations.

2. Each LEA shall establish and implement effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the student with a FAPE.

3. An LEA may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit, or activity of the LEA except as required by these Regulations.

E. Informed parental consent need not be obtained for re-evaluation if the LEA can demonstrate through detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, detailed records of visits made to the parent's home or place of employment and the results of those visits, that it has taken reasonable measures to obtain that consent and that the student's parent has failed to respond.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§506. Complaint Management and Mediation**

A. Complaint management procedures shall be established to resolve disputes regarding educational decisions between an LEA and a parent.

1. Any individual or organization acting on behalf of a student with a disability shall have the right to file a complaint when it is believed that there exists a violation of state and/or federal law regarding the educational rights of a student with a disability.

2. Complaints may be filed in writing, by telephone or in person. The complaint shall involve a violation that occurred not more than one year prior to the date of filing unless a longer period is reasonable because the violation is continuing, or because the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint was received under this Section.

3. Upon receipt, the complaint shall be reviewed; the LEA shall then be notified in writing and asked to provide specific information regarding the complaint.

4. The complainant shall be given the opportunity to provide additional oral or written information during the course of the investigation.

5. All information relevant to the complaint shall be reviewed by the Department and a decision shall be made as to whether an on-site visit is needed. A determination shall be made as to whether the LEA is violating any requirements of applicable Federal or State statutes, regulations or standards.

6. Within sixty (60) days of the receipt of the complaint, the Department shall issue not only a letter of findings to the complainant and to the LEA on each of the allegations of the complaint but also the reasons for the Department's decision.

7. The Department shall ensure effective implementation of the final decision through technical assistance, negotiations and corrective actions that achieve compliance. In resolving a complaint in which it has found a failure to provide appropriate services, the Department shall address how to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student and appropriate future provision of services for all students with disabilities.

8. The Department shall allow for extensions of the sixty (60) day time lines only if exceptional circumstances exist.

9. If a complaint received is the subject of a due process hearing or if it contains multiple issues, of which one or more is part of the hearing, the Department shall set

aside any part of the complaint that is being addressed in the hearing until the conclusion of the hearing. Any issue of the complaint that is not a part of the hearing action shall be resolved, using the time limit and procedures above.

10. If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision shall be binding and the Department shall inform the complainant to that effect.

11. A complaint alleging an LEA's failure to implement a due process decision shall be resolved by the Department.

C. Mediation process procedures shall be available to parents and the LEA personnel to allow them to resolve disputes involving any matter described in §504.A 1. and 2. At a minimum, mediation shall be offered whenever a due process hearing is requested under §507 and §519 I. and L. of these Regulations.

1. Mediation, which is voluntary on the part of both parties, shall be conducted by a qualified and impartial mediator trained in effective mediation techniques and assigned by the Department.

2. Mediation shall not be used to deny or delay a parent's right to a due process hearing or to deny any other rights.

3. The Department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

4. The impartial mediator may not be an employee of any LEA or State agency that is providing direct services to the student. The mediator shall not have a personal or professional conflict of interest. A person who otherwise qualifies as a mediator shall not be considered an employee of an LEA solely because he or she is paid by the agency to serve as a mediator.

5. The Department shall bear the cost of the mediation process.

6. The mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

7. An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

8. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§507. Impartial Due Process Hearing**

A. A parent or LEA may initiate a hearing on any of the matters described in §504 A. 1 and 2. A parent initiates a hearing by sending written notice to the LEA. The LEA initiates a hearing by sending written notice to the parent and to the Department. When a hearing has been initiated, the LEA shall inform the parents of the availability of mediation.

1. The written notice to the LEA for a due process hearing shall include the student's name and address, the name of the school the student is attending, a description of

the nature of the problem, and a proposed resolution of the problem to the extent known and available to the person requesting the hearing.

2. The request for a due process hearing may be presented orally if the parent is illiterate in English or has a disability that prevents the production of a written statement.

3. An LEA may not deny or delay a parent's right to a due process hearing for failure to provide the required notice described above.

B. Any party to a hearing has the following rights as described below.

1. The hearing shall be conducted at a time and place convenient to the parent, the student and the school system.

2. Any party shall have the right to be accompanied and advised by counsel or by individuals with special knowledge or training with respect to the problems of exceptional students.

3. Any party to the hearing shall have the right to present evidence and to confront, cross-examine, and compel the attendance of witnesses.

4. Any party to the hearing shall have the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

5. At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluation that the party intends to use at the hearing.

6. The hearing officer may bar any party that fails to comply with the above requirement from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

7. Any party shall have the right to obtain a written or electronic, at the option of the parent, verbatim record of the hearing at no cost.

8. Any party to the hearing shall have the right to obtain written or, at the option of the parent, electronic findings of fact and decisions at no cost.

C. A parent involved in a hearing shall have the right to

1. have the student who is the subject of the hearing present;

2. have the hearing open to the public;

3. be informed, upon request, of any free or low-cost legal and other relevant services when either the parent or LEA initiates a due process hearing; and

4. be informed that, if the parent prevails in a due process hearing, the parent may be able to recover attorney fees.

D. The Department, after deleting any personally identifiable information, shall annually transmit those findings and decisions to the State Advisory Panel established under these Regulations; and shall upon request, make those findings and decisions available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§508. Hearing Officer Appointment and Hearing Procedures**

A. The hearing officer appointed shall be in compliance with requirements stipulated below.

1. A hearing officer shall be an impartial person knowledgeable about the legal and educational issues involved in assessing compliance with these Regulations.

a. A hearing officer may not be an employee of a public agency that is involved in the education or care of the student. A person who otherwise qualifies to conduct a hearing under this section is not an employee of the public agency solely because he or she is paid by the agency to serve as a hearing officer.

b. No person who has a personal or professional interest that would conflict with his or her objectivity may be appointed to serve as a hearing officer.

2. The Department and each LEA shall maintain the list of qualified hearing officers. The list shall include a statement of the qualifications of each of the hearing officers and, to the extent possible, include representation from all regions of the state. The Department shall ensure that these hearing officers have successfully completed an inservice training program approved by the Department. Additional inservice training shall be provided whenever warranted by changes in applicable legal standards or educational practices.

3. Appointments which shall be for a period of three years, may be renewed. The Department shall annually review the activities of persons on the list and shall remove persons from the list if they leave the state, decline to participate actively in the hearing process, cease to be impartial, or do not carry out their responsibilities in a satisfactory fashion.

B. Hearing procedures shall include the designating of a hearing officer as stipulated below.

1. The local special education administrator shall notify the Department of the need to assign a hearing officer within one day of receipt of a request for a hearing.

2. The hearing officer shall be assigned within five days by the Department on a rotational basis from the Department's list of certified hearing officers. Consideration will be given to the location of the hearing when making the assignment.

3. After a hearing officer has been assigned, the Department shall provide both the complainant and the local special education supervisor a written notice of the name of the hearing officer. The written notices shall be delivered by certified mail.

4. If the parent or LEA has reasonable doubt regarding the impartiality of a hearing officer, written information shall be submitted to the Department within three days of receipt of the notice of the assigned hearing officer.

5. The Department shall review any written challenge and provide a written decision and notice to the parent and LEA within three days after receipt of the written challenge.

6. If the Department determines that doubt exists as to whether the proposed hearing officer is truly impartial, another hearing officer shall be immediately assigned.

C. Procedures for conducting a hearing are stipulated below.

1. The hearing officer shall contact all parties to schedule the hearing and then shall notify in writing all parties and the Department of the date, time and place of the hearing.

2. The hearing shall be conducted in accordance with guidelines developed by the Department.

3. At the request of either party, the hearing officer shall have the authority to subpoena persons to appear at the hearing.

4. A final hearing decision shall be reached and a copy of the decision mailed to each party not later than forty-five (45) days after the receipt of the request for the hearing.

5. A hearing officer may grant specific extensions of time beyond the prescribed time requirements at the request of either party. When an extension is granted, the hearing officer shall, on the day the decision is made to grant the extension, notify all parties and the Department in writing, stating the date, time, and location of the rescheduled hearing.

6. A decision made by the hearing officer shall be final unless an appeal is made by either party.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§509. Appeal of the Hearing Decision**

A. Any party aggrieved by the findings and decisions of the hearing may appeal the hearing decision.

B. A written request to review the hearing decision shall be sent by certified mail to the Department within fifteen days of receipt of the hearing decision. The request shall state the basis upon which the review is requested.

C. The Department shall notify all parties of the request and activate the State Level Review Panel.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§510. The State Level Review Panel**

A. The State Level Review Panel shall be composed of three hearing officers trained by the Department in special education law and due process procedures.

B. State Level Review Panel Members may not be employees of the State agency or LEA responsible for the education or care of the student. They shall not have participated in the due process hearing being appealed nor have a personal or professional interest that would conflict with his or her objectivity.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§511. Appeal to the State Level Review Panel**

A. In conducting the appeal, the Panel shall issue a decision within thirty (30) days from receipt of the request for an appeal.

1. The Panel shall examine the entire hearing record.

2. The Panel shall ensure that procedures were consistent with the requirements of due process.

3. The Panel shall seek additional evidence if necessary. If a hearing is held to receive additional evidence, hearing rights stated in §507 A and B of these Regulations are applicable.

4. The Panel shall afford all parties an opportunity for oral or written argument, or both, at the discretion of the reviewing panel. Any written argument(s) shall be submitted to all parties.

5. The Panel shall make a final decision upon completion of the review.

B. In conducting the appeal, the Panel shall provide copies of its written findings and decision to all parties.

C. The Department, after deleting any personally identifiable information, shall annually, transmit those findings and decisions to the State Advisory Panel established under these Regulations; and shall upon request, make those findings and decisions available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§512. Appeal to State or Federal Court**

A. Any party aggrieved by the decision and the finding of the State Level Review Panel has the right to bring a civil action in State or Federal court. The civil action shall be filed in State court within thirty (30) days of the decision. This time line does not apply to Federal court. Refer to 34 CFR 300.512 for additional information on this topic.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§513. Reserved**

### **§514. Student Status During Proceedings**

A. During the pendency of any administrative or judicial proceeding regarding due process, the student involved shall remain in the current educational placement unless the parent and the LEA agree otherwise.

B. If the hearing involves an application for initial admission to a public school, the student, with the consent of the parents, shall be placed in the public school program of the LEA until the completion of all the proceedings.

C. If the decision of a State Level Review Panel, as described in §510, in an administrative appeal agrees with the parent that a change of placement is appropriate, that placement shall be treated as an agreement between the State or the LEA and the parents for the purposes of A. above.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§515. Costs**

A. LEAs shall be responsible for paying administrative costs or reasonable expenses related to participation of LEA personnel in a hearing or appeal. The expenses of the hearing officer, the review panel, and stenographic services shall be paid by the Department in accordance with its policies and procedures.

B. The awarding and funding of attorneys' fees may be provided under the following stipulations.

1. In any action or proceeding brought under Section 615 of IDEA, the courts, in its discretion, may award reasonable attorneys' fees as part of the costs to the parent of a student with a disability who is a prevailing party.

2. Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615( Procedural Safeguards) of the IDEA. This stipulation does not preclude the Department from using funds under Part B of the IDEA for conducting an action or proceeding under section 615 of the IDEA.

3. The court may award reasonable attorneys' fees under section 615 of the IDEA consistent with 34 CFR 300.513 (c) (1)-(5).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§516. Surrogate Parents**

A. An LEA shall ensure that the rights of a student are protected if no parent (as defined in §904) can be identified; the LEA, after reasonable efforts, cannot discover the whereabouts of a parent; or the student is a ward of the State (including a ward of the court or of a State agency).

B. A surrogate parent may represent the student in all matters relating to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education.

C. A method for determining whether a student needs a surrogate parent and for assigning a surrogate parent shall be developed and implemented by each LEA.

1. A person assigned as a surrogate parent shall have no interest that conflicts with the interests of the student and shall not be an employee of the Department, the LEA, or any agency involved in the education or care of the student.

2. The person assigned shall have knowledge and skills that ensure adequate representation of the student.

D. An LEA may select as a surrogate a person who is an employee of a private agency that provides only noneducational care for the student and who meets the standards in D. above.

E. Payment of fees for service as a surrogate parent does not, in and of itself, render a person an employee of the LEA.

F. Any person appointed as a surrogate parent shall be protected by the "limited liability" of L.R.S. 17:1958.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§517. Confidentiality of Information**

A. The Department shall have established policies and procedures for the implementation of the confidentiality requirements under IDEA - Part B and the Family Educational Rights and Privacy Act (FERPA) of 1974.

B. The Department shall give notice which is adequate to inform parents fully about the requirements under identification, location and evaluation of exceptional students.

1. The notice shall provide a description of the extent to which the notice is given in the native languages of the various population groups in the State.

2. The notice shall provide a description of the students on whom personally identifiable information is maintained, the types of information sought, the method the State intends to use in gathering the information (including the sources from whom information is gathered) and the uses to be made of the information.

3. The notice shall provide a summary of the policies and procedures that participating agencies shall follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information.

4. The notice shall provide a description of all of the rights of parents and students regarding this information, including the rights under the FERPA.

5. Before any major identification, location, or evaluation activity, the notice shall be published or

announced in newspapers, or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

C. In ensuring access rights, each LEA shall permit parents to inspect and review any educational records relating to their child which are collected, maintained or used by the LEA under these Regulations. The LEA shall comply with the request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the student; in no case shall the time exceed forty-five (45) days after the request has been made. The LEA shall not destroy any educational records if there is an outstanding request to inspect and review the records.

1. The right to inspect and review any educational records includes the following:

a. the right to a response from the LEA to reasonable requests for explanations and interpretations of the records;

b. the right to request that the LEA provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

c. the right to have a representative of the parent inspect and review the records when written permission by the parent is presented.

2. Any LEA may presume that a parent has authority to inspect and review records relating to his or her child unless the LEA has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation and divorce.

D. In ensuring record of access, each LEA shall keep a record of parties attaining access to education records collected, maintained or used under these Regulations (except access by parents or authorized parties of the LEA), including the name of the party, the date access was given, and the purpose for which the party was authorized to use the record.

E. When any educational record includes information on more than one student, the parents of those students shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

F. Each LEA shall provide parents, on request, a list of the types and locations of education records collected, maintained or used by the LEA.

G. Each LEA may charge a fee for copies of records that are made for parents under these Regulations if the fee does not effectively prevent the parents from exercising their right to inspect and review those records; but an LEA may not charge a fee to search or to retrieve information under these Regulations.

H. Amendments of records at parent's request shall follow prescribed guidelines.

1. The parent shall have a right to have the child's records amended when the parent believes that the information contained in the records is inaccurate, misleading or otherwise in violation of the parent's and child's privacy or other rights.

2. After the receipt of a request by a parent of a student with a disability to amend the student's record, the

LEA shall decide within a reasonable time whether to amend.

3. If the LEA refuses to amend the records as requested by the parent, the LEA shall inform the parent of the right to request a hearing as stated below.

I. The LEA shall, on request, provide an opportunity for a hearing to challenge information in educational records to ensure that they are not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student.

1. A hearing held under these Regulations shall be conducted according to the procedures under the Family Educational Rights and Privacy Act (FERPA).

J. Results of a hearing regarding records have the following stipulations.

1. If, as a result of a hearing, the LEA decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parents in writing.

2. If, as a result of a hearing, the LEA decides that the information is not inaccurate, misleading or otherwise in violation of privacy or other rights, the parents shall be afforded a right to place in the record comments they may have concerning the records or comments setting forth any reasons for disagreeing with the decision of the agency.

3. Any explanation placed in the record shall be maintained by the LEA as part of the records of the student as long as the record or contested portion is maintained by the LEA; and if the records of the student or the contested portion are disclosed by the LEA to any party, the explanation shall also be disclosed to the party.

K. Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of the LEA collecting or using the information under these Regulations subject to Number 2 below of this section, or used for any purpose other than meeting a requirement of these Regulations.

1. An LEA or institution subject to FERPA may not release information from education records to LEA without parental consent unless authorized to do so under FERPA.

2. If a parent refuses to provide consent under this Section, the requesting agency may file a written complaint with the IDEA. Such a complaint shall be investigated by the Division according to adopted procedures for the complaint management required by IDEA.

L. Each LEA shall protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.

1. One official at each LEA shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

2. Any persons collecting or using personally identifiable information shall receive training or instruction regarding the State's policies and procedures.

3. Each LEA shall maintain for public inspection a current listing of the names and the positions of those employees within the agency who may have access to personally identifiable information.

M. The LEA shall inform parents when personally identifiable information collected, maintained or used is no longer needed to provide educational services to the student.

1. The information shall be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance records, classes attended, grade level completed and year completed may be maintained without time limitation.

O. All rights of privacy afforded to parents shall be afforded to students with disabilities.

1. Under the regulations for the Family Educational Rights and Privacy Act of 1974, the rights of parents regarding educational records shall be transferred to the student at age eighteen.

2. If the rights accorded to parents under Part B of the IDEA are transferred to a student who reaches the age of majority, consistent with section §519 of these regulations, the rights regarding educational records shall also be transferred to the student. However, the LEA shall provide any notice required under the IDEA to the student and the parent.

P. The *Compliance Monitoring Procedures Handbook, Bulletin 1922*, includes the policies, procedures and sanctions that the State shall use to ensure that the requirements of IDEA - Part B and these Regulations are met.

Q. The LEA shall include in the records of a student with a disability, a statement of any current or previous disciplinary action that has been taken against the student, and transmit the statement to the same extent that the disciplinary information is included in and transmitted with the student records of nondisabled students.

1. The statement shall include a description of any behavior engaged in by the student that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the student and other individuals.

2. If the student transfers from one school to another, the transmission of any of the student's records shall include both the student's IEP and any statement of current or previous disciplinary action that has been taken against the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§518. Transfer of Parental Rights at the Age of Majority**

A. When a student with a disability reaches the age of majority that applies to all students (except for a student with a disability who has been determined to be incompetent under state law), he or she shall be afforded those rights guaranteed at such age.

1. The LEA shall provide any notice required by these Regulations to both the individual and the parent; all rights accorded to parents under these Regulations shall transfer to the student.

2. All rights accorded to parents under these Regulations shall transfer to students who are incarcerated in an adult or juvenile, State or local correctional institutions.

3. Whenever rights transfer under these Regulations pursuant to paragraph A. 1 and 2, the LEA shall notify the individual and the parent of the transfer of rights.

B. Each LEA shall follow the procedures established by the Department for appointing the parent or an appropriate individual to represent the educational interest of a student with a disability who has reached the age of majority and has not been determined incompetent under State law, but does not have the ability to provide informed consent with respect to his or her educational program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§519. Discipline Procedures for Students with Disabilities**

A. For purposes of removal of a student with a disability from the student's current educational placement under §519.B. - L. of these Regulations, a change of placement occurs when:

1. a student with a disability is removed from his or her current educational placement for more than ten consecutive school days; or

2. a student with a disability is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

B. School personnel have the authority to order a change in placement for a student with a disability when certain conditions exist.

1. School personnel may order a removal of a student with a disability from the student's current educational placement for not more than ten consecutive school days for any violation of school rules to the extent a removal would be applied to a student without a disability, and school personnel may order additional removals of not more than ten consecutive school days in the same school year for separate incidents of misconduct as long as the removals do not constitute a change of placement as defined in 519. A. of this section.

2. School personnel may order a change in placement of a student with a disability to an appropriate interim alternative educational setting for the same amount of time a student without a disability would be subject to discipline, but for not more than forty-five (45) days, if

a. the student has carried a weapon to school or to a school function under the jurisdiction of the State or an LEA; or

b. the student has knowingly possessed or used illegal drugs or sold or solicited the sale of a controlled substance while at school or a school function under the jurisdiction of the State or an LEA.

C. For purposes of this section, the following definitions apply:

*Controlled substance* means a drug or other substance identified under schedule I, II, III, IV, or V in Sec. 202 (c) of the Controlled Substance Act (21 U.S.C. 812 (c)).

*Illegal drug* means a controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

*Weapon* has the meaning given the term *dangerous weapon* under paragraph (2) of the first subsection (g) of Sec. (g) of Sec 930 of Title 18, United States Code.

D. A hearing officer who meets the requirements of §502 of these Regulations has the authority to order a change in placement for a student with a disability when certain conditions exist.

1. The hearing officer may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) days if the hearing officer, in an expedited due process hearing:

a. determines that the LEA has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others (substantial evidence means beyond a preponderance of the evidence);

b. considers the appropriateness of the student's current placement;

c. considers whether the LEA has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

d. determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets all IAES requirements as set forth in paragraph F below.

E. An LEA need not provide services during periods of removal under §519.B.1. to a student with a disability who has been removed from his or her current placement for ten school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.

1. In the case of a student with a disability who has been removed from his or her current placement for more than ten school days in that school year, the LEA, for the remainder of the removals, shall provide services to the extent necessary to enable the student to progress appropriately in the general curriculum and to advance appropriately toward achieving the goals set out in the student's IEP, if the removal is:

a. under the school personnel's authority to remove under §519.B.1 for not more than ten consecutive school days as long as that removal does not constitute a change of placement as defined in §519.A. of these Regulations; school personnel, in consultation with the student's special education teacher, shall determine the extent to which services are necessary to enable the student to progress appropriately in the general curriculum and to advance appropriately toward achieving the goals set out in the student's IEP;

b. for behavior that is not a manifestation of the student's disability consistent with ' 519.G of these Regulations; the student's IEP team shall determine the extent to which services are necessary to enable the student to progress appropriately in the general curriculum and to advance appropriately toward achieving the goals set out in the student's IEP.

2. An LEA shall provide services that will enable the student to continue to progress in the general curriculum and to continue to receive those services and modifications,

including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP. The LEA shall include services and modifications designed to address the behavior described below and to prevent the behavior from recurring if the removal is:

- a. for drugs or weapon offenses (the IEP team determines the interim alternative educational setting); or
- b. based on a hearing officer's determination that maintaining the current placement of the student is substantially likely to result in injury to the student or others if he or she remains in the current placement. (School personnel in consultation with the student's special education teacher shall propose the interim alternative educational setting to the hearing officer.)

F. Either before or not later than ten business days after either first removing the student for more than ten school days in a school year or commencing a removal that constitutes a change of placement as defined in 519.A. and including the action describe 519 B.2 of this section, the LEA shall follow prescribed procedures as listed below.

1. If the LEA did not conduct a functional behavior assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the removal occurred, the LEA shall convene an IEP meeting to develop an assessment plan.

2. If the student already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation as necessary, to address the behavior.

3. As soon as practicable after developing the behavioral intervention plan and completing the assessment required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

4. If subsequently, a student with a disability who has a behavioral intervention plan and who has been removed from his or her placement for more than ten school days in a school year is subjected to a removal that does not constitute a change of placement, the IEP team members shall review the behavior intervention plan and its implementation to determine whether modifications are necessary.

- a. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation to the extent the team determines necessary.

G. The interim alternative educational setting referred to in paragraph B of this section shall be determined by the IEP team. Any interim alternative educational setting in which a student is placed under paragraphs B.2 and C of this section shall:

1. be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP; and

2. shall include services and modifications designed to address the behavior described in paragraph B.2 and C. and to prevent the behavior from recurring.

H. Manifestation determination review is required whenever an action involving a removal that constitutes a change of placement for a student with a disability is contemplated.

1. Not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and shall be provided the procedural safeguards notice (Louisiana's Educational Rights of Children with Disabilities).

2. Immediately, if possible, but in no case later than ten school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action.

3. The review shall be conducted by the IEP team and other qualified personnel in a meeting.

4. In carrying out the manifestation determination review, the IEP team and other qualified personnel may determine that the behavior of the student was not a manifestation of the student's disability only if the IEP team and other qualified personnel:

- a. consider, in terms of the behavior subject to disciplinary action, all relevant information - the evaluation and diagnostic results, including the results or other relevant information supplied by the parent or student; observations of the student; and the student's IEP and placement and;

- b. determine that:

- i. in relationship to the behavior subject to disciplinary action, the student's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement;

- ii. the student's disability did not impair the ability of the student to understand the impact and consequence of the behavior subject to disciplinary action; and

- iii. the student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.

5. If the IEP team and other qualified personnel determine that any of the standards in paragraph 4.b. of this section were not met, the behavior shall be considered a manifestation of the student's disability.

6. If the IEP team and other qualified personnel determine that the behavior is a manifestation of the student's disability, the disciplinary removal cannot occur, unless the removal is in accordance with §519.B.2.(a) and (b) and §519 C. of these Regulations. The IEP team may consider modification to the student's program (e.g., additional related services, counseling, changes in the behavior management plan, increased time in special education, changes to class schedules, change of teacher).

7. The manifestation review meeting may be conducted at the same IEP meeting that is convened to conduct the functional behavioral assessment.

8. If in the review, the LEA identifies deficiencies in the student's IEP or placement or in their implementation, it shall take immediate steps to remedy those deficiencies.

- I. When the determination is made that the behavior was not a manifestation of the student's disability, prescribed guidelines shall be followed.

1. If the results of the manifestation determination review is that the behavior of the student was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without

disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities except a FAPE as defined in paragraph E. of this section shall be provided.

2. If the LEA initiates disciplinary procedures applicable to all students, the LEA shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the persons or persons making the final determination regarding the disciplinary action.

3. Except as provided in §519.K.1. of these Regulations, if a parent requests a hearing to challenge a determination made through the review process that the behavior of the student was not a manifestation of the student's disability, the student's status during due process proceeding shall follow §514 of these Regulations.

J. If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement and discipline, the parent may request a hearing.

1. The State or LEA shall arrange for an expedited hearing in any case described in the above paragraph if a hearing is requested by a parent.

a. In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the LEA has demonstrated that the student's behavior was not a manifestation of the student's disability.

b. In reviewing a decision under §519 B.2. of these Regulations to place a student in an interim alternative educational setting, the hearing officer shall apply the standards in §519 G. of these Regulations.

K. The student's placement during appeal shall follow prescribed guidelines.

1. If the parents request a hearing or an appeal regarding a disciplinary action described in §519.B.2. or §519.C. to challenge the interim alternative educational setting or the manifestation determination, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until expiration of the time period provided for in 519 B.2 or 519 C., whichever occurs first, unless the parent and the State or LEA agree otherwise.

2. If a student is placed in an interim alternative educational setting pursuant to ' 519 B.2 and §519 C. and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the student shall remain in the current placement (student's placement prior to the interim alternative educational setting), except as provided in §519 J.1.

3. The LEA may request an expedited due process hearing if school personnel maintain that it is dangerous for the student to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings.

a. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in §519 F.

b. A placement ordered pursuant to 3.a above may not be longer than fort-five (45) days.

c. The procedures in 3. above may be repeated as necessary.

L. A student who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the LEA including any behavior described in §519 B and 519 E, may assert any of the protections provided for in this section if the LEA had knowledge (as determined in accordance with paragraph (2) below ) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

1. An LEA shall be deemed to have knowledge that a student is a student with a disability if:

a. the parent of the student have expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the LEA that the student is in need of special education and related services;

b. the behavior or performance of the student demonstrates the need for these services, in accordance with the definition of a student with a disability;

c. the parent of the student have requested an evaluation of the student; or

d. the teacher of the student or other personnel of the LEA has expressed concern about the behavior or performance of the student to the director of special education of the LEA or to other personnel in accordance with the LEA's established child find or special education referral system.

2. An LEA would not be deemed to have knowledge under paragraph 2 above, if as a result of receiving the information specified in that paragraph, the LEA either:

a. conducted an evaluation and determined that the student was not a student with a disability; or

b. determined that an evaluation was not necessary and provided notice to the student's parents of its determination.

3. Certain conditions apply if there is no basis of knowledge.

a. If an LEA does not have knowledge that a student is a student with a disability, in accordance with paragraphs 1 and 2 above, prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors.

b. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in less than sixty business days without exception or extensions.

4. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

5. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by the parents, the LEA shall provide special education and related services.

M. Expedited due process hearings addressed in paragraph J. of this section shall follow the procedures prescribed below.

1. The hearing shall meet the requirements of §507.A. of these Regulations.

2. The hearing shall be conducted by a due process hearing officer that meets the criteria established in §508 of these Regulations.

3. The hearing shall result in a written decision that shall be mailed to the parties within twenty business days of the LEA's receipt of the request for the hearing, without exceptions or extensions.

4. The hearing shall have time lines that are the same for hearings requested by the parents or the LEA.

5. The hearing shall be conducted according to guidelines established in §508 of these Regulations, where appropriate, and according to guidelines established by the Department.

6. The decisions on expedited due process hearings are appealable consistent with the procedures established at §509 of these Regulations. The request for an appeal of the expedited due process hearing shall be sent to the Department by certified mail within five business days of receipt of the expedited due process hearing decision. A final decision shall be reached in the review and a copy mailed to all parties within twenty business days of receipt of the request for a review without exceptions or extensions.

N. Nothing in this part prohibits an LEA from reporting a crime committed by a student with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.

1. An LEA reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime.

2. An LEA reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

## **§520. - 599. Reserved**

### **Chapter 6. Establishment and Operation of Special School District**

#### **§601. Establishment of Special School District (SSD)**

A. Special School District (SSD) is an educational service agency administered by the Louisiana Department of Education with the approval of the SBESE serving in the capacity of the governing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§602. Program Approval**

A. Each educational program operated by SSD shall meet the Standards for school approval as established in the *School Administrator's Handbook, Bulletin 741*.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§603. Purpose**

A. The instructional programs operated by SSD shall consist of Special School District Number 1 (SSD#1) and Special School District Number 2 (SSD#2).

1. The purposes of SSD#1 is to provide a free appropriate public education for eligible students with disabilities, ages three through twenty-one years, who have been enrolled in State operated programs and to provide appropriate educational services to school-aged students enrolled in State-operated mental health facilities.

2. The purpose of SSD#2 is to provide appropriate educational, vocational, and related services to eligible students who are placed by Department of Public Safety and Corrections (DPS&C) in certain privately-operated secure juvenile correctional facilities.

3. During this period, SSD shall assume jurisdiction and responsibility for education on an individual basis for each student to assure that each student receives an uninterrupted appropriate educational program.

B. When providing a FAPE to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons, certain requirements do not apply or can be modified.

1. The requirements do not apply relating to participation of students with disabilities in general assessments.

2. The requirements do not apply relating to transition planning and transition services to students whose eligibility under these Regulations will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

3. The requirements relating to IEP or placement may be modified by the IEP team of a student with a disability if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§604. - 629. Reserved**

#### **§630. General Responsibilities**

A. Whenever a student enters the jurisdiction of SSD consistent with the requirements of these Regulations, SSD shall be responsible for either providing or causing to be provided all needed educational services to each student in full compliance with provisions of Chapter 4 of these Regulations, and/or as stipulated in *Bulletin 741*, as listed below.

1. The necessary certified personnel to ensure the conduct of an Individual Evaluation for each student within its jurisdiction in accordance with all requirements of §430-436 of these Regulations

2. The development and implementation of an IEP for each student with disabilities in accordance with §440-446 of these Regulations.

3. Adequate administrative and instructional personnel to implement each student's educational plan.

4. Adequate personnel to establish and maintain the appropriate relationships with each affected LEA to provide for a smooth transition of educational services for each student leaving SSD.

5. The transmission of all educational records of a student leaving SSD to the LEA in which the student will be enrolled or seeking to be enrolled.

6. The adherence to all procedural safeguards of Chapter 5.

B. The assumption of this responsibility by SSD shall not relieve in any way an insurer, similar third party, or State or local public agency - e.g., Department of Health and Hospitals (DHH), Department of Public Safety and Corrections (DPS&C) - from an otherwise valid obligation to provide or to pay for services to which students are entitled as clients or beneficiaries of such third parties under State or Federal entitlement or laws, or under policies or contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§631. Jurisdiction**

A. SSD has jurisdiction over all students with disabilities enrolled in residential facilities operated by DHH or DPS&C, eligible students enrolled in facilities operated by OMH, eligible students placed by DPS&C in certain privately-operated secure juvenile correctional facilities, and students placed by SSD in an LEA. When a student is no longer enrolled in a State-operated facility, jurisdiction is transferred from SSD to the LEA of current residence of the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§632. Enrollment**

A. Students as identified in §631 shall be enrolled in a SSD school/ program after admission to a State-operated residential facility or to certain privately-operated secure juvenile correctional facilities.

B. SSD shall develop with each affected agency an interagency agreement for the purpose of implementing the above requirements, which shall include procedures for the joint development of each IEP; educational plan; and treatment, care, or habilitation plan.

C. Wherever possible, consistent with the rules for the least restrictive environment, students enrolled in SSD#1 shall participate in educational programs operated by city/parish LEAs serving the geographic attendance area in which the facility is located.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§633. Reserved**

#### **§634. Emergency and Respite Care Program**

A. The admission of a student by the State of Louisiana into a DHH facility for a temporary program of respite care shall not automatically require enrollment in SSD for the purpose of these Regulations. The admission of a student on an emergency basis shall not constitute enrollment in SSD. However, if such admission continues on a nonemergency

basis after a decision has been made by the legally constituted agency (i.e., DHH or DPS&C) or by a court of the State of Louisiana to place the student in a State-operated residential facility, the student shall be enrolled in SSD in accordance with §632 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§635. - 649. Reserved**

#### **§650. Financing**

A. The Department shall provide to SSD whatever financial resources are necessary to support the educational programs of SSD.

B. The cost of teachers, paraeducators, principals, speech therapists, pupil appraisal personnel, and other instructional support staff for the educational programs operated by SSD shall be included in the operating budget prepared by the Department. SSD may from time to time enter into contracts for the delivery of educational services with LEAs in whose jurisdiction residential facilities are located. LEAs shall participate in such contractual arrangements unless the State Board approves the request by a LEA for exemption from this obligation.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§651. - 689. Reserved**

#### **§690. Instructions for Child Count**

A. Each LEA shall use LANSER for the purpose of tracking students with disabilities. Data from this system shall be used to produce the Annual Child Count, as of December 1, for the purpose of generating grant awards under IDEA-B and the Preschool Grants Program.

B. Each LEA/State agency shall determine the eligibility of each student for inclusion in the December 1 Child Count, which will generate funds under IDEA-B. It is the responsibility of the LEA/State agency to verify that each eligible student is receiving the special education and related services stated on the Individualized Education (IEP) Program or early intervention services, as stated on the Individualized Family Service Plan (IFSP).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§691. Individual Evaluation**

A. Individual evaluations in SSD shall be conducted to comply with all requirements of §430-436 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§692. IEP and Placement Development and Review**

A. The IEPs and placement of students enrolled in SSD shall be developed and implemented in accordance with §440-446 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§693. Procedural Safeguards**

A. Students and parents of students with disabilities enrolled in SSD#1 shall be provided the procedural safeguards in accordance with Chapter 5 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§694. Reserved**

### **§695. Monitoring and Complaint Management**

A. Special School District shall develop an internal monitoring and complaint management system.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§696. - 699. Reserved**

## **Chapter 7. Responsibilities of State Board Special Schools**

### **§701. Establishment**

A. The State Board Special Schools (Louisiana School for the Deaf, Louisiana School for the Visually Impaired, and Louisiana Special Education Center) are State operated schools providing educational programs and services for students with disabilities. These schools are administered by the Department.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§702. School Approval**

A. Each State Board Special School shall meet the Standards for School Approval of the SBESE.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§703. Purpose**

A. State Board Special Schools are designated to provide a free appropriate public education for students who, because of low-incidence impairments (i.e., deaf, blind, orthopedic impairment) meet the criteria for admission for each such special school; they are enrolled in such special school on a residential basis. The quality of education shall be equal to that received by any other similar student with disabilities in the city/parish LEAs of the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§704. Administrative Organization**

A. The SBESE is the governing board of the State Board Special Schools. The Department administers such special schools through the schools' appointed superintendents. The superintendent of each special school shall administer the special school for which he or she is responsible in compliance with approved SBESE policies and procedures, these Regulations, and other applicable bulletins.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§705. General Responsibilities**

A. Whenever a student with disabilities enters a State Board Special School in compliance with §401 D.6. of these Regulations, provision for a FAPE shall be the responsibility of the LEA with jurisdiction in accordance with §706.

B. State Board Special Schools shall, upon admitting a student with disabilities in compliance with §716, assume the responsibility for providing the student a free appropriate public education in full compliance with all provisions of Chapter 4 of these Regulations, including those related to child search, evaluation, IEP development and implementation, and placement; the provision of special education and related services; adherence to procedural safeguards; and certification of staff.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§706. Jurisdiction**

A. All students with disabilities referred by an LEA and admitted as full-time residential students into a State Board Special School shall be under the jurisdiction of the State Board Special School.

B. Students with disabilities referred by an LEA and admitted as full-time students to participate in the academic and nonacademic programs to the extent necessary to meet the individual needs of the student, with the exception of residential services because of the proximity of residence of parents and/or other residential arrangements, shall also be under the jurisdiction of State Board Special Schools.

C. Students with disabilities under the jurisdiction of the State Board Special School, but placed in an educational program or receiving services in a city/parish LEA, shall remain under the jurisdiction of the State Board Special School.

D. Students with disabilities placed by an LEA in a State Board Special School shall remain under the jurisdiction of the placing LEA.

E. The LEA which retains jurisdiction shall retain the fiscal responsibility for funds or resources not available to the other system from the State or through an interagency agreement or cooperative program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

### **§707. Enrollment (Admission and Release)**

A. Eligible students with disabilities shall be admitted to State Board Special Schools according to admission procedures established by the State Board Special School, approved by the SBESE, and in compliance with §303 or §716 of these Regulations.

B. Students with disabilities admitted to State Board Special Schools shall be released from enrollment according to procedures established by the State Board Special School, approved by the SBESE, and in compliance with these Regulations.

1. Students with disabilities currently enrolled in State Board Special Schools shall not be referred to a city/parish LEA without a review of the current IEP/Placement (in compliance with §440 and 451.D.) conducted by the State Board Special School and an LEA representative.

2. Prior to the release of any student placed in a State Board Special School, through out-of-district placement procedures at §451.B., the Division shall review and approve each release.

C. State Board Special Schools may enter into interagency agreements with Special School District for cooperative supportive efforts in the provision of services, such as child search, evaluation and coordination.

D. Admission to a State Board Special School does not necessarily mean that all educational services described in the IEP of the student shall be provided within such facility. Wherever appropriate, consistent with the rules for a least restrictive environment in §446, students admitted to State Board Special School programs shall participate in educational programs operated by city/parish school systems serving the geographic attendance area in which the facility is located.

E. Admission to a State Board Special School shall not relieve in any way an insurer, similar third party, or other State or local public agency (e.g., DHH, DPS&C, DSS) from an otherwise valid obligation either to provide or to pay for services to which students with disabilities are entitled as clients or beneficiaries of such third parties under State or Federal entitlement or laws, or under policies or contracts.

F. State Board Special Schools may not deny admission or release from enrollment any student with a disability who exhibits behavioral concerns. All procedural safeguards, as found in Chapter 5 of these Regulations, shall be afforded the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§708. Financing**

A. State Board Special Schools shall apply for State funds by submitting annual budgets approved by the SBESE to the Louisiana Legislature. Such budgets shall indicate Federal and State sources of revenue. Each State Board Special School shall have its own schedule number in the annual appropriation bill.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§709. Child Search Activities**

A. State Board Special Schools shall cooperate with each LEA in which the parents of a student with a disability enrolled in the State Board Special School are domiciled to permit the LEA to carry out its ongoing responsibility with respect to child search when a student is in a State Board Special School.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§710. Reserved**

#### **§711. Instructions for Child Count**

A. Each LEA shall use LANSER for the purpose of tracking students with disabilities. Data from this system shall be used to produce the Annual Child Count, as of December 1, for the purpose of generating grant awards under IDEA-B and the Preschool Grants Program.

B. Each LEA/State agency shall determine the eligibility of each student for inclusion in the December 1 Child Count, which will generate funds under IDEA-B. It is the responsibility of the LEA/State agency to verify that each eligible student is receiving the special education and related services stated on the Individualized Education Program or early intervention services, as stated on the Individualized Family Service Plan.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§712. Individual Evaluation**

A. Individual evaluations in State Board Special Schools shall be conducted in compliance with all requirements of §430-436 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§713. IEP/Placement**

A. IEP/Placement of students enrolled in a State Board Special School shall be reviewed or revised and implemented in accordance with §440-459 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§714. Procedural Safeguards**

A. Students with disabilities and parents of students with disabilities enrolled in a State Board Special School shall be afforded all the procedural safeguards provided by Chapter 5 of these Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§715. Monitoring and Complaint Management**

A. The State Board Special Schools shall develop an internal monitoring and complaint management system.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§716. Louisiana Schools for the Deaf and the Visually Impaired Alternative Placement**

A. In compliance with RS 17:348 and RS 17:1946.B(2) the Louisiana School for the Deaf (LSD) and the Louisiana School for the Visually Impaired (LSVI) shall determine, not later than the second Monday in September of each year, the number of additional students who may be admitted under this placement option. LSD and LSVI shall base the determination on the availability of all necessary resources required to provide a free appropriate public education.

B. Upon receipt from a parent (as defined in Chapter 9 of these Regulations) of an application for admission of his or her child, LSD or LSVI shall require, at a minimum, an individual evaluation which meets the requirements in the *Pupil Appraisal Handbook* for classification as having a hearing impairment (i.e., deaf, hard of hearing) or a visual impairment (i.e., blindness, partial sight) as a part of the application. LSD or LSVI shall notify the LEA of the

parent/student domicile that the application has been made, in order to fulfill the provisions established in §709 of these Regulations.

C. Within forty-five (45) business days, LSD or LSVI shall process the application, make a determination of eligibility for admission, and develop an Individualized Education Program (IEP). In the development of the IEP, the parent shall be informed of all placement options available to meet the student's educational needs.

D. LSD or LSVI shall notify the LEA of the parent/student domicile that a student has been admitted or rejected under the provisions of this Subsection.

E. The applicable procedural safeguards established in Part 500 of these Regulations shall be followed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§717. - 799. Reserved**

## **Chapter 8. Interagency Agreements**

### **§801. General Statement**

A. Under R.S. 17:1941-1958 et seq., the SBESE has authorized the Department, Division of Special Populations to enter into any agreement developed with another public or private agency, or agencies, whenever such an agreement is consistent with the Regulations; is essential to the achievement of full compliance with the Regulations; is designed to achieve or accelerate the achievement of the full educational goal for all students with disabilities; and is necessary to provide maximum benefits appropriate in service, quality, and cost to meet the full educational opportunity goal in the State. Each LEA and the Department shall enter into all interagency agreements or other mechanisms for interagency collaboration specified in the regulations by following all the requirements in this part.

B. As used in this part, *interagency agreement* means an operational statement between two or more parties or agencies that describes a course of action to which the agencies are committed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§802. - 809. Reserved**

### **§810. Relationship Between LEAs and the Department**

A. The relationship between the Department and the LEAs is defined by these Regulations in regard to providing a free appropriate public education to students with disabilities. Interagency agreements shall not be necessary to define such relationships.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§811. - 819. Reserved**

### **§820. Purpose of Interagency Agreements**

A. The purpose of interagency agreements shall be to assure that the standards established by Federal/State mandates and the SBESE to ensure a free appropriate public education for students with disabilities are upheld when they are implemented by an approved public or private agency not within the governance of the SBESE.

B. The agreements are mandated to provide maximum use of both human and fiscal resources in the delivery of special education and related services and to identify or define a method for defining the financial responsibility of each agency.

C. Agreements may be entered into with parties both inside and outside the State of Louisiana with special consideration being given to abide by the rules for least restrictive environment. Nothing in any agreement shall be construed to reduce assistance available or to alter eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§821. - 829. Reserved**

### **§830. Types of Interagency Agreements**

A. SDE and SSD shall have agreements with the Department of Health and Hospitals (DHH), the Department of Social Services (DSS), and the Department of Public Safety and Corrections (DPS&C), and/or other state agencies and their sub-offices, where appropriate. LEAs shall have those agreements whenever necessary for the provision of a free appropriate public education. The State School for the Deaf, State School for the Visually Impaired and the State Special Education Center, now under the auspices of SSD, shall have interagency agreements with the LEA in whose geographic area they are located; with each LEA that places a student in the day programs of that facility; with regional state agencies; and with habilitation agencies with which they share students.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§831. - 839. Reserved**

### **§840. Mandatory Content of Interagency Agreements**

A. Each agreement shall contain in writing information specified by Federal and State mandates and SBESE policy, as listed below:

1. a statement describing the disparate governance being dealt with by the parties of the agreement;
2. the reason for writing the agreement;
3. the responsibilities of each party of the agreement for providing a FAPE, including policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency designed to promote the coordination and timely and appropriate delivery of services;
4. an identification of or a method for defining financial responsibility of each agency in providing services, including conditions and terms of reimbursement;
5. all applicable State and Federal standards that will apply to the agreement being developed;
6. the data to be exchanged and the methods for exchanging them;
7. the statements with respect to Child Search and confidentiality issues;
8. the monitoring schedule and procedures;
9. the duration of the agreement;
10. the process for amending the agreement, to include not only the statement to the effect that the contract may be terminated upon thirty days written notice but also the

procedures for the disposition of data/materials collected to that point;

11. any information specific to an agency which is necessary for approval of the agreement by the Department;

12. the names, titles and signatures of individuals authorized to enter into such agreements.

B. Interagency agreements shall be reviewed annually. It is not necessary to write a new agreement if there is documentation between parties that the existing signed agreement is still agreeable to all parties.

C. In addition, the agreements shall contain the three statements listed below for conformance to Division of Administration requirements.

1. The Contractor shall not assign any interest in this contract and shall not transfer any interest in same (whether by assignment or novation) without prior written consent of the State, provided, however, that claims for money due or to become due to the Contractor from the State may be assigned to a bank, trust company, or other financial institution without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

2. The Contractor shall agree to abide by all of the provisions of R.S.43:31 in regard to the printing of public documents. The Contractor shall agree that prior to the final publication of any reports, documents, or publications of whatever nature for delivery to or used by the State, the final proofs shall be proofread by personnel of the Department and that no final printing shall occur until the Contractor has been advised by the Department in writing that the text of materials to be printed has been proofread and approved.

3. The Contractor shall agree that the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration's auditors shall have the option of auditing all of the Contractor's accounts that relate to this contract.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§841. - 859. Reserved**

#### **§860. Resolving Interagency Disputes**

A. The steps to be followed to resolve interagency disputes including funding in an expeditious manner have been prescribed by the SBESE.

1. For agency disputes between educational agencies over which SBESE has control, regular complaint procedures shall be followed.

2. For interagency disputes at the local, regional, or state level that involve either program or financial responsibility, referral to the Office of the Governor shall be made.

3. If a dispute continues beyond these interventions, either party of the dispute may seek resolution from a court of competent authority.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§861. - 899. Reserved**

### **Chapter 9. Definitions**

#### **§901. Terms**

A. The terms defined in §902-904 of this Chapter are used throughout these Regulations. Unless expressly provided to the contrary, each term used in these Regulations shall have the meaning established by this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§902. Abbreviations/Acronyms Used in these Regulations**

A. DSS - State Division of Social Services  
B. DHH - State Department of Health and Hospitals  
C. DPS&C - State Department of Public Safety and Corrections

D. FAPE - Free Appropriate Public Education  
E. FERPA - Family Educational Records and Privacy Act of 1974

F. IDEA - Part B of the Individuals with Disabilities Education Act amends the Education for All Handicapped Children Act of 1975 formerly known as EHA (P.L. 94-142).

G. IEP - The Individualized Education Program required by §440 of these Regulations

H. LEA - Local Education Agency  
I. LRE - Least Restrictive Environment  
J. SBESE - State Board of Elementary and Secondary Education

K. Section 504 - Section 504 of the Rehabilitation Act of 1973, 29 USC 706 and the Regulation issued by the U.S. Department of Education at 45 CFR 84

L. SSD#1 and SSD#2 - Special School District Number One and Two

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§903. Abbreviated Terms**

A. The Act - Sections 1941 through 1958 of Chapter 8 of Title 17 of Louisiana Statutes of 1950, as amended

B. The Department - The State Department of Education  
C. The Division - The Division of Special Populations of the State Department of Education

D. The State - The State of Louisiana  
E. The State Board - The State Board of Elementary and Secondary Education

F. The State Board Special Schools - The Louisiana Special Education Center, The Louisiana School for the Deaf, The Louisiana School for the Visually Impaired

G. The Superintendent - The State Superintendent of Public Elementary and Secondary Education

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

#### **§904. Definitions**

*Adapted Physical Education* is specially designed physical education for not only students with disabilities who may not safely or successfully engage in unrestricted

participation in the vigorous activities of the regular physical education program on a full-time basis but also for students with disabilities, ages three through five, who meet the criteria specified in *Bulletin 1508*. The delivery of adapted physical education required by an IEP shall meet the following conditions:

1. evaluation and instruction are provided by a certified adapted physical education teacher;
2. only students with disabilities whose need is documented in accordance with criteria for eligibility as identified in *Bulletin 1508* are included in the caseload;
3. the caseload is in accordance with the pupil/teacher ratios listed in Chapter 10 of these Regulations.

*Age of Majority* means as defined in Louisiana, means eighteen years of age.

*Alternative Placement* means any educational placement within the preschool, elementary, and secondary structure of the State specially designed for providing for the needs of students with disabilities. At a minimum, the continuum of alternative placements shall include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. Provisions shall be made for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class instruction.

*Alternative Assessment* means a substitute approach used in gathering information on the performance and progress of students who do not participate in typical state assessments. Under these Regulations, alternate assessments shall be used to measure the performance of a relatively small population of students with disabilities who are unable to participate in the general statewide assessment system, even with accommodations and modifications.

*Assistive Technology Device* means any item, piece of equipment, or product system - whether acquired commercially off the shelf, modified, or customized - that is used to increase, maintain, or improve functional capabilities of a student with a disability.

*Assistive Technology Service* means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes

1. the evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;
2. purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities;
3. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitation plans and programs;
5. training or technical assistance for a student with disabilities, or, if appropriate, that student's family; and
6. training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student.

*At No Cost* means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular educational program.

*Audiology* as a related service, means

1. the identification of students with hearing loss;
2. the determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
3. the provision of habilitative activities such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
4. the creation and administration of programs for prevention of hearing loss;
5. the counseling and guidance of students, parents, and teachers regarding hearing loss; and
6. the determination of the students' needs for group and individual amplification, the selection and fitting of an appropriate aid, and the evaluation of the effectiveness of amplification.

*Autism* means a developmental disability that significantly affects verbal and nonverbal communication and social interaction, generally evident before age three, and that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance. A student who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria are satisfied.

*Business Day* means Monday through Friday, except Federal and State holidays (unless holidays are specifically included in the designation of business day).

*Certificate of Achievement* refers to an exit document issued to a student with a disability after he or she has achieved certain competencies and has met specified conditions as listed below. The receipt of a Certificate of Achievement shall not limit a student's continuous eligibility for services under these Regulations unless the student has reached the age of twenty-two.

1. The student has a disability under the criteria in the *Pupil Appraisal Handbook*.
2. The student has participated in alternate assessment.
3. The student has completed at least twelve years of school or has reached the age of twenty-two (not to include students younger than sixteen).
4. The student has met attendance requirements according to *Bulletin 741*.
5. The student has addressed the general education curriculum as reflected on the students' IEP.
6. Transition planning for the student has been completed and documented.

*Certificate of Achievement - Provisional Eligibility Criteria* refers to an exit document issued to a student with a disability after he or she has achieved certain competencies and has met specified conditions as listed below.

1. Eligible students are those
  - a. who have disabilities under the criteria in the *Pupil Appraisal Handbook*;
  - b. who were in an Alternative to Regular Placement (ARP) program during the 1997-98 school year as documented in the IEP;
  - c. who were enrolled in grades 6, 7, 8, 9, 10, or 11 during the 1998-99 school year; and
  - d. who their IEP team determined did not meet the LEAP Alternate Assessment Participation Criteria.

2. Eligible students shall meet the Provisional Eligibility Criteria listed below to be awarded a Certificate of Achievement. The receipt of a Certificate of Achievement shall not limit a student's continuous eligibility for services under these Regulations unless the student has reached the age of twenty-two.

- a. The student has participated in general district and statewide assessments, including all components of the Graduation Exit Examination (GEE).

- i. If the student has failed a component of the GEE, the decision to retake that component of the GEE is an IEP team decision.

- ii. If the student will not retake that component of the GEE, GEE remediation will not be provided.

- iii. If the student will retake that component of the GEE, the student will be provided GEE remediation.

- b. The student has completed at least twelve years of school or has reached the age of twenty-two (not to include students younger than sixteen).

- c. The student has met attendance requirements according to *Bulletin 741*.

- d. Transition planning for the student has been completed and documented.

- e. A body of evidence exists to document that the student had access to and progressed in the general curriculum, to include at a minimum the Louisiana Content Standards in the areas of English/language arts, mathematics, science, and social studies and the foundation skills.

- f. A body of evidence exists to document that the student has developed vocational competencies.

*Change of Placement* See §448 and §519A. of these Regulations.

*Child Search Coordinator* is the LEA employee responsible for the child-search and child-identification activities, including those of locating the student suspected of having a disability. Child-search in these Regulations equates to child-find in IDEA.

*Combination Self-contained and Resource Classroom* is an alternative education placement in which the same teacher provides special education instruction for students who receive instruction in various special education alternative placements. These placements include self-contained, resource, and regular classes.

*Community-based Instruction* is teaching and learning functional skills and activities in the community setting in which these activities would typically occur.

*Community-based Vocational Training* is job training for high school students who train in real-work sites/local businesses, without pay, with training/support/supervision and/or follow-along provided by trained personnel from the LEA.

*Confidentiality of Information* involves the storage, disclosure to third parties, retention, and destruction of personally identifiable information.

*Consent* means that

1. the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication;

2. the parent understands and agrees in writing to carry out the activity for which his or her consent is sought; the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. the parent understands that granting of consent is voluntary on the part of the parent and may be revoked at any time; if a parent revokes consent, that revocation is not retroactive (i.e., does not negate an action that occurred after the consent had been given and before the consent was revoked).

*Controlled Substance* means a drug or other substance identified under schedules I, II, III, IV, or V. in section 202(c) of the Controlled Substances Act (21 U.S.C. 812 (c)).

*Counseling Services* means services provided by qualified social workers, psychologists, guidance counselors, or otherwise qualified personnel.

*Day* means calendar day unless otherwise indicated as business day or school day.

*Deaf-blindness* is concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

*Deafness* See Hearing Impairment.

*Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

*Due Process* See §507. of these Regulations.

*Developmental Delay* is a disability in which students, ages three through nine, are identified as experiencing developmental delays in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development or adaptive development.

*Disability* See Student with a disability.

*Early Identification and Assessment of Disabilities in Students* as a related service, means the implementation of a formal plan for identifying a disability as early as possible in a student's life.

*Education Records* means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

*Educational Diagnostic Services* include

1. identifying special needs of students by providing consultation and collaboration with teachers, school administrators, students and parents, classroom observations and academic support services;

2. preventing educational problems through early identification of at-risk students;

3. consulting with teachers and other school staff members in planning, implementing, and evaluating school

programs and strategies to meet the educational needs of individuals and groups of students;

4. designing interventions that address the academic needs of specific students to increase success in the academic setting;

5. administering, analyzing and interpreting informal and formal tests that will assist in identifying educational strengths and/or weaknesses in students who may need special education and related services; and

6. working as part of a multidisciplinary team to assess the educational, psychological, social and health needs of individual students.

*Emotional Disturbance* means a condition characterized by behavioral or emotional responses so different from appropriate age, cultural, or ethnic norms that they adversely affect performance. Performance includes academic, social, vocational or personal skills. Such a disability is more than a temporary, expected response to stressful events in the environment; it is consistently exhibited in two different settings; and it persists despite individualized intervention within general education and other settings. Emotional disturbance can co-exist with other disabilities. This classification does not include children/youth who are socially maladjusted, unless it is determined that they also meet the criteria for Emotional Disturbance.

*Educational Service Agency* means a regional public multiservice agency that is authorized by State law to develop, manage, and provide services or programs to LEAs and that is recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the state. This definition includes any other public institution or agency having administrative control and direction over a public elementary or secondary school and includes entities that meet the definition of an intermediate educational unit.

*Equipment* means machinery, utilities, built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

*Excess Cost* means those costs that are in excess of the average annual per student expenditure in a LEA during the preceding school year for an elementary or secondary school student, as may be appropriate.

*Evaluation* is a multidisciplinary evaluation of a child/student, ages birth through twenty-one years, in all areas of suspected disability through a systematic process of review; examination; interpretation; and analysis of screening data, developmental status, intervention efforts, interviews, observations, and test results, as required; and other assessment information relative to the predetermined criteria as defined in the *Pupil Appraisal Handbook*.

*Evaluation Coordinator* is the pupil appraisal person who, in addition to serving as an examiner in the individual evaluation, is assigned the responsibilities described in §433 for a particular student.

*Extended School Year (ESY) Services* is the provision of special education and related services to students with disabilities beyond the normal school year of the LEA. All students (ages three through twenty-one) classified as having a disability according to the *Pupil Appraisal Handbook* with a current evaluation and IEP are to be screened annually by the ESY screening date to determine eligibility for ESY. Services are to be provided in accordance with the student's IEP once eligibility is determined. (Refer to *Bulletins 1870/1871 and 1872*.)

*Free Appropriate Public Education (FAPE)* means special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet the standards of the Department; that include preschool, elementary school, or secondary school education in the state; and that are provided in conformity with an IEP.

*Foster parent* See Parent.

*Generic Class* is an instructional setting (self-contained or resource).

1. In accordance with the level of support needed, students with disabilities may be placed as follows:

a. mild/moderate class consisting of mild to moderate impairments which include mental disabilities, autism, specific learning disabilities, emotional disturbances, orthopedic impairments, other health impairments, speech or language impairments, or traumatic brain injury; or

b. severe/profound class consisting of moderate, severe to profound impairments which include mental disabilities, autism, multiple disabilities, deaf-blindness, emotional disturbance, or traumatic brain injury.

2. The instruction is provided by a special education teacher with appropriate certification as specified in *Bulletin 746*.

3. The pupil/teacher ratios established in Chapter 10 of these Regulations are used.

4. The generic class meets the other requirements of the categorical self-contained or resource class.

*Hearing Impairment* means an impairment in hearing, whether permanent or fluctuating, that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that it adversely affects a student's educational performance. It includes students who are deaf or hard-of-hearing or who have unilateral hearing loss or high frequency hearing loss

*Home or Hospital Instruction* refers to alternative education placements on the continuum for the provision of special education to a student with a disability in the student's home environment or in a hospital, based on an IEP by a teacher with appropriate certification according to the pupil/teacher ratio established in Chapter 10 of these Regulations.

*Homeless or Homeless Individual* refers to

1. an individual who lacks a fixed, regular, and adequate nighttime residence; and

2. an individual who has a primary nighttime residence that is

a. a supervised, publicly or privately operated, shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

b. an institution that provides a temporary residence for individuals intended to be institutionalized; or

c. a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings such as a camp ground, abandoned buildings and cars;

d. substandard housing which includes no heat, indoor plumbing, running water or means of cooking or storing food;

e. crowded or undesirable living conditions in which two or more families live together, (called doubled-up or doubling-up) because they have no place of their own to live.

*IEP Team* See §441. of these Regulations.

*Illegal Drug* means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any provision of Federal law.

*Include* means that the items named are not all of the possible items that are covered, whether like or unlike the one named.

*Independent Educational Evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question. (See §503 of these Regulations.)

*Individualized Education Program* means a written statement developed, reviewed, and revised in a meeting in accordance with §440-445 for each student with a disability.

*Individualized Family Service Plan (IFSP)* is a written plan for providing early intervention services for ChildNet eligible children and their families. The determination of the most appropriate early intervention services - including any modifications in placement, service delivery, service providers or early intervention services - is accomplished through the development of the IFSP. The IFSP shall

1. be developed jointly by the family and appropriate qualified personnel, including family service coordinators involved in the provision of early intervention services;

2. be based on the multidisciplinary evaluation and assessment of the child and family;

3. include the services necessary to enhance the development of the child and the capacity of the family to meet the special needs of their child;

4. continue until the child transitions out of early intervention, either to other appropriate service providers at age three, or at such time that the family and multidisciplinary professionals determine that services are no longer necessary; or the family no longer desires early intervention services;

5. identify the location of the early intervention services to be provided in natural environments, including the home and community settings, in which children without special needs would participate.

If there is a dispute between agencies regarding the development or the implementation of the IFSP, the Lead Agency is responsible for taking the necessary actions to resolve the dispute or assign responsibility for developing or implementing the IFSP.

*Infants and Toddlers with Disabilities* are children between the ages of birth and three years of age who have

been determined eligible for early intervention services according to the *Pupil Appraisal Handbook*.

*Instruction in Regular Class* is an alternative education placement for eligible students with disabilities who receive special education and related services less than twenty-one percent of the school day outside the regular classroom.

*Interagency Agreement* means an operational statement between two or more parties or agencies that describes a course of action to which the agencies are committed. The statement shall be drawn up to be consistent with the mandatory provision of Chapter 8 of these Regulations.

*Interim Alternative Educational Setting* See §519.F. of these Regulations.

*Interpreter Services* means the facilitation of communication within an instructional environment via an enhanced visual and/or tactile mode between and among hearing impaired and hearing individuals in situations in which those individuals are unable to communicate with one another using a speech and hearing mode.

*Least Restrictive Environment* means the educational placement of a student with a disability in a manner consistent with the Least Restrictive Environment Requirements in §446. of these Regulations.

*LEA* means a public board of education or other public authority legally constituted within the State for either administrative control or direction of or to perform a service function for public elementary or secondary schools in a city, parish, school district, or other political subdivision of the state. The term includes an educational service agency and any other public institution or agency having administrative control and direction of a public elementary or secondary school including a public charter school that has been established as an LEA under State law.

*Maintenance of Effort* See §493.C. of these Regulations.

*Manifestation determination review* - See §519.G. of these Regulations.

*Medical Services* as a related service, means services for diagnostic and evaluation purposes provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

*Mental Disability* refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable skill areas: communication, home living, community use, health and safety, leisure, self-care, social skills, self-direction, functional academics, and work. Mental disabilities are manifested before age eighteen.

*Multiple Disabilities* are concomitant impairments (such as mental disability-blindness, orthopedic impairment - deafness, autism - orthopedic impairment, or emotional disturbance - mental disability), the combination of which causes such severe educational problems that the student cannot be accommodated in a special education program solely for one of the impairments. This term does not include deaf-blindness.

*Native Language* when used with reference to an individual of limited English proficiency, means the language normally used by that individual, or in the case of a student, the language normally used by parents of the

student. In all direct contact with the student, including the evaluation of the student, the language is the one normally used by the student in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, braille, or oral communication).

*Nonacademic and Extracurricular Activities* See §446.A.10. of these Regulations.

*Noncategorical Preschool* is a disability in which students three years through age five, but not enrolled in a State-approved kindergarten, are identified as having a disabling condition which is described, according to functional or developmental levels, as mild/moderate or severe/profound.

*Occupational Therapy* as a related service, means services, as defined in the *Pupil Appraisal Handbook*, provided by a qualified Occupational Therapist.

*Orientation and Mobility Training* as a related service, means services provided to blind or visually-impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home and community. This service includes teaching students, as appropriate,

1. spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

2. to use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

3. to understand and use remaining vision and distance low vision aids; and

4. other concepts, techniques, and tools.

*Orthopedic Impairment* means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member); impairments caused by disease (e.g., poliomyelitis, bone tuberculosis); and disabilities from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

*Other Health Impairment* means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment; the impairment is due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, ventilator assistance, or attention deficit disorder or attention deficit hyperactivity disorder; and adversely affects a student's educational performance.

*Paraeducator (Teacher-aide)* is a person who assists in the delivery of special educational services under the supervision of a special education teacher or other professional who has the responsibility for the delivery of special education services to students with disabilities and who has all of the following qualifications: 1) is at least twenty years of age; 2) possesses a high school diploma or its equivalent; and 3) has taken a nationally validated achievement test and scored a level of achievement

equivalent to the normal achievement level of a tenth grade student.

*Paraeducator Training Unit* is a setting that may be used for the training of self-help skills (toilet training, dressing skills, grooming skills, feeding skills, and pre-academic readiness activities) to students with severe or low incidence disabilities or preschool students. A school-aged unit shall be made up of no more than six paraeducators. A preschool unit shall be made up of no more than four paraeducators. All units shall be supervised directly by a certified special education teacher.

*Parent* means a natural or adoptive parent of a child; a guardian, but not the State if the child is a ward of the State; a person acting in the place of a parent such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with §516. A foster parent may act as a "parent" under these Regulations when the natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; and when the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under these Regulations, and has no interest that would conflict with the interest of the child. Louisiana Law requires that the rights and responsibilities of a parent established by these Regulations shall be exercised by the student with a disability who attains the age of eighteen years, unless such student has been interdicted or determined to be in continuing minority by a court order of the State of Louisiana and taking into consideration the student's type and severity of disability in accordance with §516 of these Regulations.

*Parent Counseling and Training* as a related service, means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

*Participating Agency* for transition purposes, is a State or local agency, other than the LEA that is responsible for a student's education and that is financially and legally responsible for providing transition services to the student.

*Participating Agency* for confidentiality purposes, means any agency or institution that collects, maintains, or uses personally identifiable information, or any agency or institution from which information is obtained under these Regulations.

*Personally Identifiable* means that information - includes the name of the student, the student's parent, or other family member; the address of the student; a personal identifier, such as the student's social security number or student number; or a list of personal characteristics or other information - that would make it possible to identify the student with reasonable certainty.

*Physical Education* means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual or group games or sports (including intramural and lifetime sports.) The term *physical education* includes special physical education, adapted physical education, movement education and motor development.

*Physical Therapy* as a related service means services, as defined in the *Pupil Appraisal Handbook*, provided by a qualified physical therapist.

*Prior Notice* See §504 of these Regulations.

*Psychological Services* as a related service, includes:

1. administering psychological and educational tests and other assessment procedures;
2. interpreting assessment results;
3. obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
4. consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests, interviews, and behavioral evaluations;
5. planning and managing a program of psychological services, including psychological counseling for students and parents; and
6. assisting in developing positive behavior intervention strategies.

*Public Agency* includes the SEA, LEAs, ESAs, public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to students with disabilities.

*Public Charter School* See §403. of these Regulations.

*Public Expense* means that the LEA either pays for the full evaluation when an independent educational evaluation is being conducted or ensures that the evaluation is otherwise provided at no cost to the parent.

*Pupil Appraisal Personnel* means personnel who meet the certification requirements for school personnel for such positions and who are responsible for the delivery of pupil appraisal services included in §411-436 of these Regulations.

*Qualified Personnel* means personnel who have met State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education and related services.

*Recreation* as a related service, means the assessment of leisure function, therapeutic recreation services, recreation programs in schools and community agencies, and leisure education.

*Rehabilitation Counseling* as a related service, means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. It also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

*Related Services* means transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education. Related services include speech/language pathology and audiological services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in students, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for

diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training. For infants and toddlers with disabilities, all services are considered direct services with the exception of health services, which is also considered a related service.

*Resource Departmentalized* is an instructional setting in which students receive instruction from more than one special education teacher and in which each teacher teaches only a single content or subject matter area. The pupil/teacher ratio shall be consistent with those listed in Chapter 10 of these Regulations. Instruction shall be provided for not more than the maximum allowed for that exceptionality in a self-contained class at any given period.

*Resource Room* is a type of alternative education placement for special education and related services; it has been designed or adapted as a location where students with disabilities may receive all or a part of the special education required by their IEPs, and in which all of the following exist

1. the pupil/teacher ratios established in Chapter 10 are used;
2. only students with disabilities are enrolled;
3. instruction is provided for not more than twelve students whose disabilities are not severe or low incidence impairments for any one hour of instructional time;
4. special education is provided by a teacher certified either generically or specifically in the area of the exceptionality for which special education is provided; and
5. students receive special education and related services for at least 21% but no more than 60% of the school day outside the regular classroom.

*School Building Level Committee* is a committee of at least three school level staff members; the committee may be identified as an SBLC, SAT, STAT, etc., at the discretion of the LEA. The committee shall be comprised of at least the principal/designee, a classroom teacher, and the referring teacher. It is suggested that other persons be included, such as the guidance counselor, reading specialist, master teacher, nurse, parents, pupil appraisal personnel, etc. This committee is a decision-making group that meets on a scheduled basis to problem-solve concerns from teachers, parents, or other professionals on individual students who are experiencing difficulty in school due to academic and/or behavior problems. In most instances, for enrolled students, it is only through the SBLC that a referral can be made to pupil appraisal for an individual evaluation.

*School Day* means any day, including a partial day, that students are in attendance at school for instructional purposes. *School day* has the same meaning for all students in school, including students with and without disabilities.

*School Health Services* as a related services means services, as defined in the *Pupil Appraisal Handbook*, provided by a certified school nurse or other qualified person.

*Self-contained Departmentalized* is an instructional setting in which students receive instruction from more than one special education teacher and in which each teacher teaches only one content area or subject matter. Pupil/teacher ratios shall be consistent with those listed in Chapter 10 of these Regulations. Instruction shall be provided for not more

than the maximum number allowed for that exceptionality in a self-contained class at any given period.

*Self-contained Special Education Classroom* is a type of alternative education placement in which special education instruction and related services are provided outside the regular classroom more than sixty percent of the school day.

*Severe Language Disorder* is a type of communication impairment resulting from any physical or psychological condition which seriously interferes with the development, formation, and expression of language and which adversely affects the educational performance of the student. This category does not include students whose communication impairment is primarily due to mental disability, autism, or a hearing impairment. This exceptionality applies to students identified as such prior to 1999.

*Severe or Low Incidence Impairments* may include moderate, severe and profound mental disabilities, multiple disabilities, autism, blindness, deafness, deaf-blindness, emotional disturbances, severe language disorders, orthopedic impairments, and traumatic brain injury, dependent upon the intensity of the student's individual needs.

*Social Work Services in Schools* as a related service, includes preparing a social or developmental history on a student with a disability; group and individual counseling with the student and family; working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school; mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and assisting in developing positive behavioral intervention strategies.

*Special Education* means specially designed instruction, at no cost to the parent, to meet the unique needs of the student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. If they meets the definition of special education, the term also includes speech-language pathology services, travel training and vocational education.

*Specially Designed Instruction* means adapting, as appropriate to the needs of an eligible student under these Regulations, the content, methodology or delivery of instruction to address the student's unique needs that result from the student's disability and to ensure access of the student to the general curriculum, so that he or she can meet the educational standards that apply to all students within the jurisdiction of the LEA.

*Specific Learning Disability* is a severe and unique learning problem characterized by significant difficulties in the acquisition, organization, or expression of specific academic skills or concepts. This learning problem is typically manifested in school functioning as significantly poor performance in such areas as reading, writing, spelling, arithmetic reasoning or calculation, oral expression or comprehension, or the acquisition of basic concepts. The term includes such conditions as attention deficit disorders, perceptual disabilities or process disorders, minimal brain dysfunction, dyslexia, developmental aphasia, or sensorimotor dysfunction, when consistent with the criteria in the *Pupil Appraisal Handbook*. The term does not apply

to students who have learning problems primarily the result of visual, hearing, or motor impairments; of mental disabilities; of an emotional disturbance; of lack of instruction in reading or mathematics; of limited English proficiency; or of economic, environmental, or cultural disadvantage.

*Speech or Language Impairment* means a communication disorder - such as stuttering, impaired articulation, a language impairment, or a voice impairment - that adversely affects a student's educational performance.

*Speech or Language Pathology* as a related service, includes identification of students with speech or language impairments; diagnosis and appraisal of specific speech or language impairments; referral for medical or other professional attention necessary for the habilitation of speech or language disorders; provisions of speech and language services for the habilitation of communication or prevention of communication impairments; and counseling and guidance of parents, students, and teachers regarding speech and language impairments.

*Student with a Disability* means a student evaluated in accordance with §430 - 436 of these Regulations and determined according to the *Pupil Appraisal Handbook* as having one of the disability categories and, by reason of that disability, needing special education and related services.

*Supplementary Aids and Services* means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate.

*Surrogate Parent*. See §516. of these Regulations.

*Transition Services* are a coordinated set of activities for a student with a disability; they are designed within an outcome-oriented process that promotes movement from school to post-school activities, including post secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; they shall be based upon the individual student's needs, taking into account the student's preferences and interests and shall include instruction, related services, community experiences, the development of employment and other post school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

*Transportation* as a related service, means transportation required to assist a student with a disability to benefit from special education and includes

1. travel to and from school; between schools and sites;
2. travel in and around school buildings; and
3. specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.

(Nonacademic and extracurricular activities may include transportation.)

*Traumatic Brain Injury* is an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or

both; the injury adversely affects a student's educational performance. The term applies to open or closed-head injuries resulting in impairments in one or more areas such as cognition; language; memory; attention; reasoning; abstract thinking; judgement; problem-solving; sensory, perceptual, or motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

*Travel Training* means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within that environment (such as, in school, in the home, at work, and in the community).

*Visual Impairment Including Blindness* means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both blindness and partial sight.

*Vocational Education* means organized educational programs directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

*Weapon* has the meaning given the term *dangerous weapon* under paragraph (2) of the first subsection (g) of section 930 of Title 18, United States Code.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

**§905. - 999. Reserved**

**Chapter 10 State Program Rules for Special Education**

**§1001. Pupil/Teacher, Pupil/Speech/Language Pathologist, and Pupil Appraisal Ratios for Public Education**

A. In providing services to all identified students with disabilities, the number of students in each instructional setting shall not exceed the following numbers.

	Preschool	Elementary	Secondary
1. Self-contained classrooms			
a. Autism	4	4	4
b. Blindness	7	9	9
c. Deafness	7	9	9
d. Deaf-blindness	4	4	4
e. Emotional Disturbance		8	8
f. Hard of Hearing	11	15	17
g. Mental Disability			
i. Mild		16	16
ii. Moderate		11	17
iii. Severe		9	9
iv. Profound		9	9
h. Mild/Moderate (Generic)		16	16
i. Multiple Disabilities	7	9	9
j. Noncategorical			
Preschool			
i. Mild/Moderate Functioning			
1. Full Day	11		
2. Half Day	16		

ii. Severe/Profound Functioning			
1. Full Day	7		
2. Half Day	14		
k. Other Health Impairment		17	17
l. Orthopedic Impairment	7	11	13
m. Partial Seeing	11	15	17
n. Speech or Language Impairment	7	9	9
o. Severe/Profound (Generic)		9	9
p. Specific Learning Disability		13	13
q. Traumatic Brain Injury	7	9	9

**2. Paraeducator Training Units**

a. **Preschool-Aged Students:** One teacher and two paraeducators shall be appointed for the initial six preschool students. For students functioning within the severe/profound range, there shall be one additional paraeducator for any additional group of three, not to exceed two additional groups of such students. For students functioning within the mild/moderate range, the additional paraeducators shall be added for each additional group of four. The maximum number of students shall not exceed twelve per unit.

b. **School-Aged Students:** One teacher and two paraeducators shall be appointed for the initial six students with severe/profound or low incidence disabilities. There shall be one additional paraeducator for any additional group of three, not to exceed four additional groups of such students. The maximum number of students shall not exceed eighteen per unit.

**3. Resource Rooms (Generic or Categorical) and Itinerant Instruction Programs (per teacher)**

- a. Students with severe or low incidence impairments/disabilities 10
- b. All other students with disabilities 27

Because of the travel requirements of the program, this number may be reduced by the LEA to 10-19 when instruction is provided to "all other students with disabilities" in at least two different schools.

**4. Combination Self-contained and Resource Classrooms**

- a. Students with severe/low incidence impairments/disabilities 12
- b. All other students with disabilities 20

**5. Hospital/Homebound Instruction (per teacher)**

- a. Itinerant 10
- b. One Site 17

**6. Preschool Intervention Settings (Parent/Child Training)**

- a. Intervention in the Home 15
- b. Intervention in a School or Center 19

**7. Infant/Toddler Settings**

- a. Center based programs (per teacher) 12
- b. Natural Environment (visits per week) 15-20

**8. Adapted Physical Education Instruction (per teacher)**

a. In caseloads exceeding thirty-five students, the total number of students identified as having a severe motor deficit shall not exceed seventeen.

- b. Itinerant Instruction (Two or more) 40

schools)  
 9. Instruction in Regular Classes. This ratio refers to the caseload of special education teachers who provide instruction to students with disabilities in general education settings.

a. Students with severe or low incidence impairments/disabilities		9
b. All other students with disabilities		16
10. Self-contained or Resource Departmentalized Settings	Elementary	Secondary
a. Autism	15	15
b. Blindness	33	33
c. Deafness	33	33
d. Deaf-blind	15	15
e. Emotional Disturbance	30	30
f. Hard of Hearing	58	63
g. Mental Disability		
i. Mild	63	63
ii. Moderate	43	63
iii. Severe	33	33
iv. Profound	33	33
h. Mild/Moderate Generic	58	58
i. Multiple Disabilities	33	33
j. Other Health Impairment	63	63
k. Orthopedic Impairment	43	45
l. Partial Seeing	58	63
m. Speech or Language Impairment	33	33
n. Severe/Profound Generic	33	33
o. Specific Learning Disability	50	58
p. Traumatic Brain Injury	33	33

11. Paraeducators may be hired to meet the unique needs of students with disabilities.

12. Speech/language pathologists in LEAs shall be employed at the rate of one for each thirty (or major fraction thereof) students receiving speech therapy. In determining the number of pupils, the following criteria shall be used.

- Each student shall receive speech therapy.
- Each speech/language pathologist shall be assigned a minimum of one student in speech therapy and shall not be assigned more than 79 points.
- Each hour per week of pupil appraisal assessment services, supervision of speech/language pathologists who hold restricted license, or supervision of speech pathology assistants shall equal one point for the purpose of determining the caseload. Assignment of these activities shall be made by the LEA supervisor.
- The caseload shall be determined according to the following guidelines.

Service Type	Number of Points Determining Caseload
Each hour of assessment	1
Each hour of supervision	1
Each hour of consultation	1
Each student receiving speech therapy	1

13. Pupil appraisal members shall be employed by LEAs at the rate listed below. LEAs may substitute one pupil appraisal for another provided that all pupil appraisal services are provided in accordance with these Regulations and the *Pupil Appraisal Handbook*.

	Public School Ratios	Private School Ratios
	Based on Membership	Based on Membership
Educational Diagnosticians	1:2,400 or major fraction thereof	1:3,500 or major fraction thereof
School Psychologists	1:2,400 or major fraction thereof	1:3,500 or major fraction thereof
Social Workers	1:3,200 or major function thereof	1:4,500 or major function thereof

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:

Interested persons may submit written comments on the proposed changes until 4:30 p.m. on February 8, 2000 to the following address: Nina Ford, Board Recorder, State Board of Elementary and Secondary Education, P.O. Box 94064, Baton Rouge, LA 70804-9064.

Weegie Peabody  
 Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
 FOR ADMINISTRATIVE RULES  
 RULE TITLE: Bulletin 1706 Regulations for Students  
 with Disabilities**

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

There are no estimated implementation costs or savings to state or local governmental units resulting from these proposed rule changes.

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

There is no estimated impact on revenue collections of state or local governmental units as a result of this measure. There will be an estimated increase in federal special education revenue of approximately 6.8 million dollars in Fiscal Year 2000-2001. However, this increase in federal special education is not due to these proposed rule changes.

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

Adoption of this rule would provide benefits to students with disabilities by enhancing their educational program through additional funds. The proposed rule clarifies fiscal responsibilities of noneducational agencies in paying for therapy services which would free up additional dollars to pay for educational services. Due to this clarification there could be additional dollars to provide training and technical assistance to school personnel and parents.

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

There are no estimated effects on competition and employment resulting from these proposed rule changes.

Marlyn Langley  
 Deputy Superintendent  
 Management and Finance  
 9912#040

H. Gordon Monk  
 Staff Director  
 Legislative Fiscal Office

## NOTICE OF INTENT

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

Commission Bylaws<sup>c</sup> Committees (LAC 28:V.113)

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

#### Title 28

#### EDUCATION

#### Part V. Student Financial Assistance<sup>c</sup> Higher Education Loan Program

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

#### §109. Committees

A. Standing committees. Unless and until otherwise decided by the vote of a simple majority of the membership of the commission, the standing committees of the commission shall consist of the following:

1. Executive Committee;
2. Budget and Finance Committee;
3. Personnel and Policy Committee;
4. Internal Audit Committee.

B. - H. ...

I. Internal Audit Committee. The Internal Audit Committee shall consist of three members of the commission. The Internal Auditor of the agency shall report to and be solely responsible to the Internal Audit Committee for the performance and reporting of findings of internal audits approved by the commission as part of the Internal Audit Plan. Every year, no later than the June meeting of the commission, the Internal Auditor shall submit to the committee for its consideration a proposed annual Internal Audit Plan covering the next fiscal year. The plan shall incorporate those internal audits which are recommended by the Executive Director. The committee shall forward its recommendations for the annual Internal Audit Plan to the commission for approval. The Internal Auditor shall complete each Internal Audit required by the annual Internal Audit Plan and submit audit findings to the committee for its review. The committee shall forward the report of findings to the Executive Director, who shall be given an opportunity to submit written comments prior to the committee's consideration of the report of findings. The findings of each internal audit, the Executive Director's comments, if any, and any committee comments and/or recommendations shall be presented to the commission for its disposition. Normally, to this committee shall also be referred all matters related to reports of audits performed by external auditors.

J. Special Committees. As the necessity therefor arises, the chairman may, with the concurrence of the commission, create special committees with such functions, powers and authority as may be delegated. The chairman may appoint ad hoc committees for special assignments for limited periods of existence not to exceed the completion of the assigned task.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), repromulgated LR 24:1264 (July 1998), LR 26:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., January 20, 2000, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn  
Executive Director

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

#### RULE TITLE: Commission Bylaws<sup>c</sup> Committees

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

The implementation cost associated with publishing the Bylaws in the *Louisiana Register* is approximately \$120. The rule provides for the establishment of an Internal Audit Committee and prescribes its function.

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

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

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

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

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

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

Jack L. Guinn  
Executive Director  
9912#044

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

Tuition Opportunity Program for Students  
(TOPS)<sup>c</sup> Scholarship and Grant Programs  
(LAC 28:IV.103, 301, 701, 703, 705,  
803, 805, 903, 907, 1701 and 2101)

The Louisiana Student Financial Assistance Commission (LASFAC) advertises its intention to revise the provisions of the Tuition Opportunity Program for Students (TOPS). This proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

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

Interested persons may submit written comments on the proposed changes until 4:30 p.m., November 20, 1999, to

Jack L. Guinn, Executive Director, Office of the Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn  
Executive Director

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

**RULE TITLE: Tuition Opportunity Program for Students (TOPS) Scholarship and Grant Programs**

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

Estimated costs to implement revisions to the program in FY 1999-2000 will be reduced by \$780,000, reduced by \$232,260 in FY 2000-2001, and increased by \$262,207 in FY 2001-2002. This includes an estimated \$500 for publication in the *Louisiana Register*, additional mailing expense of \$2700 and total decreased awards of \$783,200 during FY 1999-2000; mailing expense of \$2700 and total decreased awards of \$234,960 during FY 2000-2001; and mailing expenses and total increased awards of \$259,507 during FY 2001-02.

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

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

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

This rule establishes procedures to promulgate amended provisions of the Tuition Opportunity Program for Students (TOPS) included in Acts 435, 805, and 1302 of the 1999 Regular Legislative Session. As a result of these Acts additional mailings will occur, certain dependents of military personnel will be eligible to receive awards, and graduates of certain high schools will be ineligible to receive awards.

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

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

Jack L. Guinn  
Executive Director  
9912#045

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Clean Fuel Fleet Program  
(LAC 33:III.223 and 1951-1973)(AQ197)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality regulations, LAC 33:III.223 and 1951-1973 (Log #AQ197).

The federal Clean Air Act Amendments of 1990 (CAAA) require implementation of a clean-fuel fleet program (CFFP)

in ozone nonattainment areas classified as serious or above. Accordingly, the department submitted a State Implementation Plan (SIP) revision for a CFFP in October 1994, and the SIP was approved by the EPA on October 23, 1995. State regulations governing the CFFP are codified in LAC 33:III.1951-1973. The CFFP was to be phased-in beginning in 1998 in the Baton Rouge ozone nonattainment area. In 1998 EPA granted affected areas a one-year extension to begin the program. At this time, the department and EPA initiated discussions regarding opt-out provisions contained in the CAAA. These provisions, found in section 182(c)(4)(B), allow subject areas to submit a SIP revision to EPA which demonstrates that there exists surplus emission reduction credits (above and beyond RACT requirements) that can be used to offset those reductions from a CFFP. The department submitted the required SIP revision to EPA, which was approved by direct final rule and became effective on September 17, 1999. As a result, the department is repealing the state CFFP (LAC 33:III.1951-1973) and applicable fee requirements in LAC 33:III.223. The basis and rationale for this proposed rule are to take advantage of the CAAA opt-out provisions for a clean-fuel fleet program that has been shown to provide only marginal emission reduction benefits in the Baton Rouge ozone nonattainment area and has high administrative, operational, and equipment costs associated with long-term implementation of the program. The department is able to achieve equivalent or better emission reductions by substituting reductions obtained through the use of the existing VOC storage rule (LAC 33:II.2103) requirements.

This proposed 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. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs**

**§223. Fee Schedule Listing**

\*\*\*

[See Prior Text in Fee Schedule Listing Table]

Additional Fees		
Fee Number	Fee Description	Amount
*** [See Prior Text in Fee Numbers 2000-2620]		
2630 *NOTE 16*	Accident Prevention Program Annual Maintenance Fee: Program 3	2500.00
2800	An application fee for mobile sources emissions banking (auto scrappage)	50.00
*** [See Prior Text in Fee Numbers 2810-2914]		

**Explanatory Notes for Fee Schedule**

\*\*\*

NOTE 17. Reserved

\* \* \*

[See Prior Text in Note 18-Processing Timelines Table]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054, 30:2341 and 30:2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:613 (September 1988), LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December, 1991), repromulgated LR 18:31 (January 1992), amended LR 18:706 (July 1992), LR 18:1256 (November 1992), LR 19:1373 (October 1993), LR 19:1420 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 20:1263 (November 1994), LR 21:22 (January 1995), LR 21:782 (August 1995), LR 21:942 (September 1995), repromulgated LR 21:1080 (October 1995), amended LR 21:1236 (November 1995), LR 23:1496 (November 1997), LR 23:1499 (November 1997), LR 23:1662 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**Chapter 19. Mobile Sources**

**Subchapter B. Repealed**

**§§1951-1973. Repealed**

A public hearing will be held on January 24, 2000, at 1:30 p.m. in the Trotter Building, Second Floor, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. This hearing will also be for a revision to the State Implementation Plan (SIP) to incorporate this proposed rule. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ197. Such comments must be received no later than January 31, 2000, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ197.

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

James H. Brent, Ph.D.  
Assistant Secretary

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

**RULE TITLE: Revisions to State Clean Fuel Fleet Program**

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

The State Clean Fuel Fleet Program has not been implemented nor have any fees been collected; therefore, as a result of the repeal of this program, there will be no implementation costs or savings to state or local governmental units.

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

The repeal of the State Clean Fuel Fleet Program will have no effect on revenue collections of state or local governmental units.

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

The repeal of the State Clean Fuel Fleet Program will have no direct economic effects on persons or non-governmental groups.

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

The repeal of the State Clean Fuel Fleet Program will have no effect on competition and employment.

James H. Brent, Ph.D.  
Assistant Secretary  
9912#084

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Emission Reduction Credits Banking  
(LAC 33:III.613 and 615)(AQ199)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality regulations, LAC 33:III.613 and 615 (Log #AQ199).

The proposed rule corrects the date from January 20, 1995 to February 20, 1995, for submittal of all applications for banking emission reduction credits. The rule requires six months for submittals to the department after promulgation of the rule; however, the actual date promulgated in AQ190, which was published in the September 1999 *Louisiana Register*, was only five months after promulgation. The basis and rationale for the proposed rule are to correct the date promulgated in AQ190 in the emission reduction credits banking rule.

This proposed 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. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part III. Air**

**Chapter 6. Regulations on Control of Emissions Through the Use of Emission Reduction Credits Banking**

**§613. ERC Bank Balance Sheet**

\* \* \*

[See Prior Text in A-C]

D. Schedule. All applications for banking ERCs in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge where the emission reductions occurred before August 20, 1994, must have been submitted prior to February 20, 1995. First-time applications for banking ERCs for attainment parishes may be submitted at any time. If a parish is redesignated as ozone nonattainment by the EPA, applications for banking ERCs for those parishes must be submitted within six months after the effective date of the EPA designation. All applications for banking ERCs where the emission reductions occurred after the date this banking rule was adopted for an area shall be submitted by March 1 following the year in which the reduction occurred. The balances (i.e., the balance available for netting and the balance available for offsets) from the ERC bank balance sheets of Subsection A of this Section shall be submitted to the department by March 1 of each year together with the certification specified in Subsection E of this Section. All emission reductions must meet the timing restrictions set forth in LAC 33:III.607.D in order to be eligible for banking as ERCs.

\* \* \*

[See Prior Text in E-F]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended LR 25:1622 (September 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§615. Schedule for Submitting Applications**

\* \* \*

[See Prior Text in A]

B. All applications for banking ERCs in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge where the emission reductions occurred before August 20, 1994, must have been submitted prior to February 20, 1995. First-time applications for banking ERCs for attainment parishes may be submitted at any time. If a parish is redesignated as ozone nonattainment by the EPA, application for banking ERCs for those parishes must be submitted within six months after the effective date of the EPA designation. Once a banking application has been filed, the bank balance and the applicant's certification should be submitted annually on March 1.

\* \* \*

[See Prior Text in C-D]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:878 (August 1994), amended LR 21:681 (July 1995), LR 25:1623 (September 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

A public hearing will be held on January 24, 2000, at 1:30 p.m. in the Trotter Building, Second Floor, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ199. Such comments must be received no later than January 31, 2000, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ199.

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

James H. Brent, Ph.D.  
Assistant Secretary

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

**RULE TITLE: Emission Reduction Credits Banking**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
No costs to state or local governments are anticipated as a result of the implementation of this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There should be no effect on revenue collections of state or local governments as a result of the implementation of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There should be no costs and/or economic benefits as a result of the implementation of this rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
Competition and employment are not expected to be significantly effected as a result of the implementation of this rule.

James H Brent, Ph.D.  
Assistant Secretary  
9912#086

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Incorporation by Reference of 40 CFR Part 63  
(LAC 33:III.5122)(AQ198)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality regulations, LAC 33:III.5122 (Log #AQ198).

This proposed rule restores a previously modified paragraph in 40 CFR 63.440(d)(1), which added a state deadline in accordance with R.S. 30:2060(N)(3). This modified paragraph was adopted in AQ177 on December 20, 1998, but was not included in an update to the incorporation by reference in AQ193 on August 20, 1999. The basis and rationale for this proposed rule are to restore the previously adopted change to 40 CFR 63, Subpart S and make the regulation conform with R.S. 30:2060(N)(3).

This proposed 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. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33  
ENVIRONMENTAL QUALITY  
Part III. Air**

**Chapter 51. Comprehensive Toxic Air Pollutant  
Emission Control Program  
Subchapter C. Incorporation by Reference of 40 CFR  
Part 63 (National Standards for  
Hazardous Air Pollutants for Source  
Categories) as it Applies to Major  
Sources**

**§5122. Incorporation by Reference of 40 CFR Part 63  
(National Standards for Hazardous Air  
Pollutants for Source Categories) as it Applies to  
Major Sources**

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories published in the *Code of Federal Regulations* at 40 CFR part 63, revised as of July 1, 1998, and specifically listed in the following table are hereby incorporated by reference as they apply to major sources in the State of Louisiana.

40 CFR 63	Subpart/Appendix Heading
* * * [See Prior Text in Subpart A - Subpart R]	
Subpart S	National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. In Sec. 63.440(d)(1), the requirement is modified to read, "Each kraft pulping system shall achieve compliance with the pulping system provisions of Sec. 63.443 for the equipment listed in Sec. 63.443(a)(1)(ii) -(v) as expeditiously as practicable, but in no event later than December 20, 2004, and the owners and operators shall establish dates, update dates, and report the dates for the milestones specified in Sec. 63.455(b)."
* * * [See Prior Text in Subpart T - Appendix D]	

[See Prior Text in B]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1798 (October 1999), LR 26:

A public hearing will be held on January 24, 2000, at 1:30 p.m. in the Trotter Building, Second Floor, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ198. Such comments must be received no later than January 31, 2000, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ198.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501

Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Incorporation by Reference of 40 CFR  
Part 63**

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

James H. Brent, Ph.D.  
Assistant Secretary  
9912#085

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

RCRA IX Package  
(LAC 33:V Chapters 1, 3, 5, 15, 17,  
22, 26, 33, 38, 41, and 43)(HW072)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations, LAC 33:V.Chapters 1, 3, 5, 15, 17, 22, 26, 33, 38, 41, and 43 (Log #HW072\*).

This proposed rule is identical to federal regulations found in 63 FR 42110-42189, 46332-46334, 47410-47418, 51254-51267, 54356-54357, 56710-56735, 65874-65947, and 71225-71230; and 64 FR 3382, 6806, 25408-25417, and 26315-26327, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This proposed rule covers the adoption of rules in the RCRA IX package for authorization for portions of the RCRA C program. The specific topics include the following titles: Petroleum Refining Process Wastes; land Disposal Restrictions Phase IV - Zinc Micronutrient Fertilizers, Administrative Stay; Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production; Land Disposal Restrictions Phase IV - Extension of Compliance date for Characteristic Slags; Land Disposal Restrictions - Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Post-Closure Requirements and Closure Process; HWIR-Media; Universal Waste Rule - Technical Amendments; Organic Air Emission Standards - Clarification and Technical Amendments; Petroleum Refining Process Wastes - Leachate Exemption; Land Disposal Restrictions Phase IV - Technical Corrections and Clarifications to Treatment Standards; Organic Air Emission Standards - Clarification and Technical Amendments. The hazardous waste regulations for the state must be equivalent to the federal regulations in order for the state to be authorized for the new portions of the RCRA program. The basis and rationale for this proposed rule are to adopt recently promulgated regulations in order to maintain equivalency with the federal regulations.

This proposed 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. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental**

**Quality, Hazardous Waste**

**Chapter 1. General Provisions and Definitions**

**§105. Program Scope**

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including "solid waste" and "hazardous waste," appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

\* \* \*

[See Prior Text in A - D.1.k]

i.i. oil-bearing hazardous secondary materials (i.e., sludges, by-products, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911) including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (i.e., cokers) unless the material is placed on the land or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this Paragraph, provided that the coke product also does not

exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in Subsection D.1.1.ii of this Section, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this Section. Residuals generated from processing or recycling materials excluded under this Subsection, where such materials as generated would have otherwise met a listing under LAC 33:V.Chapter 49, are designated as F037 listed wastes when disposed of or intended for disposal;

\* \* \*

[See Prior Text in D.1.1.ii - D.1.o]

p. secondary materials (i.e., sludges, by-products, and spent materials as defined in LAC 33:V.109) (other than hazardous wastes listed in LAC 33:V.Chapter 49) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

\* \* \*

[See Prior Text in D.1.p.i - D.1.p.iv.(c)]

v. the owner or operator provides a notice to the administrative authority identifying the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in non-land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process; and

\* \* \*

[See Prior Text in D.1.p.vi - D.1.r.i]

ii. the oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An *associated organic chemical manufacturing facility* is a facility: where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. *Petrochemical recovered oil* is oil that has been reclaimed from secondary materials (i.e., sludges, by-products, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes;

\* \* \*

[See Prior Text in D.1.s - D.2.h.ii.(t)]

iii. a residue derived from coprocessing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under Paragraph 2. h.iii.(b) of this Subsection if the owner or operator:

(a). processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and

(b). legitimately reclaims the secondary mineral processing materials;

\* \* \*

[See Prior Text in D.2.i. - o]

p. Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

i. the solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, and K172 if these wastes had been generated after the effective date of the listing (February 8, 1999);

ii. the solid wastes described in Paragraph 2.p.i of this Subsection were disposed prior to the effective date of the listing;

iii. the leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

iv. discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act; and

v. after February 13, 2001, the leachate or gas condensate will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of Paragraph 2 of this Subsection after the emergency ends.

\* \* \*

[See Prior Text in D.3 - D.8]

9. Dredged Material That is Not a Hazardous Waste. Dredged material that is subject to the requirements of a permit that has been issued under Section 404 of the Federal Water Pollution Control Act (33 U.S.C.1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this Subsection, the following definitions apply:

a. the term dredged material has the same meaning as defined in 40 CFR 232.2; and

b. the term permit means:

i. a permit issued by the U.S. Army Corps of Engineers (Corps) or an approved state under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

ii. a permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

iii. in the case of Corps civil works projects, the administrative equivalent of the permits referred to in Paragraph 9.a and b of this Subsection, as provided for in Corps regulations (for example, see 33 CFR 336.1, 336.2, and 337.6).

\* \* \*

[See Prior Text in E - O.2.c.vi]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987),

LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid And Hazardous Waste, Hazardous Waste Division, LR 23:564 (May 1997), LR 23:567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687 (September 1998), LR 24:1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§109. Definitions**

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

\*\*\*

[See Prior Text]

*Corrective Action Management Unit (CAMU)* an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility.

\*\*\*

[See Prior Text]

*Facility*—

\*\*\*

[See Prior Text in 1 - 2]

3. notwithstanding Paragraph 2 of this definition, a remediation waste management site is not a facility that is subject to LAC 33:V.3322, but is subject to corrective action requirements if the site is located within such a facility.

\*\*\*

[See Prior Text]

*Miscellaneous Unit* a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well (with appropriate technical standards under 40 CFR part 146), containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under LAC 33:V.329, or staging pile.

\*\*\*

[See Prior Text]

*Remedial Action Plan (RAP)* a special form of RCRA permit that a facility owner or operator may obtain instead of a permit issued under LAC 33:V.303 - 329 and 501 - 537, to authorize the treatment, storage, or disposal of hazardous remediation waste (as defined in this Section) at a remediation waste management site.

*Remediation Waste* all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous waste characteristic and are managed for implementing cleanup.

*Remediation Waste Management Site* a facility where an owner or operator is or will be treating, storing, or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under LAC 33:V.3322, but is subject to corrective action requirements if the site is located in such a facility.

\*\*\*

[See Prior Text]

*Solid Waste*

\*\*\*

[See Prior Text in 1 - 5.a.ii]

iii. returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at LAC 33:V.105.D.1.p apply rather than this Paragraph.

\*\*\*

[See Prior Text]

*Staging Pile* an accumulation of solid, nonflowing remediation waste (as defined in this Section) that is not a containment building and that is used only during remedial operations for temporary storage at a facility Staging piles must be designated by the administrative authority according to the requirements of LAC 33:V.2605.

\*\*\*

[See Prior Text]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:47 (January 1990), LR 16:218 (March 1990), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§110. References**

\*\*\*

[See Prior Text in A - A.10]

11. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846 [Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), and IIIA (April 1998)]. The Third Edition of SW-846 and Updates I, II, IIA,

IIB, and III (document number 955-001-00000-1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800. Update IIIA is available through EPA's Methods Information Communication Exchange (MICE) Service. MICE can be contacted by phone at (703) 821-4690. Update IIIA can also be obtained by contacting the U.S. Environmental Protection Agency, Office of Solid Waste (5307W), OSW Methods Team, 401 M Street, SW, Washington, DC, 20460. Copies of the Third Edition and its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4650. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC;

\*\*\*

[See Prior Text A.12 - A.14]

15. "ASTM Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope," ASTM Standard D 2879-92, available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103;

16. The OECD Green List of Wastes (revised May 1994), the Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4, and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations). These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on July 11, 1996. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the *Federal Register*. The materials are available for inspection at: the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC; the U.S. Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, First Floor, Arlington, VA 22203 (Docket Number F-94-IEHF-FFFFF); and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France; and

17. Method 1664, Revision A, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Non-Polar Material) by Extraction and Gravimetry. Available at NTIS, PB99-121949, U.S. Department of Commerce, 5285 Port Royal, Springfield, Virginia 22161.

\*\*\*

[See Prior in Text B]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 22:814 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:656 (April 1998), LR 24:1690 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### Title 33

### ENVIRONMENTAL QUALITY

#### Part V. Hazardous Waste and Hazardous Materials

##### Subpart 1. Department of Environmental

##### Quality, Hazardous Waste

#### Chapter 3. General Conditions for Treatment,

##### Storage, and Disposal Facility Permits

#### §322. Classification of Permit Modifications

The following is a listing of classifications of permit modifications made at the request of the permittee.

Modifications	Class
	***
	[See Prior Text in A - D.3.f]
g. staging piles.	2
	***
	[See Prior Text in E - N.2]

3. Approval of a staging pile or staging pile operating term extension in accordance with LAC 33:V.2605. 2

<sup>1</sup>Class 1 modifications requiring prior administrative authority approval.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:614 (July 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:815 (September 1996), amended by the Office of the Secretary, LR 24:2245 (December 1998), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:436 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### Chapter 5. Permit Application Contents

##### Subchapter B. Signatories to Permit Applications and Reports, Changes of Authorizations, and Certifications

#### §513. Certification

A. Any person signing a document under LAC 33:V.507 or 509 shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2. For remedial action plans (RAPs) under LAC 33:V.Chapter 5.Subchapter G, if the operator certifies according to Subsection A.1 of this Section, then the owner may choose to make the following certification instead of the certification in Subsection A.1 of this Section: "Based on my knowledge of the conditions of the property described in the RAP and my inquiry of the person or persons who manage the system referenced in the operator's certification, or those persons directly responsible for gathering the information, the information submitted is, upon information and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

\* \* \*

[See Prior Text in B]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **Subchapter F. Special Forms of Permits**

##### **§540. Remedial Action Plans (RAPs)**

Remedial action plans (RAPs) are special forms of permits that are regulated under LAC 33:V.Chapter 5.Subchapter G.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **Subchapter G. Remedial Action Plans (RAPs) - General Information**

##### **§545. Why is this Subchapter Written in a Special Format?**

This Subchapter is written in a special format to make it easier to understand the regulatory requirements. Like other department regulations, this establishes enforceable legal requirements. For this Subchapter, *I* and *you* refer to the owner/operator.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

##### **§550. What is a RAP?**

A. A RAP is a special form of a RCRA permit that you, as an owner or operator, may obtain, instead of a permit issued under LAC 33:V.303 - 329 and 501 - 537, to authorize you to treat, store, or dispose of hazardous remediation waste (as defined in LAC 33:V.109) at a remediation waste management site. A RAP may only be issued for the area of contamination where the remediation wastes to be managed under the RAP originated, or areas in close proximity to the contaminated area, except as allowed in limited circumstances under LAC 33:V.699.

B. The requirements in LAC 33:V.303 - 329 and 501 - 537 do not apply to RAPs unless those requirements for traditional RCRA permits are specifically required under this Subchapter. The definitions in LAC 33:V.109 apply to RAPs.

C. Notwithstanding any other provision of LAC 33:V.Subpart 1, any document that meets the requirements in this Section constitutes a RCRA permit under RCRA section 3005(c).

D. A RAP may be:

1. a stand-alone document that includes only the information and conditions required by this Subchapter; or

2. part (or parts) of another document that includes information and/or conditions for other activities at the remediation waste management site, in addition to the information and conditions required by this Subchapter.

E. If you are treating, storing, or disposing of hazardous remediation wastes as part of a cleanup compelled by federal

or state cleanup authorities, your RAP does not affect your obligations under those authorities in any way.

F. If you receive a RAP at a facility operating under interim status, the RAP does not terminate your interim status.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

##### **§555. When Do I Need a RAP?**

A. Whenever you treat, store, or dispose of hazardous remediation wastes in a manner that requires a RCRA permit under LAC 33:V.Chapter 3, you must either obtain:

1. a RCRA permit according to LAC 33:V.303 - 329 and 501-537; or

2. a RAP according to this Subchapter.

B. Treatment units that use combustion of hazardous remediation wastes at a remediation waste management site are not eligible for RAPs under this Subchapter.

C. You may obtain a RAP for managing hazardous remediation waste at an already permitted RCRA facility. You must have these RAPs approved as a modification to your existing permit according to the requirements of LAC 33:V.321 - 323 instead of the requirements in this Subchapter. When you submit an application for such a modification, however, the information requirements in LAC 33:V.321.C.1.a.i, 2.a.iv, and 3.a.iv do not apply; instead, you must submit the information required under LAC 33:V.580. When your permit is modified the RAP becomes part of the RCRA permit. Therefore, when your permit (including the RAP portion) is modified, revoked and reissued, terminated, or when it expires, it will be modified according to the applicable requirements in LAC 33:V.321 - 323, revoked and reissued according to the applicable requirements in LAC 33:V.323, terminated according to the applicable requirements in LAC 33:V.323, and expire according to the applicable requirements in LAC 33:V.315.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality Office of Environmental Assessment, Environmental Planning Division, LR 26:

##### **§560. Does My RAP Grant Me Any Rights or Relieve Me of Any Obligations?**

The provisions of LAC 33:V.307 apply to RAPs.

(Note: The provisions of LAC 33:V.307.A provide you assurance that, as long as you comply with your RAP, the department will consider you in compliance with Subtitle C of RCRA and will not take enforcement actions against you. However, you should be aware of four exceptions to this provision that are listed in LAC 33:V.307.)

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality Office of Environmental Assessment, Environmental Planning Division, LR 26:

##### **§565. How Do I Apply for a RAP?**

To apply for a RAP, you must complete an application, sign it, and submit it to the administrative authority according to the requirements in this Subchapter.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§570. Who Must Obtain a RAP?**

When a facility or remediation waste management site is owned by one person, but the treatment, storage, or disposal activities are operated by another person, it is the operator's duty to obtain a RAP, except that the owner must also sign the RAP application.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§575. Who Must Sign the Application and Any Required Reports for a RAP?**

Both the owner and the operator must sign the RAP application and any required reports according to LAC 33:V.507, 509, and 511. In the application, both the owner and the operator must also make the certification required in LAC 33:V.513.A. However, the owner may choose the alternative certification under LAC 33:V.513.B if the operator certifies under LAC 33:V.513.A.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§580. What Must I Include in My Application for a RAP?**

A. You must include the following information in your application for a RAP:

1. the name, address, and EPA identification number of the remediation waste management site;
2. the name, address, and telephone number of the owner and operator;
3. the latitude and longitude of the site;
4. the United States Geological Survey (USGS) or county map showing the location of the remediation waste management site;
5. a scaled drawing of the remediation waste management site showing:
  - a. the remediation waste management site boundaries;
  - b. any significant physical structures; and
  - c. the boundary of all areas on-site where remediation waste is to be treated, stored, or disposed;
6. a specification of the hazardous remediation waste to be treated, stored, or disposed of at the facility or remediation waste management site. This must include information on:
  - a. constituent concentrations and other properties of the hazardous remediation wastes that may affect how such materials should be treated and/or otherwise managed;
  - b. an estimate of the quantity of these wastes; and
  - c. a description of the processes you will use to treat, store, or dispose of this waste including technologies, handling systems, design, and operating parameters you will use to treat hazardous remediation wastes before disposing of them according to the LDR standards of LAC 33:V.Chapter 22, as applicable;
7. enough information to demonstrate that operations that follow the provisions in your RAP application will

ensure compliance with applicable requirements of LAC 33:V.Chapters 15 - 37, 41, and 43;

8. such information as may be necessary to enable the administrative authority to carry out his duties under other state laws as is required for traditional RCRA permits under LAC 33:V.517.U; and

9. any other information the administrative authority decides is necessary for demonstrating compliance with this Subsection or for determining any additional RAP conditions that are necessary to protect human health and the environment.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§585. What If I Want to Keep This Information Confidential?**

Provisions for confidential information may be found in LAC 33:I.Chapter 5.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§590. To Whom Must I Submit My RAP Application?**

You must submit your application for a RAP to the administrative authority for approval.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§595. If I Submit My RAP Application as Part of Another Document, What Must I Do?**

If you submit your application for a RAP as a part of another document, you must clearly identify the components of that document that constitute your RAP application.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§600. What Is the Process for Approving or Denying My Application for a RAP?**

A. If the administrative authority tentatively finds that your RAP application includes all of the information required by LAC 33:V.580 and that your proposed remediation waste management activities meet the regulatory standards, the administrative authority may make a tentative decision to approve your RAP application. The administrative authority will then prepare a draft RAP and provide an opportunity for public comment before making a final decision on your RAP application, according to this Subchapter.

B. If the administrative authority tentatively finds that your RAP application does not include all of the information required by LAC 33:V.580 or that your proposed remediation waste management activities do not meet the regulatory standards, the administrative authority may request additional information from you or ask you to correct deficiencies in your application. If you fail or refuse to provide any additional information the administrative authority requests, or to correct any deficiencies in your

RAP application, the administrative authority may make a tentative decision to deny your RAP application. After making this tentative decision, the administrative authority will prepare a notice of intent to deny your RAP application (*notice of intent to deny*) and provide an opportunity for public comment before making a final decision on your RAP application, according to the requirements in this Subchapter. The administrative authority may deny the RAP application either in its entirety or in part.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§605. What Must the Administrative Authority Include in a Draft RAP?**

A. If the administrative authority prepares a draft RAP, it must include:

1. the information required under LAC 33:V.580.A.1 - 9;

2. the following terms and conditions:

a. terms and conditions necessary to ensure that the operating requirements specified in your RAP comply with applicable requirements of LAC 33:V.Chapters 15 - 37, 41, and 43 (including any recordkeeping and reporting requirements). In satisfying this provision, the administrative authority may incorporate, expressly or by reference, applicable requirements of LAC 33:V.Chapters 15 - 37, 41, and 43 into the RAP or establish site-specific conditions as required or allowed by LAC 33:V.Chapters 15 - 37, 41, and 43;

b. terms and conditions in LAC 33.V.309;

c. terms and conditions for modifying, revoking and reissuing, and terminating your RAP, as provided in LAC 33:V.640; and

d. any additional terms or conditions that the administrative authority determines are necessary to protect human health and the environment, including any terms and conditions necessary to respond to spills and leaks during use of any units permitted under the RAP; and

3. if the draft RAP is part of another document, as described in LAC 33:V.550, the administrative authority must clearly identify the components of that document that constitute the draft RAP.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§610. What Else Must the Administrative Authority Prepare in Addition to the Draft RAP or Notice of Intent to Deny?**

A. Once the administrative authority has prepared the draft RAP or notice of intent to deny, he must then:

1. prepare a statement of basis that briefly describes the derivation of the conditions of the draft RAP and the reasons for them, or the rationale for the notice of intent to deny;

2. compile an administrative record, including:

a. the RAP application and any supporting data furnished by the applicant;

b. the draft RAP or notice of intent to deny;

c. the statement of basis and all documents cited therein (material readily available at the department or published material that is generally available need not be physically included with the rest of the record, as long as it is specifically referred to in the statement of basis); and

d. any other documents that support the decision to approve or deny the RAP; and

3. make information contained in the administrative record available for review by the public upon request.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§615. What Are the Procedures for Public Comment on the Draft RAP or Notice of Intent to Deny?**

A. The administrative authority must:

1. send notice to you of his intention to approve or deny your RAP application, and send you a copy of the statement of basis;

2. publish a notice of his intention to approve or deny your RAP application in a major local newspaper of general circulation;

3. broadcast his intention to approve or deny your RAP application over a local radio station; and

4. send a notice of his intention to approve or deny your RAP application to each unit of local government having jurisdiction over the area in which your site is located and to each state agency having any authority under state law with respect to any construction or operations at the site.

B. The notice required by Subsection A of this Section must provide an opportunity for the public to submit written comments on the draft RAP or notice of intent to deny within at least 45 days.

C. The notice required by Subsection A of this Section must include:

1. the name and address of the office processing the RAP application;

2. the name and address of the RAP applicant, and if different, the remediation waste management site or activity the RAP will regulate;

3. a brief description of the activity the RAP will regulate;

4. the name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft RAP or notice of intent to deny, statement of basis, and the RAP application;

5. a brief description of the comment procedures in this Section, and any other procedures by which the public may participate in the RAP decision;

6. if a hearing is scheduled, the date, time, location, and purpose of the hearing;

7. if a hearing is not scheduled, a statement of procedures to request a hearing;

8. the location of the administrative record, and times when it will be open for public inspection; and

9. any additional information the administrative authority considers necessary or proper.

D. If, within the comment period, the administrative authority receives written notice of opposition to his intention to approve or deny your RAP application and a request for a hearing, the administrative authority must hold an informal public hearing to discuss issues relating to the

approval or denial of your RAP application. The administrative authority may also determine on his own initiative that an informal hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the administrative authority must schedule this hearing at a location convenient to the nearest population center to the remediation waste management site and give notice according to the requirements in Subsection A of this Section. This notice must, at a minimum, include the information required by Subsection C of this Section and:

1. reference to the date of any previous public notices relating to the RAP application;
2. the date, time, and location of the hearing; and
3. a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§620. How Will the Administrative Authority Make a Final Decision on my RAP Application?**

A. The administrative authority must consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft RAP or notice of intent to deny, and revise your draft RAP based on those comments, as appropriate.

B. If the administrative authority determines that your RAP includes the information and terms and conditions required in LAC 33:V.605, then he may issue a final decision approving your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been approved.

C. If the administrative authority determines that your RAP does not include the information required in LAC 33:V.605, then he will issue a final decision denying your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been denied.

D. If the administrative authority's final decision is that the tentative decision to deny the RAP application was incorrect, he will withdraw the notice of intent to deny and proceed to prepare a draft RAP, according to the requirements in this Subchapter.

E. When the administrative authority issues his final RAP decision, he must refer to the procedures for appealing the decision under R.S. 30:2024.

F. Before issuing the final RAP decision, the administrative authority must compile an administrative record. Material readily available at the department or published materials which are generally available and which are included in the administrative record need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the response to comments. The administrative record for the final RAP must include information in the administrative record for the draft RAP (see LAC 33:V.610.B) and:

1. all comments received during the public comment period;
2. tapes or transcripts of any hearings;
3. any written materials submitted at these hearings;
4. the responses to comments;

5. any new material placed in the record since the draft RAP was issued;

6. any other documents supporting the RAP; and

7. a copy of the final RAP.

G. The administrative authority must make information contained in the administrative record available for review by the public upon request.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§640. After My RAP is Issued, How May it be Modified, Revoked and Reissued, or Terminated?**

In your RAP, the administrative authority must specify, either directly or by reference, procedures for future modifications, revocations and reissuance, or terminations of your RAP. These procedures must provide adequate opportunities for public review and comment on any modification, revocation and reissuance, or termination that would significantly change your management of your remediation waste, or that otherwise merits public review and comment. If your RAP has been incorporated into a traditional RCRA permit, as allowed under LAC 33:V.555.C, then the RAP will be modified according to the applicable requirements in LAC 33:V.321 - 323.B.2, revoked and reissued according to the applicable requirements in LAC 33:V.321 and 323.B.3, or terminated according to the applicable requirements of LAC 33:V.323.B.3.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§645. For What Reasons May the Administrative Authority Choose to Modify My Final RAP?**

A. The administrative authority may modify your final RAP on his own initiative only if one or more of the following reasons listed in this Section exist(s). If one or more of these reasons do not exist, then the administrative authority will not modify your final RAP, except at your request. Reasons for modification are:

1. you made material and substantial alterations or additions to the activity that justify applying different conditions;

2. the administrative authority finds new information that was not available at the time of RAP issuance and would have justified applying different RAP conditions at the time of issuance;

3. the standards or regulations on which the RAP was based have changed because of new or amended statutes, standards, or regulations, or by judicial decision after the RAP was issued;

4. if your RAP includes any schedules of compliance, the administrative authority may find reasons to modify your compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which you as the owner/operator have little or no control and for which there is no reasonably available remedy;

5. you are not in compliance with conditions of your RAP;

6. you failed in the application or during the RAP issuance process to disclose fully all relevant facts, or you misrepresented any relevant facts at the time;

7. the administrative authority has determined that the activity authorized by your RAP endangers human health or the environment and can only be remedied by modifying; or

8. you have notified the administrative authority (as required in the RAP under LAC 33:V.321.B) of a proposed transfer of a RAP.

B. Notwithstanding any other provision in this Section, when the administrative authority reviews a RAP for a land disposal facility under LAC 33:V.665, he may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in LAC 33:V.Subpart 1.

C. The administrative authority will not reevaluate the suitability of the facility location at the time of RAP modification unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§650. For What Reasons May the Administrative Authority Choose to Revoke and Reissue My Final RAP?**

A. The administrative authority may revoke and reissue your final RAP on his own initiative only if one or more reasons for revocation and reissuance exist(s). If one or more reasons do not exist, then the administrative authority will not modify or revoke and reissue your final RAP, except at your request. Reasons for modification or revocation and reissuance are the same as the reasons listed for RAP modifications in LAC 33:V.645.A.5 - 8 if the administrative authority determines that revocation and reissuance of your RAP is appropriate.

B. The administrative authority will not reevaluate the suitability of the facility location at the time of RAP revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§655. For What Reasons May the Administrative Authority Choose to Terminate My Final RAP, or Deny My Renewal Application?**

The administrative authority may terminate your final RAP on his own initiative, or deny your renewal application, for the same reasons as those listed for RAP modifications in LAC 33:V.645.A.5 - 7 if the administrative authority determines that termination of your RAP or denial of your RAP renewal application is appropriate.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§665. When Will My RAP Expire?**

RAPs must be issued for a fixed term, not to exceed 10 years, although they may be renewed upon approval by the administrative authority in fixed increments of no more than ten years. In addition, the administrative authority must review any RAP for hazardous waste land disposal five years after the date of issuance or reissuance, and you or the administrative authority must follow the requirements for modifying your RAP as necessary to assure that you continue to comply with currently applicable requirements in RCRA sections 3004 and 3005.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§670. How May I Renew My RAP if It is Expiring?**

If you wish to renew your expiring RAP, you must follow the process for application for and issuance of RAPs in this Subchapter.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§675. What Happens if I Have Applied Correctly for a RAP Renewal But Have Not Received Approval By the Time My Old RAP Expires?**

If you have submitted a timely and complete application for a RAP renewal, but the administrative authority, through no fault of yours, has not issued a new RAP with an effective date on or before the expiration date of your previous RAP, your previous RAP conditions continue in force until the effective date of your new RAP or RAP denial.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§680. What Records Must I Maintain Concerning My RAP?**

A. You are required to keep records of:

1. all data used to complete RAP applications and any supplemental information that you submit for a period of at least three years from the date the application is signed; and

2. any operating and/or other records the administrative authority requires you to maintain as a condition of your RAP.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§685. How Are Time Periods In the Requirements in This Subchapter and My RAP Computed?**

A. Any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event. (For example, if your RAP specifies that you must close a staging pile within 180 days after the operating term for that staging pile expires, and the operating term expires on June 1, then June 2 counts as day one of your 180 days, and you would have to complete closure by November 28.)

B. Any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event. (For example, if you are transferring ownership or operational control of your site, and wish to transfer your RAP, the new owner or operator must submit a revised RAP application no later than 90 days before the scheduled change. Therefore, if you plan to change ownership on January 1, the new owner/operator must submit the revised RAP application no later than October 3, so that the 90th day would be December 31.)

C. If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day. (For example, if you wish to request an administrative hearing on the administrative authority's decision to modify your RAP, then you must file your request with the secretary within 30 days after notice of the decision is served upon you. If the thirtieth day falls on Sunday, then you may submit your appeal by the Monday after. If the thirtieth day falls on July 4, then you may submit your appeal by July 5.)

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§690. How May I Transfer My RAP to a New Owner or Operator?**

A. If you wish to transfer your RAP to a new owner or operator, you must follow the requirements specified in your RAP for RAP modification to identify the new owner or operator, and incorporate any other necessary requirements. These modifications do not constitute *significant* modifications for purposes of LAC 33:V.640. The new owner/operator must submit a revised RAP application no later than 90 days before the scheduled change along with a written agreement containing a specific date for transfer of RAP responsibility between you and the new permittees.

B. When a transfer of ownership or operational control occurs, you as the old owner or operator must comply with the applicable requirements in LAC 33:V.Chapter 37 (financial requirements), until the new owner or operator has demonstrated that he is complying with the requirements in that chapter. The new owner or operator must demonstrate compliance with LAC 33:V.Chapter 37 within six months of the date of the change in ownership or operational control of the facility or remediation waste management site. When the new owner/operator demonstrates compliance with LAC 33:V.Chapter 37 to the administrative authority, the administrative authority will notify you that you no longer need to comply with LAC 33:V.Chapter 37, as of the date of demonstration.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§695. What Must the State or EPA Region Report About Noncompliance with RAPs?**

The department or EPA region must report noncompliance with RAPs according to the provisions of 40 CFR 270.5.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§699. May I Perform Remediation Waste Management Activities Under a RAP at a Location Removed from the Area Where the Remediation Wastes Originated?**

A. You may request a RAP for remediation waste management activities at a location removed from the area where the remediation wastes originated if you believe such a location would be more protective than the contaminated area or areas in close proximity.

B. If the administrative authority determines that an alternative location, removed from the area where the remediation waste originated, is more protective than managing remediation waste at the area of contamination or areas in close proximity, then the administrative authority may approve a RAP for this alternative location.

C. You must request the RAP, and the administrative authority will approve or deny the RAP, according to the procedures and requirements in this Subchapter.

D. A RAP for an alternative location must also meet the following requirements, which the administrative authority must include in the RAP for such locations:

1. the RAP for the alternative location must be issued to the person responsible for the cleanup from which the remediation wastes originated;

2. the RAP is subject to the expanded public participation requirements in 40 CFR 124.31, 124.32, and 124.33;

3. the RAP is subject to the public notice requirements in LAC 33:V.717; and

4. the site permitted in the RAP may not be located within 61 meters or 200 feet of a fault which has had displacement in the Holocene time (you must demonstrate compliance with this standard through the requirements in LAC 33:V.517.T). (See definitions of terms in LAC 33:V.109);

[Note to Paragraph 4 of this Subsection: sites located in a political jurisdiction other than those listed in Appendix VI of 40 CFR 264 are assumed to be in compliance with this requirement.]

E. These alternative locations are remediation waste management sites and retain the following benefits of remediation waste management sites:

1. exclusion from facility-wide corrective action under LAC 33:V.3322; and

2. application of LAC 33:V.1501.H in lieu of LAC 33:V.Chapter 15.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **Chapter 11. Generators §1109. Pre-Transport Requirements**

\*\*\*

[See Prior Text in A - E.1.a]

i. in containers and the generator complies with the applicable requirements of LAC 33:V.Chapter 43.Subchapters H, Q, R, and V; and/or

ii. in tanks and the generator complies with the applicable requirements of LAC 33:V.Chapter 43.Subchapters I, Q, R, and V, except LAC 33:V.4442 and 4445 ; and/or

\* \* \*

[See Prior Text in E.1.a.iii - 7.d.iv.(c).(v)]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24.1693 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:

## **Chapter 15. Treatment, Storage, and Disposal Facilities**

### **§1501. Applicability**

\* \* \*

[See Prior Text in A - G]

H. The requirements of LAC 33:V.1105, 1503, 1504, 1507, 1509, 1511, 1513, 1515, 1517, 1519, and 3322 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional RCRA permit because the facility is also treating, storing, or disposing of hazardous wastes that are not remediation wastes. In these cases, LAC 33:V.1509, 1511, 1513, and 3322 do apply to the facility subject to the traditional RCRA permit.) Instead of the requirements of LAC 33:V.1509, 1511, and 1513, owners or operators of remediation waste management sites must:

1. obtain an EPA identification number by applying to the administrative authority using the department's Form HW - 1;

2. obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store, or dispose of the waste according to LAC 33:V.Chapters 9 - 11, 15 - 29, and 31- 37, and must be kept accurate and up to date;

3. prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the administrative authority that:

a. physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and

b. disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site will not cause a violation of the requirements of this Section;

4. inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous

waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/operator must take remedial action immediately;

5. provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of LAC 33:V.Chapters 9 - 11, 15- 29, and 31- 37, and on how to respond effectively to emergencies;

6. take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive, and incompatible waste;

7. for remediation waste management sites subject to regulation under LAC 33:V.Chapters 19, 21, 23, 25, 27, 29, 31, and 32, the owner/operator must design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of LAC 33:V.1503.B;

8. not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave;

9. develop and maintain a construction quality assurance program for all surface impoundments, waste piles, and landfill units that are required to comply with LAC 33:V.2303.C and D, 2503.L and M, and 2903.J and K at the remediation waste management site, according to the requirements of LAC 33:V.1504;

10. develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from, a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store, and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment occurs;

11. designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;

12. develop, maintain, and implement a plan to meet the requirements in Subsection H.2 - 6 and 9 - 10 of this Section; and

13. maintain records documenting compliance with Subsection H.1 –12 of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 23:565 (May 1997), LR 23:568 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1106 (June 1998), LR 24:1694 (September 1998), LR 24:1759 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), LR 26:

**§1529. Operating Record and Reporting Requirements**

\*\*\*

[See Prior Text in A - B.19]

20. Any records required under LAC 33:V.1501.H.13.

\*\*\*

[See Prior Text in C - E.3]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:832 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1695 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), LR 26:

**§1533. Relationship to Interim Status Standards**

A facility owner or operator who has fully complied with the requirements for interim status, as defined in section 3005(e) of RCRA and regulations under LAC 33:V.4301, must comply with the regulations specified in LAC 33:V.Chapter 43 in lieu of the regulations in this Chapter, until final administrative disposition of his permit application is made, except as provided under LAC 33:V.Chapter 26.

[Comment: As stated in section 3005(a) of RCRA, after the effective date of regulations under that section, i.e., LAC 33:V.Chapters 3, 5, and 7, the treatment, storage, or disposal of hazardous waste is prohibited except in accordance with a permit. Section 3005(e) of RCRA provides for the continued operation of an existing facility which meets certain conditions until final administrative disposition of the owner's or operator's permit application is made.]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§1535. Imminent Hazard Action**

Notwithstanding any other provisions of these regulations, enforcement actions may be brought in accordance with section 7003 of RCRA and/or R.S. 30:2050.8.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

**Chapter 17. Air Emission Standards**

**§1703. Definitions**

As used in this Chapter, all terms not defined herein shall have the meanings given them in LAC 33:V.109.

\*\*\*

[See Prior Text]

*Equipment* each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, flange, or other connector and any control devices or systems required by this Chapter.

\*\*\*

[See Prior Text]

*Open-Ended Valve or Line* any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous waste and one side open to the atmosphere, either directly or through open piping.

\*\*\*

[See Prior Text]

*Sampling Connection System* an assembly of equipment within a process or waste management unit used during periods of representative operation to take samples of the process or waste fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

\*\*\*

[See Prior Text]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1696 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**Subchapter C. Air Emission Standards for Tanks, Surface Impoundments, and Containers**

**§1747. Applicability**

\*\*\*

[See Prior Text in A - B.4]

5. a waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h), CERCLA authorities, or similar state authorities;

\*\*\*

[See Prior Text in B.6 - D.3]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1701 (September 1998), LR 25:440 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§1753. Waste Determination Procedures**

\*\*\*

[See Prior Text in A - A.1]

a. An initial determination of the average VO concentration of the waste stream shall be made before the

first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of LAC 33:V.1751.C.1 from using air emission controls, and thereafter, an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit.

b. Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in LAC 33:V.1751.

\* \* \*

[See Prior Text in A.2 - B.1]

a. An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in the exempt waste management unit, and thereafter, the information used for the waste determination shall be updated at least once every 12 months following the date of the initial waste determination.

b. Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in LAC 33:V.1751.C.2 are not achieved.

\* \* \*

[See Prior Text in B.2 - D]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1704 (September 1998), LR 25:440 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### §1755. Standards: Tanks

\* \* \*

[See Prior Text in A - H.2]

3. whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either of the following conditions as specified in Subsection H.3.a and b of this Section:

a. at those times when opening of a safety device, as defined in LAC 33:V.1703, is required to avoid an unsafe condition; or

b. at those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of LAC 33:V.1761.

\* \* \*

[See Prior Text in I - L.2]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1704 (September 1998), LR 25:440 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### §1759. Standards: Containers

\* \* \*

[See Prior Text in A - E.5]

6. Transfer of hazardous waste in or out of a container using container level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the department considers to meet the requirements of this Paragraph include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

\* \* \*

[See Prior Text in F - H.3]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1712 (September 1998), LR 25:441 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

## Chapter 22. Prohibitions on Land Disposal

### Subchapter A. Land Disposal Restrictions

#### §2203. Definitions Applicable to this Chapter

When used in this Chapter the following terms have the meanings given below:

\* \* \*

[See Prior Text]

**Hazardous Debris** debris that contains a hazardous waste listed in LAC 33:V.4903 or that exhibits a characteristic of hazardous waste identified in LAC 33:V.4901. Any deliberate mixing of prohibited hazardous waste with debris that changes its treatment classification (i.e., from waste to hazardous debris) is not allowed under the dilution prohibition in LAC 33:V.2207.

\* \* \*

[See Prior Text]

**Land Disposal** placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt-dome formation, salt-bed formation, underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes.

\* \* \*

[See Prior Text]

**Soil** unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles as classified by the U.S. Soil Conservation Service, or a

mixture of such materials with liquids, sludges, or solids, that is inseparable by simple mechanical removal processes and is made up primarily of soil by volume based on visual inspection. Any deliberate mixing of prohibited hazardous waste with soil that changes its treatment classification (i.e., from waste to contaminated soil) is not allowed under the dilution prohibition in LAC 33:V.2207.

\*\*\*

[See Prior Text]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:221 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:667 (April 1998), LR 25:442 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§2205. Storage of Prohibited Wastes**

\*\*\*

[See Prior Text in A - G]

H. The prohibition and requirements in this Section do not apply to hazardous remediation wastes stored in a staging pile approved in accordance with to LAC 33:V.2605.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:220 (March 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1724 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), LR 26:

**§2221. Schedule of Wastes Identified or Listed After November 8, 1984**

\*\*\*

[See Prior Text in A - F.2]

3. On September 21, 1998, the wastes specified in LAC 33:V.4901.C as EPA Hazardous Waste Number K088 are prohibited from land disposal. In addition, soil and debris contaminated with these wastes are prohibited from land disposal.

\*\*\*

[See Prior Text in F.4 - 7]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:667 (April 1998), LR 24:1725 (September 1998), LR 25:443 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§2223. Applicability of Treatment Standards**

\*\*\*

[See Prior Text in A - H]

Zinc micronutrient fertilizers that are produced for the general public's use and that are produced from or contain recycled characteristic hazardous wastes (D004-D011) are

subject to the applicable treatment standards in LAC 33:V.Chapter 22.Table 2.

\*\*\*

[See Prior in Text J]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 22:819 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:668 (April 1998), LR 24:1726 (September 1998), LR 25:443 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§2236. Alternative Land Disposal Restriction (LDR) Treatment Standards for Contaminated Soil**

\*\*\*

[See Prior Text in A - C.3]

a. for soil that also contains only analyzable and nonanalyzable organic constituents, treatment of the analyzable organic constituents to the levels specified in Subsection C.1 and 2 of this Section; or

b. for soil that contains only nonanalyzable constituents, treatment by the method(s) specified in LAC 33:V.2227 for the waste contained in the soil.

\*\*\*

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

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Waste Services, LR 25:446 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§2245. Generators' Waste Analysis, Recordkeeping, and Notice Requirements**

\*\*\*

[See Prior Text in A - D]

Generator Paperwork Requirements Table				
Required Information	LAC 33:V. 2245. B	LAC 33:V. 2245.C	LAC 33:V. 2245.D	LAC 33:V. 2245.I
EPA Hazardous Waste Numbers and manifest numbers of first shipment.	X	X	X	X
Statement: This waste is not prohibited from land disposal.			X	
The waste is subject to the LDRs. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored, for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice.	X	X		
The notice must include the applicable wastewater/nonwastewater category (see LAC 33:V.2203.A) and subdivisions made within a	X	X		

waste code based on waste-specific criteria (such as D003 reactive cyanide).				
Waste analysis data (when available).	X	X	X	
Date the waste is subject to the prohibition.			X	
For hazardous debris, when treating with the alternative treatment technologies provided by LAC 33:V.2230: the contaminants subject to treatment, as described in LAC 33:V.2230; and an indication that these contaminants are being treated to comply with LAC 33:V.2230.			X	
For contaminated soil subject to LDRs as provided in LAC 33:V.2236.A, the constituents subject to treatment as described in LAC 33:V.2236.D, and the following statement: This contaminated soil [does/does not] contain listed hazardous waste and [does/does not] exhibit a characteristic of hazardous waste and [is subject to/complies with] the soil treatment standards as provided by LAC 33:V.2236.C or the universal treatment standards.	X	X		
A certification is needed (see applicable section for exact wording).		X		X

\* \* \*

[See Prior Text in E - K]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 22:1130 (November 1996), LR 23:565 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:669 (April 1998), LR 24:1728 (September 1998), LR 25:447 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§2246. Special Rules Regarding Wastes That Exhibit a Characteristic**

\* \* \*

[See Prior Text in A - D.1.b]

2. The certification must be signed by an authorized representative and must state the language found in LAC 33:V.2247.C.

3. If treatment removes the characteristic but does not meet standards applicable to underlying hazardous constituents, then the certification found in LAC 33:V.2247.C.4 applies.

\* \* \*

[See Prior Text in E - F.2]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:1057 (December 1990), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:669 (April 1998), LR 24:1730 (September 1998), LR 25:449 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§2247. Owners or Operators of Treatment or Disposal Facilities: Testing, Waste Minimization, Recordkeeping, and Notice Requirements**

\* \* \*

[See Prior Text in A - C.3]

4. For characteristic wastes that are subject to the treatment standards in LAC 33:V.2223 (other than those expressed as a required method of treatment), or LAC 33:V.2236 that contain underlying hazardous constituents as defined in LAC 33:V.2203; if these wastes are treated on-site to remove the hazardous characteristic, and are then sent off-site for treatment of underlying hazardous constituents, the certification must state the following:

"I certify under penalty of law that the waste has been treated in accordance with the requirements of LAC 33:V.2223 or 2236 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

\* \* \*

[See Prior Text in C.5 - H]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 23:566 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:670 (April 1998), LR 24:1730 (September 1998), LR 25:449 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

Table 2 – TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters	Nonwastewaters
		Common Name	CAS <sup>2</sup> Number	Concentration in mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Concentration in mg/kg <sup>5</sup> unless noted as "mg/l TCLP" or Technology Code <sup>4</sup>
*** [See Prior Text in D001 – K087]					
K088	Spent potliners from primary aluminum reduction.	Acenaphthalene	83-32-9	0.059	3.4
		Anthracene	120-12-7	0.059	3.4
		Benzo(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene	205-99-2	0.11	6.8
		Benzo(k)fluoranthene	207-08-9	0.11	6.8
		Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Fluoranthene	206-44-0	0.068	3.4
		Indeno (1,2,3-c,d)pyrene	193-39-5	0.0055	3.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Antimony	7440-36-0	1.9	1.15 mg/l TCLP
		Arsenic	7440-38-2	1.4	26.1 mg/kg
		Barium	7440-39-3	1.2	21 mg/l TCLP
		Beryllium	7440-41-7	0.82	1.22 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
Mercury	7439-97-6	0.15	0.025 mg/l TCLP		
Nickel	7440-02-0	3.98	11 mg/l TCLP		
Selenium	7782-49-2	0.82	5.7 mg/l TCLP		
Silver	7440-22-4	0.43	0.14 mg/l TCLP		
Cyanide (Total) <sup>7</sup>	57-12-5	1.2	590		
Cyanide (Amenable) <sup>7</sup>	57-12-5	0.86	30		
*** [See Prior Text in K093 – K151]					
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. <sup>10</sup>	Acetonitrile	75-05-8	5.6	1.8
		Acetophenone	96-86-2	0.010	9.7
		Aniline	62-53-3	0.81	14
		Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbaryl	63-25-2	0.006	0.14
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyridine	110-86-1	0.014	16
Toluene	108-88-3	0.080	10		
Triethylamine	121-44-8	0.081	1.5		
*** [See Prior Text in K157 – K158]					
K159	Organics from the treatment of	Benzene	71-43-2	0.14	10

Table 2 – TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters	Nonwastewaters
		Common Name	CAS <sup>2</sup> Number	Concentration in mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Concentration in mg/kg <sup>5</sup> unless noted as "mg/l TCLP" or Technology Code <sup>4</sup>
	thiocarbamate wastes. <sup>10</sup>				
		Butylate	2008-41-5	0.042	1.4
		EPTC (Eptam)	759-94-4	0.042	1.4
		Molinate	2212-67-1	0.042	1.4
		Pebulate	1114-71-2	0.042	1.4
		Vernolate	1929-77-7	0.042	1.4
* * *					
[See Prior Text in K161 – U395]					
U404	Triethylamine	Triethylamine	121-44-8	0.081	1.5
U408	2,4,6-Tribromophenol	2,4,6-Tribromophenol	118-79-6	0.035	7.4
* * *					
[See Prior Text in U409 – U411]					

\* \* \*

[See Prior Text in Notes 1-6]

7 Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in LAC 33:V.110, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

\* \* \*

[See Prior Text in Notes 8 - 9]

10 The treatment standards for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code

CMBST at LAC 33:V.Chapter 22, Table 3, for nonwastewaters; and biodegradation, as defined by the technology code BIODG, carbon adsorption, as defined by the technology code CARBN, chemical oxidation, as defined by the technology code CHOXD, or combustion, as defined as technology code CMBST at LAC 33:V.Chapter 22, Table 3, for wastewaters.

11 For these wastes, the definition of CMBST is limited to: (1) combustion units operating under LAC 33:V.Chapter 30, (2) combustion units permitted under LAC 33:V.Chapter 31, or (3) combustion units operating under LAC 33:V.Chapter 43, Subchapter N, which have obtained a determination of equivalent treatment under LAC 33.V.2227.B.

NOTE: NA means not applicable.

Table 7. Universal Treatment Standards

Regulated Constituent-Common Name	CAS <sup>1</sup> Number	Wastewater Standard Concentration in mg/l <sup>2</sup>	Nonwastewater Standard Concentration in mg/kg <sup>3</sup> unless noted as "mg/l TCLP"
Organic Constituents			
* * *			
[See Prior Text in Acenaphthylene - Acrylonitrile]			
Aldicarb sulfone <sup>6</sup>	1646-88-4	0.056	0.28
* * *			
[See Prior Text in Aldrin – gamma BHC]			
Barban <sup>6</sup>	101-27-9	0.056	1.4
Bendiocarb <sup>6</sup>	22781-23-3	0.056	1.4
Benomyl <sup>6</sup>	17804-35-2	0.056	1.4
* * *			
[See Prior Text in Benzene – nButylalcohol]			
Butylate <sup>6</sup>	2008-41-5	0.042	1.4
* * *			
[See Prior Text in Butylbenzylphthalate – 2-sec-Butyl-4,6-dinitrophenol (Dinoseb)]			
Carbaryl <sup>6</sup>	63-25-2	0.006	0.14
Carbenzadim <sup>6</sup>	10605-21-7	0.056	1.4
Carbofuran <sup>6</sup>	1563-66-2	0.006	0.14
Carbofuran phenol <sup>6</sup>	1563-38-8	0.056	1.4

Table 7. Universal Treatment Standards			
Regulated Constituent-Common Name	CAS <sup>1</sup> Number	Wastewater Standard Concentration in mg/l <sup>2</sup>	Nonwastewater Standard Concentration in mg/kg <sup>3</sup> unless noted as "mg/l TCLP"
***			
[See Prior Text in Carbon disulfide – Carbon Tetrachloride]			
Carbosulfan <sup>6</sup>	55285-14-8	0.028	1.4
***			
[See Prior Text in Chlordane (alpha and gamma isomers) – p-Cresol]			
m-Cumenyl methylcarbamate <sup>6</sup>	64-00-6	0.056	1.4
***			
[See Prior Text in Cyclohexanone – Disulfoton]			
Dithiocarbamates (total) <sup>6</sup>	137-30-4	0.028	28
EPTC <sup>6</sup>	759-94-4	0.042	1.4
***			
[See Prior Text in Endosulfan I - Fluorene]			
Formetanate hydrochloride <sup>6</sup>	23422-53-9	0.056	1.4
***			
[See Prior Text in Heptachlor - Methapyrilene]			
Methiocarb <sup>6</sup>	2032-65-7	0.056	1.4
Methomyl <sup>6</sup>	16752-77-5	0.028	0.14
***			
[See Prior Text in Methoxychlor – Methylparathion]			
Metolcarb <sup>6</sup>	1129-41-5	0.056	1.4
Mexacarbate <sup>6</sup>	315-18-4	0.056	1.4
Molinate <sup>6</sup>	2212-67-1	0.042	1.4
***			
[See Prior Text in Napthalene – N-Nitrosopyrrolidine]			
Oxamyl <sup>6</sup>	23135-22-0	0.056	0.28
***			
[See Prior Text in Parathion – total PCBs (sum of all PCB isomers, or all Aroclors)]			
Pebulate <sup>6</sup>	1114-71-2	0.042	1.4
***			
[See Prior Text in Pentochlorobenzene – Phthalicanhydride]			
Physostigmine <sup>6</sup>	57-47-6	0.056	1.4
Physostigmine salicylate <sup>6</sup>	57-64-7	0.056	1.4
Promecarb <sup>6</sup>	2631-37-0	0.056	1.4
***			
[See Prior Text in Pronamide]			
Propham <sup>6</sup>	112-42-9	0.056	1.4
Propoxur <sup>6</sup>	114-26-1	0.056	1.4
Prosulfocarb <sup>6</sup>	52888-80-9	0.042	1.4
***			
[See Prior Text in Pyrene – 1,1,2- Trichloro-1,2,2-trifluoroethane]			
Triethylamine <sup>6</sup>	101-44-8	0.081	1.5
***			
[See Prior Text in tris-(2,3-Dibromopropyl) phosphate]			
Vernolate <sup>6</sup>	1929-77-7	0.042	1.4
***			
[See Prior Text in Vinylchloride - Zinc]			

\*\*\*

[See Prior Text in Notes 1-5]

<sup>6</sup> Between August 26, 1998 and March 4, 1999, these constituents are not *underlying hazardous constituents* as defined in LAC 33:V.2203.

\* \* \*

[See Prior Text in Note 7]

Note: NA means not applicable

### Title 33

## ENVIRONMENTAL QUALITY

### Part V. Hazardous Waste and Hazardous Materials

#### Subpart 1. Department of Environmental Quality- Hazardous Waste

#### Chapter 26. Corrective Action Management Units and Temporary Units

##### §2601. Corrective Action Management Units (CAMU)

A. To implement remedies under LAC 33:V.3322 or RCRA section 3008(h), or to implement remedies at a permitted facility that is not subject to LAC 33:V.3322, the administrative authority may designate an area at a facility as a corrective action management unit, as defined in LAC 33:V.109, under the requirements of this Section. A CAMU must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

\* \* \*

[See Prior Text in A.1 - H]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

##### §2603. Temporary Units (TU)

A. For temporary tanks and container storage areas used to treat or store hazardous remediation wastes during remedial activities required under LAC 33:V.3322 or RCRA section 3008(h), or at a permitted facility that is not subject to LAC 33:V.3322, the administrative authority may designate a unit at the facility as a temporary unit. A temporary unit must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the temporary unit originated. For temporary units, the administrative authority may replace the design, operating, or closure standard applicable to these units under LAC 33:V.Chapters 9 - 11, 15 - 21, 23 - 29, 31 - 37, and 43 with alternative requirements which protect human health and the environment.

\* \* \*

[See Prior Text in B - G]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

##### §2605. Staging Piles

[Note: This Section is written in a special format to make it easier to understand the regulatory requirements. Like other department and USEPA regulations, this establishes enforceable legal requirements. For this Section, *I* and *you* refer to the owner/operator.]

A. What Is a Staging Pile? A staging pile is an accumulation of solid, non-flowing remediation waste (as defined in LAC 33:V.109) that is not a containment building and is used only during remedial operations for temporary storage at a facility. A staging pile must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by the administrative authority according to the requirements in this Section.

B. When May I Use a Staging Pile? You may use a staging pile to store hazardous remediation waste (or remediation waste otherwise subject to land disposal restrictions) only if you follow the standards and design criteria the administrative authority has designated for that staging pile. The administrative authority must designate the staging pile in a permit or, at an interim status facility, in a closure plan or order (consistent with LAC 33:V.4303.A.5 and B.5). The administrative authority must establish conditions in the permit, closure plan, or order that comply with Subsections D - K of this Section.

C. What Information Must I Provide to Get a Staging Pile Designated? When seeking a staging pile designation, you must provide:

1. sufficient and accurate information to enable the administrative authority to impose standards and design criteria for your staging pile according to Subsections D - K of this Section;

2. certification by an independent, qualified, registered professional engineer for technical data, such as design drawings and specifications, and engineering studies, unless the administrative authority determines, based on information that you provide, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and

3. any additional information the administrative authority determines is necessary to protect human health and the environment.

D. What Performance Criteria Must a Staging Pile Satisfy? The administrative authority must establish the standards and design criteria for the staging pile in the permit, closure plan, or order.

1. The standards and design criteria must comply with the following:

- a. the staging pile must facilitate a reliable, effective, and protective remedy;

- b. the staging pile must be designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment (for example, through the use of liners, covers, runoff/run-on controls, as appropriate); and

- c. the staging pile must not operate for more than two years, except when the administrative authority grants an operating term extension under Subsection I of this Section (entitled "May I Receive an Operating Extension for a Staging Pile?"). You must measure the two-year limit, or other operating term specified by the administrative authority in the permit, closure plan, or order, from the first time you place remediation waste into a staging pile. You must maintain a record of the date when you first placed

remediation waste into the staging pile for the life of the permit, closure plan, or order, or for three years, whichever is longer.

2. In setting the standards and design criteria, the administrative authority must consider the following factors:

- a. length of time the pile will be in operation;
- b. volumes of wastes you intend to store in the pile;
- c. physical and chemical characteristics of the wastes to be stored in the unit;
- d. potential for releases from the unit;
- e. hydrogeological and other relevant environmental conditions at the facility that may influence the migration of any potential releases; and
- f. potential for human and environmental exposure to potential releases from the unit;

E. May a Staging Pile Receive Ignitable or Reactive Remediation Waste? You must not place ignitable or reactive remediation waste in a staging pile unless:

1. you have treated, rendered, or mixed the remediation waste before you placed it in the staging pile so that:

- a. the remediation waste no longer meets the definition of ignitable or reactive under LAC 33:V.4903.B or D; and
- b. you have complied with LAC 33:V.1517.B; or

2. you manage the remediation waste to protect it from exposure to any material or condition that may cause it to ignite or react.

F. How Do I Handle Incompatible Remediation Wastes in a Staging Pile? The term *incompatible waste* is defined in LAC 33:V.109. You must comply with the following requirements for incompatible wastes in staging piles:

1. you must not place incompatible remediation wastes in the same staging pile unless you have complied with LAC 33:V.1517.B;

2. if remediation waste in a staging pile is incompatible with any waste or material stored nearby in containers, other piles, open tanks, or land disposal units (for example, surface impoundments), you must separate the incompatible materials, or protect them from one another by using a dike, berm, wall, or other device; and

3. you must not pile remediation waste on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to comply with LAC 33:V.1517.B.

G. Are Staging Piles Subject to Land Disposal Restrictions (LDR) and Minimum Technological Requirements (MTR)? No. Placing hazardous remediation wastes into a staging pile does not constitute land disposal of hazardous wastes or create a unit that is subject to the minimum technological requirements of RCRA 3004(o).

H. How Long May I Operate a Staging Pile? The administrative authority may allow a staging pile to operate for up to two years after hazardous remediation waste is first placed into the pile. You must use a staging pile no longer than the length of time designated by the administrative authority in the permit, closure plan, or order (the *operating term*), except as provided in Subsection I of this Section.

I. May I Receive an Operating Extension for a Staging Pile?

1. The administrative authority may grant one operating term extension of up to 180 days beyond the

operating term limit contained in the permit, closure plan, or order (see Subsection L of this Section for modification procedures). To justify to the administrative authority the need for an extension, you must provide sufficient and accurate information to enable the administrative authority to determine that continued operation of the staging pile:

a. will not pose a threat to human health and the environment; and

b. is necessary to ensure timely and efficient implementation of remedial actions at the facility.

2. The administrative authority may, as a condition of the extension, specify further standards and design criteria in the permit, closure plan, or order, as necessary, to ensure protection of human health and the environment.

J. What is the Closure Requirement For a Staging Pile Located in a Previously Contaminated Area?

1. Within 180 days after the operating term of the staging pile expires, you must close a staging pile located in a previously contaminated area of the site by removing or decontaminating all:

- a. remediation waste;
- b. contaminated containment system components; and

c. structures and equipment contaminated with waste and leachate.

2. You must also decontaminate contaminated subsoils in a manner and according to a schedule that the administrative authority determines will protect human health and the environment.

3. The administrative authority must include the above requirements in the permit, closure plan, or order in which the staging pile is designated.

K. What is the Closure Requirement for a Staging Pile Located in an Uncontaminated Area?

1. Within 180 days after the operating term of the staging pile expires, you must close a staging pile located in an uncontaminated area of the site according to LAC 33:V.2315.A and 3507; or according to LAC 33:V.4379 and 4475.A.

2. The administrative authority must include the above requirement in the permit, closure plan, or order in which the staging pile is designated.

L. How May My Existing Permit (for example, RAP), Closure Plan, or Order be Modified to Allow Me to Use a Staging Pile?

1. To modify a permit, other than a RAP, to incorporate a staging pile or staging pile operating term extension, either:

a. the administrative authority must approve the modification under the procedures for agency-initiated permit modifications in LAC 33:V.322; or

b. you must request a class 2 modification under LAC 33:V.321.C.

2. To modify a RAP to incorporate a staging pile or staging pile operating term extension, you must comply with the RAP modification requirements under LAC 33:V.640 and 645.

3. To modify a closure plan to incorporate a staging pile or staging pile operating term extension, you must follow the applicable requirements under LAC 33:V.3511.C or 4381.C.

4. To modify an order to incorporate a staging pile or staging pile operating term extension, you must follow the terms of the order and the applicable provisions of LAC 33:V.4303.A.5 or B.5.

M. Is Information About the Staging Pile Available to the Public? The administrative authority must document the rationale for designating a staging pile or staging pile operating term extension and make this documentation available to the public.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental**

**Quality Hazardous Waste**

**Chapter 33. Groundwater Protection**

**§3322. Corrective Action**

\* \* \*

[See Prior Text in A - D]

E. This Section does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:614 (July 1990), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of the Secretary, LR 24:2247 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental**

**Quality Hazardous Waste**

**Chapter 38. Universal Wastes**

**Subchapter A. General**

**§3813. Definitions**

\* \* \*

[See Prior Text]

*Small Quantity Handler of Universal Waste* a universal waste handler (as defined in this Section) who does not accumulate 5,000 kilograms or more total of universal waste (batteries, pesticides, thermostats, lamps, or antifreeze, calculated collectively) at any time.

\* \* \*

[See Prior Text]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:570 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1760 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental**

**Quality Hazardous Waste**

**Chapter 41. Recyclable Materials**

**Subchapter C. Special Requirements for Group III**

**Recyclable Materials**

**§4145. Spent Lead-Acid Batteries Being Reclaimed**

A. Applicability. Are spent lead-acid batteries exempt from hazardous waste management requirements? If you generate, collect, transport, store, or re-generate lead-acid batteries for reclamation purposes, you may be exempt from certain hazardous waste management requirements. Use the following table to determine which requirements apply to you. Alternatively, you may choose to manage your spent lead-acid batteries under the *Universal Waste* rule in LAC 33:V.Chapter 38.

If your batteries	And if you	Then you	And you
1. will be reclaimed through regeneration (such as by electrolyte replacement).		are exempt from LAC 33:V. Subpart 1 except for LAC 33:V. Chapters 1,31.Table 1, and 49, and LAC 33:V.1103, and the notification requirements at section 3010 of RCRA.	are subject to LAC 33:V. Chapters 1, 31. Table 1, and 49 and LAC 33:V.1103.
2. will be reclaimed other than through regeneration.	generate, collect, and/or transport these batteries.	are exempt from LAC 33:V. Subpart 1 except for LAC 33:V.Chapters 1,31.Table 1, and 49, and LAC 33:V.1103, and the notification requirements at section 3010 of RCRA.	are subject to LAC 33:V. Chapter 1, 31. Table 1, and 49 and LAC 33:V.1103 and applicable provisions under LAC 33:V.Chapter 22.
3. will be reclaimed other than through regeneration.	store these batteries, but you aren't the reclaimer.	are exempt from LAC 33:V. Subpart 1 except for V.Chapters 1,31.Table 1, and 49, and LAC 33:V.1103, and the notification requirements at section 3010 of RCRA.	are subject to LAC 33:V. Chapters 1, 31. Table 1, and 49 and LAC 33:V.1103 and applicable provisions under LAC 33:V.Chapter 22.
4. will be reclaimed other than through regeneration.	store these batteries before you reclaim them.	must comply with LAC 33:V.4145.B and, as appropriate, other regulatory provisions described in LAC 33:V.4145.B.	are subject to LAC 33:V. Chapters 31. Table 1 and 49 and LAC 33:V.1103 and applicable provisions under LAC 33:V.Chapter 22.
5. will be reclaimed other than through regeneration.	don't store these batteries before you reclaim them.	are exempt from LAC 33:V. Subpart 1 except for LAC 33:V. Chapters 1, 31.Table 1, and 49 and LAC 33:V.1103, and the notification requirements at section 3010 of RCRA.	are subject to LAC 33:V. Chapters 31. Table 1 and 49 and LAC 33:V.1103 and applicable provisions under LAC 33:V.Chapter 22.

B. Requirements. If I store spent lead-acid batteries before I reclaim them, but not through regeneration, which requirements apply? The requirements of this Subsection apply to you if you store spent lead-acid batteries before you reclaim them, but you don't reclaim them through regeneration. The requirements are slightly different depending on your RCRA permit status.

1. For interim status facilities, you must comply with:
  - notification requirements under section 3010 of RCRA;
  - all applicable provisions in LAC 33:V.4301 - 4306;
  - c. all applicable provisions in LAC 33:V.Chapter 43.Subchapter A, except LAC 33:V.4313 (waste analysis);
  - d. all applicable provisions in LAC 33:V.Chapter 43.Subchapters B and C;
  - e. all applicable provisions in LAC 33:V.Chapter 43.Subchapter D, except LAC 33:V.4353 and 4355 (dealing with the use of the manifest and manifest discrepancies);
  - f. all applicable provisions in LAC 33:V.Chapter 43.Subchapters E - K; and
  - g. all applicable provisions in LAC 33:V.Chapters 3, 5, and 7.

2. For permitted facilities, you must comply with:
  - a. notification requirements under section 3010 of RCRA;
  - b. all applicable provisions in LAC 33:V.1501;
  - c. all applicable provisions in LAC 33:V.1503, 1504, 1507, 1509, 1515, and 1517;
  - d. all applicable provisions in LAC 33:V.1511 and 1513;
  - e. all applicable provisions in LAC 33:V.Chapter 9, but not LAC 33:V.905 or 907 (dealing with the use of the manifest and manifest discrepancies);
  - f. all applicable provisions in LAC 33:V.1505, and Chapters 19, 21, 23, 29, 33, 35, and 37; and
  - g. all applicable provisions in LAC 33:V.Chapters 3, 5, and 7.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 13:237 (April 1987), LR 23:579 (May 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

### **Title 33**

## **ENVIRONMENTAL QUALITY**

### **Part V. Hazardous Waste and Hazardous Materials**

#### **Subpart 1. Department of Environmental Quality**

#### **Hazardous Waste**

#### **Chapter 43. Interim Status**

#### **§4305. Termination of Interim Status**

Interim status terminates when:

\* \* \*

[See Prior Text in A - E]

One of the following occurs:

1. final administrative disposition of a permit application is made, except an application for a remedial action plan (RAP) under LAC 33:V.Chapter 43.Subchapter H; or

\* \* \*

[See Prior Text in F.2]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 16:614 (July 1990), LR 20:1000 (September 1994), LR 20:1109 (October 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

#### **§4306. Imminent Hazard Action**

Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to section 7003 of RCRA and/or R.S. 30:2050.8.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

### **Subchapter V. Air Emission Standards for Tanks, Surface Impoundments, and Containers**

#### **§4727. Waste Determination Procedures**

\* \* \*

[See Prior Text in A - A.1]

a. An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of LAC 33:V.4725 from using air emission controls, and thereafter, an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit.

b. Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the VO concentration limit specified in LAC 33:V.4725.

\* \* \*

[See Prior Text in A.2 - 3.b.i]

ii. A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

\* \* \*

[See Prior Text in A.3.b.iii]

iv. Sufficient information, as specified in the *site sampling plan* required under Subsection A.3.b.iii of this Section shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous waste represented by the samples.

c. Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in Subsection A.3.c.i-ix of this Section, including appropriate quality assurance and quality control

(QA/QC) checks and use of target compounds for calibration. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as  $1.8 \times 10^{-6}$  atmospheres/gram-mole/m<sup>3</sup>) at 25EC. Each of the analytical methods listed in Subsection A.3.c.ii - vii of this Section has an associated list of approved chemical compounds for which the department considers the method appropriate for measurement. If an owner or operator uses Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, incorporated by reference in LAC 33:V.110.A, to analyze one or more compounds that are not on that method's published list, the procedures in Subsection A.3.c.viii of this Section must be followed. At the owner's or operator's discretion, the owner or operator may adjust test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor ( $f_{m25D}$ ). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25° Celsius contained in the waste. Constituent-specific adjustment factors ( $f_{m25D}$ ) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711:

\* \* \*

[See Prior Text in A.3.c.i - B.1]

a. An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in a waste management unit exempted under the provisions of LAC 33:V.4725 from using air emission controls, and thereafter, update the information used for the waste determination at least once every 12 months following the date of the initial waste determination.

b. Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in LAC 33:V.4725 are not achieved.

\* \* \*

[See Prior Text in B.2 - B.3.b.i]

ii. A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample

results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

\* \* \*

[See Prior Text in B.3.b.iii]

iv. Sufficient information, as specified in the *site sampling plan* required under Subsection B.3.b.iii of this Section, shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the process treating the hazardous waste represented by the samples.

c. Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in Subsection B.3.c.i-ix of this Section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system, to determine if the conditions of LAC 33:V.4723 or 4725 are met, the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as  $1.8 \times 10^{-6}$  atmospheres/gram-mole/m<sup>3</sup>] at 25EC. Each of the analytical methods listed in Subsection B.3.c.ii - vii of this Section has an associated list of approved chemical compounds for which the department considers the method appropriate for measurement. If an owner or operator uses Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, incorporated by reference in LAC 33:V.110.A, to analyze one or more compounds that are not on that method's published list, the procedures in Subsection B.3.c.viii of this Section must be followed. At the owner's or operator's discretion, the owner or operator may adjust test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor ( $f_{m25D}$ ). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical

constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25° Celsius contained in the waste. Constituent-specific adjustment factors ( $f_{m25D}$ ) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711:

\* \* \*

[See Prior Text B.3.c.i - D.9]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1747 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

A public hearing will be held on January 24, 2000, at 1:30 p.m. in the Trotter Building, Second Floor, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by HW072\*. Such comments must be received no later than January 24, 2000, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0486. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of HW072\*.

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

James H. Brent, Ph.D.  
Assistant Secretary

9912#095

## NOTICE OF INTENT

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

Risk Evaluation/Corrective Action Program (RECAP)  
(LAC 33:I.1305 and 1307;VII.305)(OS034)

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

secretary gives notice that rulemaking procedures have been initiated to amend the Office of the Secretary regulations, LAC 33:I.1305 and 1307, and the Solid Waste regulations, LAC 33:VII.305 (Log #OS034).

This proposed rule clarifies the Office of the Secretary and the Solid Waste regulations to reflect the department's intent and will adopt by reference the Risk Evaluation/Corrective Action Program (RECAP) document that is being revised as part of this rulemaking package. The RECAP revisions will provide clarification and corrections to text, tables, and figures of the RECAP document. Clarifications of text will enhance the reader's understanding of the content of the document. Correction to errors in the document and movement of text will improve the RECAP document readability and help the regulated community understand the document. Some of these changes include: revisions to the Screening Option to determine if an area of concern requires further evaluation under a management option; upgrading the SIC codes to newly adopted NAICS codes; corrections to the RECAP standards tables; allowance of the SPLP method for the soil level protective of groundwater derivation for Management Options 1, 2, and 3; site investigation requirements expanded to provide more guidance to submitters; new RECAP submittal forms to enable both submitters and Department reviewers to find needed information more easily; and increased flexibility that may be granted by the Department of the submittal requirements for each screening or management option. The RECAP revisions will help ensure that a consistent method based on sound scientific principles is used and will continue to serve as a standard tool to assess impacts to soil, groundwater, surface water, and air. The basis and rationale for this proposed rule are to establish uniformity for submitters in the program to minimize the time and money necessary to identify corrective action levels for constituents of concern at a contaminated site. This should encourage voluntary and expeditious remediation.

This proposed 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. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

## Title 33

### ENVIRONMENTAL QUALITY

#### Part I. Office of the Secretary

#### Subpart 1. Departmental Administrative Procedures

#### Chapter 13. Risk Evaluation/Corrective Action Program

#### §1305. Applicability

\* \* \*

[See Prior Text In A - A.3]

B. This Chapter shall not apply to activities conducted in accordance with corrective action plans, closure plans, or closure standards that were approved by the department prior to December 20, 1998, except when modification of such a plan is deemed by the department to be necessary to protect human health or the environment or when modification of such a plan is otherwise allowed or required by the department in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

**§1307. Adoption by Reference**

The document entitled, "Louisiana Department of Environmental Quality Risk Evaluation/Corrective Action Program (RECAP)" dated [Final Promulgation Date] is hereby adopted and incorporated herein in its entirety. The RECAP document is available for purchase or inspection from 8 a.m. until 4:30 p.m., Monday through Friday from the Louisiana Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 82178 (7290 Bluebonnet Boulevard, 4th Floor), Baton Rouge, LA 70884-2178. For RECAP document availability at other locations, contact the department's Regulation Development Section at (225) 765-0399. The RECAP document may also be reviewed on the Internet at <http://www.deq.state.la.us/technology/recap/index.htm>.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998), amended by the Office of Environmental Assistance, Environmental Planning Division, LR 26:

**Part VII. Solid Waste**

**Chapter 3. Scope and Mandatory Provisions of the Program**

**§305. Facilities Not Subject to the Permitting Requirements or Processing or Disposal Standards of These Regulations**

The following facilities that are operated in an environmentally sound manner are not subject to the permitting requirements or processing or disposal standards of these regulations:

\* \* \*

[See Prior Text In A – B]

C. facilities which process or reuse on-site-generated, nonhazardous, petroleum-contaminated media and debris from underground storage tank corrective action, provided such processing or reuse is completed in less than 12 months and authorized by the Underground Storage Tank Regulations.

\* \* \*

[See Prior Text In D – J]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assistance, Environmental Planning Division, LR 26:

A public hearing will be held on January 24, 2000, at 1:30 p.m. in the Trotter Building, Second Floor, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS034. Such comments must be received no later than January 31, 2000, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS034.

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

James H. Brent, Ph.D.  
Assistant Secretary

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

**RULE TITLE: Risk Evaluation/Corrective Action Program (RECAP)**

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

Existing staff and facilities will be used in the implementation of the Risk Evaluation/Corrective Action Program (RECAP) Revision Package rule. No significant costs or savings are anticipated with the promulgation of the RECAP revisions.

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

No net increase or decrease in revenues is expected with the promulgation of this rule.

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

Implementation of the proposed Risk Evaluation/Corrective Action Program (RECAP) revisions would result in some reduction in the costs of remediating contaminated sites to a protective level when compared to the present RECAP regulation. Clarification of the RECAP Screening Option will enable submitters to more expeditiously address sites. Clarifications, updates, and corrections to text, figures and tables to the document will benefit the environmental service providers in reducing overall review time and preparation.

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

It is expected that no significant increase in needed environmental services will correspond with the revisions in this rule. Since RECAP is an established rule, competition in the environmental service sectors is positive and energetic because all parties are pursuing remedial actions under the same set of standards. Amendments to RECAP should not impact present competition and employment.

James H. Brent, Ph.D.  
Assistant Secretary  
9912#093

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor Division of Administration Office of Facility Planning and Control

(Editor's Note: The following notice, which appeared on pages 2305 through 2310 of the November 20, 1999 *Louisiana Register*, is being republished to include the family impact statement.)

#### Rental and Lease Procedure and Regulations (LAC 34:III.Chapter 5)

The Division of Administration, Office of Facility Planning and Control, in accordance with R.S. 49:950 et seq. gives notice that in order to be in conformity with law intends to amend and reenact the following rules governing the Office of Facility Planning and Control's Real Estate Leasing Section.

LAC 34:III.501 is being amended to reflect changes to La. R.S. 39:1641. More specifically, Acts 1988, No. 919, Section 3 repealed subsec. E of Section 1641, thus removing all but one of the exceptions found in LAC 34:III.501. Acts 1997, No. 600, Section 1 repealed subsec. F of Section 1641, thus removing the remaining exception in LAC 34:III.501.

LAC 34:III.503 is being amended to reflect changes by Acts 1995, No. 635 to La. R.S. 39:1643 (A), increasing from 2,500 square feet to 5,000 square feet as the amount of square feet requiring advertising and competitive bidding.

LAC 34:III.505 is being amended to require a bidder "control" the offered properties and parking areas on the date of the bid opening and throughout the term of the lease and option period.

LAC 34:III.506 is being promulgated to merely reflect the law contained in La. R.S. 39:1599.

LAC 34:III.507 has been incorporated into the proposed LAC 34:III.503.

LAC 34:III.508 is being promulgated to merely reflect the law contained in La. R.S. 39:1594.

The proposed LAC 34:III.509 contains only a few minor changes.

LAC 34:III.510 is being promulgated merely to reflect provisions contained in state leases.

LAC 34:III.511 is being re-promulgated.

LAC 34:III.512 is being promulgated to reflect the law as contained in La. R.S. 39:1661.

LAC 34:III.513 is being amended to clarify that the emergency procurement provisions apply only to leases of 5,000 square feet or more because emergency procurements relieve the State of the need to advertise for bids. For smaller leases, the State is not required to advertise for bids.

LAC 34:III.514 is being promulgated to reflect the law as contained in La. R.S. 39:1598.

LAC 34:III.515 is being amended to reflect the changes to La. R.S. 39:1643(A) by Acts 1995, No. 635.

LAC 34:III.516 is being promulgated to reflect current procedures followed by the Real Estate Leasing Section and what is contained in La. R.S. 39:1644(A).

LAC 34:III.517 is being amended to add what is implicit in the law, i.e. that the rules for the Office of State

Purchasing apply if they are not in conflict with the rules for Rental and Lease Procedure.

#### Family Impact Statement

Furthermore, in accordance with La. R.S. 49:972 (as enacted by Acts 1999, No. 1183), the following Family Impact Statement is made. It is not anticipated that the proposed rules will have any effect on:

- 1) the stability of the family;
  - 2) the authority and rights of parents regarding the education and supervision of their children;
  - 3) the functioning of the family;
  - 4) the family earnings and family budget;
  - 5) the behavior and personal responsibility of children;
- or
- 6) the ability of the family or a local government to perform the function as contained in the proposed rules.

#### Title 34

### GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL Part III. Facility Planning And Control Chapter 5. Rental and Lease Procedure and Regulations

#### §501. Authority, Policy, Purpose, and Application

A. Authority. Louisiana Revised Statutes provide that all agreements for the lease or rental of space shall be made by the agency whose offices and/or activities are to be housed, but shall be made and entered into only with the approval of the commissioner of administration. (Louisiana Procurement Code, Louisiana Revised Statutes, Chapter 17 of Title 39 R.S. 39:1551 et seq. with particular reference to 39:1641-1644). The commissioner has designated the Office of Facility Planning and Control, Real Estate Leasing Section, to administer this function (1641).

B. Policy. It is the policy of the Division of Administration to acquire the best available rental space for state agencies with the greatest amount of competition among lessors of privately owned facilities (1594(G), 1594(E) as amended, 1643(A) as amended).

C. Purpose. The purpose of these procedures and regulations is to simplify and clarify the procurement practices for renting and leasing of space for state agencies, to provide increased economy and efficiency in procurement activities, to foster more effective competition for bid space, ensure fair and equitable treatment of all persons involved, to enable greater public confidence in the lease procurement process, and to maintain a procurement system of quality and integrity.

D. Application. The definition of "Agency" stated in R.S. 39:2(2) shall be the sole definition of the term "state agency" employed herein in connection with the acquisition of housing space and the fact that an agency is supported by fees or taxes collected by, or dedicated to, the agency or which otherwise receives its operating funds through means other than direct appropriations, shall not be a test as to whether these rules shall be applicable to an agency of the state. [39:1641(C)].

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department in LR 10:902 (November 1984), amended LR 26:

### §503. Space Acquisition Method

#### A. In General

1. The Office of Facility Planning and Control, Real Estate Leasing Section, will retain an original of each lease and will notify a user agency when its lease is about to expire.

2. All standard forms mentioned herein are available on request from the Office of Facility Planning and Control, Real Estate Leasing Section.

3. Every lease for the use of 5,000 square feet or more, with the exception of emergency and sole source procurements as set forth in Rules 513 and 514 and cooperative use agreements between public procurement units, as set forth in R.S. 39:1701 and 1704, must be procured in accordance with R.S. 39:1594.

4. All leases and lease amendments, including amendments both for space of less than 5,000 square feet (which can be negotiated) and for 5,000 square feet or more, which must be bid, must be preceded by a request for approval form RL-2A (negotiable and amended leases) and RL-2B (leases competitively bid) on which the request for space, location and terms of lease are detailed.

5. The Office of Facility Planning and Control, Real Estate Leasing Section, will examine the request in relation to authorized programs, funds, and personnel, and will approve, take under advisement, or disapprove the user agency request, taking into consideration, including but not limited to, the price per square foot of rental space, space allocation, availability of housing in State-owned space, location of the requested space, number of locations considered, timeliness of the availability of the requested space.

#### B. Procedure for Space Less than 5,000 Square Feet

1. An agency seeking to acquire a lease for less than 5,000 square feet or to amend an existing lease which will result in total leased space of less than 5,000 square feet, shall attempt to obtain at least three (3) written proposals. Upon receipt of these proposals, the user agency shall enter into a negotiation process to obtain the best price and terms possible under the circumstances subject to approval by the Division of Administration.

2. Once the agency has completed this negotiation process and has selected a prospective lessor, it submits an RL-2A form to the Office of Facility Planning and Control, Real Estate Leasing Section, for approval of the proposed lease.

3. If an RL-2A request is not approved, the agency is notified in writing of the reasons for disapproval. Facility Planning and Control, Real Estate Leasing Section, may request additional information for further consideration.

4. Upon approval of the RL-2A request, the Real Estate Leasing Section will prepare the lease and extract of lease/amendment. The lease, extract of lease/amendment, and accompanying affidavit are executed, first by the lessor, then by the lessee, who is the user agency or department, and then given final approval by the Division of Administration. The extract of lease and the affidavit become a part of the lease. All leases and amendments shall be executed as four originals and distributed as follows: two (2) leases shall be distributed to the user agency, one (1) distributed to the lessor, and one (1) retained by the Office of Facility Planning and Control, Real Estate Leasing Section. The

lessor shall record the extract of lease/amendment, lease or amendment in the public records of the parish in which the leased premises are located, and provide the Real Estate Leasing Section with a certified copy showing such recordation.

#### C. Space 5,000 Square Feet or Greater

##### 1. The Bid Specifications and Solicitation

a. The Office of Facility Planning and Control, Real Estate Leasing Section, receives the RL-2B from the user agency. If an RL-2B is not approved, the agency is notified in writing of the reasons for disapproval. Additional information may be requested for further consideration. If the RL-2B is approved, the Office of Facility Planning and Control, Real Estate Leasing Section, prepares the bid specifications. The bid specifications shall include the bid proposal form, affidavit attesting to control of the offered property and parking area, evidence of agency, corporate, or partnership authority (if applicable), space specifications and requirements, criteria for evaluation of the bids and a sample lease. Criteria for evaluation of bids shall include location of the proposed space, conditions of the proposed space, suitability of the proposed space for the user agency's needs, and timeliness of availability of the proposed space. (Act 635 of 1995 amending 39:1594(E) and Act 121 of 1997 adding 39:1594(C)(4).

b. The Real Estate Leasing Section forwards the bid specifications to the user agency for final review and comment prior to advertisement.

2. Advertisement and Notice. As required by R.S. 39:1643, leases for the use of 5,000 square feet or more of space are to be awarded pursuant to R.S. 39:1594 (unless exempt under R.S. 39:1593) which requires adequate public notice of the invitation for bids to be given at least 20 days prior to bid opening date. This notice is given by advertising in the official journal of the state and in the official parish journal of the parish where the property is to be leased. The advertisement shall be published twice in the state and parish journals, with one publication on a Saturday, if available. The bid specifications are then made available and distributed to bidders who request a copy. Bidders receiving a copy of the bid specifications, become a "Bidder of Record" for that solicitation.

3. Pre-Bid Conference. A pre-bid conference may be held upon the request of the user agency to answer questions from prospective bidders. The date and time of the pre-bid conference shall be included in the advertisement, which shall state if attendance at the pre-bid conference is a pre-requisite to submission of a bid.

##### 4. Addenda to Bid Specifications

a. A potential bidder or the user agency can request changes/alterations to the advertised bid specifications, but only in writing to the Office of Facility Planning and Control, Real Estate Lease Section. The written request is reviewed by the Real Estate Leasing Section and by the user agency. If approved, an addendum to the bid specifications is issued and provided to all "Bidders of Record."

b. Addenda modifying the bid specifications must be issued no later than three (3) working days prior to the advertised time for the opening of bids, excluding Saturdays, Sundays and any other legal holidays. If the necessity arises to issue an addendum modifying the bid specifications within the three-day period prior to the advertised time for

the opening of bids, the opening of bids shall be extended exactly 14 days, without the requirement of re-advertising. Addenda shall be sent to all "Bidders of Record."

c. If any changes/alterations to the advertised bid specifications are a substantial deviation from the advertised bid specifications, the solicitation must be re-advertised with a new bid opening date established. The bid opening is rescheduled for at least 20 days after the re-advertisement. Any alterations or changes to advertised geographic boundaries may be grounds for re-advertisement of the solicitation.

#### 5. Bid Opening

a. Bids are opened by the Real Estate Leasing Section at the specified date, time and place. The Real Estate Leasing Section evaluates the bids and arranges them on a bid tabulation sheet. If deemed necessary by the Real Estate Leasing Section, additional information and documentation evidencing control of the offered property and parking areas can be requested of the apparent low bidder.

b. The Real Estate Leasing Section sends the bid tabulation to the user agency with a request that the user agency verify availability of funds for rental payments to the apparent low bidder and compliance of the property offered by the apparent low bidder with the specified geographic boundaries.

#### 6. Determination of Lowest Bidder

a. Upon receipt from the user agency of verification of availability of rental payments to the apparent low bidder and verification of compliance of the property offered by the apparent low bidder within the specified geographic boundaries, the Real Estate Leasing Section sends written notice to the apparent low bidder requesting schematic floor plans, site plans, and outline specifications of the proposed lease space. The apparent low bidder is allowed 20 days in which to provide the required documents. The user agency shall then review the documents as to adjacencies and layout of the space. If they meet the agency's requirements, the agency shall then submit the schematic plans, site plans, and outline specifications to the Real Estate Leasing Section for review. Once the Real Estate Leasing Section determines they are in compliance with the advertised bid specifications, it will proceed with the issuance of the lease documents.

b. If the schematic plans, site plans, and outline specifications are not approved by the Real Estate Leasing Section, the apparent low bidder is allowed ten (10) days in which to correct any deficiencies or discrepancies between the submitted plans and the advertised bid specifications. Upon receipt of the revised plans, the Real Estate Leasing Section reviews for compliance with the advertised bid specifications. If the documents are then approved by the Real Estate Leasing Section, the lease documents are then issued. Should the schematic plans, site plans, and outline specifications still not comply with the advertised bid specifications, the bid may be rejected for non-compliance with the advertised bid specifications. The next apparent low bidder can then be considered by following the same procedures.

c. Should all bidders be considered non-responsive or not in compliance with the advertised bid specifications, the bid solicitation is canceled. The bid specifications can be reviewed for possible revisions in order that a new solicitation can be issued.

7. Execution of the Lease. The Real Estate Leasing Section will prepare the lease and extract of lease. The lease and extract of lease and accompanying affidavit are executed, first by the lessor, who must return the signed lease and the affidavit within 10 days after receipt. The lease is then executed by the lessee, who is the user agency or department, and then given final approval by the Division of Administration. The affidavit and extract of lease become a part of the lease. All leases shall be executed as four originals and are distributed as follows: two (2) leases to the user agency, one (2) to the lessor, and one (1) retained by the Office of Facility Planning and Control, Real Estate Leasing Section. The lessor shall record an extract of lease or lease in the public records of the parish in which the leased premises are located and provide the Real Estate Leasing Section with a certified copy showing such recordation.

8. Notice to Other Bidders. When the lease documents are mailed to the lowest, responsible bidder for execution, all other bidders are notified via certified mail of the contract award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department in LR 10:902 (November 1984), amended LR 26:

#### **§505. Space Offered**

A. A bidder may offer space consisting of any of the following: owned or leased space ready for occupancy, owned or leased space to be renovated for occupancy, owned or leased new construction.

B. Space may not be offered for lease in response to a solicitation if the same space has been offered/bid for another solicitation within the last sixty (60) days and has not been withdrawn for that solicitation.

C. A bidder must control the offered property and parking areas as of the date of the bid opening and throughout the term of the lease and option period. He shall submit an affidavit with his bid indicating how the property and parking areas are controlled. The Real Estate Leasing section shall ask the apparent low bidder to provide schematic plans, outline specifications, and site plans and will evaluate those plans and specifications to determine compliance of the offered space with the advertised bid specifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department in LR 10:902 (November 1984), amended LR 26:

#### **§506. Rejection of Bids and Cancellation of Invitations for Bids or Requests for Proposals**

A. The Chief Procurement Officer or designee has the right to reject any or all bids, and to cancel an invitation for bids, a Request for Approval Form RL-2, or other solicitation when it has been deemed to be in the best interest of the State of Louisiana. Such determination must be made in writing.

B. If the solicitation is cancelled prior to bid opening, all bidders of record (those bidders who obtain from the Real Estate Leasing Section a copy of the bid specifications) are

notified. If the solicitation is cancelled after the bid opening, all bidders are notified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:

**§507. Additional Requirements of Lessor Repealed**

**§508. Correction and Withdrawal of Bids**

A. Prior to Bid Opening. Prior to the bid opening, a written request for the withdrawal of a bid will be granted if the request is received prior to the specified time of the bid opening. If a bidder withdraws a bid, all bid documents shall remain the property of the State.

B. After Bid Opening. Patent errors in bids or errors in bids supported by clear and convincing evidence may be corrected, or bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders. Such bid may be corrected or withdrawn after bid opening only with the approval of the Office of Facility Planning and Control, Real Estate Leasing Section. A bidder who wishes to correct or withdraw a bid, must request approval for such action in writing. The request must specify the justification for the proposed correction or withdrawal. If a bidder is allowed to withdraw a bid, he may be required to withdraw all other bids he has submitted for that solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:

**§509. Determination of Responsibility**

A. The Real Estate Leasing Section may request that an apparent low bidder submit suitable evidence that he is a responsible bidder. A responsible bidder shall:

1. have adequate financial resources for performance, or have the ability to obtain such resources as required during performance;
2. have the necessary experience, organization, technical qualifications, skills, and facilities, or have the ability to obtain them (this may include subcontractor arrangements);
3. be able to comply with the proposed or required occupancy date; and
4. not have an unsatisfactory record of contract performance.

B. The Real Estate Leasing Section may request the following information:

1. a letter of credit from a financial institution;
2. financial statement;
3. a letter of commitment from the bank or other institution financing the project and addressed to the Division of Administration, stating the amount and terms of commitment to the Lessor;
4. information from the prospective Lessor, including representations and other data contained in proposals, or other written statements or commitments, such as financial assistance and subcontracting arrangements;
5. other information supportive of financial responsibility, including financial data, and records concerning lessor performance;

6. publications, including credit ratings and trade and financial journals; and

7. information from other sources, including banks, other financial companies, state departments and agencies, and courts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department in LR 10:902 (November 1984), amended LR 26:

**§510. Assignment of Proceeds of Lease and Assignment of Lease**

Assignments of Lease and Assignments of Proceeds of Lease by a lessor must be approved in advance and in writing by the Office of Facility Planning and Control, Real Estate Leasing Section. Approval of a requested assignment shall not be unreasonably or arbitrarily withheld by either party. However, the approval of any assignment of proceeds of lease may be conditioned upon receipt of reasonable assurances from assignee of his ability and willingness to assume responsibility for performance of the terms of the lease in the event of failure of performance by the assignor. Assignment of Lease forms and Assignment of Proceeds of Lease forms shall be provided by the Office of Facility Planning and Control, Real Estate Leasing Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:

**§511. Resolution of Controversies**

A. Right to Protest. Any prospective lessor who is aggrieved in connection with the solicitation or award of a contract may protest to Facility Planning and Control. Protests with respect to a solicitation shall be submitted in writing no later than 10 days prior to the opening of bids. If a person protests a solicitation, an award cannot be made until said protest is resolved. Protests with respect to the award of a contract shall be submitted in writing within 14 days after contract award. Said protest shall state fully and in particular, the reason for protest if a protest is made with respect to the award of a contract. Work on the contract cannot be commenced until it is resolved administratively.

B. Decision. The assistant director, Facility Planning and Control, must notify the protesting party in writing and the legal counsel of the Division of Administration within 14 days after receipt of said protest whether or not the protest is denied or granted. If the protest with reference to the solicitation is granted, the solicitation will be canceled and reissued. If the protest with reference to the award is granted, then the lease will be voided and the remaining solicitations may be re-evaluated for another selection. If another selection cannot be made or if it appears to be in the best interest of the state, a new solicitation will be issued.

C. Appeal. If an aggrieved party is not satisfied with the rendered decision, then that party may appeal said decision in writing to the commissioner of administration within seven days of the decision. The protesting party should fully explain the basis of his appeal. The commissioner then must render a decision in writing within 14 days of receipt of the appeal. The commissioner's decision is final and an

aggrieved party may bring judicial action within two weeks from receipt of said decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control in LR 11:945 (October 1985), amended in LR 22:345 (May 1996), repromulgated LR 26:

#### **§512. Lease Clauses**

A. A lease may include clauses providing for equitable adjustments in prices, time for performance, or other contract provisions, as appropriate, covering such subjects as:

1. the unilateral right of the state to order in writing changes in the work within the general scope of the contract in the drawings, designs, or specifications for space to be furnished;
2. the unilateral right of the state to order in writing temporary stopping of the work or delaying of performance; and
3. variations between estimated and actual quantities.

B. A lease may include clauses providing for appropriate remedies covering such subjects as:

1. liquidated damages as appropriate;
2. specified excuses for delay or non-performance;
3. termination of the contract for default; and
4. termination of the contract in whole or in part if sufficient funds have not been appropriated by the Legislature.

C. A lease may also provide that in the event that the lessor fails to fulfill or comply with the terms of any contract, he may be subject to disqualification on future state projects and the chief procurement officer may award the contract to the next lowest responsible bidder, subject to acceptance by that bidder, and charge the difference in cost to the defaulting lessor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:

#### **§513. Emergency Procurement**

A. The Office of Facility Planning and Control, Real Estate Leasing Section, may make emergency procurements for acquisition of housing space of 5,000 square feet or more when there exists an imminent threat to the public health, welfare, safety or public property.

B. The declaration of an emergency must be made in writing by the Chief Procurement Officer or his designee, fully documenting the nature of the emergency, the circumstances leading up to the emergency and a description of the threat to public health, welfare, safety or public property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1598.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department in LR 10:902 (November 1984), amended LR 26:

#### **§514. Sole Source Procurements**

The Office of Facility Planning and Control, Real Estate Leasing Section may make sole source procurements for acquisition of housing space of 5,000 square feet or more or may amend an existing lease to total in excess of 5,000

square feet or more when the Chief Procurement Officer, or his designee, determines in writing that there is only one source for the required space.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1597.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department, LR 26:

#### **§515. Amendments to Leases**

A. Additional Space. Any additional space added is to be only that for which the requirement could not reasonably have been foreseen at the time of execution of the lease or the latest option renewal; the additional space provision is not to be used to circumvent the bid law.

1. Leases for Space of Less than 5,000 Square Feet. Any lease for less than 5,000 square feet may be amended by negotiation between the user agency and the lessor. The square footage of such a lease may be increased up to a total of 4,999 square feet with the approval of the Division of Administration. If the amendment causes the space to measure 5,000 square feet or more, the additional space must be procured in accordance with RS 39:1594 unless it is deemed a sole source or emergency procurement.

2. Leases for Space of 5,000 Square Feet or More. Any lease for space of 5,000 square feet or more, may be amended by negotiations between the user agency and the lessor to include up to 4,999 square feet of additional space. Such amendment must also be approved by the Division of Administration. If the amendment adds 5,000 square feet or more, the additional space must be procured in accordance with RS 39:1594 unless it is considered a sole source or emergency procurement.

B. Modifications and Alterations. In the event alterations to or modifications of space currently under lease are required to meet changed operating requirements, a lease may be amended. Such lease amendment may, with the approval of the Division of Administration, provide an adjustment in monthly lease payments not to exceed twenty five (25%) percent of the original annual lease price per square foot, sufficient to reimburse the lessor for paying for the leasehold improvements. Any adjustment in lease payments shall also require the approval of the Joint Legislative Committee on the Budget. The continuance of a rental adjustment in excess of twenty five (25%) percent of the original rental rate shall be further contingent on the appropriation of funds in the following fiscal years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department in LR 10:902 (November 1984), amended LR 26:

#### **§516. Renegotiation and Renewal of Current Leases**

A. Leases of Less than 5,000 Square Feet. If an agency wishes to renew an existing lease of less than 5,000 square feet, it may renegotiate with the present lessor or attempt to obtain proposals from other prospective lessors.

B. Space of 5,000 Square Feet or More. An existing lease for office or warehouse space of 5,000 square feet or more, may be renegotiated with the present lessor, but only after the Division of Administration has entered into a competitive negotiation process involving discussions with at least three (3) offerors who submit written proposals. If

less than three (3) written proposals are submitted, the Division of Administration may, nevertheless, hold discussions with those offerors, as well as with the current lessor, but without revealing information gleaned from competing proposals to other offerors. Such proposals shall be solicited by advertising as provided in R.S. 39:1594(C).

C. Evaluation of Proposals. If the Commissioner of Administration, or his designee, determines after evaluation of the proposals and discussions with the current lessor that to renew the present lease would be in the best interest of the State, an existing lease may be renewed. The Commissioner, or his designee, may enter into a lease with one of the other offerors if determined to be in the best interest of the State. In making such a determination, the Commissioner, or his designee, shall take into consideration, over the duration of the lease, rental rates, the amount of funds necessary to relocate, any geographical considerations particular to that state program, the amount of disruption to state business that may be incurred in moving to a new location, and any other relevant factors presented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:

#### **§517. Revised Statutes and Louisiana Administrative Code**

These regulations shall be read and interpreted jointly with Chapter 17 of Title 39 of the Revised Statutes and, when not in conflict, with the purchasing rules of the *Louisiana Administrative Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department in LR 10:902 (November 1984), amended LR 26:

Interested persons may submit written comments within 20 days of publication to: Roger Magendie, Director, Office of Facility Planning and Control, P.O. Box 94095, Baton Rouge, LA 70804-9095.

Roger Magendie  
Director

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

##### **RULE TITLE: Rental and Lease Procedure and Regulations**

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

It is not anticipated that the proposed rule changes will have any implementation costs or savings to the State or to local governmental units because the changes were required by changes in the law itself.

For example, Acts 1988, No. 919, Section 3 repealed subsec. E of La. R.S. 39:1641 and amended subsec. F of the same statute. As a result, certain agencies were no longer exempt from the Procurement Code's provisions regarding the acquisition of housing space. In addition, Acts 1997, No. 600, Section 1 repealed subsec. F of La. R.S. 39:1641. As a result, leases for the storage of voting machines are now administered by the Office of Real Estate Leasing of the Office of Facility

Planning and Control. These changes are reflected in the proposed changes to the *Louisiana Administrative Code*, Title 34, Part III, Chapter 5, Section 501, Authority, Policy, Purpose, and Application.

Another statutory change was the increase in the amount of square feet necessitating advertisement and competitive bidding. Acts 1995, No. 635 amended La. R.S. 39:1643(A), increasing from 2,500 to 5,000 square feet the amount of square feet in a lease that must be publicly advertised and bid. This change is reflected in Sections 503 and 515 of the proposed rules.

Section 505 of the current rules is now incorporated in Section 515 of the proposed rules.

Section 507 of the current rules is now incorporated in Section 503 of the proposed rules.

Other than the above-cited substantive changes necessitated by changes in the law itself, the proposed rules are basically the same, but re-written and organized in a format easier to comprehend.

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

It is not anticipated that the proposed rules will have any effect on revenue collections of state or local governmental units.

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

It is not anticipated that any changes in the rules will increase costs or benefits to directly affected persons or non-governmental groups.

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

It is not anticipated that the proposed rules will have any effect on competition and employment.

Roger Magendie  
Director  
9912#089

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

#### **NOTICE OF INTENT**

##### **Department of Health and Hospitals Board of Dentistry**

Administration of Local Anesthesia for Dental Purposes  
(LAC 46:XXXIII.710)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.710 "Administration of Local Anesthesia for Dental Purposes." No preamble has been prepared.

#### **Title 46**

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

#### **Part XXXIII. Dental Health Professions**

#### **Chapter 7. Dental Hygienists**

#### **§710. Administration of Local Anesthesia for Dental Purposes**

A. - E. ...

F. A dental hygienist can maintain local anesthesia privileges by administering at least 20 patient visits using local anesthetic injection during the previous biennial

renewal period, documented by a log book to include date of visit, patient name, supervising dentist, purpose of injection, and any adverse reaction or complication. Otherwise, he or she must satisfy the board of competence to administer local anesthesia by successfully completing a course of 72 hours of studies that satisfies the curriculum requirements of §710.

G. ...

H. The endorsement shall be for a period of two years and renewable with documentation of experience as described in §710.F at the time of the renewal of his/her dental hygiene license.

I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1292 (July 1998), amended LR 25:1476 (August 1999), LR 26:

Interested persons may submit written comments on this proposed rule to C. Barry Ogden, Executive Director, Louisiana State Board of Dentistry, 1515 Poydras Street, Suite 1850, New Orleans, Louisiana 70112. Written comments must be submitted to and received by the Board within sixty days of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the Board within twenty days of the date of this notice. No preamble has been prepared.

C. Barry Ogden  
Executive Director

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

##### RULE TITLE: Administration of Local Anesthesia for Dental Purposes

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

A cost of \$2,200 is estimated to implement these rule changes. Notification of these rule changes will be provided to our licensees via mass mailing with substitute pages for inclusion in Louisiana Dental Practice Act booklets.

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

There will be no effect on revenue collections by the Board of Dentistry or any other state or local governmental unit.

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

There will be no costs and/or economic benefit to directly affected persons or non-governmental groups.

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

There will be no effect on competition and employment.

C. Barry Ogden  
Executive Director  
9912#009

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Board of Dentistry

Continuing Education Requirements  
(LAC 46:XXXIII.1603, 1609, 1611, 1613, and 1617)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend the following: LAC 46:XXXIII.1603 "Effective Date," LAC 46:XXXIII.1609 "Reporting and Record Keeping," LAC 46:XXXIII.1611 "Continuing Education Requirements for Relicensure of Dentists," LAC 46:XXXIII.1613 "Continuing Education Requirements for Relicensure of Dental Hygienists," and that the Department of Health and Hospitals, Board of Dentistry intends to delete in its entirety LAC 46:XXXIII.1617 "Continuing Education While on Inactive Status, and Requirements for Return to Active Status." No preamble has been prepared.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XXXIII. Dental Health Professions

#### Chapter 16. Continuing Education Requirements

##### §1603. Effective Date

Beginning January 1, 1995, dentists and dental hygienists licensed to practice in the state of Louisiana, in addition to other requirements, shall complete the minimum hours of continuing education set forth in this Chapter during each renewal period in order to renew or have recertified their licenses, permits or certificates necessary to practice dentistry or dental hygiene in this state. These continuing education requirements also apply to all dentists and dental hygienists licensed to practice in Louisiana, but are practicing outside of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8)(13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 26:

##### §1609. Reporting and Record Keeping

A. Upon renewal of a dental or dental hygiene license, the licensee must list on a form provided by the board the date, location, sponsor, subject matter and hours completed during the past renewal period of continuing education courses. The licensee must attest to the truthfulness of his report by executing his signature where required on the reporting form.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8), (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 26:

**§1611. Continuing Education Requirements for Relicensure of Dentists**

A. Unless exempted under §1607, each dentist shall complete a minimum of 40 hours of continuing education during each renewal period for the renewal of his/her license to practice dentistry.

B. At least one-half of the minimum credit hours (20) must be attained by personally attending clinical courses pertaining to the actual delivery of dental services to patients.

C. No more than 20 of the required 40 hours can be completed from the following:

1. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:569 (June 1995), LR 22:24 (January 1996), LR 22:1216 (December 1996), LR 23:1526 (November 1997), LR 24:1117 (June 1998), LR 25:510 (March 1999), LR 26:

**§1613. Continuing Education Requirements for Relicensure of Dental Hygienists**

A. Unless exempted under §1607, each dental hygienist shall complete a minimum of 24 hours of continuing education during each renewal period for the renewal of his/her license to practice dental hygiene.

B. At least one-half of the minimum credit hours (12) must be attained by personally attending clinical courses pertaining to the actual delivery of dental services to patients.

C. No more than 12 of the required 24 hours can be completed from the following:

1. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:570 (June 1995), LR 22:24 (January 1996), LR 22:1217 (December 1996), LR 23:1526 (November 1997), LR 24:1118 (June 1998), LR 25:510 (March 1999), LR 26:

**§1617. Continuing Education while on Inactive Status, and Requirements for Return to Active Status**

Repealed.

If you wish to render any comments concerning any of these proposed Notices of Intent, please forward them to the undersigned at One Canal Place, Suite 2680, 365 Canal Street, New Orleans, Louisiana 70130. Written comments must be received by our office within sixty (60) days following December 20, 1999.

C. Barry Ogden  
Executive Director

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

**RULE TITLE: Continuing Education Requirements**

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

A cost of \$2,200 is estimated to implement these rule changes. Notification of these rule changes will be provided to

our licensees via mass mailing with substitute pages for inclusion in Louisiana Dental Practice Act booklets.

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

There will be no effect on revenue collections by the Board of Dentistry or any other state or local governmental unit.

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

There will be no costs and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

C. Barry Ogden  
Executive Director  
9912#012

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Dentistry**

Evidence of Graduation (LAC 46:XXXIII.103)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.103, "Evidence of Graduation." No preamble has been prepared.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXXIII. Dental Health Professions**

**Chapter 1. General Provisions**

**§103. Evidence of Graduation**

A. All applicants for a dental or dental hygiene license shall furnish the board with satisfactory evidence of graduation from an accredited dental school, dental college, or educational program prior to the examination given by the board for such licensure. An accredited dental school, dental college, or educational program shall be one that has been certified as accredited by the Commission on Dental Accreditation of the American Dental Association, and shall be at a minimum two years in length.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1112 (June 1998), amended LR 26:

Interested persons may submit written comments on this proposed rule to C. Barry Ogden, Executive Director, Louisiana State Board of Dentistry, 1515 Poydras Street, Suite 1850, New Orleans, Louisiana 70112. Written comments must be submitted to and received by the Board within sixty days of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public

hearing must be made in writing and received by the Board within twenty days of the date of this notice.

C. Barry Ogden  
Executive Director

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

**RULE TITLE: Evidence of Graduation**

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

A cost of \$2,200 is estimated to implement these rule changes. Notification of these rule changes will be provided to our licensees via mass mailing with substitute pages for inclusion in Louisiana Dental Practice Act booklets.

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

There will be no effect on revenue collections by the Board of Dentistry or any other state or local governmental unit.

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

There will be no costs and/or economic benefit to directly affected persons or non-governmental groups.

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

There will be no effect on competition and employment.

C. Barry Ogden  
Executive Director  
9912#008

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Dentistry**

Oral Administration of Versed  
(LAC 46:XXXIII.1508)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to add LAC 46:XXXIII.1508 "Oral Administration of Versed." No preamble has been prepared.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXXIII. Dental Health Professions**

**Chapter 15. Anesthesia/Analgesia Administration  
§1508. Oral Administration of Versed**

Oral Administration of Versed shall be performed on the dental premises only. Prescriptions for oral Versed intended for at-home pre-medication is prohibited. Further, all dental offices where oral Versed is administered shall be in compliance with LAC 46:XXXIII.1511 "Required Facilities, Personnel and Equipment for Sedation Procedures" as it pertains to the administration of general anesthesia/deep sedation.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:760(8) and R.S. 37:793.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 26:

Interested persons may submit written comments on this proposed rule to C. Barry Ogden, Executive Director, Louisiana State Board of Dentistry, 1515 Poydras Street, Suite 1850, New Orleans, Louisiana 70112. Written comments must be submitted to and received by the Board within sixty days of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the Board within twenty days of the date of this notice. No preamble has been prepared.

C. Barry Ogden  
Executive Director

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

**RULE TITLE: Oral Administration of Versed**

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

A cost of \$2,200 is estimated to implement these rule changes. Notification of these rule changes will be provided to our licensees via mass mailing with substitute pages for inclusion in Louisiana Dental Practice Act booklets.

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

There will be no effect on revenue collections by the Board of Dentistry or any other state or local governmental unit.

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

There will be no costs and/or economic benefit to directly affected persons or non-governmental groups.

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

There will be no effect on competition and employment.

C. Barry Ogden  
Executive Director  
9912#011

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Medical Examiners**

Medications Used in the Treatment of Noncancer-Related Chronic or Intractable Pain (LAC 46:XLV.6915-6923)

Notice is hereby given, in accordance with R.S. 49:953, that the Louisiana State Board of Medical Examiners (Board), pursuant to the authority vested in the Board by the Louisiana Medical Practice Act, R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B), and the provisions of the Administrative Procedure Act, intends to amend its existing administrative rules governing physician prescription, dispensation, administration or other use of medications for the treatment of noncancer-related chronic or intractable pain, LAC 46:XLV, Subpart 3, Chapter 69, §§6915-6923. In compliance with R.S. 49:953A(1)(a)(viii) and R.S. 49:972, the proposed rule amendments may have a positive impact on the stability and functioning of the family by reducing

barriers to the treatment and relief of non-cancer related chronic or intractable pain with controlled substances, while at the same time providing appropriate safeguards against improper prescribing practices which may lead to substance abuse by patients. The proposed rule amendments are set forth below. Inquiries concerning the proposed rule amendments may be directed in writing to Delmar Rorison, Executive Director, Louisiana State Board of Medical Examiners, at the address set forth below.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XLV. Medical Professions

##### Subpart 3. Practice

#### Chapter 69. Prescription, Dispensation and Administration Of Medications

#### Subchapter B. Medications Used in the Treatment of Noncancer-Related Chronic or Intractable Pain

##### §6915. Scope of Subchapter

The rules of this subchapter govern physician responsibility for providing effective and safe pain control for patients with noncancer-related chronic or intractable pain.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners LR 23:727 (June 1997), amended LR 26:

##### §6917. Definitions

As used in this subchapter, unless the content clearly states otherwise, the following terms and phrases shall have the meanings specified:

*Board* the Louisiana State Board of Medical Examiners.

*Chronic Pain* pain which persists beyond the usual course of a disease, beyond the expected time for healing from bodily trauma, or pain associated with a long term-incurable or intractable medical illness or disease.

*Controlled Substance* any substance defined, enumerated or included in federal or state statute or regulations 21 C.F.R. §§1308.11-15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations and statute.

*Diversion* the conveyance of a controlled substance to a person other than the person to whom the drug was prescribed or dispensed by a physician.

*Intractable Pain* a chronic pain state in which the cause of the pain cannot be eliminated or successfully treated without the use of controlled substance therapy and, which in the generally accepted course of medical practice, no cure of the cause of pain is possible or no cure has been achieved after reasonable efforts have been attempted and documented in the patient's medical record.

*Noncancer-Related Pain* that pain which is not directly related to symptomatic cancer.

*Physical Dependence* the physiological state of neuroadaptation to controlled substance which is characterized by the emergence of a withdrawal syndrome if the controlled substance use is stopped or decreased abruptly, or if an antagonist is administered. Withdrawal

may be relieved by readministration of the controlled substance.

*Physician* physicians and surgeons licensed by the Board.

*Protracted Basis* utilization of any controlled substance for the treatment of noncancer-related chronic or intractable pain for a period in excess of 12 weeks during any 12-month period.

*Substance Abuse* (may also be referred to by the term *Addiction*) a compulsive disorder in which an individual becomes preoccupied with obtaining and using a substance, despite adverse social, psychological, and/or physical consequences, the continued use of which results in a decreased quality of life. The development of controlled substance tolerance or physical dependence does not equate with substance abuse or addiction.

*Tolerance* refers to the physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce the same effect or a reduced effect is observed with a constant dose. Controlled substance tolerance refers to the need to increase the dose of the drug to achieve the same level of analgesia. Controlled substance tolerance may or may not be evident during controlled substance treatment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners LR 23:727 (June 1997), amended LR 26:

##### §6919. General Conditions/Prohibitions

The treatment of noncancer-related chronic or intractable pain with controlled substances constitutes legitimate medical therapy when provided in the course of professional medical practice and when fully documented in the patient's medical record. A physician duly authorized to practice medicine in Louisiana and to prescribe controlled substances in this state shall not, however, prescribe, dispense, administer, supply, sell, give, or otherwise use for the purpose of treating such pain, any controlled substance unless done in strict compliance with applicable state and federal laws and the rules enumerated in this subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), R.S. 37:1270(B)(6) and R.S. 37:1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners LR 23:727 (June 1997), amended LR 26:

##### §6921. Use of Controlled Substances, Limitations

A. Requisite Prior Conditions. In utilizing any controlled substance for the treatment of noncancer-related chronic or intractable pain on a protracted basis, a physician shall comply with the following rules:

1. Evaluation of the Patient. Evaluation of the patient shall initially include relevant medical, pain, alcohol and substance abuse histories, an assessment of the impact of pain on the patient's physical and psychological functions, a review of previous diagnostic studies, previously utilized therapies, an assessment of coexisting illnesses, diseases, or conditions, and an appropriate physical examination.

2. Medical Diagnosis. A medical diagnosis shall be established and fully documented in the patient's medical record, which indicates not only the presence of noncancer-related chronic or intractable pain, but also the nature of the underlying disease and pain mechanism if such are determinable.

3. Treatment Plan. An individualized treatment plan shall be formulated and documented in the patient's medical record which includes medical justification for controlled substance therapy. Such plan shall include documentation that other medically reasonable alternative treatments for relief of the patient's noncancer-related chronic or intractable pain have been considered or attempted without adequate or reasonable success. Such plan shall specify the intended role of controlled substance therapy within the overall plan, which therapy shall be tailored to the individual medical needs of each patient.

4. Informed Consent. A physician shall ensure that the patient and/or his guardian is informed of the benefits and risks of controlled substance therapy. Discussions of risks and benefits should be noted in some format in the patient's record.

B. Controlled Substance Therapy. Upon completion and satisfaction of the conditions prescribed in §6921.A, and upon a physician's judgment that the prescription, dispensation, or administration of a controlled substance is medically warranted, a physician shall adhere to the following rules.

1. Assessment of Treatment Efficacy and Monitoring. Patients shall be seen by the physician at appropriate intervals, not to exceed 12 weeks, to assess the efficacy of treatment, assure that controlled substance therapy remains indicated, and evaluate the patient's progress toward treatment objectives and any adverse drug effects. Exceptions to this interval shall be adequately documented in the patient's record. During each visit, attention shall be given to the possibility of decreased function or quality of life as a result of controlled substance treatment. Indications of substance abuse or diversion should also be evaluated. At each visit, the physician should seek evidence of under treatment of pain.

2. Drug Screen. If a physician reasonably believes that the patient is suffering from substance abuse or that he is diverting controlled substances, the physician shall obtain a drug screen on the patient. It is within the physician's discretion to decide the nature of the screen and which type of drug(s) to be screened.

3. Responsibility for Treatment. A single physician shall take primary responsibility for the controlled substance therapy employed by him in the treatment of a patient's noncancer-related chronic or intractable pain.

4. Consultation. The physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation, and consultation with or referral to an expert in the management of such patients.

5. Medications Employed. A physician shall document in the patient's medical record the medical necessity for the use of more than one type or schedule of

controlled substance employed in the management of a patient's noncancer-related chronic or intractable pain.

6. Treatment Records. A physician shall document and maintain in the patient's medical record, accurate and complete records of history, physical and other examinations and evaluations, consultations, laboratory and diagnostic reports, treatment plans and objectives, controlled substance and other medication therapy, informed consents, periodic assessments, and reviews and the results of all other attempts at analgesia which he has employed alternative to controlled substance therapy.

7. Documentation of Controlled Substance Therapy. At a minimum, a physician shall document in the patient's medical record the date, quantity, dosage, route, frequency of administration, the number of controlled substance refills authorized, as well as the frequency of visits to obtain refills.

C. Termination of Controlled Substance Therapy. Evidence or behavioral indications of substance abuse or diversion of controlled substances shall be followed by tapering and discontinuation of controlled substance therapy. Such therapy shall be reinitiated only after referral to and written concurrence of the medical necessity of continued controlled substance therapy by an addiction medicine specialist, a pain management specialist, a psychiatrist, or other substance abuse specialist based upon his physical examination of the patient and a review of the referring physician's medical record of the patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), R.S. 37:1270(B)(6), and R.S. 37:1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 23:727 (June 1997), amended LR 26:

#### **§6923. Effect of Violation**

Any violation of or failure of compliance with the provisions of this subchapter, §§6915-6923, shall be deemed a violation of R.S. 37:1285(A)(6) and (14), providing cause for the board to suspend or revoke, refuse to issue, or impose probationary or other restrictions on any license held or applied for by a physician to practice medicine in the state of Louisiana culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), R.S. 37:1270(B)(6), and R.S. 37:1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 23:728 (June 1997), amended LR 26:

Interested persons may submit data, views, arguments, information or comments on the proposed amendments, in writing, to the Louisiana State Board of Medical Examiners, at Post Office Box 30250, New Orleans, Louisiana, 70190-0250 (630 Camp Street, New Orleans, Louisiana, 70130). Written comments must be submitted to and received by the Board within sixty (60) days from the date of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument or public hearing must be made in writing and received by the Board within twenty (20) days of the date of this notice.

Delmar Rorison  
Executive Director

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

**RULE TITLE: Medications Used in the Treatment of  
Noncancer-Related Chronic or  
Intractable Pain**

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

It is not anticipated that the proposed rule amendments will result in any additional costs to the Board of Medical Examiners, aside from those related to publication in the *Louisiana Register*, which we anticipate to be approximately \$800.

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

It is not anticipated that the proposed rules amendments will have any effect on the Board's revenue collections.

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

It is not anticipated that implementation of the proposed rule amendments will have a material effect on costs, paperwork or workload of physicians who may treat noncancer-related chronic or intractable pain.

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

It is not anticipated that the proposed rule amendments will have any impact on competition or employment in either the public or private sector.

Delmar Rorison  
Executive Director  
9912#054

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Medical Examiners**

**Regulations Governing Continuing Medical  
Education Requirements for Physicians  
(LAC 46:XLV.417, 419, 433-449)**

Notice is hereby given, in accordance with R.S. 49:953, that the Louisiana State Board of Medical Examiners (Board), pursuant to the authority vested in the Board by the Louisiana Medical Practice Act, R.S.37:1270(A)(1), 1270(A)(8) and the provisions of the Louisiana Administrative Procedure Act, intends to amend its existing rules respecting the renewal and reinstatement of licensure, 46:XLV, Subpart 2, Chapter 4, §§417 and 419 and adopt rules providing continuing medical education requirements for physicians seeking the renewal and/or reinstatement of licensure, LAC 46:XLV, Subpart 2, Chapter 4, §§433-449. The proposed amendments and new rules have no know impact on family formation, stability and autonomy as described in R.S.49:972. The proposed rule amendments and rules are set forth below. Inquiries concerning the proposed rule amendments and rules may be directed in writing to: Delmar Rorison, Executive Director, Louisiana State Board of Medical Examiners, at the address set forth below.

**Title 46. PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLV. Medical Professions**

**Subchapter I. License Issuance, Termination,  
Renewal and Reinstatement**

**§417. Renewal of License**

A. Every license issued by the board under this Chapter shall be renewed annually on or before the first day of the month in which the licensee was born, by submitting to the board a properly completed application for renewal, upon forms supplied by the Board, together with the renewal fee prescribed in Chapter 1 of these rules and documentation of satisfaction of the annual continuing medical education requirements prescribed by subchapter K of these rules.

B. An application for renewal of license form 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 licensee as reflected in the official records of the board.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1270, 37:1270(A)(8), R.S. 37:1280 and 37:1281.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 10:914 (November 1984), amended LR 16:523 (June 1990), LR 24:1500 (August 1998), LR 26:

**§419. Reinstatement of Expired License**

A. ...

B. An applicant seeking reinstatement more than one year from the date on which his license expired shall demonstrate, as a condition of reinstatement, satisfaction of the continuing medical education requirements of §§433-449 of subchapter K of these rules for each year since the date of the expiration of licensure. As additional conditions of reinstatement the board may require:

B.1.-E.3. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 10:914 (November 1984), amended LR 14:86 (February 1988), LR 16:524 (June 1990), LR 22:213 (March 1996), withdrawal LR 22:280 (April 1996), LR 24:1500 (August 1998), LR 26:

**Subchapter K. Continuing Medical Education**

**§433. Scope of Subchapter**

The rules of this subchapter provide standards for the continuing medical education (ACME®) requisite to the renewal or reinstatement of licensure, as provided by §§417 and 419 of these rules and prescribe the procedures applicable to satisfaction and documentation of continuing medical education in connection with applications for renewal or reinstatement of licensure.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:

**§435. Continuing Medical Educational Requirement**

Subject to the waiver of and exceptions to CME prescribed by §§445 and 447 and the special requirements attendant to initial renewal of licensure specified in §449, every physician seeking the renewal or reinstatement of

licensure, to be effective on or after January 1, 2002, shall annually evidence and document, upon forms supplied by the Board, the successful completion of not less than 20 hours of board approved CME.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:

#### **§437. Qualifying Continuing Medical Education Programs**

Any program, course, seminar or other activity offering Category 1 CME shall be deemed approved for purposes of satisfying the continuing medical education requirements under this subchapter, if sponsored or offered by:

1. an organization or entity accredited by the Accreditation Council for Continuing Medical Education (ACCME);
2. a member board of the American Board of Medical Specialties;
3. the American Academy of Family Physicians (AAFP);
4. the American College of Obstetricians and Gynecologists (ACOG);
5. the American Osteopathic Association (AOA); or
6. an organization or entity accredited by the Louisiana State Medical Society or any other ACCME recognized state medical society.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:

#### **§439. Documentation Procedure**

A. A form for annual documentation and certification of satisfaction of the continuing medical education requirements prescribed by §§433-449, shall be mailed with each application for renewal or reinstatement of licensure form mailed by the board pursuant to §§417 or 419. Such form shall be completed and delivered to the board with the physician's application.

B. Physicians will not be required to transmit documentation of compliance with continuing medical education requirements for renewal or reinstatement of licensure, unless requested by the board pursuant to §439.E.

C. A physician shall maintain a record or certificate of attendance for at least 4 years from the date of completion of the continuing medical education activity. Satisfactory evidence shall consist of a certificate or other documentation which shall, at a minimum, contain the:

1. program title;
2. sponsor's name;
3. physician's name;
4. inclusive date or dates and location of the CME event; and
5. documented verification of successful completion of 20 hours of Category 1 CME by stamp, signature, official or other proof acceptable to the board.

D. The board shall select for an audit of continuing medical education activities no fewer than 2% of the applicants for renewal or reinstatement each year. In addition, the board has the right to audit any questionable documentation of activities.

E. Verification of continuing medical education satisfying the requirements of this subchapter shall be

submitted by a physician to the board within 30 days of the date of mailing of notification of audit or such longer period as the board may designate in such notification. A physician's failure to notify the board of a change of mailing address will not absolve the licensee from the audit requirement.

F. Any certification of continuing medical education which is not approved by the board pursuant to §437 shall not be considered as qualifying for CME recognition by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:

#### **§441. Failure to Satisfy Continuing Medical Education Requirements**

A. An applicant for renewal of licensure who fails to evidence satisfaction of the continuing medical education requirements prescribed by these rules shall be given written notice of such failure by the board. Such notice shall be mailed to the most recent address of the licensee as reflected in the official records of 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 such license shall be deemed expired, unrenewed and subject to revocation without further notice, unless the applicant shall have, within such 90 days, furnished the board satisfactory evidence by affidavit that:

1. the applicant has satisfied the applicable continuing medical education requirements;
2. the applicant's failure to satisfy the continuing medical education requirements was occasioned by disability, illness or other good cause as may be determined by the board pursuant to §445; or
3. the applicant is exempt from such requirements pursuant to §447.

B. The license of a physician which has expired for nonrenewal or been revoked for failure to satisfy the CME requirements of §435 of these rules, may be reinstated pursuant to §419 upon written application to the board, accompanied by payment of the reinstatement fee required by §419, in addition to all other applicable fees and costs, together with documentation and certification that the applicant has, for each year since the date on which the applicant's license was last issued or renewed, completed an aggregate of 20 hours of board approved CME.

C. The license of a physician which has expired, has not been renewed or been revoked for failure to meet the requirements of §449, or one which has expired, has not been renewed or revoked on more than one occasion for failure to satisfy the CME requirements of §435 of these rules shall be deemed in violation of R.S. 37:1285(A)(30), providing cause for the board to suspend or revoke, refuse to issue, or impose probationary or other restrictions on any license held or applied for by a physician to practice medicine in the state of Louisiana culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1270(A)(8) and R.S. 37:1280.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:

#### **§443. Falsification of Continuing Medical Education**

Any licensee or applicant who falsely certifies attendance at and/or completion of the required continuing medical education requirements of §§433-449 shall be deemed in

violation of R.S.37:1285(A)(3), (4), (13) and/or (30), providing cause for the board to suspend or revoke, refuse to issue, or impose probationary or other restrictions on any license held or applied for by a physician to practice medicine in the state of Louisiana culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:

#### **§445. Waiver of Requirements**

The board may, in its discretion, waive all or part of the CME required by these rules in favor of a physician who makes written request to the board and evidences to its satisfaction a permanent physical disability, illness, financial hardship or other similar extenuating circumstances precluding the individual's satisfaction of CME requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:

#### **§447. Exceptions to the Continuing Medical Education Requirements**

A. Except as provided in §449, the CME requirements prescribed by this subchapter prerequisite to renewal or reinstatement of licensure shall not be applicable to a physician:

1. engaged in military service longer than one year's duration outside of Louisiana;
2. who has held an initial Louisiana license on the basis of examination for less than one year;
3. who has within the past year been certified or recertified by a member board of the American Board of Medical Specialties;
4. who is in a residency training program approved by the Board; or
5. who is a retired physician in accordance with §418 of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:

#### **§449. CME Requirement for Initial Renewal of License**

A. Effective on and after January 1, 2002, every physician seeking the initial renewal of medical licensure, whether such license was originally issued by the board on the basis of examination, reciprocity or reinstatement shall, as part of the continuing medical education required by this subchapter as a condition prerequisite to licensure renewal, evidence and document upon forms supplied by the board attendance at an orientation program sponsored and/or approved by the board.

B. The program required pursuant to §449.A shall be conducted at such locations, on such dates and at such times as may be designated by the board, shall consist of not less than two (2) hours in duration and involve such content, topic and structure as the Board may from time to time deem appropriate.

C. Notification of the dates, times and locations at which such programs will be offered, as well as the enrollment procedure, shall be mailed to the most recent address of each applicant subject to the requirements of §449.A as reflected

in the official records of the board. A physician's failure to notify the board of a change of mailing address will not absolve the applicant of the requirement to attend a board sponsored/approved orientation program as a condition of approval of an initial request for licensure renewal.

D. A physician required to attend an orientation program pursuant to §449.A shall, for each hour of attendance as may be required by the board, be granted an hour-for-hour credit towards the annual CME requirement specified by §435.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:

Interested persons may submit data, views, arguments, information, comments or inquiries on the proposed rule amendments and rules, in writing, to the Louisiana State Board of Medical Examiners, at Post Office Box 30250, New Orleans, Louisiana, 70190-0250 (630 Camp Street, New Orleans, Louisiana, 70130). Written comments must be submitted to and received by the Board within 60 days from the date of this notice. A request pursuant to R. S. 49:953(A)(2) for oral presentation, argument or public hearing must be made in writing and received by the Board within twenty (20) days of the date of this notice.

Delmar Rorison  
Executive Director

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

#### **RULE TITLE: Regulations Governing Continuing Medical Education Requirements for Physicians**

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

The Board of Medical Examiners anticipates the costs associated with the implementation of the proposed rules will be approximately \$111,524 in FY 99-2000 and \$107,124 in FY 2000-2001 and subsequent years. The Board will increase efforts related to monitoring and auditing of the continuing medical education requirements imposed by the proposed rules. While impossible to determine with any degree of certainty, the Board anticipates the proposed rules will result in a decrease in investigations and disciplinary actions.

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

The Board has sufficient funds to implement the continuing medical education requirements imposed by these rules through FY 2000-2001. Funding thereafter will be accomplished by an anticipated increase in fees, pending enactment of legislation authorizing a fee increase for this purpose. If authorized by the legislature, a fee increase of \$7 upon approximately 15,531 physician applicants who will be required to obtain continuing education credits would generate \$108,000 in revenue in FY 2001-2000.

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

Commencing in January 2002, physicians who apply for annual renewal and those seeking reinstatement of licensure will be required under the proposed rules to obtain and document to the Board 20 hours of continuing medical education each year as a condition to renewal or reinstatement. Continuing education is available at no cost to physicians through a number of sources. When assessed, a fee is typically

\$15-\$20 per hour for continuing education. It is estimated that for each applicant the cost of obtaining continuing medical education may represent \$100-\$200 annually. Each physician applicant will be required to document the required continuing education in connection with an application for licensure renewal or reinstatement resulting in minimal additional paperwork involving one additional form. The rule amendments should not, therefore, result in or effect any material increase or reduction of costs or paperwork for physician applicants. Conversely, it is anticipated that the proposed rules will generate a positive but undeterminable economic impact on issues and costs relating to malpractice and disciplinary actions, which will inure to the benefit of the public, physicians and the state.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed rules will have any impact on competition or employment in either the public or private sector.

Delmar Rorison  
Executive Director  
9912#055

H.Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Nursing**

**Renewal of License and Change of Status  
(LAC 46:XLVII.3333 and 3337)**

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S.49:950 et seq., that the Board of Nursing (board) pursuant to the authority vested in the board by R.S.37:918, R.S.37:919 intends to adopt rules amending the Professional and Occupational Standards pertaining to the retired status of the board. The proposed amendments of the rules are set forth below.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 33. General**

**§3333. Renewal of License**

A.- D.1. ...

2. Pays the required one-time fee as specified under LAC 46:XLVII.3341.

3. A license will be printed designating the year and retired status. No further licenses will be issued.

4. A licensee in retired status will continue to receive *The Examiner* and other official mailings and continue to be listed in the official roster of Registered Nurses in Louisiana.

5. After placed in retired status, no further renewal applications will be sent.

6. If at a future date, the licensee wishes to return to practice, the requirements for reinstatement specified under LAC 46:XLVII.3335.D, 4507.E.2, and/or 4507.A.3 must be met.

7. The professional designation can be used followed by retired.

8. If the Registered Nurse (RN) license is placed in retired status, the Advanced Practice Registered Nurse (APRN) license shall also be placed in retired or inactive status with no fee.

9. The APRN license may be placed in retired or inactive status with no fee while the RN license remains active.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:918 and 920.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:74 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), LR 26:

**§3337. Change of Status**

A. A registrant who is no longer practicing as a registered nurse, may, by submitting a written notice to the board, be granted inactive status. No annual renewal nor fee is required of a person in inactive status.

B. A person who holds an inactive status may resume practicing status by submitting a completed applicant form, paying the required fee and meeting all other requirements for licensure renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:918 and R.S.37:920.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:74 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 16:1060 (December 1990), LR 24:1293 (July 1998), LR 26:

Interested persons may submit written comments on the proposed rules to: Barbara L. Morvant, Executive Director, Louisiana State Board of Nursing, 3510 N. Causeway Blvd., Suite 501, Metairie, LA, 70002. The deadline for receipt of all written comments is 4:30 p.m. on December 6, 1999.

Barbara L. Morvant, R.N., M.N.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Renewal of License and Change of Status**

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

There is no anticipated cost to state or local government units, except for those associated with publishing the amendment in the Register, estimated at \$45.00. There also may be an additional 20 licenses printed that would have gone inactive with no license printed in the past at an estimate of .02 per license (20 @ .02= .40).

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

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

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

There is no estimated cost and/or economic benefits to directly affected persons or non-governmental groups. Retired registered nurse will have the option to pay a one-time fee of \$45.00 for a license. Currently, the choice is to pay a yearly renewal fee of \$45.00 or to go inactive with no fee.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

There is no anticipated effect on competition and employment.

Barbara L. Morvant, R.N., M.N.  
Executive Director  
9912#053

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary**

Breast Cancer Treatment Alternatives

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 40:5;40:1229.2, and 40:1299:23, the Department of Health and Hospitals, Office of the Secretary, proposes to promulgate regulations pertaining to written notification of breast cancer patients regarding treatment alternatives.

The proposed rule establishes the content of the standard written summary and the manner of distribution to physicians as required by Act 199 of the 1999 Regular Legislative Session.

In compliance with Act 1183 of the 1999 Regular Session, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family formation, stability, or autonomy as described in R.S. 49:972.

**Proposed Rule**

**A. Content of the Standard Written Summary**

1. What you should know about breast cancer treatment alternatives

2. What is breast cancer? Breast cancer occurs when cells in the breast become abnormal and divide in an out-of-control manner.

**B. You should know:**

1. That there is no one right treatment for all women. Find out your options.

a. You can ask questions and write down or record your doctor's answers;

b. You do not have to decide overnight. You should start treatment within a couple of weeks of diagnosis;

c. You should be sure you know why any test or procedure is being done and what the are risks;

d. You can ask another doctor about your treatment choices ("second opinion").

**C. Treating Breast Cancer**

1. There are four main ways to treat breast cancer: surgery, radiation therapy, chemotherapy and hormone therapy. The best for you will depend on:

- a. size and stage of your tumor (lump);
- b. how much the cancer has spread (stage);
- c. how your tumor reacts to certain hormones;
- d. the type of genetic material in the cancer cells;
- e. the rate the cells are growing;
- f. your age and general health.

**D. Surgery**

1. There are two types of surgery for breast cancer:

a. breast-conserving surgery only part of the breast is removed; and

b. mastectomy removing the entire breast.

**E. Breast-Conserving Surgery**

1. Lumpectomy surgery that removes the tumor and some of the tissue around it.

2. Partial or Segmental Mastectomy the tumor, some tissue around it, and the lining over the chest muscle is removed.

a. If you have breast-conserving surgery, you will also have radiation therapy to destroy any remaining cancer cells.

b. For early breast cancer, breast-conserving surgery with radiation is as effective as mastectomy

c. You may have a change in breast shape, especially if the tumor was large.

**F. Mastectomy the removal of the breast.**

1. This may be your best option if you have more than one tumor or a large tumor. The several types of mastectomies which vary in how much tissue is removed.

2. If the tumor is large or there are several abnormal areas in the breast, a mastectomy and reconstruction may have better cosmetic results than a lumpectomy.

3. You should ask about surgery to rebuild the breast.

**G. Lymphadenectomy**

1. If the cancer has spread, some of the lymph nodes in the armpit will be removed to see if it has spread there. With mastectomy, the lymph nodes are removed at the same time. For breast-conserving surgery, lymph nodes may be removed in another operation.

**H. Radiation Therapy**

1. Radiation therapy is used in addition to surgery. It uses high-energy rays to kill cancer cells that may be in the breast and lymph nodes after surgery. Radiation therapy is considered necessary after breast-conserving surgery, but may be needed after mastectomy.

2. With radiation, breast-conserving surgery for early breast cancer is as effective as mastectomy.

3. Radiation Therapy can involve daily visits for six weeks.

4. Radiation to the breast does not cause hair loss, vomiting, or diarrhea, but has local side effects you should ask about.

**I. Chemotherapy**

1. Chemotherapy means "treatment with drugs." Many drugs are used for breast cancer. Your doctor will suggest the drugs most effective for your cancer type.

2. With surgery and radiation, chemotherapy may make treatment more successful.

3. Side effects depend on the drugs, but can include loss of appetite, nausea, vomiting, diarrhea, hair loss, mouth sores, constipation, weight change, lack of energy, increased chance of infection, and sore throat.

**J. Hormone Therapy**

1. Hormones are chemicals your body makes to control many functions. If hormones make your tumor grow, your doctor may suggest therapy that blocks hormones from getting to cancer cells.

- a. May need to take pills for five years;
- b. May increase uterine cancer risk.

#### K. Clinical Trials

1. New and improved drugs to treat people have to be tested in people. These tests, called clinical trials, help doctors:

- a. learn if a drug works and is safe;
- b. know what dose works best;
- c. know what side effects it causes.

2. Many clinical trials are designed for outpatients, and let participants go about their normal activities. Clinical trials tend to require about the same time and number of doctor visits as standard therapy, but you might have to give blood samples or take tests more often to monitor your response.

3. The clinical trial must be explained to you fully and you must agree to the conditions. The hope of benefiting from a new drug or the desire to take part in research that might benefit others makes people volunteer for clinical trials. If interested, discuss this with your doctor or contact:

- a. National Cancer Institute  
Cancer Information Service  
1-800-4-CANCER  
Deaf callers: 1-800-332-8615  
cancertrials.nci.nih.gov
- b. Centerwatch Clinical Trials Listing Service  
(617) 856-5900  
www.centerwatch.com

#### L. Breast Reconstruction

1. If you have a mastectomy, your breast may be able to be reconstructed or rebuilt at the time that your mastectomy is done or at a later date. Ask your doctor about your options before you start treatment.

2. There are several ways to rebuild a breast:

- a. from skin, muscle, and fat from another part of your body;
- b. using a breast implant. A breast implant is a sac placed under the skin or chest muscle.

3. Things to Consider About Breast Reconstruction:

- a. in clothes, you will look like you did before surgery;
- b. you may need more than one surgery to complete the reconstruction;
- c. a reconstructed breast may not have natural feelings and will not look exactly like your removed breast;
- d. each option for breast reconstruction needs to be fully explained to you by the doctor doing the surgery;
- e. ask about the effects on "self-exam" and mammography;
- f. ask about timing with respect to radiation therapy.

#### M. Breast Cancer

1. Is the most common cancer in women in the U.S. and Louisiana. About 1/3 of all cancer cases in women are breast cancer

2. One out of eight American women will get breast cancer.

3. In Louisiana women have a lower risk of breast cancer than other women in the United States.

	White	African American
Louisiana	99 per 100,000	87 per 100,000
US	115 per 100,000	101 per 100,000

4. Deaths rates are either higher or similar to the national average.

	White	African American
Louisiana	24 per 100,000	33 per 100,000
US	26 per 100,000	32 per 100,000

5. Five-year Relative Survival Rates by Stage at Diagnosis

Breast Cancer	Percent Surviving
All Stages	84
Local	97
Regional	76
Distant	20

#### American Cancer Society Facts and Figures

##### 6. Places to Find More Information

a. National Cancer Institute Cancer Information Service

1-800-4-CANCER  
rex.nci.nih.gov

b. American Cancer Society National  
1-800-ACS-2345  
www.cancer.org

c. American Cancer Society State  
(504) 469-0021  
www2.cancer.org/state/la/index.html

d. Susan G. Komen Foundation  
1-800-462-9273  
www.komen.org

7. For a detailed version of this brochure, you can:

- a. Call toll free 877-4-LCLTFB (877-452-5832)
- b. Download or read at [http://rex.nci.nih.gov/PATIENTS/aboutbc/abc\\_treatment.html](http://rex.nci.nih.gov/PATIENTS/aboutbc/abc_treatment.html)

##### N. Methods of Distribution

1. The Louisiana State Board of Medical Examiners will distribute to all physicians licensed in Louisiana in its Spring, 2000 newsletter, a copy of a brochure containing the written summary detailed above. Furthermore, the board will provide a copy of the brochure to physicians upon renewal of their licenses for the year 2001. In subsequent years, all new licensees will receive a copy of the brochure with their licenses. Additional copies of the brochure can be obtained by contacting the Louisiana State Board of Medical Examiners.

2. The Louisiana Cancer and Lung Trust Fund Board will make the brochure available for printing via its website ([lcltfb.org](http://lcltfb.org)).

Interested persons may submit written comments on this proposed rule until the close of business on January 28, 2000. All such comments should be addressed to Donna

Williams, M.S., M.P.H., Louisiana Cancer and Lung Trust Fund Board, 1600 Canal St., Suite 800, New Orleans, Louisiana 70112.

A public hearing to receive verbal and/or written comments or questions regarding the proposed rule will also be held on January 25, 2000 at 9:30 am in the conference room at the office of the Louisiana State Board of Medical Examiners at 630 Camp Street, New Orleans, LA 70130.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Breast Cancer Treatment Alternatives**

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

In FY 99-00, the Department of Health and Hospitals (DHH) will incur a one time cost of approximately \$160 to publish the rule in the *Louisiana Register* prior to implementation. The initial costs for printing 16,000 brochures is \$2,250 (based upon the number of doctors in Louisiana) and \$300 for the first 500 pamphlets and \$50 for each 500 after that. The initial cost of mailing the pamphlets will be \$2,720 based upon \$0.17 per piece bulk mail. In FY 00-01, it is anticipated that an additional 4,000 pamphlets will be needed for newly licensed doctors and new patients at a cost of \$650. Mailing these pamphlets is estimated at \$236 based upon 1,000 newly licensed doctors and 200 doctors requesting additional pamphlets. All costs associated with the proposed rules will be funded by self-generated funds of the Louisiana Board of Medical Examiners. Costs for FY 01-02 are anticipated to be the same as costs FY 00-01.

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

There is no estimated effect on revenue collections of state or local governmental units from the proposed action.

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

The proposed rules will allow DHH to provide information to persons diagnosed with breast cancer that could assist those persons in making more informed decisions related to methods and/or costs of treatment for breast cancer.

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

There is no estimated effect on competition and employment from the proposed action.

David W. Hood  
Secretary  
9912#038

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Disproportionate Share Hospital Payment  
Methodologies for Small Rural Hospitals**

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule May 20, 1999 governing the disproportionate share payment methodologies for hospitals (*Louisiana Register*, Volume 25, Number 5). This rule was adopted pursuant to state law Act 19 of the 1998 Legislative Session, and Act 1485 (the Rural Hospital Preservation Act) of the 1997 Legislative Session. Act 19 provided for different treatment of disproportionate share funds for uncompensated costs in small non-state operated local government hospitals and private rural hospitals with 60 beds or less. Act 1485 allowed small rural hospitals to meet less stringent criteria in order to receive the maximum disproportionate share funding available in accordance with the amounts appropriated by the Legislature and to the extent authorized by federal law.

In order to comply with Senate Concurrent Resolution Number 48 and Act 1068 of the 1999 Regular Session of the Louisiana Legislature, the Department adopted an emergency rule effective October 1, 1999 which amended the May 20, 1999 rule by revising the disproportionate share qualification criteria for small rural hospitals (*Louisiana Register*, Volume 25, No. 9 ). The following proposed rule continues the provisions of the October 1, 1999 emergency rule. In compliance with Act 1183 of the 1999 Regular Session, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary Bureau of Health Services Financing amends the May 20, 1999 rule governing the disproportionate share

payment methodologies for hospitals by revising the qualification criteria for small rural hospitals as required by Senate Concurrent Resolution Number 48 and Act 1068 of the 1999 Regular Session of the Louisiana Legislature.

### III. Reimbursement Methodologies

#### B. Small Rural Hospitals

1. A small rural hospital is a hospital (excluding a long-term care hospital, rehabilitation hospital or free-standing psychiatric hospital, but including distinct part psychiatric units) that meets the following criteria:

a. had no more than sixty hospital beds as of July 1, 1994 and is located in a parish with a population of less than fifty thousand or in a municipality with a population of less than twenty thousand; or

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

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

d. had no more than sixty hospital beds as of July 1, 1997 and is a publicly owned and operated hospital that is located in either a parish with a population of less than fifty thousand or a municipality with a population of less than twenty thousand.

The remainder of the May 20, 1999 rule shall remain in effect as previously promulgated.

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is the person responsible for responding to inquiries regarding this emergency rule. He is the person responsible for responding to all inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Tuesday, January 25, 2000 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: **Disproportionate Share Hospital Payment Methodologies: Small Rural Hospitals**

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

There is no estimated impact to the state as a result of this proposed rule. However a cost of \$160 (\$80 SGF and \$80 FED) will be incurred in SFY 1999-00 for the state's administrative expense of promulgating this proposed rule and the final rule.

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

The proposed rule will increase federal revenue collections by approximately \$4,672,349 for SFY 1999-00, \$4,822,701 for SFY 2000-01, and \$4,967,382 for SFY 2001-02.

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

Approximately three (3) additional small rural hospitals will qualify for disproportionate share hospital payments in accordance with the provisions of this rule. Implementation of this proposed rule shall increase reimbursement to these additional hospitals by approximately \$4,672,269 for SFY 1999-00, \$4,822,701 for SFY 2000-01, and \$4,967,382 for SFY 2001-02.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9912#035

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

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

#### Hospital Prospective Reimbursement Methodology Teaching Hospitals

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing previously adopted a rule, June 20, 1994, that established the reimbursement of major and minor teaching hospitals as peer groups under the prospective reimbursement methodology for hospitals (*Louisiana Register*, Volume 20, Number 6).

The Department proposes to amend the criteria for participation in the peer groups for major and minor teaching hospitals and to adopt new criteria for the reimbursement of graduate medical education (GME) pursuant to Section 15 Schedule 09 of Act 19 of the 1998 Regular Legislative Session and R.S. 39:71 et seq.

In compliance with Act 1183 of the 1999 Regular Session, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family formation, stability, or autonomy as described in R.S. 49:972.

#### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the criteria for participation in the peer groups for major and minor teaching hospitals and adopts new criteria for the reimbursement of graduate medical education (GME).

#### I. Major Teaching Hospitals

A. The Louisiana Medical Assistance Program's recognition of a major teaching hospital is limited to facilities having a documented affiliation agreement with a Louisiana medical school accredited by the Liaison

Committee on Medical Education (LCME). These facilities must be a major participant in at least four approved medical residency programs. At least two of the programs must be in medicine, surgery, obstetrics/gynecology, pediatrics, family practice, emergency medicine or psychiatry.

B. For the purposes of recognition as a major teaching hospital, a facility shall be considered a "major participant" in a graduate medical education program if it meets both of the following criteria:

1. the facility must pay for the costs of the training program in the non-hospital or hospital setting including the residents' salaries and fringe benefits, the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct graduate medical education and other direct administrative costs of the program; and

2. the facility must participate in residency programs that:

- a. require residents to rotate for a required experience, or

- b. require explicit approval by the appropriate Residency Review Committee (RRC) of the medical school with which the facility is affiliated prior to utilization of the facility, or

- c. provide residency rotations of more than one-sixth of the program length or more than a total of six (6) months at the facility and are listed as part of an accredited program in the Graduate Medical Education Directory of the Accreditation Council for Graduate Medical Education (ACGME).

C. Major teaching hospitals must maintain an intern and resident full time equivalency of at least fifteen filled positions.

## **II. Minor Teaching Hospital**

A. The Louisiana Medical Assistance Program's recognition of a minor teaching hospital is limited to facilities having a documented affiliation agreement with a Louisiana medical school accredited by the Liaison Committee on Medical Education (LCME). These facilities must participate significantly in at least one approved medical residency program. At least one of these programs must be in medicine, surgery, obstetrics/gynecology, pediatrics, family practice, emergency medicine or psychiatry.

B. For the purposes of recognition as a minor teaching hospital, a facility is considered to "participate significantly" in a graduate medical education program if it meets both of the following criteria:

1. the facility must pay for the costs of the training program in the non-hospital or hospital setting including the residents' salaries and fringe benefits, the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct graduate medical education and other direct administrative costs of the program; and

2. the facility must participate in residency programs that:

- a. require residents to rotate for a required experience, or

- b. require explicit approval by the appropriate Residency Review Committee (RRC) of the medical school with which the facility is affiliated prior to utilization of the facility, or

- c. provide residency rotations of more than one-sixth of the program length or more than a total of six (6) months at the facility and are listed as part of an accredited program in the Graduate Medical Education Directory of the Accreditation Council for Graduate Medical Education (ACGME). If not listed, the sponsoring institution must have notified the ACGME, in writing, that the residents rotate through the facility and spend more than one-sixth of the program length or more than a total of six (6) months at the facility.

C. Minor teaching hospitals must maintain an intern and resident full time equivalency of at least six filled positions.

## **III. Approved Medical Residency Program**

A. An approved medical residency program is one that meets one of the following criteria:

1. counts toward certification of the participant in a specialty or sub-specialty listed in the current edition of either The Directory of Graduate Medical Education Programs published by the American Medical Association, Department of Directories and Publications, or The Annual Report and Reference Handbook published by the American Board of Medical Specialties; or

2. is approved by the ACGME as a fellowship program in geriatric medicine;

3. is a program that would be accredited except for the accrediting agency's reliance upon an accreditation standard that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangement for such training regardless of whether the standard provides exceptions or exemptions.

B. A residency program at a non-hospital facility may be counted by a hospital if:

1. there is a written agreement with the non-hospital facility that requires the hospital facility to pay for the cost of the training program; and

2. the agreement requires that the time that residents spend in the non-hospital setting is for patient care.

## **IV. Graduate Medical Education**

A. In addition, the Bureau adopts new criteria for the reimbursement of graduate medical education (GME) in facilities that do not qualify as major or minor teaching facilities. GME recognized by the Medical Assistance Program for reimbursement shall be limited to facilities having a documented affiliation agreement with a Louisiana medical school accredited by the LCME.

B. Payment for GME costs shall be limited to the direct cost of interns and residents in addition to the teaching physician supervisory costs. Teaching physician supervisory costs shall be limited in accordance with the provisions of the Medicare Provider Reimbursement Manual. The GME component of the rate shall be based on hospital specific graduate medical education Medicaid cost for the latest year on which hospital prospective reimbursements are rebased trended forward in accordance with the the prospective reimbursement methodology for hospitals.

C. Hospitals implementing GME programs approved after the latest year on which hospital prospective reimbursements have been rebased shall have a GME component based on the first full cost reporting period that

the approved GME program is in existence trended forward in accordance with the prospective reimbursement methodology for hospitals.

#### V. Requirements for Reimbursements

A. Qualification for teaching hospital status or to receive reimbursement for GME costs shall be reestablished at the beginning of each fiscal year.

B. To be reimbursed as a teaching hospital or to receive reimbursement for GME costs, a facility shall submit the following documentation within thirty days of the beginning of each state fiscal year to the Director, Institutional Reimbursement, P. O. Box 546, Baton Rouge, LA 70821:

1. a copy of the executed affiliation agreement for the time period for which the teaching hospital status or GME reimbursement applies;

2. a copy of any agreements with non-hospital facilities; and

3. a signed Certification For Teaching Hospital Recognition.

C. Each hospital which is reimbursed as a teaching hospital or receives reimbursement for GME costs shall submit the following documentation within ninety days of the end of each state fiscal year to the Director, Institutional Reimbursements, P. O. Box 546, Baton Rouge, LA 70821:

1. a copy of the Intern and Resident Information System (IRIS) report that is submitted annually to the Medicare intermediary; and

2. a copy of any notice given to the ACGME that residents rotate through a facility for more than one sixth of the program length or more than a total of six months.

D. Copies of all contracts, payroll records and time allocations related to graduate medical education must be maintained by the hospital and available for review by the state and federal agencies or their agents.

E. No teaching hospital shall receive a per diem rate greater than 115 percent of its facility specific cost based on the latest rebasing year trended forward to the rate year in accordance with the prospective reimbursement methodology for hospitals.

F. The peer group maximum for minor teaching hospitals shall be the peer group maximum for minor teaching hospitals or the peer group maximum for peer group five, whichever is greater.

G. If it is subsequently discovered that a hospital has been reimbursed as a major or minor teaching hospital and did not qualify for that peer group for any reimbursement period, retroactive adjustment shall be made to reflect the correct peer group to which the facility should have been assigned. The resulting overpayment will be recovered through either immediate repayment by the hospital or recoupment from any funds due to the hospital from the Department.

Interested persons may submit comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Tuesday, January 25, 2000 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data,

views or arguments, orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Hospital Prospective Reimbursement Methodology Teaching Hospitals

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

It is anticipated that implementation of this proposed rule will reduce state program costs by approximately (\$330,749) for SFY 1999-00, (\$1,356,451) for SFY 2000-01, and (\$1,397,145) for SFY 2001-02. It is anticipated that \$320 (\$160 SGF and \$160 FED) will be expended in SFY 1999-00 for the state's administrative cost of promulgating this proposed rule and the final rule.

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

It is anticipated that implementation of this proposed rule will reduce federal revenue collections by approximately (\$784,228) for SFY 1999-00, (\$3,238,573) for SFY 2000-01, and (\$3,335,730) for SFY 2001-02.

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

Implementation of this proposed rule will amend the criteria for recognition as a major and minor teaching hospital under the prospective reimbursement methodology. Seven hospitals will receive an adjustment in per diem rates as a result of the amended criteria to qualify as a teaching hospital. Certain hospitals satisfying the private teaching hospital peer group criteria will receive a reduction in reimbursements of approximately (\$1,114,977) for SFY 1999-00, (\$4,595,024) for SFY 2000-01, and (\$4,732,875) for SFY 2001-02.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9912#036

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

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

Targeted Case Management Services  
Nurse Home Visits for First Time Mothers

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt the following proposed rule under the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted a rule in July of 1999 restructuring targeted case management services under the Medicaid Program in order to enhance the quality of services and assure statewide access to services (*Louisiana Register*,

Vol.25, No.7). The Bureau proposes to amend the July 1999 rule to extend the provision of case management services to a new targeted population of Medicaid recipients. The new targeted population shall be composed of first time mothers who reside in the Department of Health and Hospitals (DHH) designated regions of Lafayette (4) and Monroe (8). DHH administrative Region 4 consists of Acadia, Evangeline, Iberia, Lafayette, St. Landry, St. Martin and Vermillion parishes. DHH administrative Region 8 consists of Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Quachita, Richland, Tensas, Union, and West Carroll parishes.

The Office of Public Health (OPH) is currently providing nurse home visits services to first time mothers funded through a grant. Medicaid recipients who are currently receiving services through OPH may continue to receive these services under the Medicaid funded Nurse Home Visits for First Time Mothers Case Management Program.

In addition, the Bureau proposes to amend the staffing qualifications contained in the July 1999 rule to include specific requirements for case management agencies serving the new targeted population. The standards for participation are also being amended to include a new provider enrollment requirement applicable to all new case management agencies.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. It is anticipated that the implementation of this proposed rule will have a positive impact on the family by encouraging early prenatal care for first time mothers and subsequently reducing infant mortality.

### **Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the July 1999 rule governing case management services to include a new targeted population of Medicaid recipients. The new targeted population shall be first time mothers who reside in the Department of Health and Hospitals (DHH) designated administrative regions of Lafayette (4) and Monroe (8). Medicaid recipients who are currently receiving nurse home visits services for first time mothers through the Office of Public Health may continue to receive these services as Medicaid funded targeted case management. Providers of Nurse Home Visits for First Time Mothers case management must provide home visit services for eligible recipients in all parishes of the Lafayette and Monroe regions.

#### **I. Eligibility Criteria**

A Medicaid recipient must not be beyond the 28<sup>th</sup> week of pregnancy and must attest that she meets one of the following definitions of a first-time mother in order to receive Nurse Home Visits case management services:

- A. is expecting her first live birth, has never parented a child and plans on parenting this child; or
- B. is expecting her first live birth, has never parented a child and is contemplating placing the child for adoption; or
- C. has been pregnant, but has not delivered a child because of an abortion or miscarriage; or

D. is expecting her first live birth, but has parented stepchildren or younger siblings; or

E. had previously delivered a child, but her parental rights were legally terminated within the first six months of that child's life; or

F. has delivered a child, but the child died within the first six months of life.

A physician's statement, medical records, legal documents, or birth and death certificates will be required as verification of first-time mother status.

After the birth of the child, the focus of Nurse Home Visit for First-Time Mothers case management is transferred from the mother to the child and services may continue until the child's second birthday. However, recipients may not receive services from more than one type of Medicaid funded case management at a time. A complete reassessment and a update of the comprehensive plan of care must be completed to incorporate the needs of the child within six (6) weeks of the delivery and 30 days prior to the child's first birthday. If during the reassessment it is determined that the child qualifies for CHILDNET and Infants and Toddlers case management, the Nurse Home Visit case manager shall transfer the child to the Infants and Toddlers Program.

#### **II. Staffing Qualifications**

Case managers and supervisors providing services to this targeted population must meet the following educational qualifications:

A. be a registered nurse licensed to practice professional nursing in the State of Louisiana; and

B. have certification of training in the David Olds Prenatal and Early Childhood Nurses Home Visit Model.

The case manager supervisor must have one year of professional nursing experience in addition to the above-referenced qualifications. A master's degree in nursing or public health may be substituted for the required one year of professional nursing experience for the supervisor.

#### **III. Standards for Participation**

All new providers interested in enrolling to provide Medicaid case management services must submit a written request to the Division of Home and Community Based Waiver Services (DHCBS) identifying the target population and the region they wish to serve. A new provider must attend a Provider Enrollment Orientation prior to obtaining a provider enrollment packet. The Bureau will offer orientation sessions at least twice per year. Enrollment packets will only be accepted for service delivery in those DHH regions that currently have open enrollment for case management agencies interested in serving certain targeted populations.

All other general provisions, standards for participation and standards for payment addressed in the July 1999 rule shall be applicable to providers of Nurse Home Visits for First Time Mothers Case Management services.

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is the person responsible for responding to all inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Tuesday, January 25, 2000 at 9:30 a.m. in the Department of

Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Targeted Case Management

#### Services: Nurse Home Visits for First Time Mothers

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

It is anticipated that implementing this proposed rule will increase state program costs by approximately \$197,690 for SFY 1999-2000; \$347,062 for SFY 2000-2001; and \$357,473 for SFY 2001-2002. It is anticipated that \$270 (\$135 SGF and \$135 FED) will be expended in SFY 1999-00 for the state administrative cost of promulgating this proposed rule and the final rule.

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

It is anticipated that implementation of this proposed rule will increase federal revenue collections by approximately \$468,420 for SFY 1999-2000; \$828,621 for SFY 2000-2001; and \$853,480 for SFY 2001-2002.

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

First time mothers who reside in the DHH Administrative Regions of Lafayette and Monroe who meet the eligibility criteria may receive nurse home visit services under case management. Providers of nurse home visit services will receive Medicaid reimbursements of approximately \$666,110 for SFY 1999-2000; \$1,175,683 for SFY 2000-2001; and \$1,210,953 for SFY 2001-2002.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9912#034

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Insurance Office of the Commissioner

#### Regulation 70~~C~~ Replacement of Life Insurance and Annuities (LAC 37:XIII.Chapter 89)

Under the authority of LSA-R.S. 22:3, et. seq., 22:644.1 and in accordance with the Administrative Procedure Act, LSA-R.S. 49:950 et seq., the Department of Insurance gives notice that it intends to adopt the following proposed regulation, to become effective July 1, 2000. This intended action complies with the statutory law administered by the Department of Insurance.

## Title 37 INSURANCE

### Part XIII. Regulations

#### Chapter 89. Regulation 70~~C~~ Replacement of Life Insurance and Annuities

#### §8901. Purpose

A. The purpose of this regulation is:

1. To regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities.

2. To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:

a. Assure that purchasers receive information with which a decision can be made in his or her own best interest;

b. Reduce the opportunity for misrepresentation and incomplete disclosure; and

c. Establish penalties for failure to comply with requirements of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:

#### §8903. Definitions

*Direct-Response Solicitation* means a solicitation through a sponsoring or endorsing entity or individual solicitation solely through mails, telephone, the internet or other mass communication media.

*Existing Insurer* means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

*Existing Policy* means an individual life insurance policy in force, including a policy under a binding or conditional receipt or a policy that is within an unconditional refund period.

*Existing Contract* means an individual annuity contract in force, including a contract that is within an unconditional refund period.

*Financed Purchase* means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of, an existing policy to pay all or part of any premium due on the new policy. If a withdrawal, surrender or borrowing involving the policy values of an existing policy are used to pay premiums on a new policy owned by the same policyholder within thirteen (13) months before or after the effective date of the new policy and is known by the replacing insurer, or if the withdrawal, surrender, or borrowing is shown on any illustration of the existing and new policies made available to the prospective policy owner by the insurer or its producers, it will be deemed *prima facie* of a financed purchase.

*Illustration* means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in Regulation 55 of the Department of Insurance.

*Policy Summary* for the purposes of this regulation, means:

1. For policies or contracts other than universal life policies, a written statement regarding a policy or contract which shall contain, to the extent applicable, but need not be limited to, the following information: current death benefit; annual contract premium; current cash surrender value; current dividend; application of current dividend; and amount of outstanding loan.

2. For universal life policies, a written statement that shall contain at least the following information: the beginning and end date of the current report period; the policy value at the end of the previous report period and at the end of the current report period; the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders); the current death benefit at the end of the current report period on each life covered by the policy; the net cash surrender value of the policy as of the end of the current report period; and the amount of outstanding loans, if any, as of the end of the current report period.

*Producer* for the purposes of this regulation, means agents and brokers.

*Replacing Insurer* means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

*Registered Contract* means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

*Replacement* means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the purposing insurer if there is no producer that by reason of the transaction, an existing policy or contract has been or is to be:

1. lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated; or
2. converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of non-forfeiture benefits or other policy values; or
3. amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid; or
4. reissued with any reduction in cash value; or
5. used in a financed purchase.

*Sales Material* means a sales illustration and any other written, printed or electronically presented information related to the policy or contract purchased, which is created, completed or provided by the company or producer and used in the presentation to the policy or contract owner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:

#### **§8905. Exemptions**

A. Unless otherwise specifically included, this regulation shall not apply to transactions involving:

1. credit life insurance;
2. group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals. Group life insurance or

group annuity certificates marketed through direct response solicitation shall be subject to the provisions of §8915;

3. an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised, or when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner of insurance;

4. proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

5.a. policies or contracts used to fund:

i. an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

ii. a plan described by Sections 401 (a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

iii. a governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or

iv. a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

b. notwithstanding Subparagraph 5(a) of this subsection, this regulation shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two (2) or more annuity providers or policy providers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement;

6. where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member; or

7. existing life insurance that is a non-convertible term life insurance policy that will expire in five (5) years or less and cannot be renewed.

B. Registered contracts shall be exempt from the requirements of §8911.B and §8913.B with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:

#### **§8907. Duties of Producers**

A. A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts.

1. If the applicant indicates that there are no existing policies or contracts, then the producer's duties with respect to replacement are complete.

2. If the applicant indicates that there are existing policies or contracts, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A or other substantially similar form approved by the commissioner of insurance. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud and that it was left with the applicant.

B. The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by the name of the insurer, the insured or annuitant, and the policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, then alternative identification, such as an application or receipt number, shall be listed.

C. In connection with a replacement transaction, the producer shall leave with the applicant the original or a copy of all sales material at the time an application for a new policy or contract is completed. Electronically presented sales material shall be provided to the policyholder in printed form no later than at the time of policy or contract delivery.

D. Except as provided in §8911(C), in connection with a replacement transaction, the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations used in the transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:

#### **§8909. Duties of All Insurers that Use Producers**

A. Insurers shall maintain a system of supervision and control to insure compliance with the requirements of this regulation, including at least the following:

1. informing its producers of the requirements of this regulation and incorporate the requirements of this regulation into all relevant producer training manuals prepared by the insurer;

2. providing its producers a written statement of the company's position with respect to the acceptability of replacements and giving guidance to its producers as to the appropriateness of these transactions;

3. a system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Paragraph (2) above;

4. procedures to confirm that the requirements of this regulation have been met; and

5. procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been identified as such by the applicant or producer.

B. Upon request, insurers shall produce and make available to the Department of Insurance records of each producer's:

1. replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance and annuity contracts not exempted from this regulation;

2. number of lapses of policies and contracts and the percentage which these lapses are to the producer's total annual sales for life insurance and annuity contracts not exempted from this regulation;

3. number of transactions that are unidentified replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subsection A.5 of this Section; and

4. replacements, indexed by replacing producer and existing insurer.

C. Insurers shall:

1. require with or as a part of each application for life insurance or an annuity, a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;

2. if there is indication of existing policies or contracts:

a. require with each application for life insurance or an annuity a completed notice regarding replacements as contained in Appendix A;

b. retain completed and signed copies of the notice regarding replacements in its home or regional office for at least five (5) years after the termination or expiration of the proposed policy or contract;

c. obtain and retain copies of any sales material as required by §8907.E, the basic illustration and any supplemental illustrations used in the sale and the producer's and applicant's signed statements with respect to financing and replacement in its home or regional office for at least five (5) years after the termination or expiration of the proposed policy or contract;

3. ascertain that the sales material and illustrations used in the replacement meet the requirements of this regulation and are complete and accurate for the proposed policy or contract; and

4. if an application does not meet the requirements of this regulation, notify the producer and applicant and fulfill the outstanding requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:

#### **§8911. Duties of Replacing Insurers that Use Producers**

A. Where a replacement is involved in the transaction, the replacing insurer shall:

1. verify that the required forms are received and are in compliance with this regulation;

2. notify any other existing insurer that may be affected by the proposed replacement within five (5) business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application;

3. mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five (5) business days of a request from an existing insurer;

4. retain copies of the notification regarding replacement required in §8907.B, indexed by producer, in its home or regional office for at least five (5) years or until the next regular examination by the insurance department of its state of domicile, whichever is later; and

5. provide to the policy or contract owner notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract.

B. In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, the insurer shall allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

C. If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements of §8907.E, the insurer may:

1. require with each application a statement signed by the producer that:

- a. represents that the producer used only company-approved sales material;
- b. lists, by identifying number or other descriptive language, the sales material that was used; and
- c. states that copies of all sales material were left with the applicant in accordance with §8907.C; and

2. within ten (10) days of the issuance of the policy or contract:

- a. notify the applicant by letter or verbal communication by a person having duties separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with §8907.C;
- b. provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and
- c. stress the importance of retaining copies of the sales material for future reference; and

3. keep a copy of the letter or other verification in the policy file at the home or regional office for at least five (5) years after the termination or expiration of the policy or contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:

#### **§8913. Duties of the Existing Insurer**

A. Upon notice that its existing policy or contract may be replaced or a policy may be part of a financed purchase, the existing insurer shall retain copies of the notification in its home or regional office, indexed by replacing insurer, notifying it of the replacement for at least five (5) years or until the conclusion of the next regular examination

conducted by the insurance department of its state of domicile, whichever is later.

B. The existing insurer shall, by letter, inform the policy or contract owner of their right to receive information regarding the existing policy or contract values. An in force illustration shall be included, if available. If an in force illustration cannot be produced within five (5) business days of receipt of a notice that an existing policy or contract is being replaced, then a policy summary shall be included with the letter. The information regarding the existing policy or contract values shall be provided within five (5) business days of receipt of the request from the policy or contract owner.

C. Upon receipt of a request to borrow, surrender or withdraw any policy or contract values, the existing insurer shall send to the applicant a notice, advising the policy or contract values will have on the non-guaranteed elements, fact amount or surrender value of the policy or contract from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy or contract owner. In the case of consecutive automatic premium loans or systematic withdrawals from a contract, the insurer is only required to send the notice at the time of the first loan or withdrawal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:

#### **§8915. Duties of Insurers with Respect to Direct Response Solicitations**

A. In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice regarding replacement, as provided in Appendix B, or other substantially similar form approved by the commissioner of insurance.

B. If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

1. Provide to applicants or prospective applicants, with the policy or contract, a notice as provided in Appendix C, or other substantially similar form approved by the commissioner of insurance. In these instances the insurer may delete the references to the producer, including the producer's signature, without having to obtain approval of the form from the commissioner of insurance. The insurer's obligation to obtain the applicant's signature shall be satisfied if the insurer can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and

2. Comply with the requirements of §6.A.2, if the applicant furnishes the names of the existing insurers, and

shall comply with the requirements of §6.A.3, 6.A.4 and 6.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:

**§8917. Violations and Penalties**

A. Any failure to comply with this regulation shall be considered a violation of La. R.S. 22:1214. Examples of violations include:

1. any deceptive or misleading information set forth in sales material; or
2. failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement; or
3. the intentional incorrect recording of an answer; or
4. advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or
5. advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.

B. Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this regulation.

C. Where it is determined that the requirements of this regulation have not been met, the replacing insurer shall provide to the policy owner either an in force illustration, if available, or a policy summary for the replacement policy, or available disclosure document for the replacement contract and the notice regarding replacements in Appendix A.

D. Violations of this regulation shall subject the violators to penalties as provided by La. R.S. 22:1217, 1217.1, and any other applicable provisions of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:

**§8919. Effective Date**

This regulation shall be effective July 1, 2000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:

**§8921. Appendix A**

**Importance Notice:**

Replacement of Life Insurance or Annuities  
(Note: This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant)

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the

existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy or contract and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?  
\_\_\_\_ YES \_\_\_\_ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contracts? \_\_\_\_ YES \_\_\_\_ NO

If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the contract number if available) and whether each policy will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. [If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because \_\_\_\_\_  
\_\_\_\_\_

I certify that the responses herein are, to the best of my knowledge, accurate:

\_\_\_\_\_  
Applicant's Signature and Printed Name      Date

\_\_\_\_\_  
Producer's Signature and Printed Name      Date

I do not want this notice read aloud to me. \_\_\_\_\_ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

**PREMIUMS:** Are they affordable?  
 Could they change?  
 You're older—are premiums higher for the proposed new policy?  
 How long will you have to pay premiums on the new policy? On the old policy?

**POLICY VALUES:** New policies usually take longer to build cash values and to pay dividends.  
 Acquisition costs for the old policy may have been paid, you will incur costs for the new one.  
 What surrender charges do the policies have?  
 What expense and sales charges will you pay on the new policy?  
 Does the new policy provide more insurance coverage?

**INSURABILITY:** If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.  
 You may need a medical exam for a new policy.  
 [Claims on most new policies for up to the first two years can be denied based on inaccurate statements.  
 Suicide limitations may begin anew on the new coverage.]

**IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:**

How are premiums for both policies being paid?  
 How will the premiums on your existing policy be affected?  
 Will a loan be deducted from death benefits?  
 What values from the old policy are being used to pay premiums?

**IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:**

Will you pay surrender charges on your old contract?  
 What are the interest rate guarantees for the new contract?  
 Have you compared the contract charges or other policy expenses?

**OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:**

What are the tax consequences of buying the new policy?  
 Is this a tax free exchange? (See your tax advisor.)  
 Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?  
 Will the existing insurer be willing to modify the old policy?  
 How does the quality and financial stability of the new company compare with your existing company?

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:

**§8923. Appendix B**

**Notice Regarding Replacement**

Replacing your life insurance policy or annuity?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:

**§8925. Appendix C**

**Important Notice:**

Replacement of life insurance or annuities

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or

changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy or contract and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?  
 \_\_\_ YES \_\_\_ NO
2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? \_\_\_ YES \_\_\_ NO

Please list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the contract number if available) and whether each policy will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. "If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer." Ask for and retain all sales material used by the agent in sales presentation. Be sure that you are making an informed decision.

I certify that the responses herein are, to the best of my knowledge, accurate:

\_\_\_\_\_  
 Applicant's Signature and Printed Name      Date

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:

A public hearing on this proposed regulation will be held on January 26, 2000, in the Plaza Hearing Room of the Insurance Building located 950 North Fifth Street, Baton Rouge, Louisiana, at 10:00 a.m. All interested persons will be afforded an opportunity to make comments.

Interested persons may obtain a copy of this proposed regulation from, and may submit oral or written comments to Barry White, Department of Insurance, P.O. Box 94214, Baton Rouge, Louisiana 70804-9214, telephone (225) 342-0826. Comments will be accepted through the close of business at 4:30 p.m. January 26, 2000.

### Family Impact Statement

1. Describe the Effect of the Proposed Rule on the Stability of the Family. The proposed rule should have no measurable impact upon the stability of the family.

2. Describe the Effect of the Proposed Rule on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. The proposed rule should have no impact upon the rights and authority of parents regarding the education and supervision of their children.

3. Describe the Effect of the Proposed Rule on the Functioning of the Family. The proposed rule should have no direct impact upon the functioning of the family.

4. Describe the Effect of the Proposed Rule on Family Earnings and Budget. The proposed rule should have no direct impact upon family earnings and budget.

5. Describe the Effect of the Proposed Rule on the Behavior and Personal Responsibility of Children. The proposed rule should have no impact upon the behavior and personal responsibility of children.

6. Describe the Effect of the Proposed Rule on the Ability of the Family or a Local Government to Perform the Function as Contained in the Rule. The proposed rule should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

James H. "Jim" Brown  
Commissioner

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Regulation 70 Replacement of Life Insurance and Annuities

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

No implementation costs or savings to state or local governmental units are anticipated as a result of adoption of Regulation 70.

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

Adoption of Regulation 70 is not expected to have any impact upon revenue collections by state or local governmental units. No new responsibilities or functions will be required of DOI as a result of adoption of Regulation 70. DOI is already performing all actions set forth in the proposed regulation; therefore, no new or additional revenue will result from adoption of this proposed regulation.

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

There should be no costs or economic benefits to insurance companies or insurance consumers as a result of Regulation 70.

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

Regulation 70 is not expected to have any impact on competition and employment.

Craig S. Johnson  
Deputy Commissioner  
9912#051

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Insurance Office of the Commissioner

Regulation 72 Commercial Lines Insurance Policy  
Form Deregulation (LAC 37:XIII. Chapter 90)

In accordance with the provisions of LRS 49:950 et seq. of the Administrative Procedures Act the Commissioner of Insurance hereby gives notice of his intent to adopt Regulation 72.

#### Title 37 INSURANCE Part XIII.

#### Chapter 90. Regulation 72 Commercial Lines Insurance Policy Form Deregulation

##### §9001. Authority

This regulation is adopted pursuant to LRS 22:620F.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:620F.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:

##### §9003. Purpose

The purpose of this regulation is to allow for more flexibility in the placement of insurance with large commercial risks within the parameters of the admitted market by establishing an exemption from the form filing, review and approval requirements of the Louisiana Insurance Code, and to adopt the initial definition of an "exempt commercial policyholder". The exemption implemented under this regulation is experimental. It is predicated upon the continued existence of an open and competitive market and the good faith of insurers in carrying out the fiduciary obligations owed to their insureds.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:620F.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:

##### §9005. Scope and Applicability

A. This regulation applies to all authorized insurers engaged in the business of writing commercial risk property and casualty insurance in this state.

B. This regulation governs the circumstances under which an insurer may issue an insurance policy to a policyholder without first filing the forms with and obtaining approval of the Commissioner of Insurance.

C. The exemption granted by this regulation is limited in scope to certain commercial risk insurance issued to special commercial entities as provided for in Sections 9011 and 9013 of this regulation, respectively.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3., LRS 22:620F.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 26:

##### §9007. Severability

If any section or provision of this regulation is held invalid, such invalidity shall not affect other sections or provisions which can be given effect without the invalid

section or provision, and for this purpose the sections and provisions of this regulation are severable.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3 and LRS 22:620F.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:

#### **§9009. Definitions**

A. For the purposes of this regulation the following terms shall have the meaning ascribed herein, unless the context clearly indicates otherwise:

*Affiliated Group* means two or more persons who are owned or controlled directly or indirectly through one or more intermediaries by, or are under common control with, the person specified (i.e., the named insured) and includes a subsidiary.

*Authorized Insurer* shall have the meaning found in LRS 22:5(13).

*COI* means the Commissioner of Insurance for the State of Louisiana.

*Commercial Risk* means any kind of risk that is not a personal risk.

*Competitive Market* means a market in which a reasonable degree of competition exists or which has not been found to be in violation of LRS 22:1211 et seq. In determining whether a reasonable degree of competition exists within a line of insurance, the COI shall consider the following factors:

- a. the number of insurers available to write the coverage,
- b. market shares of the leading writers and the changes in market shares over a reasonable period of time,
- c. existence of financial or economic barriers that could prevent new firms from entering the market,
- d. measures of market concentration and changes of market concentration over time,
- e. whether long-term profitability for insurers in the market is reasonable in relation to industries of comparable business risk, and
- f. the relationship of insurers' cost to revenue over a reasonable period of time.

*Insurer* shall have the meaning found in LRS 22:5(2).

*LDOI* means the Louisiana Department of Insurance.

*LIRC* means the Louisiana Insurance Rating Commission.

*Person* means an individual, a corporation, a partnership, an association, a trust, a joint stock company, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

*Personal Risk* means homeowners, tenants, private passenger nonfleet automobile, mobile home and other property and casualty insurance for personal, family or household needs.

*State* means the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3 and LRS 22:620F.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:

#### **§9011. Types of Coverage Exempt From Filing and Approval**

A. All kinds of commercial property and casualty insurance, including but not limited to Commercial Property, Boiler & Machinery, Commercial Auto, General Liability, Directors & Officers, Business Owners and Inland Marine

insurance, written on commercial risks are exempt from the filing and approval provisions of LRS 22:620 if the policy is issued to an exempt commercial policyholder as defined in Section 9013 of this regulation, except for the following kinds:

1. worker's compensation and employer's liability insurance;
2. professional liability insurance.

B. The exemption provided for in this section only applies to policy forms. Rate and rule filings must be made with the LIRC as required by law.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3; LRS 22:620F and LRS 22:1403.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:

#### **§9013. Special Commercial Entities**

A. *Special Commercial Entity* means a person who meets the criteria for an *exempt commercial policyholder*.

B. An *Exempt Commercial Policyholder* means any person who applies for or procures commercial risk insurance, of the kinds provided for in Section 9011, and meets the following criteria:

1. Has and maintains aggregate annual commercial insurance premiums, excluding worker's compensation and employer's liability, and professional liability insurance premiums, of more than two hundred thousand (\$200,000) dollars in the preceding fiscal year. In determining whether this threshold has been met, premiums paid to one or more insurers are to be added together to reach the total aggregate.

2. At the time the policy is issued the policyholder must have (a) if a single company not less than fifty (50) employees; (b) if a member of an affiliated group not less than one hundred (100) employees collectively; (c) if a municipality a population of not less than fifty thousand (50,000); and, (d) if a public entity an operating budget of not less than twenty (\$20,000,000) million dollars for the most recently completed calendar or fiscal year whichever applies.

3. Has signed the certification form as provided for in Section 9015B of this regulation.

C. Beginning January 1, 2001, the criteria in Subsection B of this Section must be reviewed on an annual basis by the COI for the purposes of determining whether the criteria should be modified. The review must be completed on or before the 31st day of March.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3, LRS 22:620F.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:

#### **§9015. Disclosure Requirements and Certification Form**

A. When soliciting, negotiating or procuring a policy of insurance with an exempt commercial policyholder the agent or broker, or the insurer in cases of direct placement, shall disclose to the policyholder and the policyholder's risk manager, if any, on a form created by the insurer, that a policy form may be used which is exempt from the form filing requirements of the Louisiana Insurance Code.

B. When a policy of insurance is issued or delivered to an exempt commercial policyholder, the insurance agent or broker, or the insurer in cases of direct placement, shall obtain from the policyholder a written certification on the form prescribed below. The certification form must in not less than ten-point type, and it must be dated and signed by a

senior officer or manager of the policyholder and the policyholder's risk manager, if any.

Louisiana Certification of Exempt Commercial Policyholder Status  
Pursuant to Louisiana Regulation 72

The undersigned \_\_\_\_\_, (the Insured) certifies to \_\_\_\_\_ (the Insurer) that the Insured meets the criteria below and is an Exempt Commercial Policyholder under Louisiana law. The Insurer may issue a commercial risk insurance policy to an Exempt Commercial Policyholder without filing the policy form with the Louisiana Department of Insurance and the Insurer by signing below certifies that it has the necessary expertise to negotiate its own policy language. The policy must still comply with Louisiana law, and complaints or questions about compliance may be directed to the Louisiana Department of Insurance (1-800-259-5300).

In order to be an Exempt Commercial Policyholder, the Insured must:

1. Execute this Certification Form and return it to the Insurer.
2. Acquire the insurance policy through an insurance agent licensed in Louisiana.
3. Meet the following requirements:

- Have and maintain aggregate annual commercial risk insurance premiums, excluding workers compensation and employer's liability and professional liability insurance premiums of more than two hundred thousand (\$200,000) dollars in the preceding fiscal year. In determining whether this threshold has been met, premiums paid to one or more insurers are to be added together to reach the total aggregate.

- At the time the policy is issued the policyholder must have (a) if a single company not less than fifty (50) employees; (b) if a member of an affiliated group not less than one hundred (100) employees collectively; (c) if a municipality a population of not less than fifty thousand (50,000); and, (d) if a public entity an operating budget of not less than twenty (\$20,000,000) million dollars for the most recently completed calendar or fiscal year whichever applies.

Signed: \_\_\_\_\_  
Date: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Risk Manager: \_\_\_\_\_

C. The disclosure notice and certification form required by this section shall be effective for the life of the policy or policies, including renewals, unless the deductible, or policy limits or coverage is significantly modified, in which case a new certification form must be executed.

D. A copy of the certification form shall be maintained by the insurer and by the producing agent or broker in the policyholder's record for a period of five (5) years from the date of issuance of the insurance policy or renewal policy if at renewal a new certification form is executed. The insurer or producing agent or broker shall make such certification forms available for examination by the COI or any person acting on behalf of the COI.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3; LRS 22:620F; LRS 22:1211 et seq. and LRS 22:1301.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:

**§9017. Requirements for Maintaining Records**

A. Any insurer who places insurance with an exempt commercial policyholder, pursuant to this regulation, shall maintain a record on the exempt commercial policyholder. The record shall contain, in addition to the certification form, the following information: any data, statistics, rates, rating plans, rating systems and underwriting rules used in

underwriting and issuing such policies; a copy of the policy with date of issuance clearly marked; annual experience data on each risk insured, including but not limited to written premiums, written premiums at a manual rate, paid losses, outstanding losses, loss adjustment expenses, underwriting expenses, underwriting profits, and profits from contingencies; and a record of all complaints including the date the complaint was made, the name of the complainant, the nature of the complaint and the final resolution.

B. The record required by this section may be kept in electronic or written form and shall be maintained by the insurer for a period of five (5) years from the date of issuance of the insurance policy or renewal policy if a new certification form is required pursuant to §9015C. Upon request, the insurer shall produce such record for examination by the COI or any person acting on behalf of the COI.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3, LRS 22:1211 et seq. and LRS 22:1301.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:

**§9019. Exempt Policy Forms**

Commercial risk property and casualty policy forms which would otherwise have to be filed with and approved by the COI are exempt from this requirement if issued to an exempt commercial policyholder. The exemption of the policy form from the requirement that it be filed with and approved by the COI is not to be taken by an insurer to mean that an insurance contract connected by the use of such a policy form, or policy forms, may in any manner be inconsistent with the statutory law of this state or public policy as expressed by the courts of this state.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3. and LRS 22:620, and 22:1211 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:

**§9021. Penalties for Failure to Comply**

The exemption created by this regulation is a limited one and insurers must strictly comply with the conditions creating the exemption. Failure to comply with the regulation by any person subject to its provisions, after proper notice and a hearing held by the COI, may result in the imposition of such penalties as are authorized by law.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3. LRS 22:620; LRS 22:1211 et seq., LRS 22:1115 and LRS 22:1457.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:

**Family Impact Statement**

1. Describe the Effect of the Proposed Rule on the Stability of the Family. The proposed rule should have no measureable impact on the stability of the family.

2. Describe the Effect of the Proposed Rule on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. The proposed rule should have no impact on the rights and authority of parents regarding the education and supervision of their children.

3. Describe the Effect of the Proposed Rule on the Functioning of the Family. The proposed rule should have no direct impact on the functioning of the family.

4. Describe the Effect of the Proposed Rule on the Family Earnings and Budget. The proposed rule should have no direct impact on the family earnings and budget.

5. Describe the Effect of the Proposed Rule on the Behavior and Personal Responsibility of Children. The proposed rule should have no impact on the behavior and personal responsibility of children.

6. Describe the Effect of the Proposed Rule on the Ability of the Family or a Local Government to Perform the Function as Contained in the rule. The proposed rule should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

A copy of the proposed regulation may be obtained from the address below or by telephone at 225-342-4673. Copies may also be obtained from the Office of the State Register, 1051 North Third Street, Baton Rouge, LA 70802, telephone no. 225-342-5015.

Interested parties may submit oral or written comments on the proposed regulation to: C. Noël Wertz, Senior Attorney, Box 94214, Baton Rouge, LA 70804-9214; telephone: 225-342-4632. The deadline to submit comments is 5:00 p.m., January 20, 2000.

The proposed regulation is scheduled to become effective April 1, 2000.

James H. "Jim" Brown  
Commissioner of Insurance

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Regulation 72, Commercial Lines Insurance Policy Form Deregulation

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

No implementation costs to state or local governmental units are expected as a result of the adoption of Regulation 72. Some minimal decrease in workload may result from not reviewing certain Property and Casualty forms/policies for large commercial risks; however since DOI does not distinguish between commercial and family/individual Property and Casualty forms awaiting review and approval, it is impossible to estimate the amount of any savings.

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

Adoption of Regulation 72 may result in some minimal decrease in fee revenue for the Department of Insurance; however, because the fees charged for forms review and approval are not separated by type of coverage (commercial vs family/individual) there is no way to estimate the amount of revenue attributable solely to commercial policies.

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

Insurers whose forms are exempt from prior review and approval may experience some economic benefit from the adoption of Regulation 72; however, there are insufficient data available to determine the extent of that benefit.

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

Regulation 72 is not expected to have any impact on competition and employment.

Craig S. Johnson  
Deputy Commissioner  
9912#049

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Louisiana Lottery Corporation

Instant Lottery Games General Rules  
(LAC 42:XV.Chapter 7)

The Louisiana Lottery Corporation in compliance with, and under authority of R.S. 49:950 et seq., and R.S. 47:9001 et seq., hereby gives notice of its intent to repromulgate and amend the rules and regulations pertaining to the operations of instant tickets. In particular, LAC 42:XV. 715 concerning the minimum age to purchase lottery tickets has been changed to conform to state law.

#### Title 42

#### LOUISIANA GAMING

#### Part XV. Lottery

#### Chapter 7. Instant Lottery Games General Rules

#### §701. Policy Statement

A. The Louisiana Lottery Corporation (the "Corporation") is authorized by Louisiana Revised Statutes 47:9008(A) to adopt such rules and regulations as may be necessary to conduct specific lottery games and operations of the Corporation. Pursuant to that grant of authority, the Board of Directors of the Corporation (the "Board") has adopted these instant lottery games general rules, which are intended to provide general guidelines concerning the conduct and administration of instant lottery games.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

#### §703. Definitions

A. As used in the Game Rules, Game Directives and Working Papers, the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

*Bar Code* means the representation of pack/ticket and validation information in bar code form on the back of each instant lottery ticket.

*Board* means the Board of Directors of the Louisiana Lottery Corporation.

*Captions* means the printed verification of each play symbol which appear in the game play area below the play symbol.

*Claim Center* means a regional office or claims office of the Corporation at which winners may redeem prizes.

*Claim Deadline* means the day after which prizes from a particular game are no longer eligible to be redeemed or claimed.

*Claim Form* means the form provided by the Corporation to be completed by prize winners when claiming a prize.

*Corporation* means the Louisiana Lottery Corporation.

*Cut and Paste* means the attempted forgery of an instant ticket by cutting a symbol off one ticket and pasting it on another in an attempt to make the resultant ticket look like a winner.

*Defective Ticket* means any ticket that was printed in error or fails to meet the distribution specifications of the Corporation.

*Drawing Directive* means the detailed drawing instructions promulgated by the President for each drawing event.

*End of Production Prize Structure* means the version of the prize structure provided by the ticket printer after production, indicating the exact number of winners of each prize and any variation from the originally authorized prize structure.

*Free Ticket* means a lottery prize for which the winner is entitled to another ticket from the same game, without charge.

*Game Directive* means the game-specific guidelines that itemize the particular requirements of each game.

*Game End Date* means the date after which tickets are no longer authorized to be sold.

*Game Number* means the two-digit designation of each game for purposes of inventory control and accounting.

*Game Play Area* means the latex-covered area on the front of the ticket that contains the computer-generated symbols that determine winning or non-winning tickets according to game specifications.

*Game Rules* means these general rules regarding all instant lottery games, prize payments, and other game parameters.

*Game Start Date* means the date on which tickets for a particular game are authorized to be sold.

*Grand Drawing* means a special event designed by the Corporation to award a large top prize and subordinate prizes through a random process.

*Grand Drawing Finalist* means a contestant in the Grand Drawing event.

*Instant Lottery Game* means a lottery game that offers pre-printed tickets that, after a latex covering is rubbed off, indicate immediately whether a player has won a prize.

*Instant Lottery Ticket* means any ticket produced for an instant lottery game authorized by the Corporation.

*Invalid Ticket* means any ticket that fails to meet all of the validation requirements of the Corporation and the ticket vendor.

*Omitted Pack* means any pack of tickets that has been removed from the game during production.

*Overprint* means the latex covering over the play area and the information printed on the surface of the latex.

*Pack* means a set of instant tickets, each bearing a common pack number, fan folded in strips of five tickets. Each pack may contain 500 tickets or some other number of tickets determined by the Corporation for a particular game.

*Pack/Ticket Number* means the series of digits visible on the front of the ticket that designates the number of the particular pack and the sequential number of each ticket.

*Play Symbols (or Prize Symbols)* means a series of alphabetic or numeric characters or symbols appearing in the game play area of an instant ticket and covered by a latex material that are utilized in each game to determine winning tickets.

*Preliminary Drawing* means an event in which qualified entrants are selected at random to participate in the Grand Drawing.

*President* means the President of the Louisiana Lottery Corporation.

*Prize Structure* means the authorized itemization of prize levels and number of winners contained in the Working Papers of each game.

*Quality Control Symbol* means an alphabetic code appearing in the corner of the play area to serve as a visual indicator of imaging underneath the overprint.

*Retailer* means any person with whom the Corporation has contracted to sell lottery tickets to the public.

*Retailer Validation Code* means an alphabetic character code present within the game play area of an instant ticket.

*Security Omit* means a pack of tickets omitted from the game for security purposes, temporarily or permanently.

*Security Patterns (or Ben Day)* means the patterns used by the ticket printer in the background of the play area to frustrate ticket forgeries.

*Ticket Display Area* means the area on the front of the ticket that is used for non-secure graphics, information and other printing.

*Ticket Number* means the 3-digit number appearing on the face of the ticket which represents the sequential appearance of that specific ticket in a particular pack.

*Valid Ticket* means a ticket that meets all the validation requirements of the Corporation and the ticket vendor.

*Validation Number* means the number within the play area of the ticket, covered by latex, that is utilized to determine whether the ticket is a winner in the computerized validation process.

*Validation Tapes* are the computer tapes provided by the ticket printer that contain the information required to determine if a ticket is the winner of any prize.

*Working Papers* are the printing requirements provided to the ticket printer for the production of each game.

*Zip Cash* means the electronic validation/accounting system utilizing bar code technology.

*Zip Cash Terminal* means the electronic equipment at the retailer location that is used for prize validation, ticket distribution and accounting functions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

#### **§705. General**

A. These Game Rules shall apply to all instant lottery games offered by the Corporation upon adoption by the Board. Any change in these rules must be approved by the Board, and will take effect upon approval. The detailed information regarding each specific instant game will be contained in a Game Directive promulgated by the President. Each Game Directive will include the appropriate prize amounts, the game symbols required to win each prize, and any unique play format information or claim requirements. The Game Directive cannot be in conflict with these Game Rules. Each Game Directive will be distributed to and posted at every Corporation office and will be available for public inspection during the sales period of the particular game. The Directive must be approved and signed by the President at least 14 days prior to the start of the game. The President shall also promulgate Drawing Directives that

prescribe the operational details of Preliminary Drawings, Grand Drawings, and any other special promotional drawings in which a prize of more than \$5,000 is offered. Promulgation shall be similar to that prescribed for Game Directives. The Drawing Directive must be approved and signed by the President at least 5 days prior to the drawing event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

#### **§707. Odds of Winning**

A. The overall odds of winning any prize in a particular game will be contained in the Game Directive for that game and shall be included in the promotional materials for the game or printed on the back of the ticket. The statement of odds does not need to specify the odds of winning each particular prize. The Corporation shall make every attempt to release accurate odds information in press releases for each instant lottery game.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

#### **§709. Compliance with Law/Rules**

A. Any person who purchases an instant lottery ticket agrees to comply and abide with State Law, these Game Rules and Game Directives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

#### **§711. Names of Winners**

A. The Corporation shall have the right to use the names and the city or area of residence of all prize winners in instant lottery games. That information may be used by the Corporation for advertising and publicity purposes. The Corporation will not make public the addresses or phone numbers of instant lottery winners. Such information will be provided to authorized governmental agencies, as required by law or as deemed appropriate. Winners who grant the Corporation permission to be photographed agree to allow the use of such photographs for publicity and advertising purposes without any additional compensation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

#### **§713. Payment of Prizes**

A. Instant Lottery game prizes will be paid in accordance with Game Directives and Retailer Regulations, and upon presentation of a valid winning instant ticket, payment will be made to the person presenting the ticket for payment. The owner of an instant ticket bears the sole responsibility for the risk of loss or theft of the ticket. If an instant ticket is claimed by the owner in error for a lower prize than that to which the owner is entitled, the Corporation shall not be liable to the owner for the higher prize not claimed. Any ticket on which the name of the owner is altered, or appears to have been altered, may be impounded by the

Corporation without payment to the claimant until ownership of the ticket can be determined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

#### **§715. Age Eligibility**

A. No person under the age established by law may purchase an instant lottery ticket, but persons under the age established by law may receive an instant lottery ticket as a gift.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, amended LR 26:

#### **§717. Retailer Eligibility**

A. Retailers authorized by the Corporation to sell tickets may purchase tickets assigned to them and may claim prizes resulting from any tickets so purchased.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

#### **§719. End of Game**

A. Each instant lottery game will end when all tickets for that game have been sold, or on a date announced in advance by the President. The President may suspend or terminate a game without notice if such action is deemed to be in the best interests of the Corporation. No tickets for a particular game may be sold for a game after the game ending date or after the suspension or termination of a game. Any liability for prizes from tickets sold after that date belongs to the retailer who sells the tickets. No prize shall be paid to any claimant who fails to submit a claim within the period of time provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

#### **§721. Winner Validation**

A. Except as provided in specific Game Directives, the following requirements will apply to the validation of winning instant lottery tickets:

1. The number of play symbols in the game play area must correspond with the number of play symbols provided for in the Working Papers for the game.

2. Each play symbol must have a corresponding caption underneath, in accordance with the captions provided for in the Working Papers for the game.

3. Each of the play symbols must be present in its entirety and be fully legible.

4. Each of the play symbols and its play caption must be printed in black ink, unless a different color of ink is specified in the Working Papers for the game.

5. The instant ticket must be intact and not defaced in any manner.

6. The Game and Pack/Ticket Numbers must be present in their entirety and be fully legible.

7. The ticket must not be reconstituted or tampered with in any manner.

8. The ticket must not be counterfeit in whole or in part.

9. The ticket must have been issued by the Corporation in the authorized manner.

10. The ticket must not be stolen or be from a pack omitted from the game by the Corporation.

11. The play symbols, captions and retailer validation codes must be in a right-side-up orientation and not reversed in any manner.

12. The ticket must have within the play area exactly the specified number of play symbols and corresponding captions, and exactly the specified number of retailer validation codes, as provided for in the Working Papers for that game.

13. The validation number on the ticket must appear on the official validation tape for the game as provided to the Corporation by the ticket printer.

14. The ticket must not be partially blank, misregistered or printed or produced in error.

15. The ticket must be submitted for redemption within the claim period provided for the game.

16. The ticket must withstand microscopic inspection of the security patterns within the play area to determine any alterations of the ticket.

17. The ticket must withstand additional confidential validation tests prescribed by the Corporation.

B. Except as provided above, any instant lottery ticket that fails to pass any of the validation requirements is void and ineligible for any prize, and no prize shall be paid. Liability for defective tickets is limited to the original purchase price of the ticket.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

### **§723. Delay of Payment**

A. The Corporation shall pay prizes in a timely fashion but may delay making payment of any prize or installment of a prize under the following circumstances:

1. A dispute occurs or it appears that a dispute may occur relative to any prize.

2. There is any question regarding the identity of the claimant.

3. There is any question regarding the validity of any ticket.

4. The claim is subject to any court ordered garnishment.

5. The Corporation becomes aware of a change in circumstances relative to a prize awarded, the payee or the claim which requires review.

B. The Corporation assumes no liability for interest for any delay of payment of a prize or installment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

### **§725. Claim Form**

A. For any prize of more than \$500, the owner of the apparent winning ticket shall complete an official "Claim Form" that requires the winner to provide:

1. The name of the individual or entity claiming the prize.

2. The address and city of residence of the claimant.

3. The social security number of the individual claimant or the federal employer's identification number issued by the IRS for multiple claimants.

B. No prize payment will be authorized if the required information is not provided by the claimant. The Corporation will utilize due diligence to insure that the information provided on the claim form is correct, including the verification of information by inspection of a driver's license, social security card or other forms of information. The name of the owner printed on the back of the ticket must correspond with the name of the claimant.

C. A group, family unit, club or other organization which is not a legal entity or which does not possess a federal employer's identification number may claim a prize if it:

1. files an Internal Revenue Service form 5754, "Statement by Person(s) Receiving Gambling Winnings," or a successor form, with the Corporation, designating to whom the prize is to be paid and the person or persons to whom the prize is taxable, or

2. designates one individual in whose name the claim shall be entered and furnish that person's social security number and other required information, if approved by the President.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

### **§727. Assignability**

A. The right of any person to a prize after the prize is claimed shall not be assignable, except as follows:

1. The Corporation may pay any prize to the estate of a deceased prize winner.

2. The prize to which a winner is entitled may be paid to another person pursuant to an appropriate court order.

B. A Grand Drawing Finalist may not assign or sell the right to participate in the Grand Drawing, nor can two or more Finalists enter into an advance agreement to split their winnings following the Grand Drawing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

### **§729. Installment Prizes**

A. The Corporation may provide for the payment of any prize of more than \$100,000 in equal annual installments. The schedule of payments shall be designed to pay the winner equal dollar amounts each year until the total payments equal the prize amount. When the prize is paid in installments, the President may round the actual amount of the prize to the nearest \$1,000 amount to facilitate the appropriate funding mechanism. The period of payment of any installment payment schedule shall not exceed 20 years, unless the prize is a guaranteed amount each year for the lifetime of the winner. If a lifetime payment guarantee is made, the minimum number of installment payments made to a winner or a winner's estate shall be 20 years. The Corporation shall not accelerate the payment schedule of any installment prize for any reason.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

**§731. Merchandise Prizes**

A. If a non-cash prize is offered, the value of the prize will be determined by the fair market value of any such prize, which will be the amount reported to the State and the IRS for tax purposes. If the value of the prize exceeds \$5,000, the Corporation will pay withholding taxes on behalf of the winner equivalent to 25% of the prize value. The Corporation will not be responsible for any state taxes or other fees associated with the prize.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

**§733. Preliminary Drawings**

A. The President shall promulgate a Drawing Directive that details the procedures involved in conducting a random drawing to determine Grand Drawing Finalists. The directive shall specify the qualifications for valid Grand Drawing Entries and a methodology for the random pre-selection of entries for purposes of the preliminary drawing, if required. The President shall exercise care in making certain that any procedures devised for Finalist selection are totally fair and random, and that no entry has a greater opportunity for selection than any other.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

**§735. Grand Drawings**

A. The President shall promulgate a Drawing Directive that details the procedure for conducting any Grand Drawing, including the prizes to be offered, the drawing method, and the equipment to be utilized. The President shall exercise care to insure a totally random drawing process that results in the selection of prize winners in a method that favors none of the participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

**§737. Independent Auditor**

A. All drawing events, including preliminary drawings and grand drawings, shall be witnessed by an independent auditing firm. The independent auditor shall attest to the fact that procedures for the drawing were properly disseminated and that the procedures were followed, and shall make note of any exceptions to the procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on August 8, 1991 and promulgated in the *State Times* on August 15, 1991, re-promulgated LR 26:

**Family Impact Statement**

Pursuant to the provisions of LA R.S. 49:953.A., the Louisiana Lottery Corporation, through its president, has

considered the potential family impact of the proposed repromulgation and amendment of LAC 42:XV.701 et seq.

It is accordingly concluded that the repromulgation and amendment of LAC 42:XV.701 would appear to have no impact on any of the following:

1. The effect on stability of the family.
2. The effect on the authority and rights of parents regarding the education and supervision of their children.
3. The effect on the functioning of the family.
4. The effect on family earnings and family budget.
5. The effect on the behavior and personal responsibility of children.
6. The ability of the family or a local government to perform the function as contained in the proposed rule.

A public hearing will be held on January 28, 2000, at 10:00 a.m., at the offices of the Louisiana Lottery Corporation, 11200 Industriplex Boulevard, Suite 190, Baton Rouge, LA. Interested persons are invited to attend and submit oral comments on the proposed amendments.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than January 26, 2000, at 4:00 p.m., to John Carruth, Louisiana Lottery Corporation, P.O. Box 90008, Baton Rouge, LA 70879.

Charles R. Davis  
President

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

**RULE TITLE: Instant Lottery Games General Rules**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
This is a re-promulgation with one modification of the existing rules originally promulgated under the special rule making authority given by statute to the Louisiana Lottery Corporation's Board of Directors. The only modification is to reflect the recent state legislation changing the minimum age to purchase lottery tickets. Changes will be made in all of the Corporation's literature to reflect this new statute as the material is reprinted. There are no estimated implementation costs or savings anticipated as a result of this proposed rule change.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The underlying legislation conceivably had some revenue impact through the reduction of lottery sales and consequently transfers to the state. The impact was estimated to be relatively minor in comparison with total lottery sales.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There is no estimated costs or economic benefits to any persons or groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
Since the legislation applies to other forms of gaming, there is no estimated effect on competition and employment.

Charles R. Davis  
President  
9912#037

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Louisiana Lottery Corporation

#### Payment of Prizes (LAC 42:XV.Chapter 9)

The Louisiana Lottery Corporation in compliance with, and under authority of R.S. 49:950 et seq., and R.S. 47:9001 et seq., hereby gives notice of its intent to repromulgate and amend the special rules and regulations on payment of prizes.

#### Title 42

#### LOUISIANA GAMING

#### Part XV. Lottery

#### Chapter 9. Special Rules and Regulations on Payment of Prizes

##### §901. Policy Statement

The Louisiana Lottery Corporation (the "Corporation") is required by Louisiana Revised Statutes 47:9026 to establish and maintain rules and regulations providing for the withholding of lottery prizes of persons who have outstanding child support arrearages as reported to the Corporation. Pursuant to that mandate, the Board of Directors of the Corporation (the "Board") has adopted these rules and regulations which are intended to provide general guidelines concerning the withholding of lottery prizes of persons with outstanding child support arrearages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation on August 23, 1991 in the *State Times* on September 10, 1991, repromulgated LR 26:

##### §903. Definitions

A. following italicized terms shall have the meaning set forth herein when used in these rules and regulations:

*Arrearage* means outstanding child support owed by a Debtor to or otherwise collectible by the Claimant Agency.

*Claimant Agency* means the Louisiana Department of Social Services.

*Debtor* means a person who has been reported by the Claimant Agency to the Corporation, pursuant to these rules and regulations, as having an Arrearage, as evidenced by the records of the Claimant Agency.

*Winner* means a person entitled to the payment of a lottery prize of \$600.00 or more.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation on August 23, 1991 in the *State Times* on September 10, 1991, repromulgated LR 26:

##### §905. Authority of the Corporation

These rules and regulations are adopted pursuant to the powers granted to the Corporation under the Louisiana Lottery Corporation Law. These rules and regulations are supplemental to and not in substitution for the provisions of the Louisiana Lottery Corporation Law, other provisions of Louisiana or federal law and other rules and regulations of the Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation on August 23, 1991 in the *State Times* on September 10, 1991, repromulgated LR 26:

##### §907. Obtaining Information from Claimant Agency

Promptly upon receiving a request for such information from the Claimant Agency, the Corporation shall provide to the Claimant Agency a computer-readable format for the compilation, storage and maintenance of a list of Debtors by the Claimant Agency. The list of Debtors generated by the Claimant Agency shall contain their Arrearages and such other information as is mutually determined by the Corporation and the Claimant Agency to be necessary and compatible with the goals of Louisiana Revised Statutes 47:9026 and the efficient and effective operation of the Corporation and the Claimant Agency. The Corporation shall accept the list as the Claimant Agency transmits and updates it to the Corporation in the prescribed format at intervals and times as specified by the Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation on August 23, 1991 in the *State Times* on September 10, 1991, repromulgated LR 26:

##### §909. Confirmation of Child Support Obligations

A. The Corporation shall determine that a Winner is a Debtor according to the following provisions:

1. Prior to the payment of any lottery prize of \$600.00 or more, the Corporation's staff shall determine whether the name of the Winner appears on the most current list of Debtors provided to the Corporation by the Claimant Agency.

2. If the name of the Winner appears on the Claimant Agency's most current list of Debtors, the Corporation may contact the Claimant Agency to confirm the Winner's status as a Debtor and verify the amount of his or her Arrearage. The Corporation shall not be obligated to request confirmation, but shall act in accordance with the information it obtains thereby if it does.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation on August 23, 1991 in the *State Times* on September 10, 1991, repromulgated LR 26:

##### §911. Disbursement of Prize Money to a Debtor

A. The Corporation shall disburse lottery prize money to a Winner who is also a Debtor as follows:

1. The Corporation shall subtract the Debtor's Arrearage and all other amounts required to be withheld from lottery prizes from the Debtor's prize, and shall pay the remainder to the Debtor. If the remainder is less than zero, the Debtor shall not receive a payment.

2. At regular intervals mutually determined by the Corporation and the Claimant Agency, the Corporation shall transfer all Arrearages withheld by the Corporation to the Claimant Agency.

3. Transfer of the Debtor's Arrearage to the Claimant Agency shall discharge the Corporation from any liability to the Debtor for payment of any prize money.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation on August 23, 1991 in the *State Times* on September 10, 1991, repromulgated LR 26:

##### §913. Reliance on Claimant Agency Information

The Corporation may enter into an agreement with the Claimant Agency entitling the Corporation to rely on information it receives from the Claimant Agency and

requiring the Claimant Agency to defend claims against the Corporation for erroneous withholding of prize money in cases in which the Corporation acts in accordance with information provided by the Claimant Agency. Otherwise, the Corporation shall not be liable to any person for withholding a lottery prize based upon information provided to it by the Claimant Agency.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:9001 et seq.

**HISTORICAL NOTE:** Promulgated by the Louisiana Lottery Corporation on August 23, 1991 in the *State Times* on September 10, 1991, repromulgated LR 26:

**§915. No Third Party Rights Created Hereby**

These rules and regulations are not intended to create contractual rights on behalf of any person or impose contractual obligations on the Corporation, but are merely intended to provide a procedure for the Corporation's staff to follow in assisting the appropriate state agency in the process of withholding the lottery prizes of persons with outstanding child support arrearages. No third party rights against the Corporation arise by virtue of these rules and regulations. These rules and regulations are subject to modification or change at any time at the sole discretion of the Corporation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:9001 et seq.

**HISTORICAL NOTE:** Promulgated by the Louisiana Lottery Corporation on August 23, 1991 in the *State Times* on September 10, 1991, repromulgated LR 26:

**§917. Amendment**

These rules and regulations may be amended according to Part D of the By-Laws and Rules of Procedure of the Corporation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:9001 et seq.

**HISTORICAL NOTE:** Promulgated by the Louisiana Lottery Corporation on August 23, 1991 in the *State Times* on September 10, 1991, repromulgated LR 26:

**Family Impact Statement**

Pursuant to the provisions of LA R.S. 49:953.A., the Louisiana Lottery Corporation, through its president, has considered the potential family impact of the proposed repromulgation and amendment of LAC 42:XV.701 et seq.

It is accordingly concluded that the repromulgation and amendment of LAC 42:XV.701 would appear to have no impact on any of the following:

1. The effect on stability of the family.
2. The effect on the authority and rights of parents regarding the education and supervision of their children.
3. The effect on the functioning of the family.
4. The effect on family earnings and family budget.
5. The effect on the behavior and personal responsibility of children.
6. The ability of the family or a local government to perform the function as contained in the proposed rule.

A public hearing will be held on January 28, 2000, at 10:00 a.m., at the offices of the Louisiana Lottery Corporation, 11200 Industriplex Boulevard, Suite 190, Baton Rouge, LA. Interested persons are invited to attend and submit oral comments on the proposed amendments.

All interested persons are invited to submit written comments on the proposed regulations. Such comments

should be submitted no later than January 26, 2000, at 4:00 p.m., to John Carruth, Louisiana Lottery Corporation, P.O. Box 90008, Baton Rouge, LA 70879.

Charles R. Davis  
President

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Payment of Prizes**

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

This is a repromulgation of the existing rules originally promulgated under the special rule making authority given by statute to the Louisiana Lottery Corporation's Board of Directors. The only modification is to correct a reference to the Corporation's By-Laws. Since there are no substantive changes in the existing rules, there are no estimated implementation costs or savings.

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

Since the rule change is to simply correct a reference to the Corporation's By-Laws, there is no estimated effect on revenue collections.

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

There is no estimated costs or economic benefits to any persons or groups.

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

There is no estimated effect on competition or employment.

Charles R. Davis  
President  
9912#031

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Louisiana Lottery Corporation**

Procurement Policies and Rules  
(LAC 42:XV.Chapter 3)

The Louisiana Lottery Corporation in compliance with, and under authority of R.S. 49:950 et seq., and R.S. 47:9001 et seq., hereby gives notice of its intent to re-promulgate and amend the rules and regulations pertaining to the procurement of goods and services. The rules concerning ethical standards and appeals have been amended, in particular, an amendment to specify that violation of the Lottery rules or law constitutes good cause for the suspension, revocation, or refusal to renew any contract, the addition of an appeal procedure that was previously found in the Corporation's By-Laws, and a new rule amendment procedure found in the Corporation's By-Laws which states that the Board shall adopt and promulgate rules and regulations in accordance with the provisions of the Administrative Procedure Act.

**Title 42**  
**LOUISIANA GAMING**

**Part XV. Lottery**

**Chapter 3. Procurement Policies and Rules**

**§301. Policy Statement**

A. The Board of Directors of the Louisiana Lottery Corporation adopts these policies and rules in order to assure public confidence in the procedures followed by the Corporation in procuring the items, products and services necessary to conduct a successful lottery. Public confidence depends on the Corporation developing and maintaining procurement procedures that:

1. are subject to the highest ethical standards;
2. promote the acquisition of high quality goods and services at competitive prices;
3. promote administrative efficiency;
4. recognize that the operation of a lottery is a unique activity of an instrumentality of the State of Louisiana; and
5. afford fair treatment of all persons offering their products and services to the Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

**§303. Definitions**

A. The following italicized terms shall have the meaning set forth herein when used in these policies and rules.

*Authorized Officers* means the President, the Vice President, the Secretary-Treasurer, the Procurement Officer and all persons designated as Division Heads in the Corporation's organizational structure from time to time.

*Board* means the Board of Directors of the Corporation as established and existing pursuant to the Louisiana Lottery Corporation Law.

*Business* means any corporation, partnership, individual, joint stock association, sole proprietorship, joint venture, business association, cooperative association, professional corporation or any other legal entity through which business is conducted.

*Contractor* means any Business with which the Corporation has entered into a Procurement contract.

*Director* means a person appointed to the Board pursuant to Section 9004 of the Louisiana Lottery Corporation Law; the term shall not include ex officio, nonvoting members of the Board.

*Louisiana Laws* means all provisions of the Constitution of the State of Louisiana and all statutes, codes, rules and regulations.

*Louisiana Lottery Corporation Law* means the provisions of Louisiana Revised Statutes 47:9000 et seq.

*Major Procurement* shall have the same meaning ascribed to such term in Section 9002(3) of the Louisiana Lottery Corporation Law.

*Minor Procurement* shall mean a Procurement of goods or services for amounts of less than \$100,000.

*Non-Statutory Major Procurement* means a Procurement that would be a Major Procurement but for the fact that it is a Procurement common to the ordinary operations of a corporation within the meaning of Section 9002(3) of the Louisiana Lottery Corporation Law.

*Person* means any Business, individual, union, committee, club, firm, corporation or other organization or group of individuals.

*Procurement* means the acquisition by the Corporation of any goods or services in return for a cash payment. The term shall not include (i) acquisitions from an agency or political subdivision of the State of Louisiana; (ii) employment contracts with individuals; (iii) contracts relating to the retail sales of lottery tickets; (iv) financing; or (v) contracts for goods or services provided as part of, or related to, a lease of immovable property.

*Procurement Authorization* means the document prepared by the Corporation pursuant to Part B, Section 2 of these policies and rules.

*Procurement Officer* means the officer of the Corporation appointed by the President to manage and supervise Procurements from time to time.

*Request for Proposals* or *RFP* means the document prepared by the Corporation pursuant to Part B, Section 2 of these policies and rules.

*Special Circumstances* mean the circumstances stated in Part B, Section 10 of these policies and rules.

*Special Procurement* means Procurement authorized in Part B, Section 10 of these policies and rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

**§305. Authority of the Corporation**

A. These policies and rules are adopted pursuant to the power granted to the Corporation under Section 9028 of the Louisiana Lottery Corporation Law. These policies and rules are supplemental to and not in substitution for all Louisiana Laws other than those relating to procurement to which the Directors, officers, employees and Contractors are subject, including without limitation the Louisiana Code of Governmental Ethics and the Louisiana Lottery Corporation Law. These policies and rules shall, pursuant to Section 9028 of the Louisiana Lottery Corporation Law, render Louisiana Laws on procurement inapplicable to the Corporation. Additionally, these policies and rules shall be deemed to incorporate the Louisiana Code of Governmental Ethics and the Louisiana Lottery Corporation Law such that, to the extent any conduct, action or a failure to act of any Director, officer, employee or Contractor is prohibited by or violates either of the Louisiana Code of Governmental Ethics or the Louisiana Lottery Corporation Law, such violation shall constitute a violation of these policies and rules. A violation of these rules by a Contractor shall constitute good cause for the suspension, revocation or refusal to renew any contract entered into pursuant to these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991, promulgated in *The Advocate* on October 8, 1991, amended LR 26:

**§307. Applicability**

These provisions shall apply to all Procurements other than Minor Procurements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

### **§309. Initiation of Procurement**

A. The Corporation shall initiate Procurement by preparation of a Procurement Authorization which authorizes the Procurement. The Procurement Authorization shall clearly state the goods or services to be procured, the Corporation's need for the goods or services, an estimate of the anticipated cost of the Procurement and a listing of potential Contractors. The listing of potential Contractors shall include all Businesses known to the Corporation as being in the business of supplying the subject goods or services and from whom a response to the Corporation's Request for Proposals would enhance the competition among Businesses for the Procurement Contract. The listing need not be included if it would include over 10 potential Contractors. The President (or in his absence the Vice President or the Secretary-Treasurer), the Procurement Officer and the Division Head of the division for which the Procurement will occur shall execute the Procurement Authorization and the Procurement Officer shall immediately send copies of the Procurement Authorization to all Directors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

### **§311. Preparation of Request for Proposals**

A. Upon execution of the Procurement Authorization, the Corporation shall prepare a Request for Proposals which shall include, at a minimum, the following information:

1. clear and complete specifications of the goods or services required by the Corporation, prepared in such a manner as to promote comparability of responses by potential Contractors;
2. a requirement that all responding proposals be in writing and the time by and place at which all responding potential contractors should submit proposals; and
3. a listing of the criteria the Corporation will use in evaluating proposals by responding potential Contractors and the relative weight the Corporation will give the respective criteria.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

### **§313. Dissemination of RFP**

A. The Corporation shall give public notice of the RFP by advertising its issuance in the official journal of Louisiana. The advertisement shall appear at least twenty (20) days before the last day that the Corporation will accept proposals by potential Contractors. The advertisement shall specify the goods or services required by the Corporation, the last date that the Corporation will accept proposals and an address at which a copy of the RFP can be obtained. When advisable in order to enhance the competitiveness of the procurement process, the Corporation shall advertise the issuance of the RFP in trade journals which serve the interests of Businesses likely to respond to the RFP. Additionally, the Corporation shall mail the RFP to potential

Contractors shown on the Procurement Authorization and to all Directors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

### **§315. Cancellation or Amendment of RFP**

A. The Corporation may cancel or amend any outstanding RFP by written notice to all Businesses to which the RFP was sent or given. The reasons for cancellation or amendment of an RFP shall be stated on a separate document attached to the version of the notice retained by the Corporation, and the Corporation shall deliver a copy of this version to the Directors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

### **§317. Acceptance and Evaluation of Proposals**

A. The Corporation shall consider and evaluate all proposals responding to the RFP, which are submitted in compliance with the deadline and other requirements stated in the RFP. The Corporation may waive any deficiency or non-conformity of a proposal or provide the responding Business a reasonable period of time to cure the deficiency or non-conformity, provided that such action does not prejudice the status of other proposals. At any time prior to completion of the evaluation process, the Corporation may request any responding potential Contractors to clarify or expand upon provisions of their proposals. The Corporation shall evaluate proposals in a manner consistent with the RFP and in accordance with a standard evaluation. The Procurement contract shall be awarded in the Corporation's sole and uncontrolled discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

### **§319. Preparation of Contract**

A. Upon completion of the evaluation and mutual acceptance of all terms of the proposal by the Corporation and the Contractor, the Corporation shall prepare the contract. The contract shall contain, at a minimum, the following:

1. the name and address of the Contractor;
2. the goods to be delivered or the services to be performed under the contract;
3. the term of the contract and a statement giving the Corporation the right to terminate the contract unilaterally upon thirty (30) days written notice;
4. a provision giving the Corporation the right to audit those financial records of the Contractor which relate to the contract;
5. a provision that the Contractor shall not transfer any interest in the contract without the prior written consent of the Corporation (except that claims for money due or to become due to the Contractor from the Corporation under the contract may be assigned to a bank, trust company or other financial institution but that the Corporation shall not be bound by the assignment unless furnished sufficient notice of it);

6. a provision that the Contractor shall bear responsibility for paying any taxes which become due as a result of payments to the Contractor under the Contract;

7. a provision that upon termination of the contract all records, reports, worksheets or any other materials related to the contract shall become the property of the Corporation;

8. a provision obligating the Contractor to provide the Corporation with notice of any material adverse change in its condition, financial or otherwise;

9. a provision requiring the payment of liquidated damages to the Corporation upon a material breach of the contract by the Contractor; and

10. Louisiana Laws will govern the contract.

B. A Procurement contract shall not obligate the Corporation for an initial term in excess of three (3) years without the approval of the Board. A contract may contain two (2) optional periods for extensions of the contract by the Corporation, provided that any individual option period or extension shall not exceed one (1) year in duration, and any individual option period or extension may become effective only upon the specific, affirmative exercise of the option, or the specific, affirmative agreement to the extension, by the Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

#### **§321. Authorization and Execution of Contract**

A. The Corporation shall not execute a contract for a Major Procurement or a Non-Statutory Major Procurement unless the Board reviews and approves the contract and authorizes execution of it by an Authorized Officer. The Board may authorize execution of the contract in a form substantially similar to the form presented to the Board for review, subject, however, to such modifications as are consistent with the RFP, the proposal and other documents delivered to the Board, and as are reported to the Board promptly after execution of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

#### **§323. Preservation of Integrity of Procurement**

A. In order to preserve the honesty, fairness and competitiveness of the procurement process, the following restrictions on dissemination of information shall apply:

1. Prior to execution of a final Contract, Directors, officers and employees of the Corporation shall not disclose the contents of a proposal or any other communication to a potential Contractor to any person not employed by the Corporation or its consultants.

2. Directors, officers and employees of the Corporation shall not disclose to any potential Contractor any information proprietary to the Corporation and pertinent to the Procurement for which the potential Contractor may submit a proposal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

#### **§325. Special Procurements**

A. Notwithstanding any other provision of these policies and rules to the contrary, the Corporation may make Procurements, including Major Procurements, without complying strictly with the procedures stated in this Part, if any of the following Special Circumstances then exist and these circumstances require non-compliance with the procedures stated in this Part:

1. a threat to public health, welfare or safety or the integrity or operation of the Corporation;

2. a unique, non-recurring opportunity to obtain goods or services at a substantial cost savings;

3. a sponsorship arrangement permitting the Corporation to acquire goods or services at a reduced cost or cost-free;

4. the structure of the applicable market does not permit the Corporation to procure the goods or services via a competitive bidding process;

5. the goods or services which meet the Corporation's reasonable requirements can be provided only by a single Business; or

6. due to time constraints not caused by the Corporation, compliance with each of the policies and rules stated in this Part would materially impair the financial performance of the Corporation.

B. A Procurement under Special Circumstances shall be made only after the President determines the existence of any of the Special Circumstances and states the reasons for the determination in a report, which is promptly delivered, to the Board. It must be made in compliance with as many of the requirements of this Part as practicable under the circumstances as determined by the President. The Board may, by affirmative action prior to the completion of the Special Procurement, reverse the President's determination and direct the Corporation not to make the Special Procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

#### **§327. Minor Procurement Procedures**

The provisions of ' 329 and ' 331 shall apply to all Minor Procurements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

#### **§329. Supervision by Procurement Officer**

A. The Procurement Officer shall supervise, manage and bear responsibility for all Minor Procurements. The Procurement Officer shall promulgate written procedures for making competitive Minor Procurements to the maximum degree possible and will assure the Corporation's compliance with these Procedures. At the Board's request, the Procurement Officer shall offer these procedures to the Board for review, and the Board may modify these procedures in its discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

### §331. Minimum Requirements of Procedures

A. Procedures promulgated by the Procurement Officer pursuant to this Part shall, at a minimum, require:

1. that no Minor Procurement shall be structured as such in order to avoid the policies and rules applicable to Procurements stated in Part B;

2. that, in instances where a sole source Contractor is used, it shall be fully justified in writing prior to the Procurement and retained as part of the file. This requirement will not apply to Procurements made under this Part against a standing order contract that was entered into on a competitive basis;

3. that all disbursements by the Corporation for Minor Procurements be by check signed by two Authorized Officers;

4. that the Corporation reasonably justify the need for the Minor Procurement; and

5. the Corporation undertake reasonable steps, considering the size of the Minor Procurement, to obtain high quality goods or services as competitive costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991 and promulgated in *The Advocate* on October 8, 1991, re-promulgated LR 26:

### §333. Appeals

A. The procedures stated in this part apply to an appeal of a Corporation determination by a vendor, contractor, or a person seeking to become a vendor or contractor under Section 9017 of the Louisiana Lottery Corporation Law.

B. Prior to making an appeal, an appellant must send the President a request letter stating the action of which the appellant seeks modification and all reasons the appellant advances for modification. The request letter must state the appellant's name and address, must enclose copies of all documents relevant to the request, and must be signed by the appellant. The appellant must represent that all facts stated in the request letter are correct to the best knowledge of the appellant. The President shall respond to the request letter in writing within ten (10) days of the Corporation's receipt of it, stating all reasons for the response.

C. An appellant may appeal the President's denial of all or any part of the appellant's request stated in the appellant's request letter by sending the President a notice of appeal. The notice of appeal shall be effective only if it is in writing, states the substance and basis of the appeal, and is received by the Corporation within ten (10) days of the appellant's receipt of the President's letter denying the appeal. The notice may request that the hearing be expedited, provided that such a request shall constitute an undertaking by the appellant to pay the costs assessable under Section 5 of this Part. Upon receipt of a notice of appeal, the President shall deliver the notice, the appellant's request letter and the President's denial letter to the Board.

D. The Board shall consider the appeal at its next regular meeting to occur five (5) or more days after receipt of the notice of appeal. The hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act. The Chairman may call a special meeting of the board to hear an appeal if the appellant has requested an expedited hearing and the Chairman in his sole discretion

believes that the appeal warrants an expedited hearing. The President shall give the appellant reasonable notice of the time and location of the Board meeting. The appellant shall be permitted to present the appeal orally for a time period determined by the Board. The presentation may not include points or subjects which were not included in the appellant's request letter. The Corporation shall keep a complete record of the hearing and shall make it available to the appellant. The Board shall render its decision on the appeal by majority vote within five (5) days after conclusion of the hearing.

E. If the appellant requested an expedited hearing, the Board conducts the hearing at a special meeting, and the Board denies the appeal, the Board may charge the appellant the Corporation's reasonable costs incurred in connection with the special meeting, including any travel and per diem expenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991, promulgated in *The Advocate* on October 8, 1991, amended LR 26:

### §335. Amendment

A. These policies and rules may be amended according to Part D of the Bylaws and Rules of Procedure of the Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on September 26, 1991, promulgated in *The Advocate* on October 8, 1991, amended LR 26:

A public hearing will be held on January 28, 2000, at 10:00 a.m., at the offices of the Louisiana Lottery Corporation, 11200 Industriplex Boulevard, Suite 190, Baton Rouge, LA. Interested persons are invited to attend and submit oral comments on the proposed amendments.

### Family Impact Statement

Pursuant to the provisions of LA R.S. 49:953.A., the Louisiana Lottery Corporation, through its president, has considered the potential family impact of the proposed repromulgation and amendment of LAC 42:XV.701 et seq.

It is accordingly concluded that the repromulgation and amendment of LAC 42:XV.701 would appear to have no impact on any of the following:

1. The effect on stability of the family.
2. The effect on the authority and rights of parents regarding the education and supervision of their children.
3. The effect on the functioning of the family.
4. The effect on family earnings and family budget.
5. The effect on the behavior and personal responsibility of children.
6. The ability of the family or a local government to perform the function as contained in the proposed rule.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later January 26, 2000, at 4:00 p.m., to John Carruth, Louisiana Lottery Corporation, P.O. Box 90008, Baton Rouge, LA 70879.

Charles R. Davis  
President

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

**RULE TITLE: Procurement Policies and Rules**

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

This is a re-promulgation with minor modifications of the existing rules originally promulgated under special rule making authority given by statute to the Louisiana Lottery Corporation's Board of Directors. The minor changes are to move the appeal process for vendors to the Procurement Policies and Rules from the Corporation's By-Laws. There is no change in the actual appeal process. Since this is a re-promulgation of existing rules with no substantive changes, there are no estimated implementation costs or savings anticipated.

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

There is no estimated effect on revenue collections.

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

There is no estimated costs or economic benefits to any persons or groups.

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

Since the rule change is only procedural, there is no estimated effect on competition or employment.

Charles R. Davis  
President  
9912#039

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Louisiana Lottery Corporation**

On-Line Lottery Games  
(LAC 42:XV.Chapter 1)

The Louisiana Lottery Corporation in compliance with, and under authority of R.S. 49:950 et seq., and R.S. 47:9001 et seq., hereby gives notice of its intent to amend the rules and regulations pertaining to the operations of on-line lottery games in particular LAC 42:XV.127 relative to payment of installment prizes.

**Title 42**

**LOUISIANA GAMING**

**Part XV. Lottery**

**Chapter 1. On-Line Lottery Games**

**§127. Installment Prizes**

A. The Corporation may provide for the payment of any prize of more than \$100,000 in equal annual installments. The schedule of payments shall be designed to pay the winner equal dollar amounts each year until the total payments equal the prize amount. When the prize amount is paid in installments, the President may round the actual amount of the prize to the nearest \$1,000 amount to facilitate the appropriate funding mechanism. The period of payment of any installment payment schedule shall not exceed 20 years. The Corporation shall not accelerate the payment schedule of any installment prize without the consent of the winner.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, re-promulgated LR 23:66 (January 1997) amended LR 26:

**Family Impact Statement**

Pursuant to the provisions of LA R.S. 49:953.A., the Louisiana Lottery Corporation, through its president, has considered the potential family impact of the proposed repromulgation and amendment of LAC 42:XV.701 et seq.

It is accordingly concluded that the repromulgation and amendment of LAC 42:XV.701 would appear to have no impact on any of the following:

1. The effect on stability of the family.
2. The effect on the authority and rights of parents regarding the education and supervision of their children.
3. The effect on the functioning of the family.
4. The effect on family earnings and family budget.
5. The effect on the behavior and personal responsibility of children.
6. The ability of the family or a local government to perform the function as contained in the proposed rule.

A public hearing will be held on January 28, 2000, at 10:00 a.m., at the offices of the Louisiana Lottery Corporation, 11200 Industriplex Boulevard, Suite 190, Baton Rouge, LA. Interested persons are invited to attend and submit oral comments on the proposed amendments.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than January 26, 2000, at 4:00 p.m., to John Carruth, Louisiana Lottery Corporation, P.O. Box 90008, Baton Rouge, LA 70879.

Charles R. Davis  
President

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

**RULE TITLE: On-Line Lottery Games**

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

There are no estimated implementation cost or savings anticipated as a result of this proposed rule change.

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

The proposed amendment is designed to implement recent federal legislation allowing a lottery prize winner receiving installment payments in excess of 10 years to receive a lump sum payment in lieu of future payments. This amendment applies to previous winners and will not affect sales or revenue to the state.

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

The previous winners who elect to exercise their option to receive a lump sum payment in lieu of annual installments may experience an economic benefit depending on their individual financial situation. The previous winners should not exercise the option if they would incur a loss. The amount of the benefit is impossible to determine without knowledge of which winners would exercise the option and their individual financial circumstances.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

There is no estimated effect on competition or employment.

Charles R. Davis  
President  
9912#033

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**  
**Louisiana Lottery Corporation**

Retailer Regulations(LAC 42:XV.Chapter 5)

The Louisiana Lottery Corporation in compliance with, and under authority of R.S. 49:950 et seq., and R.S. 47:9001 et seq., hereby gives notice of its intent to re-promulgate and amend the rules and regulations pertaining to the retailers of lottery games. In particular, the proposed amendments include elimination of certain definitions to conform to the statute and recent changes to the Corporation's By-Laws. In addition, the proposed amendments include changes to provide that retailers are subject to the state code of ethics. As submitted, certain sections are deleted since these topics are covered under the state code or lottery law. Also, proposed amendments reflect a recent reduction by the Corporation of the application fees charged to potential retailers, the addition of language detailing the annual license renewal process which is required by statute, a change to the language regarding retailer commissions that allows for the Corporation to increase the amount of the commission percentage as necessary, a change in language regarding required purchase of lottery tickets by retailers to give the Corporation flexibility to handle unusual circumstances affecting retailers without the requirement of an automatic suspension or termination of its license, clarification language regarding transfer of equipment deposits, clarification language regarding retailer training, and a change in the minimum number of games offered by a retailer from two (2) to four (4) games reflecting a change in pack sizes from five hundred (500) tickets per pack to two-hundred fifty (250) tickets per pack. The final modification is to add an appeal procedure that was previously found in the Corporation's By-Laws.

**Title 42**

**LOUISIANA GAMING**

**Part XV. Lottery**

**Chapter 5. Retailer Regulations**

**§501. Policy Statement**

A. In order to conduct a successful lottery, the Louisiana Lottery Corporation (the "Corporation") must develop and maintain a statewide network of lottery retailers that will serve the public convenience and promote the sale of tickets, while insuring the integrity of the lottery operations, games and activities. In order to facilitate such objectives, the Corporation has adopted these Retailer Regulations. Such Retailer Regulations shall be in addition to and not a substitute for the provisions of the Louisiana Lottery Corporation Law, other provisions of Louisiana or federal law and the other rules and regulations of the Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

**§503. Definitions**

A. The following italicized terms shall have the meaning set forth herein when used in these Retailer Regulations.

*Board* means the Board of Directors of the Corporation as established and existing pursuant to the Louisiana Lottery Corporation Law.

*Director* means a person appointed to the Board pursuant to Section 9004 of the Louisiana Lottery Corporation Law; the term shall not include ex officio, nonvoting members of the Board.

*Employee* means any person who is not a Director or Officer but who is employed by the Corporation to work a regular work week of 25 or more hours per week, or any person who is not a Director or Officer of the Corporation but who is employed or contracted by the Corporation to perform work for which he or she will either:

a. work, in any six week period, more than 200 hours for the Corporation, or

b. receive, in any one-year period, more than \$10,000, in the aggregate, for work performed for the Corporation. "Employee" shall not include a person who otherwise meets the above criteria but who is an employee of an Organization contracted to perform services for or provide products to the Corporation; provided, that, with regard to the conduct of such employee, such Organization is subject to another provision of Louisiana Law.

*Louisiana Laws* means all provisions of the Constitution of the State of Louisiana and all statutes, codes, rules and regulations.

*Lottery Tickets* means lottery instant tickets or on-line tickets or any other ticket sold to the public as part of a lottery game.

*Louisiana Lottery Corporation Law* means the provisions of Louisiana Revised Statutes 47:9000 et seq.

*Officer* means the President, the Vice President, and the Secretary-Treasurer.

*Organization* means a corporation, partnership, joint stock association, sole proprietorship, joint venture, business association, cooperative association, professional corporation or other entity existing for any purpose.

*Retailer* means any person or Organization with whom the Corporation has contracted to sell Lottery Tickets to the public.

*Instant Retailer* means a person or Organization that sells instant tickets to the public, and an "On-Line Retailer" means a person or Organization that sells on-line tickets to the public. Without affecting the definitions in this section, an Instant Retailer may also sell, or may in the future sell, on-line tickets, and an On-Line Retailer shall sell instant tickets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

**§505. Authority of the Corporation**

A. These Retailer Regulations are adopted pursuant to the powers granted to the Corporation under the Louisiana

Lottery Corporation Law. These Retailer Regulations are supplemental to and not in substitution for other Louisiana Laws to which Retailers are subject.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

#### **§507. Ethical Rules Relating to Retailers**

A. A retailer shall be subject to the Louisiana Code of Governmental Ethics and the applicable provisions of the Louisiana Lottery Corporation Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended LR 26:

#### **§509. Selection of Retailers**

A. General Provisions. The following provisions shall generally apply to the selection of Retailers:

1. In selecting Retailers, whether of instant tickets or of on-line tickets, the Corporation may consider the following factors, among others:

- a. financial responsibility;
- b. integrity;
- c. reputation;
- d. accessibility of the place of business or activity to the public;
- e. security of the premises;
- f. sufficiency of existing Retailers to serve the public convenience;
- g. projected volume of sales for the lottery game involved.

2. The Corporation may conduct whatever investigations it deems necessary to analyze an application and may require any applicant to produce any information the Corporation deems necessary.

3. The selection of Retailers shall be made without regard to political affiliation, activities, or monetary contributions to political organizations or candidates for any public office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended in *The Advocate* on December 24, 1991, re-promulgated LR 26:

#### **§511. Threshold Criteria for Retailers**

A. An applicant for Retailer status may not become and remain a Retailer unless the applicant meets the following threshold criteria:

1. the applicant is current in payment of all taxes, interest, and penalties owed to any taxing political subdivision where the applicant sells Lottery Tickets;
2. the applicant is current in filing all applicable tax returns and in payment of all taxes, interest, and penalties owed to the state of Louisiana, excluding items under formal appeal pursuant to applicable statutes;
3. the applicant has not been:
  - a. convicted of a criminal offense related to the security or integrity of a lottery in Louisiana or any other jurisdiction;
  - b. convicted of any illegal gambling activity, false statements, false swearing, or perjury in this or any other jurisdiction; or convicted of any crime punishable by more

than one year imprisonment or a fine of more than one thousand dollars, or both;

c. found to have violated the provisions of these Retailer Regulations, the Louisiana Lottery Corporation Law or any administrative regulation adopted thereunder, unless either ten years have passed since the violation, or the President and the Board find the violation both minor and unintentional in nature;

d. a vendor (as defined in Section 9002(8) of the Louisiana Lottery Corporation Law) or any employee or agent of any vendor doing business with the Corporation;

e. a resident in the same household as an Officer of the Corporation;

f. found to have made a statement of material fact to the Corporation, knowing such statement to be false.

4. The applicant meets such other criteria as the Corporation adopts from time to time relating to the integrity, reputation, financial responsibility, business practices or qualifications of an applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended in *The Advocate* on December 24, 1991, amended LR 26:

#### **§513. Criteria for Instant Retailers**

A. In general, the Corporation shall permit any applicant meeting the threshold criteria stated in Section 2 above to become an Instant Retailer. However, the Board may from time to time adopt specific policies relative to the selection of Instant Retailers if it determines that the Corporation's best interests will be served by such policies. The determination and policies shall be stated in a written policy statement adopted by the Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended in *The Advocate* on December 24, 1991, re-promulgated LR 26:

#### **§515. Criteria for On-Line Retailers**

A. The Board shall maintain a limitation on the number of On-Line Retailers. The limitation shall be based on the number of On-Line Retailers permitted under the Corporation's contracts for procurement of an on-line lottery system and other appropriate objective business factors. The determination and policies shall be stated in a written policy statement adopted by the Board. The mechanism and factors established to determine which applicants become On-Line Retailers shall be based solely on the Corporation's business needs and shall afford fair and objective treatment to all applicants. By way of example, but not limitation, such determining factors may include:

1. the status of the applicant's license to sell instant tickets, if any, and the applicant's volume of instant ticket sales;
2. the distribution of Retailers for on-line tickets throughout the state and the geographic area serviced by the applicant, and the sufficiency of Retailers for on-line tickets to serve the public convenience at any particular location in the state;
3. the average number of customers who visit an applicant's place of business;
4. the applicant's hours of operations;

5. the capability and willingness of an applicant to pay prizes up to the maximum amount payable by Retailers at various times during the day;
6. the capability and willingness of an applicant to promote the sale of Lottery Tickets;
7. the applicant's proposed location for the terminal to sell on-line tickets;
8. the financial stability of an applicant;
9. any problems the Corporation has experienced with an applicant's electronic fund transfer account for instant ticket sales;
10. the degree to which an applicant uses display materials for instant ticket games;
11. the sales potential for on-line tickets by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended in *The Advocate* on December 24, 1991, re-promulgated LR 26:

#### **§517. Application Procedure and Fees**

A. The Corporation may develop forms for the Retailer applications requesting all such information required by law or that the Corporation deems necessary or appropriate to evaluate Retailers. The Corporation may require that such application be completed, executed, acknowledged, notarized or any of the foregoing, and that an officer of the Retailer execute and acknowledge or notarize any oath that the Corporation deems necessary or appropriate.

B. Each applicant for a license to sell lottery tickets shall provide to the Corporation a non-refundable application fee in an amount determined by the Board from time to time.

C. Special procedures for application for a Retailer license may be developed by the Corporation for applicants that are a "chain store group," or a group of two or more stores or other retail outlets under common control. Each applicant that is a chain store group shall pay a non-refundable application fee in an amount determined by the Board from time to time for each retail outlet location which shall be covered by such license.

D. Instant Retailers who apply to become On-Line Retailers shall be assessed such uniform charges and fees as are stated in the policy statement for On-Line Retailers. Such uniform charges and fees are intended to satisfy the requirements of La. R.S. 47:9051 (C). Such uniform charges and fees may be defined as reimbursements for costs associated with providing the retailer on-line status, do not constitute revenue to the Corporation and may be collected on a weekly, monthly or annual basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended in *The Advocate* on December 24, 1991, re-promulgated in *The Advocate* on January 1, 1994, amended LR 26:

#### **§519. Other Business of Retailers**

A. A Retailer may not be engaged exclusively in the sale of Lottery Tickets. However, this Section 6 does not preclude the Corporation from contracting for the sale of Lottery Tickets with nonprofit, charitable organizations or units of local government in accordance with the provisions of these Retailer Regulations, the Louisiana Lottery Corporation Law and Louisiana Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended in *The Advocate* on December 24, 1991, re-promulgated LR 26:

#### **§521. Duty to Update**

A. Any information provided by a Retailer to the Corporation under these Retailer Regulations or on any application, filing or other instrument submitted to the Corporation that becomes incorrect or misleading shall immediately be updated by the Retailer by providing an explanation thereof to the Corporation. Without limiting the foregoing, a Retailer shall notify the Corporation immediately if any change in the ownership of the licensed retailer location occurs or of any conviction that would affect the Retailer's eligibility to obtain a retailer license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended in *The Advocate* on December 24, 1991, re-promulgated LR 26:

#### **§523. Retailer Certificate**

A. Each applicant that is accepted by the Corporation shall be issued a lottery retailer certificate, which shall be conspicuously displayed at the place where the Retailer is authorized to sell Lottery Tickets. Lottery Tickets shall only be sold by the Retailer at the location stated on the lottery retailer certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended in *The Advocate* on December 24, 1991, re-promulgated LR 26:

#### **§525. Annual Renewal Required**

A. There shall be an annual renewal process October through December 31 of each year for licenses obtained after January 1. If a license is obtained after October 1 the license shall not expire until the next succeeding calendar year. Expired licenses not renewed by December 31 shall be suspended and/or terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended LR 26:

#### **§527. Assignability of Contracts**

A. No Retailer contract awarded pursuant to these Retailer Regulations shall be transferable or assignable. No Retailer shall contract with any person for lottery goods or services except with the approval of the Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

#### **§529. Suspension, Revocation or Termination of Contracts**

A. Any Retailer contract may, for good cause, be suspended, revoked, or terminated by the President if the Retailer is found to have violated any provision of these Retailer Regulations, the Louisiana Lottery Corporation Law or objective criteria established by the Board. All Retailer contracts shall be renewable annually after issuance unless sooner canceled or terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

### **§531. Cancellation of Contracts**

A. Any contract executed by the Corporation pursuant to these Retailer Regulations and the Louisiana Lottery Corporation Law shall specify the reasons for which any contract may be canceled, suspended, revoked, or terminated by the Corporation, which reasons shall include but not be limited to:

1. commission of a violation of these Retailer Regulations, the Louisiana Lottery Corporation Law or administrative regulations adopted pursuant thereto or other provisions of Louisiana Law;
2. failure to accurately account for Lottery Tickets, revenues, or prizes as required by the Corporation;
3. commission of any fraud, deceit, or misrepresentation;
4. insufficient sale of tickets;
5. conduct prejudicial to public confidence in the lottery;
6. the Retailer filing for or being placed in bankruptcy or receivership;
7. any material change in any matter considered by the Corporation in executing the contract with the Retailer; or
8. failure to meet any of the objective criteria established by the Board pursuant to these Retailer Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

### **§533. Power of President**

A. If, in the discretion of the President, cancellation, denial, revocation, suspension, or rejection of renewal of a Retailer contract is in the best interests of the lottery, the public welfare, or the State of Louisiana, the President may cancel, suspend, revoke, or terminate, after notice and a hearing, any contract issued pursuant to these Retailer Regulations or the Louisiana Lottery Corporation Law. Such contract may, however, be temporarily suspended by the President without prior notice, pending any prosecution, hearing, or investigation, whether by a third party or by the President. A contract may be suspended, revoked, or terminated by the President for any one or more of the reasons enumerated in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

### **§535. Retailer Security**

A. The following rules shall apply to the retailer security, which Section 9053 of the Louisiana Lottery Corporation Law requires of Retailers.

B. The security shall consist of a letter of credit or bond issued by a bank or surety company acceptable to the Corporation. For purposes of this Section, the term "bond" shall include cash, cash-equivalent instruments or such other instruments as the Corporation determines provide immediate liquidity.

C. The security may be in an amount of no greater than two times the Retailer's average gross sales of Lottery Tickets for the period within which the Retailer is required to remit sales proceeds to the Corporation. The calculation of the security amount shall exclude the amount of Lottery Tickets for which the Retailer has paid in advance.

D. The security under this Section shall constitute security for all obligations of the Retailer to the Corporation pursuant to these Retailer Regulations or the Retailer's contract with the Corporation. The obligations of Retailers shall include, without limitation, the Retailer's obligation to remit sales proceeds and unsold Lottery Tickets to the Corporation. The Corporation may enforce the security immediately upon a Retailer's default in any such obligations for the full amount of the defaulted obligations up to the amount of the security, without affecting the Corporation's right to any deficiency. Enforcement shall occur by drawing upon a letter of credit, request for payment under a bond or otherwise according to law.

E. In order to facilitate the acquisition of the required security by Retailers, the Corporation shall maintain the Retailer Security Account, a special banking account for the pooling of retailer security and the acquisition of a letter of credit or bond as required by Section 9053 of the Louisiana Lottery Corporation Law. In lieu of posting security, a Retailer having a security obligation may pay a non-refundable ten-dollar (\$10.00) fee to the Corporation and the Corporation shall deposit this fee into the Retailer Security Account. Such fee may be increased or decreased by the Corporation from time to time. Upon any default by any Retailer, the Corporation may pay such defaulted obligations, up to the amount of the security required of the Retailer, from the letter of credit or bond secured by the Retailer Security Account. Upon such payment, the Retailer shall be obligated to reimburse the Corporation for the full amount of such defaulted obligation and the Corporation shall deposit the reimbursement into the Retailer Security Account. At the end of each fiscal year, the President and the Board may authorize inclusion of all or a portion of the unused amounts remaining in the Retailer Security Account at the end of the fiscal year in the revenues of the Corporation for the fiscal year.

F. The Retailer's authority to sell Lottery Tickets shall be suspended for any period in which the Retailer does not maintain the security required under this Section, but will be reinstated upon the reinstatement of the security. Failure to maintain adequate security shall be grounds for suspension or termination of a retailer contract and license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended LR 26:

### **§537. Change of Location or Ownership**

A. Any change in location or ownership of the business of a Retailer will automatically suspend the Retailer's certificate. An application must be filed in the same manner as provided in these Retailer Regulations to reinstate the Retailer's certificate for the new location or the new owner of the business. Sales of Lottery Tickets are prohibited following a change in location or ownership of the business of a Retailer until a new lottery retailer certificate is issued to the new owner or location. The Corporation may employ necessary procedures to minimize interruptions in service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

#### **§539. Proceeds from Ticket Sales**

A. All proceeds from the sale of Lottery Tickets received by a Retailer shall constitute a trust fund until paid to the Corporation either directly or through the Corporation's authorized collection representative. A Retailer shall have a fiduciary duty to preserve and account for lottery proceeds and Retailers shall be personally liable for all proceeds. Proceeds shall include unsold instant tickets received by a Retailer and cash proceeds of sale of any lottery products, net of allowable sales commissions and credit for lottery prizes to winners by Retailers. Sales proceeds and unused instant tickets shall be delivered to the Corporation or its authorized collection representative upon demand. Retailers shall place all lottery proceeds due the Corporation in accounts in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the Retailer until the date they are paid over to the Corporation. The Corporation may require a Retailer to establish a single separate electronic funds transfer account, where available, for the purpose of receiving monies from ticket sales, making payments to the Corporation, and receiving payments from the Corporation. Failure to have sufficient funds available to cover an electronic funds transfer to the Corporation's account shall be a cause for suspension or termination of a Retailer's contract and license. Unless otherwise authorized in writing by the Corporation, each Retailer shall establish a separate bank account for lottery proceeds which shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets. This Section shall apply to all lottery tickets generated by computer terminal or other electronic devices and any other tickets delivered to Retailers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

#### **§541. Insolvency of Retailer**

A. Whenever any person or Organization who receives proceeds from the sale of Lottery Tickets in the capacity of a Retailer becomes insolvent, or dies insolvent, the proceeds due the Corporation from such person or his, her or its estate shall have preference over all debts or demands.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

#### **§543. Sales Commissions**

A. A Retailer shall receive a sales commission equal to at least five percent (5%) of the gross proceeds from the sale of Lottery Tickets. In addition to the five-percent sales commission the Corporation may develop a system of bonuses and sales incentives based on dollar volume of business, the sale of winning tickets, or such other criteria as the Corporation may develop from time to time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

#### **§545. Sale of Lottery Tickets on Credit**

A. The Retailer shall not directly extend credit to the purchaser of Lottery Tickets, but Lottery Tickets may be sold for cash or by use of any credit card or similar instrument. Lottery Tickets may not be sold by mail (except for subscription sales established by the Corporation,) phone, fax or other similar method of communications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

#### **§547. Sales Price of Tickets**

A. No person shall sell a Lottery Ticket at a price other than established by the Corporation, unless authorized in writing by the President. No person other than a duly certified Retailer shall sell Lottery Tickets, but this shall not be construed to prevent a person who may lawfully purchase tickets from making a gift of Lottery Tickets to another. Nothing in these Retailer Regulations shall be construed to prohibit the Corporation from designating certain of its agents and employees to sell Lottery Tickets directly to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

#### **§549. Promotional Tickets**

A. Lottery Tickets may be given by merchants as a means of promoting goods or services to customers or prospective customers subject to the prior written approval by the Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

#### **§551. Location of Sales**

A. No Retailer shall sell a Lottery Ticket except from the locations listed in the Retailer's contract and certificate. No Lottery Tickets shall be sold at state of Louisiana rest stops.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

#### **§553. Payment of Prizes**

A. Retailers shall pay any lottery prize of \$50 or less. A Retailer may pay prizes greater than fifty dollars, up to \$600, after proper verification of such winning tickets as prescribed by the Corporation. Prizes of more than \$600 shall be paid by the Corporation by mail or at a designated Corporation office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended and re-promulgated in *The Advocate* on December 24, 1991, re-promulgated LR 26:

### **§555. Required Purchases of Lottery Tickets**

A. Failure of a Retailer to order Lottery Instant Tickets for any sixty (60) day period may result in suspension of the Retailer's license, and the Corporation shall notify Retailer of such suspension. If the Retailer does not purchase Lottery Instant Tickets from the Corporation within thirty (30) days after the date the notice of suspension is sent by the Corporation, the Retailer's license may be terminated and the Retailer shall pay all debts due the Corporation within thirty (30) days of such termination. The aggregate of all orders for Lottery Tickets placed after the date of a notice of suspension and before the expiration of such thirty (30) day period must be equal to at least the highest amount of Lottery Tickets purchased by the Retailer for any of its last three purchases or the retailer license shall be automatically terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended LR 26:

### **§557. Computation of Rental Payments**

A. If a Retailer's rental payments for the business premises are contractually computed, in whole or in part, on the basis of a percentage of retail sales, and such computation of retail sales is not explicitly defined to include sales of tickets in a state lottery, the compensation received by the Retailer from the lottery shall be considered the amount of retail sale for purposes of computing the rental payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

### **§559. Equipment Payment or Deposit**

A. An equipment payment or deposit may be required for any equipment provided by the Corporation to a Retailer; provided that such charges shall be uniform and that any deposits will be returned upon the return of such equipment in good operating condition. All or any portion of a deposit may be retained by the Corporation if any equipment is damaged, destroyed, lost, stolen or otherwise made unavailable or unusable for normal operations. Upon receipt of written notice from a Retailer, the Corporation may transfer the equipment deposit of a Retailer, which has created a new entity at the same location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended LR 26:

### **§561. Reimbursement of Equipment Payment**

A. The Corporation may purchase the terminals of Retailers who purchased their equipment if the Corporation determines that such purchase is in the best interest of the Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

### **§563. Security Procedures**

A. A Retailer shall provide reasonable security for all Lottery Tickets and other Corporation property and is responsible for all Lottery Tickets delivered to it upon the

Retailer's acknowledgment of receipt thereof. A Retailer shall notify the Corporation within twenty-four hours of any lost, stolen, missing or counterfeit tickets. The Corporation shall not be liable for any event not reported within such time period, and may reimburse or credit a Retailer for any tickets affected thereby.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

### **§565. Retailer Records**

A. Each Retailer shall keep accurate and complete records of all transactions with the Corporation, and such records shall be open to inspection by the Corporation at all times during normal business hours. The Corporation may make summaries or notes of any such records and may copy any such records either at the Retailer's place of business or, if more convenient, off of such premises so long as such records are returned within forty eight hours of the time they are withdrawn from such place of business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

### **§567. Training School**

A. Retailers shall be required to send at least one person to training sponsored by the Corporation. The Corporation, at its discretion, may waive the training of Retailers who have previous lottery experience on the operation of lottery equipment and accounting procedures. The Corporation shall encourage Retailers to have new employees attend a training session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended LR 26:

### **§569. Compliance with All Applicable Laws**

A. Each Retailer agrees to operate in a manner consistent with the Louisiana Lottery Corporation Law, applicable federal laws, Louisiana Laws and local ordinances, the rules and regulations promulgated by the Corporation and with his, her or its contract with the Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, re-promulgated LR 26:

### **§571. Merchandising**

A. Each Retailer agrees to offer no less than four (4) instant games for sale to the public at all times if four (4) or more instant games are available from the Corporation. The Retailer shall use a Lottery Ticket dispenser for the sale of Lottery Tickets, and shall place the dispenser in a prominent location in the retail establishment near the cash register or checkout area. The Retailer shall prominently display point-of-sale materials supplied by the Corporation, including door decals, game posters, display tickets, danglers, change mats and lighted interior signs, unless the Corporation agrees otherwise in writing. The Retailer shall make Lottery Tickets available, and shall provide for redemption of winning Lottery Tickets, for the full duration of the Retailer's normal business hours, provided that the

hours for redemption may be subject to limitation on the availability of validation of winning Lottery Tickets by the Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended LR 26:

### §573. Appeals

A. The procedures stated in this part apply to an appeal of a Corporation determination by a retailer or a person seeking to become a retailer under Section 9017 of the Louisiana Lottery Corporation Law.

B. Prior to making an appeal, an appellant must send the President a request letter stating the action of which the appellant seeks modification and all reasons the appellant advances for modification. The request letter must state the appellant's name and address, must enclose copies of all documents relevant to the request and must be signed by the appellant. The appellant must represent that all facts stated in the request letter are correct to the best knowledge of the appellant. The President shall respond to the request letter in writing within ten (10) days of the Corporation's receipt of it, stating all reasons for the response.

C. An appellant may appeal the President's denial of all or any part of the appellant's request stated in the appellant's request letter by sending the President a notice of appeal. The notice of appeal shall be effective only if it is in writing, states the substance and basis of the appeal, and is received by the Corporation within ten (10) days of the appellant's receipt of the President's letter denying the appeal. The notice may request that the hearing be expedited, provided that such a request shall constitute an undertaking by the appellant to pay the costs assessable under Section 5 of this Part. Upon receipt of a notice of appeal, the President shall deliver the notice, the appellant's request letter and the President's denial letter to the Board.

D. The Board shall consider the appeal at its next regular meeting to occur five (5) or more days after receipt of the notice of appeal. The hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act. The Chairman may call a special meeting of the board to hear an appeal if the appellant has requested an expedited hearing and the Chairman in his sole discretion believes that the appeal warrants an expedited hearing. The President shall give the appellant reasonable notice of the time and location of the Board meeting. The appellant shall be permitted to present the appeal orally for a time period determined by the Board. The presentation may not include points or subjects which were not included in the appellant's request letter. The Corporation shall keep a complete record of the hearing and shall make it available to the appellant. The Board shall render its decision on the appeal by majority vote within five (5) days after conclusion of the hearing.

E. If the appellant requested an expedited hearing, the Board conducts the hearing at a special meeting, and the Board denies the appeal, the Board may charge the appellant the Corporation's reasonable costs incurred in connection with the special meeting, including any travel and per diem expenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended LR 26:

### §575. Amendment

A. These Retailer Regulations may be amended in accordance with the provisions of Part D of the Bylaws and Rules of Procedure of the Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Lottery Corporation in *The State Times* on May 21, 1991, amended and re-promulgated in *The Advocate* on January 1, 1994, re-promulgated LR 26:

#### Family Impact Statement

Pursuant to the provisions of LA R.S. 49:953.A., the Louisiana Lottery Corporation, through its president, has considered the potential family impact of the proposed repromulgation and amendment of LAC 42:XV.701 et seq.

It is accordingly concluded that the repromulgation and amendment of LAC 42:XV.701 would appear to have no impact on any of the following:

1. The effect on stability of the family.
2. The effect on the authority and rights of parents regarding the education and supervision of their children.
3. The effect on the functioning of the family.
4. The effect on family earnings and family budget.
5. The effect on the behavior and personal responsibility of children.
6. The ability of the family or a local government to perform the function as contained in the proposed rule.

A public hearing will be held on January 28, 2000, at 10:00 a.m., at the offices of the Louisiana Lottery Corporation, 11200 Industriplex Boulevard, Suite 190, Baton Rouge, LA. Interested persons are invited to attend and submit oral comments on the proposed amendments.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than January 26, 2000, at 4:00 p.m., to John Carruth, Louisiana Lottery Corporation, P.O. Box 90008, Baton Rouge, LA 70879.

Charles R. Davis  
President

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Retailer Regulations**

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

This is a re-promulgation with minor modifications of the existing rules originally promulgated under the special rule making authority given by statute to the Louisiana Lottery Corporation's Board of Directors. The changes are designed to provide for more flexibility for the Corporation to manage the relationship with the retailers who sell the lottery tickets to the public. There are no estimated implementation costs or savings anticipated as a result of this proposed rule change.

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

The proposed amendments are to bring the Retailer Regulations into compliance with the recent changes in the statute and the Corporation's By-Laws.

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

There is no estimated costs or economic benefits to any persons or groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

There is no estimated effect on competition or employment.

Charles R. Davis  
President  
9912#048

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Board of Private Security Examiners**

Definitions, Organization, Board Membership; Company  
Licensure; Registration; Training; Criminal Background  
Checks; Disciplinary Action; Insignias; Markings;  
Restrictions; Licensee Suitability, Records, Investigations,  
and Registrant Violations; Administrative Penalties  
(LAC 46:LIX.101-107, 201, 301, 401-409,  
501, 601, 603, 701, 801-813, 901-907)

Under the authority of the Private Security Regulatory and  
Licensing Law, R.S. 37:3270 et seq., and in accordance with  
the provisions of the Administrative Procedure Act, R.S.  
49:950 et seq., the executive secretary gives notices that  
rulemaking procedures have been initiated to amend and  
repromulgate the Louisiana State Board of Private Security  
Examiners Regulations, LAC 46:LIX:101-107, 201, 301,  
401-409, 501, 601, 603, 701, 801-813, 901-907, as follows:

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIX. Private Security Examiners**

**Chapter 1. Definitions, Organization, Board  
Membership and General Provisions**

**§101. Definitions**

*Date of Hire* date applicant begins performing the  
functions and duties of a security officer.

*Dog Handler* an individual who is accompanied by a  
trained protection dog while performing the duties of a  
security officer as defined in R.S. 37:3272. He shall be  
considered unarmed unless he falls under the definition of an  
armed security officer.

*Emergency Assignment* any unplanned or unexpected  
event not covered by a prior contractual agreement.

*Weapon* any firearm or baton approved by the board.

In addition to the above definitions, terms outlined in  
these rules shall be found in R.S. 37:3272.

AUTHORITY NOTE: Promulgated in accordance with R.S.  
37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public  
Safety and Corrections, Board of Private Security Examiners, LR  
13:751 (December 1987), amended LR 15:846 (October 1989), LR  
18:189 (February 1992), LR 23:587 (May 1997), LR 26:

**§103. Organization, Board Membership and General  
Provisions**

A. The private security regulatory and licensing law  
(R.S. 37:3270, et seq.) shall be administered by the Board of  
Private Security Examiners, hereinafter referred to as the  
"board."

B. The official seal of the board consists of the Louisiana  
state seal with a pelican in the middle.

C. The board shall consist of nine members appointed by  
the governor for a term concurrent with the term of office of  
the appointing governor. No member of the board shall be  
employed by a person or company who employs any other  
member of the board.

D. The chairperson shall exercise general supervision of  
the board's affairs, shall preside at all meetings when  
present, shall appoint members to committees as needed to  
fulfill the duties of the board, and shall perform all other  
duties pertaining to the office as deemed necessary and  
appropriate.

E. The vice-chairperson shall perform the duties of the  
chairperson in his absence or other duties assigned by the  
chairperson.

F. Standing committees of the board are:

1. general committee duties to include special  
projects as authorized by the chairperson;

2. finance committee duties to include periodic  
review of the budget, recommendations regarding the  
establishment of fees charged by the board, and  
recommendations to the board regarding all expenditures  
requested by the executive secretary in excess of \$500; and

3. ethics committee duties to include review of  
allegations and recommendations to the board regarding any  
alleged misconduct, incompetence or neglect of duty by  
board members.

G. Each board member shall have one vote on all  
motions. Proxy voting is not allowed.

H. The board shall appoint an executive secretary to  
serve as the chief administrative officer of the board. The  
executive secretary serves at the pleasure of the board and is  
a full-time employee of the board. He shall:

1. act as the board's recording and corresponding  
secretary and shall have custody of the records of the board;

2. cause written minutes of every meeting to be kept  
and open to inspection to the public;

3. keep the board's seal and affix it to such  
instruments and matters that require attest and approval of  
the board;

4. act as treasurer and receive and deposit all funds;

5. attest all itemized vouchers for payment of  
expenses of the board;

6. make such reports to the governor and legislature as  
provided for by law or as requested by same;

7. keep the records and books of account of the  
board's financial affairs;

8. give at least 15 calendar days prior notice to all  
persons who are to appear before the board;

9. sign off on Cease and Desist Orders; and

10. any other duties as directed by the board.

I. The executive secretary may spend up to \$500 for  
board purchases without prior approval by the board or  
chairperson, and in accordance with the Division of  
Administration's rules governing purchases.

J. Meetings shall be announced and held in accordance  
with the Administrative Procedure Act (R.S. 49:950 et seq.),  
and the Open Meetings Law (R.S. 42:4.2 et seq.).

AUTHORITY NOTE: Promulgated in accordance with R.S.  
37:3270, et seq.

HISTORICAL NOTE: Promulgated by Department of Public  
Safety and Corrections, Board of Private Security Examiners, LR  
13:751 (December 1987), amended LR 15:11 (January 1989), LR

15:846 (October 1989), LR 19:189 (February 1992), LR 23:587 (May 1997), LR 26:

### **§105. Consumer Information**

A. Minutes of all board meetings shall be made available to the public upon written request to the board. A monetary fee may be assessed in accordance with Division of Administration rules and regulations.

B. Complaints to the board shall be in writing, signed by the individual making the complaint, and include a means by which to contact the individual for investigative purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270, et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 18:190 (February 1992), LR 26:

## **Chapter 2. Company Licensure**

### **§201. Qualifications and Requirements for Company Licensure**

A. Licensing information packages may be obtained from the board by submitting, in writing, a request for such package. Request shall include the name, address, and phone number of the person requesting this information.

B. An applicant for licensure shall meet all of the qualifications and requirements specified in R.S. 37:3276 in addition to the rules herein.

C. Applicant must possess a high school diploma, GED, or equivalent work experience.

D. Applicant shall fill out and file with the board a notarized application form provided and approved by the board. If the applicant is a corporation, it shall be subscribed and sworn to by at least two principal corporate officers.

E. In addition to the completed application, the following documentation shall be submitted to the board:

1. one set of classifiable fingerprints of the applicant or qualifying agent and/or of each officer, partner or shareholder who owns a 25 percent or greater interest;

2. letters attesting to good moral character from three reputable individuals, not related by blood or marriage, who have known the applicant or qualifying agent for at least five years;

3. copy of applicant's or qualifying agent's DD-214 military discharge papers showing type of discharge, if applicable;

4. copy of company's badge and insignia;

5. copy of occupational license from each city or parish in which that company or branch has security operations, if applicable;

6. a certificate of general public liability insurance in an amount as required by law with the state of Louisiana named as an additional insured;

7. articles of incorporation, if incorporated, and certificate of authority from the Louisiana secretary of state; and

8. \$200 licensing fee, \$20 application fee, \$50 examination fee and \$10 fingerprint processing fee.

F. It shall be unlawful for any individual to make an application to the board as qualifying agent unless that person intends to maintain and continues to maintain that supervisory position on a regular, full-time basis.

G. All material changes of fact affecting a company licensee must be communicated to the board, in writing, within 10 calendar days. These changes of facts include the following:

1. change in any of the principal corporate officers or noncorporate owners who hold a 25 percent or greater interest in the company, or qualifying agent, or any partner in a partnership;

2. change of business name, address or telephone number; and

3. change of ownership if the business is a sole proprietorship.

H. Any change of the current listed principal officers in a corporation that is a licensee must be accompanied with a copy of the minutes electing the new officers and verification that these changes have been recorded with the secretary of state's office.

I. Branch Office. A branch office of a board licensed company may voluntarily register with the board by submitting the following documentation:

1. a letter from the licensee authorizing the board to register the branch office under the licensee. Letter shall also include the name of the designated branch manager, branch office address and phone number;

2. a current list of active security officers, and their social security numbers, who are to be registered with the designated branch officer; and

3. \$100 annual licensing fee to cover administrative costs.

The board shall issue a license certificate to the branch office with an identifying branch office number.

#### **J. Examination**

1. All applicants who apply to the board for licensure are required to successfully pass a written examination administered by the board. The examination tests the applicant's knowledge of R.S. 37:3270 et seq., the board's rules and regulations and the security profession.

2. Applicants required to take the examination are those:

a. applying for an initial company license;

b. reinstating an expired license; and

c. applying as a new qualifying agent for an approved, licensed company.

3. The passing grade of the examination shall be 70 percent.

4. An applicant who does not successfully pass the examination may reapply to take the examination twice within a six-month period. If the applicant does not successfully pass the examination as required, the application shall be referred to the board for action.

K. Insurance Renewal. On or before the expiration date of the required general liability insurance policy, licensee shall submit to the board a new certificate of insurance in an amount as required by law showing that insurance has been renewed and there has not been any lapse in coverage.

#### **L. License Renewal**

1. A company license shall expire annually on the date of issuance. Date of issuance means the date application was submitted to the board.

2. To renew a company license, licensee must submit a \$200 annual renewal fee to the board 30 days prior to the expiration date of license. If there have been any changes in the status of the company, then a new company application must also be submitted, along with a \$20 application fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:752 (December 1987), amended LR 15:847 (October 1989), LR 18:190 (February 1992), LR 23:588 (May 1997), LR 26:

### §203. Application Procedure

A. Application must be made to the board on application forms obtained from the board. If the applicant is an individual, the application shall be subscribed and sworn to by such person. If the applicant is a partnership, the application shall be subscribed and sworn to by each partner. If the applicant is a corporation, it shall be subscribed and sworn to by at least two principal corporate officers. The application shall include the following information:

1. full name and business address of applicant; and if the applicant is a partnership, the name and address of each partner, or if a corporation, the name and address of the qualifying agent;

2. name under which the business is to operate;

3. address of the principal place of business and all branch offices of the applicant within this state, and the corporate headquarters of the business, if outside this state;

4. if the applicant is a corporation, the correct legal name, the state of incorporation, date of incorporation, date qualified to do business in Louisiana, along with a copy of the certificate of good standing, and the names of the two principal officers of the corporation, other than the qualifying agent, and the business address, residence address, and the office or position held by each within the company; further, if the qualifying agent is not a resident of Louisiana, the application shall also include the name and the address of the applicant's agent for service of process designated as required by law;

5. statement as to the general nature of the business;

6. if the applicant is to operate as a sole proprietor, he must furnish a copy of his occupational license with the application;

7. as to each individual applicant; or if the applicant is a partnership, as to each partner, or if the applicant is a corporation, as to the qualifying agent and two principal corporate officers, the following information:

a. full name;

b. age;

c. date and place of birth;

d. all residences during the immediate past five years;

e. all employment or occupations engaged in during the immediate past five years;

f. one set of classifiable fingerprints;

g. one recent photograph no larger than 2" x 2";

h. a general physical description;

i. letters attesting to good moral character from three reputable individuals, not related by blood or marriage, who have known the applicant(s) or qualifying agent for at least five years;

j. a list of all convictions and/or pending criminal charges in any jurisdiction for any felony, crime involving moral turpitude, or illegal use of a dangerous weapon, for which a full pardon or similar relief has not been granted;

8. one classifiable set of prints of the applicant, or of the manager, of each officer, partner or shareholder who owns a 25 percent or greater interest;

9. copy of DD-214 form, if applicable, showing type of discharge;

10. a certificate of general public liability insurance in an amount as required by law with the state of Louisiana named as an additional insured;

11. copy of company's badge and insignia;

12. copy of occupational license from parish where company or branch has operations.

B. Verification of required experience shall be in the form of affidavits from clients, employers, copy of DD-214, and other types of information the board may reasonably deem sufficient.

C. An administrative fee of \$25 made payable to the board will be assessed on all checks returned from the bank and deemed non-sufficient funds.

D. An administrative fee of \$25 made payable to the board will be assessed on all fingerprint cards repeatedly rejected by the Department of Public Safety.

E. Company applications must be notarized; however, individual security officer applications need not be.

#### F. Out-of-State Company

1. Companies wishing to do business in Louisiana must either incorporate here or be duly qualified to do business within this state with a valid certificate of authority issued by the secretary of state, and shall have an agent for service of process designated as required by law.

2. Out-of-state companies wishing to do business in Louisiana, who satisfied all the licensing requirements outlined in the law, may do so without examination if the state under which it holds a valid license has comparable licensing requirements. Verification of satisfactory completion of such other state's examination must be submitted to the board. If the out-of-state company is licensed by a state that does not have licensing requirements comparable to those of Louisiana, then the company must satisfy all the licensing requirements outlined in R.S. 37:3270 et seq.

3. Fees for out-of-state companies are the same as for instate companies except that an out-of-state company shall be required to pay the board of the cost of transportation, lodging, and meals at the state rate when an examination of records is performed if those records are kept outside of the state.

G. It shall be unlawful for any individual to make an application to the board as qualifying agent unless that person intends to maintain and maintains that supervisory position on a regular, full-time basis.

H. Licenses issued by the board shall be valid for a one year period beginning from the date application was submitted to the board.

#### I. Renewal Provisions

1. A \$200 annual renewal fee must be submitted to the board 30 days prior to the expiration date of license. If there have been any changes in the status of the company, then a new company application must also be submitted, along with a \$20 application fee.

J. All material changes of facts affecting the licensee must be communicated to the board, in writing, within 10 calendar days. These changes of facts include the following:

1. change in any of the principal corporate officers or qualifying agent of a corporation, any partner in a partnership, or individual, noncorporate owners of a 25 percent or greater interest in the applicant;

2. termination of a branch manager;

3. change of business name;
4. change of business address;
5. change of business telephone number;
6. change of ownership if the business is a sole proprietorship.

K. Any change of the current listed principal officers in a corporation that is a licensee must be accompanied with a copy of the minutes electing the new officers and verification that these changes have been recorded with the secretary of states office.

L. A branch office of a board licensed company which desires to register with the board may do so on a voluntary basis at a fee of \$100 per year. A letter requesting to register a branch office, along with a current list of active security officers, including social security numbers, should be submitted to the board along with a \$100 check or money order made payable to the Louisiana State Board of Private Security Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:752 (December 1987), amended LR 15:12 (January 1989), LR 15:847 (October 1989), LR 26:

### **Chapter 3. Security Officer Registration**

#### **§301. Qualifications and Requirements for Security Officer Registration**

A. An applicant for security officer registration shall meet all of the qualifications and requirements specified in R.S. 37:3283 in addition to the rules herein.

B. An applicant for security officer registration shall meet all of the qualifications of a licensee as defined in R.S. 37:3276, except:

1. the applicant may be a resident alien;
2. the applicant must be at least 18 years of age if registered unarmed, or if registered to carry a baton;
3. the applicant must be at least 21 years of age if registered armed.

C. Any person who performs the functions and duties of a security officer shall fill out and file with the board an application form provided and approved by the board. The application must be either postmarked or received in the board office within 20 calendar days of the applicant's date of hire.

D. In addition to the completed application, the following documentation on the applicant shall be submitted to the board:

1. one set of classifiable fingerprints;
2. copy of DD-214 military discharge papers showing type of discharge, if applicable;
3. non-refundable application fee and fingerprint processing fee; and
4. if applicant has worked less than 20 calendar days, documentation must nevertheless be submitted, but without the required fees if a termination form is included showing the dates worked.

E. Applicant must sign the application to certify that the information he is providing the board is correct.

F. Licensee shall review the application to insure that it has been properly completed and signed by the applicant. Licensee shall sign the application to certify that the applicant will be given the required training.

G. Licensee shall cut off the portion of the application identified as "temporary registration card," have the applicant complete required information, and instruct applicant to carry temporary registration card at all times while on duty. Temporary registration card is valid until applicant receives a permanent registration card from the board.

H. An applicant who will be registered to carry a weapon must be trained in that weapon prior to carrying such weapon on a job site and verification of training must be submitted by the licensee to the board at the time application is made. If the applicant has not been trained, then the licensee shall register the applicant as unarmed until such time as required training has been received and proof of training submitted to the board. If the applicant receives the required weapons training within 15 days from his date of hire, and submits proof of such training on a board training verification form, then the board will change the status of the applicant from unarmed and no fee will be required. If the training is received after 30 days, then a \$10 status change fee must be submitted in accordance with the rule for status changes.

I. Licensee shall notify the board, in writing, within 10 calendar days of any change in an applicant's status, eligibility, address, or phone number.

#### **J. Dual Registration**

1. A security officer who works for more than one licensed security company must register with the board for each individual company.

2. Each company a security officer is employed with shall submit an application marked "dual registration" with the required application fee. The application must be either postmarked or received in the board office within 20 calendar days of the applicant's date of hire.

3. Each company that a security officer is employed with is responsible for insuring that officer is trained in accordance with R.S. 37:3284 and the rules herein.

#### **K. Registration Card**

1. A registration card will not be issued until an investigation determines that the applicant meets the requirements to become registered and verification of training has been received by the board that the applicant has successfully completed required training.

2. A registration card is valid for two years based on date of hire. It shall be in the form of a pocket card and shall be issued to the registrant through the licensee with whom he is employed. Registrant must sign the back of the card immediately upon receipt.

3. A registration card is the property of the Louisiana State Board of Private Security Examiners and must be surrendered to the board upon request.

4. Registration card classifications are as follows:

- a. revolver;
- b. straight baton;
- c. revolver and shotgun;
- d. 9MM and shotgun;
- e. revolver and baton;
- f. shotgun;
- g. shotgun and PR-24 baton;
- h. shotgun and baton;
- i. PR-24 baton;
- j. revolver and PR-24 baton;

- k. 9MM semiautomatic;
- l. 9MM and baton;
- m. unarmed;
- n. unarmed only;
- o. 9MM and PR-24 baton;
- p. 40 caliber semiautomatic; and
- q. 40 caliber semiautomatic and baton.

5. If a registration card is lost or mutilated, registrant is responsible. A \$10 fee will be assessed to issue a replacement card and registrant shall submit, in writing, to the board his name, social security number, registration card number, and circumstances surrounding loss or mutilation of card.

6. Prior to or after issuance of any registration card, the board may require documented evidence verifying the applicant meets, or continues to meet, all requirements to be registered with the board.

#### L. Reinstatement

1. A registrant who terminates employment from a licensee and is rehired within 30 calendar days by the same licensee may be reinstated by licensee submitting, in writing, a request to have registrant reinstated, accompanied by a \$10 reinstatement fee.

2. Written request must provide the security officer's name, social security number, date of termination, and date of reinstatement.

#### M. Renewal

1. The board will notify the licensee 60 days prior to the expiration date of the registration card of each registrant in their employ.

2. A renewal application and required renewal fee must be submitted to the board not less than 30 days prior to the expiration date of the registration card.

#### N. Emergency Assignment

1. Unarmed security officers may work emergency assignments a maximum of 20 calendar days within a six month consecutive period.

2. Registration requirements set forth in §301.D.4 apply.

3. Armed security officers must be registered with the board and have received all firearms training prior to working an armed post.

#### O. Status Change

1. A registrant's status may be changed from unarmed to armed, or vice versa, by submitting a letter to the board requesting a status change with a \$10 status change fee.

2. Firearms training verification must be received by the board before the officer's status can be changed to armed.

#### P. Re-Employment

1. When a registrant is re-employed by one licensee from another, the new licensee is responsible for insuring that the officer is trained, or has been trained in accordance with R.S. 37:3284 and the rules herein, and that proper documentation is, or has been, received by the board.

2. If registrant terminates employment with one employer and is reemployed within 30 calendar days, the new employer, within 20 days of such reemployment, shall submit to the board a reapplication on a form prescribed by the board, together with a reapplication fee paid by the new employer. The board shall then issue a new registration card reflecting the name or license number, or both, of the new employer.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3270 et seq.

**HISTORICAL NOTE:** Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:753 (December 1987), amended LR 15:11 (January 1989), LR 13:846 (October 1989), LR 18:191 (February 1992), LR 23:588 (May 1997), LR 26:

### Chapter 4. Training

#### §401. Training Programs

A. All board required training shall be administered by a licensed instructor. The board shall approve all training programs and shall develop training criteria outlining specific curriculum to be used in the instructing and training of all security officers.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3270 et seq.

**HISTORICAL NOTE:** Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:753 (December 1987), amended LR 15:12 (January 1989), LR 15:848 (October 1989), LR 18:192 (February 1992), LR 26:

#### §403. Classroom Training

A. Any security officer employed after September 1, 1985 shall complete, within 30 days from his date of hire, eight hours' classroom training under a board licensed classroom instructor.

B. Security officer shall have 60 days from date of first work assignment to complete an additional eight hours classroom training program which has been approved by the board.

C. Upon completion of each of the eight hour segments of the prescribed training, a 50 question examination shall be given to each security officer by the board licensed instructor. The first eight hour examination shall be different from the second eight hour examination, cover the required training topics, and be approved by the board prior to being administered. Minimum passing score is 70 percent.

D. All scores of such examinations must be recorded and submitted to the board by the licensee or employer, as the case may be, on its prescribed training verification form signed by the licensed instructor within 15 calendar days from completion of training.

E. Security officers who have been registered in other states who have licensing requirements similar to Louisiana, and law enforcement officers identified in R.S. 37:3284 may attend a four hour modular training program administered by a board licensed instructor. Upon completion of the four hour modular training, the officer shall take a 50 question examination, and if the security officer successfully passes the examination, this modular training shall be considered the equivalent to the classroom training provided for in R.S. 37:3284 and rules herein. If the security officer does not successfully pass the examination, then he must go through the entire classroom training program.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3270 et seq.

**HISTORICAL NOTE:** Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 18:192 (February 1992), amended LR 23:588 (May 1997), LR 26:

#### §405. Firearms Training

A. Armed security officers, in addition to the training requirements outlined in R.S. 37:3284 and in the rules herein, shall complete firearms training and range qualifications by a board licensed firearms instructor, as

prescribed by the board, prior to working an armed assignment. Examination scores must be recorded and submitted to the board by the licensee or employer, as the case may be, on its prescribed verification form signed by the licensed instructor within 15 calendar days from completion of training.

B. Upon completion of the prescribed firearms training, a written examination will be given to each security officer by the board licensed firearms instructor. The examination shall cover the required training topics and be approved by the board. Minimum passing score is 70 percent.

C. Successful completion of firearms training also includes the security officer passing the board required firearms proficiency course by achieving a minimum marksmanship qualifying score of 75 percent.

D. Annual refresher firearms training, as outlined in paragraph F below, is due one year from the date of the last firearms training recorded at the board office. The anniversary date will not change if the training is taken within 30 days prior to said date.

E. Authorized Weapons. The following weapons are the only weapons authorized and approved by the board:

1. straight baton or PR-24 baton;
2. .357 caliber revolver, minimum four inch barrel with .357 or .38 caliber ammunition or .38 caliber revolver, minimum four inch barrel with .38 caliber ammunition only;
3. 9mm semiautomatic, minimum four inch barrel, double action;
4. shotgun and 40 caliber weapon, minimum four-inch barrel.

F. Handgun Proficiency Course. The handgun proficiency course shall have the following requirements:

1. a score of 80 percent required to qualify, 200 points out of 250 points;
2. an approved standard police or security firearms' target shall be used;
3. the caliber weapon trained with must be the same caliber weapon the security officer carries while on duty;
4. the handgun course of fire shall be:
  - a. at a distance of four yards:
    - i. 12 shots, unsupported, point shooting, without sights: 45 seconds:
      - (a). six shots, strong hand only;
      - (b). six shots, weak hand only;
    - b. at a distance of seven yards:
      - i. two shots, unsupported, two-handed with sights: 5 seconds (indexing these rounds);
      - ii. 12 shots, unsupported, two-handed with sights: 60 seconds;
      - iii. 12 shots, unsupported, two-handed point shooting: 60 seconds;
    - c. at a distance of 15 yards:
      - i. 12 shots, barricade, strong hand: 60 seconds;
      - ii. 12 shots, barricade, two handed with sights: 60 seconds:
        - (a). six shots, standing right barricade;
        - (b). six shots, standing left barricade.

G. Semiautomatic Handgun

1. Security officer must have successfully completed the board-required initial firearms training with a revolver prior to being trained with a semiautomatic handgun.

2. A board licensed semiautomatic firearms instructor must train the officer in the use of a semiautomatic handgun prior to him carrying such weapon on a job site. The board-licensed semiautomatic firearms instructor must meet the same qualifications of a firearms instructor as required by R.S. 37:3284.

3. Semiautomatic proficiency course used by the firearms instructor must be certified by the National Rifle Association, Department of Energy or P.O.S.T. and proof of such certification shall be submitted to the board for approval and verification.

H. Shotgun Proficiency Course. The shotgun proficiency course shall have the following requirements:

1. Training in use of shotgun is to be taught only if the security officer is required to carry a shotgun in the performance of his duties.

2. The shotgun course of fire shall be:
  - a. five rounds of buckshot (nine pellets only); 60 percent required to qualify out of 90 points possible on an NRA B-27 target. B-29 target may be used for 25 yards or 15 yards;
  - b. scoring: two points for each hit within the seven ring. One point for each hit outside the seven ring, in the black;
  - c. at a distance of 15 yards; two rounds, standing from the shoulder: 10 seconds;
  - d. at a distance of 25 yards; two rounds total from the shoulder; one round standing, two rounds kneeling. Time includes loading time with the shotgun starting from the "cruiser safe" position (chamber empty, magazine loaded, safety on): 20 seconds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 18:192 (February 1992), amended LR 23:588 (May 1997), LR 26:

#### **§407. Baton Training**

A. Security officers carrying a straight baton as a weapon must successfully complete a minimum of eight hours of an initial straight baton training course approved by the board and administered by a board licensed straight baton instructor prior to carrying such weapon on duty. Security officer must also successfully complete a four hour annual refresher straight baton training program approved by the board.

B. Security officers carrying a PR-24 baton as a weapon must successfully complete a minimum eight hours of a prebasic PR-24 baton training course approved by the board and administered by a board licensed PR-24 baton instructor prior to carrying such weapon on post. Security officer must also successfully complete a four hour annual refresher PR-24 baton training program approved by the board.

C. The board licensed baton instructor must meet the same qualifications of a classroom instructor as required by R.S. 37:3284 and must possess a board recognized law enforcement baton certification.

D. Annual baton refresher training is due one year from the date of the last baton training recorded at the board office.

E. Security officers trained in baton must successfully pass a written examination administered by a board licensed baton instructor and achieve a minimum passing score of 70 percent. Examination scores must be recorded and submitted

to the board by the licensee or employer, as the case may be, on its prescribed verification form signed by the licensed instructor within 15 calendar days from completion of training.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3270 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 18:193 (February 1992), amended LR 23:589 (May 1997), LR 26:

#### **§409. Instructor Requirements, Responsibilities and Liability**

A. The board shall collect the following instructor fees pursuant to R.S. 37:3286:

1. application fee	\$20
2. in-house/outside classroom license fee	\$50
3. in-house/outside firearms license fee	\$75
4. in-house/outside baton license fee	\$50
5. transfer application fee	\$20
6. in-house/outside classroom renewal license fee	\$50
7. in-house/outside firearms renewal license fee	\$75
8. in-house/outside baton renewal license fee	\$50
9. examination fee	\$25
10. reexamination fee	\$15

B. An applicant applying for an instructor license who does not successfully pass the required examination may reapply to take the examination twice within a six month period. If the applicant does not successfully pass the examination as required, the application shall be referred to the board for action.

##### C. Instructor Responsibilities and Liability

1. An in-house instructor who is covered under his employer's company insurance policy shall be required to have his employer submit a letter to the board stating that he is covered under the company policy for the teaching of security officers. If not covered under a company insurance policy, an instructor must provide a certificate of general public liability insurance in an amount as required by law, with the state of Louisiana named as an additional insured.

2. Licensed instructors are required to keep on file for three years records of training tests and any other documentation that verifies the test scores achieved by security officers they trained.

##### D. License Renewal

1. Instructor licenses issued by the board shall be valid for two years. Expiration date is based on the date the license is approved and issued.

2. To renew an instructor license, instructor shall submit to the board a renewal application form provided by the board and the required renewal fee 30 days prior to the expiration date of license.

E. Insurance Renewal. On or before the expiration date of the general liability insurance policy, instructor shall submit to the board a new certificate of insurance in an amount as required by law showing that insurance has been renewed and there has not been any lapse of coverage.

F. License Classification. Instructor licenses are categorized as follows:

*In-House* licensed with a security company and may only teach security officers employed with that company.

*Outside* licensed to train anyone in the state of Louisiana.

*Outside Limited* licensed to teach students at a training academy or educational institution. Instructor may only teach students of that particular institution

##### G. License Transfer

1. An instructor may transfer his license to another company by submitting to the board a transfer application, \$20 transfer fee, and proof of general liability insurance coverage.

2. An in-house instructor who desires to become an outside instructor shall submit a new instructor application, \$20 application fee, proof of general liability insurance and training program that will be used to teach the students.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3270 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 18:194 (February 1992), amended LR 23:589 (May 1997), LR 26:

#### **Chapter 5. Criminal Background Checks**

##### **§501. Criminal Background Checks**

##### A. Dispositions

1. If an applicant has been convicted of any crime that would prevent him from meeting the qualifications of a licensee or registrant as specified in R.S. 37:3276, it shall be incumbent upon the applicant to submit with his application documentation showing proof that he has been pardoned for that crime.

2. If an applicant possesses an arrest record as issued by the Louisiana State Police, Bureau of Identification, without the disposition thereof, it shall be incumbent upon the applicant, within 30 days, to provide the written disposition of his arrest from the district attorney's office or the criminal clerk of court's office from the judicial district in which the arrest occurred.

3. If the applicant does not provide the written disposition as required, the board shall have sufficient cause to deny the application.

##### B. Denial of Application Due to Conviction

1. If an applicant has a felony conviction, as evidenced by the background check run by the Louisiana State Police, Bureau of Identification, then his employment as a security officer must be terminated immediately unless he has provided the board with documentation showing proof that he has received a pardon or similar relief.

2. The board will notify the employer that the officer has been denied and it is incumbent upon the employer to submit to the board a termination notice within 10 calendar days after denial notification.

3. If the background check reveals a misdemeanor conviction that would disqualify the applicant under the provisions of R.S. 37:3270 through 3298 and the rules herein, he may continue to work pending the outcome of the appeal process.

4. If the applicant does not appeal the board's denial of his application due to his misdemeanor conviction, then the applicant must be terminated 30 days after receipt of written notice of denial from the board.

5. The board will notify the applicant and his employer if the application is denied and the reason therefor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:755 (December 1987), amended LR 15:13 (January 1989), LR 15:850 (October 1989), LR 18:194 (February 1992), LR 26:

## **Chapter 6. Disciplinary Action**

### **§601. Contested Proceedings**

A. Before revoking or suspending a license or registration card, or imposing fines or costs over \$500, the board will afford the applicant an opportunity for a hearing after reasonable notice of not less than 15 days, except in a case of a failure to maintain the required insurance or when a registrant is found carrying an unauthorized weapon while performing the duties of a security officer.

B. All requests for a hearing must be submitted in writing to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:756 (December 1987), amended LR 18:194 (February 1992), LR 26:

### **§603. Final Decision and Orders**

A. All final decisions and orders of the board shall be in writing and signed by the executive secretary or chairperson.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 18:195 (February 1992), LR 26:

## **Chapter 7. Insignias, Markings, Restrictions**

### **§701. Restrictions**

A. No badge or insignia with the initials "SP" or "SO" may be worn on the uniform of a registrant.

B. A licensee shall not display red or blue emergency lights on any vehicle used on a security assignment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:757 (December 1987), amended LR 18:195 (February 1992), LR 26:

## **Chapter 8. Licensee Suitability, Records, Investigations, and Registrant Violations**

### **§801. Licensee's Suitability and Business Relationships**

A. The board may deny an application, suspend, revoke, or restrict a licensee upon the vote of four concurring members when it finds that the licensee or business entity is unsuitable for the purpose of its license or endangers the health, safety, or welfare of the citizens of this state.

B. In determining the suitability of an applicant or licensee or other persons or business entities, the board may consider the following:

1. general character, including honesty and integrity;
2. financial security and stability, competency, and business experience in the capacity of the relationship; and
3. refusal to provide records, information, equipment, or access to premises to any authorized representative of the board, or any law enforcement officer when such access is reasonably necessary to insure compliance with R.S. 37:3270 through 3298 and the rules herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:758 (December 1987), amended LR 15:14 (January 1989), LR 15:852 (October 1989), LR 18:195 (February 1992), LR 26:

### **§803. Employee Records Required to be Kept and Subject to Inspection**

A. The licensee is required to keep on file the following documentation on each registrant in their employment up to three years from date of termination. Such documentation is subject to inspection as may reasonably be required by an authorized representative of the board during reasonable business hours:

1. current residence and phone number of all registrants;
2. copy of the application submitted to the board;
3. copy of training verification form submitted to the board and original training tests completed by any registrant trained by such company, and any other documented information on required training;
4. copy of registration card issued by the board; and
5. copy of termination notice.

B. An authorized representative of the board shall be defined as the executive secretary, investigator, or staff member of the board. Board members are not authorized to inspect employee records of licensees without the voting approval of the majority of the board at a public board meeting.

C. Licensee shall make available to any authorized representative of the board for inspection such employee records and other information as the board may reasonably require to insure compliance with R.S. 37:3270 through 3298 and the rules herein.

D. The board shall notify the company, in writing, 15 days prior to the conducting of a routine inspection of employee records.

E. A company will have no more than 30 days to comply with the board's written findings as a result of an inspection, in addition to paying any assessed administrative fines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:758 (December 1987), amended LR 15:14 (January 1989), LR 18:195 (February 1992), LR 26:

### **§805. Investigations**

A. The board may investigate the actions of any licensee. The investigation shall be conducted for the purpose of determining whether a licensee is in compliance with R.S. 37:3270 through 3298 and the rules herein.

B. An investigation conducted by a duly authorized representative of the board is not to be construed as an inspection of files as described in §803.C hereof. It is an investigation of alleged violations by a licensee or registrant as a result of a complaint and is exempt from written and verbal notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:758 (December 1987), amended LR 18:195 (February 1992), LR 23:589 (May 1997), LR 26:

**§807. Violations by Registrants**

A. In addition to violations specified in R.S. 37:3270 et seq. and the other parts of these rules, the following shall be considered violations by a registrant:

1. performing security duties for any other person other than the licensee with whom he is registered;
2. failure to sign registration card;
3. failure to affix a photograph of registrant, taken within the last six months, to registration card;
4. failure to timely surrender registration card when required to do so;
5. possession or use of any registration card which has been improperly altered;
6. defacing of a registration card; and
7. allowing improper use of a registration card.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:758 (December 1987), amended LR 15:852 (October 1989), LR 18:195 (February 1992), LR 23:589 (May 1997), LR 26:

**§809. Inspection of Records**

A. Licensee shall make available to any authorized representative of the board for inspection such employee records and other information as the board may reasonably require to ensure compliance with the Private Security Regulatory and Licensing Law and with these rules and regulations.

B. The board shall notify the company, in writing, 15 days prior to the conducting of a routine inspection of employee records.

C. The board shall notify the company, in writing, three days prior to conducting an inspection of their employee records brought on by a complaint.

D. A company will have no more than 30 days to comply with the board's written findings as a result of any inspection in addition to paying any fine assessed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:758 (December 1987), amended LR 15:14 (January 1989), LR 15:852 (October 1989), LR 26:

**§811. Training Records**

It is the responsibility of licensees and certified trainers to keep records of tests and firearms certification on training for each registrant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:758 (December 1987), LR 26:

**§813. Unlawful Act**

A. No person shall engage in the business of providing contract security services except in accordance with Chapter 7 and the rules and regulations adopted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:758 (December 1987), amended LR 15:852 (October 1989), LR 26:

**Chapter 9. Administrative Penalties**

**§901. Administrative Penalties Pursuant to R.S.**

**37:3288**

A. Any person who is determined by the board, after reasonable notice and opportunity for a fair and impartial hearing held in accordance with the Administrative Procedure Act, to have committed an act that is a violation of R.S. 37:3270 et seq., or any rule herein, is subject to an administrative penalty of not more than \$500 per violation; and/or denial, suspension, or revocation of a license or registration card; and/or imposition of probationary conditions or other restrictions including assessment of administrative costs incurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:758 (December 1987), amended LR 18:196 (February 1992), LR 26:

**§903. Administrative Penalties Pursuant to R.S.**

**37:3288(B)**

A. Licensees and registrants who violate provisions of R.S. 37:3270 et seq. and the rules herein may be assessed administrative penalties by the executive secretary in lieu of, but not limited to, bringing licensee or registrant before the board at a hearing.

B. Assessed administrative fines may be appealed by submitting to the board a written request to appear before the board at the next scheduled board meeting.

C. In accordance with R.S. 37:3288(B), administrative penalty schedule is as follows:

Penalty Fee Schedule	Not to Exceed
Licensee's failure to submit security officer application, fingerprint card, and/or necessary registration fees within prescribed time period. If the application, fingerprint card, and/or registration fees are not submitted within 14 days after deadline date, administrative fine accumulates at a daily rate, not to exceed \$500	\$25
Licensee's failure to resubmit fingerprint card after two written requests by the board when a deadline date is given. If the fingerprint card is not resubmitted within 14 days after deadline date, administrative fine accumulates at a daily rate, not to exceed \$500	\$25
Licensee's failure to notify the board in writing within prescribed time period of security officers in their employ who have been terminated. If termination is not submitted within 14 days after deadline date, administrative fine accumulates at a daily rate, not to exceed \$500	\$25
Licensee or registrant's failure to submit information as requested by the board when a deadline date is given. If information is not submitted within 14 days after deadline date, administrative fine accumulates at a daily rate, not to exceed \$500	\$25
Licensee's failure to submit company license renewal fee prior to expiration date	\$25/day up to \$500
Licensee's failure to submit renewal application and renewal fee for a registrant in their employ prior to expiration date. If the renewal application and renewal fee are not submitted within 14 days after deadline date, administrative fine accumulates at a date rate, not to exceed \$500	\$25

Penalty Fee Schedule	Not to Exceed
Licensee's failure to have registrant in their employ trained within prescribed time period. If registrant is not trained within 14 days after deadline date, administrative fine accumulates at a daily rate, not to exceed \$500	\$25
Licensee's failure to submit to the board a training verification form on a registrant in their employ within prescribed time period. If training verification is not submitted within 14 days after deadline date, administrative fine accumulates at a daily rate, not to exceed \$500	\$25
Registrant's failure to carry on his person a temporary or permanent registration card while on duty	\$25
Fingerprint cards repeatedly rejected by the Department of Public Safety as non-classifiable due to smudges, not being fully rolled, etc.	\$25
Registrant's performing security duties for any other person other than the licensee with whom he is registered	\$25
Registrant's failure to sign registration card	\$25
Registrant's failure to affix a photograph of registrant, taken within the last six months, to registration card	\$25
Registrant's failure to timely surrender registration card when required to do so	\$25
Registrant's possession or use of any registration card which has been improperly altered	\$25
Registrant's defacing of a registration card	\$25
Registrant's allowing improper use of a registration card	\$25
Registrant carrying an unauthorized weapon while on duty	not less than \$25 nor more than \$100
Licensee or registrant's submission of a check to the board that is returned from the bank deemed non-sufficient funds	\$25
Licensee allowing registrant to carry an unauthorized weapon while on duty	not less than \$25 nor more than \$100

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:758 (December 1987), amended LR 15:14 (January 1989), LR 18:196 (February 1992), LR 26:

**§905. Request for Copies**

A. Copies of these rules and regulations will be made available upon written request to the board, and a monetary fee will be assessed in accordance with the Division of Administration's rules governing public records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:758 (December 1987), LR 26:

**§907. Public Comments**

A. Upon adoption of these rules and regulations, the board, if requested to do so by an interested person within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:758 (December 1987), LR 26:

These proposed regulations are to become effective upon publication in the *Louisiana Register*.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than December 31, 1999, at 4:30 p.m. to Wayne R. Rogillio, Executive Secretary, Louisiana State Board of Private Security Examiners.

Wayne R. Rogillio  
Executive Secretary

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

**RULE TITLE: Definitions, Organization, Board Membership; Company Licensure; Registration; Training; Criminal Background Checks; Disciplinary Action; Insignias; Markings; Restrictions; Licensee Suitability, Records, Investigations, and Registrant Violations; Administrative Penalties**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
Neither costs nor savings to state or local governmental units are involved in these rule changes.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No effect on revenue collections of state or local governmental units is anticipated from these rule changes.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
No costs or economic benefits to directly affected persons or governmental groups are expected from these rule changes.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No effect on competition and employment is anticipated from these rule changes.

Wayne R. Rogillio  
Executive Secretary  
9912#013

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Gaming Control Board**

Pari-Mutuel Live Racing Facility Slot Machine Gaming  
(LAC 42:VII.Chapters 17, 21 - 29 and 42)

The Louisiana Gaming Control Board hereby gives notice that it intends to adopt LAC 42.VII.1701 et seq. 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 VII. Pari-Mutuel Live Racing Facility**  
**Slot Machine Gaming**

**Chapter 17. General Provisions**

**§1701. Definitions**

As used in the regulations, the following terms have the meanings described below.

*Act* the Louisiana Pari-Mutuel Racing Facility Economic Redevelopment and Gaming Control Act, La. R.S. 27:351 et seq. and as amended, R.S. 27:1 et seq. and as amended.

*Administrative Approval* the authority conferred upon the board or the division by the board, any regulation, or by a condition imposed on a license, to grant or deny, in their individual discretion, a request for approval of a proposed action or transaction.

*Agent* any commissioned Louisiana state police trooper or designated employee of the Louisiana State Police, Gaming Enforcement Section.

*Applicant* any person who has submitted an application to the board seeking a license, or approval, or the renewal thereof.

*Applicant Records* those records which contain information and data pertaining to an applicant's criminal record, antecedents and background, and the applicant's financial records, furnished to or obtained by the board or division from any source incidental to an investigation for licensing, findings of suitability, registration, the continuing obligation to maintain suitability, or other affirmative approval.

*Application* the forms, schedules and other documents prescribed by the board and division upon which an applicant seeks a license, registration, or other finding of suitability, or renewal thereof. Application also includes information, disclosure statements, personal and personal financial histories, financial statements and all documents incorporated in, attached to, or submitted with the application form.

*Architectural Plans and Specifications, Architectural Plans, and Plans or Specifications* all of the plans, drawings, and specifications for the construction, furnishing, and equipping of the eligible facility, including, but not limited to, detailed specifications and illustrative drawings or models depicting the proposed size, layout and configuration of the facility, including electrical and plumbing systems, engineering, structure, and aesthetic interior and exterior design as are prepared by one or more licensed professional architects and engineers. *Architectural Plans and Specifications* does not include FF&E, as defined in this Chapter.

*Associated Equipment* any gaming equipment which does not affect the outcome of the game, except as otherwise provided in these regulations.

*Background Investigation* all efforts, whether prior to or subsequent to the filing of an application, designed to discover information about an applicant, licensee, registrant, or other person required to be found suitable and includes without time limitations, any additional or deferred efforts to fully develop the understanding of information which was provided or should have been provided or obtained during the application process.

*Business Year* the annual period used by a licensee for internal accounting purposes as defined and approved by the division.

*Candidate* any person whose name is included in a petition to place such person on the exclusion list pursuant to these regulations.

*Career or Professional Offender* any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this state.

*Certified Electronic Technician* qualified service personnel or gaming employee trained by a manufacturer, distributor, supplier, or other qualified entity, or through training programs approved by the division, who are capable of performing any repairs, parts replacements, maintenance, and other matters relating to servicing of slot machines.

*Chairman* the chairman of the Louisiana Gaming Control Board.

*Cheat* any person whose act or acts in any jurisdiction would constitute cheating.

*Coin* a metal representative of value, redeemable for cash, and issued or sold by a licensee for use in gaming devices at the eligible facility, commonly referred to as "token". Coin also means a metal representative of value manufactured for, or by, the United States Government.

*Confidential Record* any paper, document or other record or data reduced to a record which is not open to public inspection.

*Confidential Source or Informant* a provider of information which is not a matter of general public knowledge or of public record, as well as an information provider, the revelation of whose identity would tend to compromise the flow of information from that particular provider or his class of providers. Examples of confidential sources include: governmental agencies which provide tax records or related information; law enforcement or criminal justice agencies, including cooperative or federally-funded data bases, which provide criminal history and related data under an information sharing or providing agreement or arrangement; private persons or entities which provide information subject to the condition that the information or their identities be kept confidential; informants, whether volunteering information or responding to investigatory measures; and any other provider or originator of information which might be deemed to be subject to a recognized privacy or confidentiality interest or a privilege against disclosure (unless the privilege has been waived), or the public disclosure of which might tend to endanger or compromise the provider of information, or impede the future furnishing of similar information.

*Day* as used in these regulations shall mean a calendar day.

*Designated Gaming Area* those contiguous portions of a licensed eligible facility in which gaming activities may be conducted, which shall be determined by measuring the area, in square feet, inside the interior walls of the licensed eligible facility, excluding any space therein in which gaming activities may not be conducted, such as bathrooms, stairwells, cage and beverage areas, and emergency evacuation routes.

*Designated Representative* a person designated by the licensee to oversee and assume responsibility for the operation of the licensee's gaming business.

*Distributor* any person that sells, leases, markets, offers, or otherwise distributes, directly or indirectly, any slot machine, gaming device or equipment for use or play in an eligible facility or sells, leases, or otherwise distributes any gaming device or equipment.

*Division Surveillance Room* a room or rooms at each facility for the exclusive use of division agents.

*Drop* the total amount of money and tokens removed from the drop box and the bill validator acceptor drop box, or for cashless slot machines, the amounts deducted from a player's slot account as a result of slot machine play.

*Duplication Fees* a charge for duplicating documents for release to the requesting person.

*Economic Interest or Interest* any interest in a licensee whereby a person receives or is entitled to receive, by agreement or otherwise, a profit, gain, thing of value, loss, credit, security interest, ownership interest, or other benefit. Economic interest in a licensee includes voting shares of stock or otherwise exercising control of the day to day operations of the licensee through a management agreement or similar contract. Economic interest does not include a debt unless upon review of the instrument, contract, or other evidence of indebtedness, the board determines a finding of suitability is required based upon the economic relationship with the licensee.

*Electronic Coin-In Meter (Soft Meter)* the electronic meter housed within the gaming device that cumulatively counts the number of coins wagered by actual coins inserted or credits won, or both.

*Electronic Coin-Out Meter (Soft Meter)* the electronic meter housed within the gaming device which cumulatively counts the number of coins paid by the hopper or credits won, or both.

*Electronic Coins-Dropped Meter (Soft Meter)* the electronic meter housed within the gaming device which cumulatively counts the number of coins diverted into the drop bucket and credit value of all bills inserted into the bill validator for play.

*Electronic Fund Transfer* any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

*Electronic Games Played Meter (Soft Meter/Handle Pulls)* the electronic meter housed within the gaming device that cumulatively counts the number of games played.

*Electronic Gaming Device* has the same meaning as "slot machine".

*Electronic Jackpots-Paid Meter (Soft Meter/Hand Paid)* the electronic meter housed within the gaming device that reflects the cumulative amounts paid by an attendant for the progressive and nonprogressive jackpots.

*Electro-Mechanical Meters (Hard/Mechanical)* the mechanical meters housed within the gaming device which register the coin in, coin out, coin dropped and games played. For the purposes of these regulations, the electro-

mechanical meters shall not be used as required information by the division/board.

*Emergency Evacuation Route* those areas within the designated gaming area of a licensed eligible facility which are clearly defined and identified by the licensee as necessary and approved by the State Fire Marshall or other federal, state, or local regulatory agency for the evacuation of patrons and employees from the facility, and from which and in which no gaming activity may be conducted.

*Employee Permit or Gaming Employee Permit* the permit of a person employed in the operation or supervision of a gaming activity at a licensed eligible facility and includes slot machine technicians and mechanics, designated gaming area security employees, count room personnel, cage personnel, slot machine booth personnel, slot machine change personnel, credit and collection personnel, casino surveillance personnel, and supervisory employees empowered to make discretionary decisions that regulate gaming activities, including shift supervisors, credit executives, gaming cashier supervisors, gaming managers and assistant managers, and any individual, other than nongaming equipment maintenance personnel, cleaning personnel, waiters, waitresses, and secretaries, whose employment duties require or authorize access to designated gaming areas.

*Enforcement Action* any action instituted by the board or division, to consider sanctions authorized by the act including the suspension, revocation or conditioning of a license or permit, or the assessment of a fine upon the conclusion of an investigation into a violation of the act or of the rules adopted pursuant to the act, a violation of a condition, restriction or limitation placed on a license or permit, a violation of the licensee's internal controls as approved by the division.

*Excluded List* a list or lists which contain identities of persons who are excluded from any licensed eligible facility pursuant to these rules.

*Excluded Person* any person who has been placed upon the list by preliminary or final order of the division, and who is required to be excluded or ejected from a gaming establishment pursuant to these rules.

*FF&E (Furniture, Fixtures and Equipment)* any part of a eligible facility that may be installed or put into use as purchased from a manufacturer, supplier, or nongaming supplier, including but not limited to television cameras, television monitors, computer systems, computer programs, computers, computer printers, ready made furniture and fixtures, appliances, accessories, and all other similar kinds of equipment and furnishings.

*Financial Statements* those statements and the information contained therein which relate to the assets, expenses, owner's equity, finances, earnings, or revenue of an applicant, licensee, registered company, or person who provides such records as part of an application or division investigation.

*Fiscal Year* a period beginning July 1 and ending June 30 the following year.

*Gaming Activities or Gaming Operations* the use, operation, offering, or conducting of slot machines at an eligible facility in accordance with the provisions of the act.

*Gaming Day* a twenty-four hour period of time which represents the beginning and ending times of gaming

activities for the purpose of accounting and determination of Net slot machine proceeds.

**Gaming Device or Gaming Equipment** a slot machine used directly or indirectly in connection with gaming or any game, which affects the result of a wager by determining wins or losses.

**Game Outcome** the final result of the wager.

**Gaming Operator or Licensee** any person holding or applying for a gaming license to participate in gaming activities at a licensed facility.

**Inspection** periodic surveillance and observation by the division of operations conducted by a licensee which surveillance and observation may or may not be made known to the licensee.

**Internal Control System** internal procedures and administration and accounting controls designed by the licensee and approved by the division and/or the board for the purpose of exercising control over the gaming operations and for complete and accurate calculation and reporting of financial data.

**Key Gaming Employee**

a. any individual who is employed in a director or department head capacity and who is empowered to make discretionary decisions that regulate gaming activities including, but not limited to, the general manager and assistant general manager of the licensed eligible facility, director of slot operations, director of cage and or credit operations, director of surveillance, director of management information systems, director of security, accounting controller, and any employee who supervises the operations of these departments or to whom these individual department directors report, and such other positions which the board or division shall later determine, based on detailed analysis of job descriptions as provided in the internal controls of the licensee as approved by the division. All other gaming employees, unless determined otherwise by the board, shall be classified as nonkey gaming employees.

b. In the case of vacation, leave of absence, illness, resignation, termination, or other planned or unplanned extended absence of a key employee, a nonkey assistant director or manager of the above named individual departments may serve not more than thirty calendar days during one calendar year as head of that department, after written request to and written approval of the supervisor of the division or the chairman of the board.

**Leakage Current** an electrical current that flows when a conductive path is provided between exposed portions of a gaming device and the environmental electrical ground when the gaming device is isolated from the normal AC power ground.

**License Type A** the authorization applied for by or issued to the owner of an eligible facility by the board to conduct slot machine gaming at an eligible facility issued pursuant to the act.

**License Type B** the authorization issued by the board to a slot machine owner to participate in slot machine gaming operations at eligible facilities.

**License Type C** the authorization issued by the board to a distributor to participate in slot machine gaming operations at eligible facilities..

**License Type D** the authorization issued by the board to a manufacturer to participate in slot machine gaming operations at eligible facilities.

**License Type E** the authorization issued to a service technician (other than an employee of the eligible facility) to participate in slot machine gaming operations at eligible facilities.

**List or Exclusion List** a list of names of persons who are required to be excluded or ejected from designated gaming facilities.

**Maintenance** the routine servicing of any slot machine, excluding the logic board, software, and electronic (soft) and mechanical (hard) meters, and other servicing which provides for the efficient operation of the machine.

**Manufacturer's Operating and Field Manual** any written literature that provides procedures, instructions, guidelines and/or information written by, or on behalf of, the manufacturer of gaming devices, components, on-line slot systems, software, and/or associated equipment.

**Modification** any movement or relocation of a gaming device wherein continuous communication between the slot machine and the on-line slot monitoring system is interrupted; or any change, conversion, or reconfiguration to a gaming device and/or component housed within, or attached to a device, wherein the program, access number (house number), payout percentage, or denomination has been altered; or, any change to the device which requires the removal of a sealed EPROM including temporary removal except for testing purposes by the division and/or board; or any conversion, software change, replacement, or any other alteration or modification to an on-line slot monitoring system that requires interruption of communication between a gaming device and the on-line slot monitoring system.

**Nongaming Supplier** any person who sells, leases or otherwise distributes, directly or indirectly, goods and/or services other than gaming devices and gaming equipment to a Type A licensee.

**Nongaming Supplier Permit** the required permit for a nongaming supplier who unless otherwise exempt, sells, leases or otherwise distributes, directly or indirectly, goods and/or services to a licensee.

**Nonvolatile Memory** a type of memory in which data stored in the memory is not lost when the power is turned off.

**Occupational Manner or Context** the systematic planning, administration, management, or execution of an activity for financial gain.

**Operation** the operation of a licensed eligible facility or the operation of a manufacturer, distributor, or supplier pursuant to the issuance of a license.

**Patron** an individual who is at least twenty-one years of age and who has lawfully placed a wager in a slot machine at a licensed eligible facility.

**Payout** winnings earned on a wager.

**Permit** an authorization therefor issued pursuant to the act other than a license including but not limited to an employee permit.

**Permittee** any person, or entity who is issued or applying for a permit.

*Premises* land, together with all buildings, improvements, and personal property located thereon.

*RAM or Random Access Memory* the electronic component used for computer work space and storage of volatile information in a gaming device.

*RAM Clear Chip* an erasable programmable read only memory chip which contains a program specifically designed to clear volatile and nonvolatile memory sections of a logic board for a gaming device.

*Random Number Generator* hardware, software, or combination of hardware and software devices for generating number values that exhibit characteristics of randomness.

*Randomness* the observed unpredictability and absence of pattern in a set of elements or events that have definite probabilities of occurrence.

*ROM or Read Only Memory* the electronic component used for storage of nonvolatile information in a gaming device, including programmable ROM and erasable programmable ROM.

*Records* accounts, correspondence, memorandums, audio tapes, videotapes, computer tapes, computer disks, electronic media, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

*Regulations* the gaming regulations promulgated pursuant to the act.

*Renewal Applicant* a person who has filed any part of an application for renewal of any license or permit.

*Renewal Application* all of the information, documents, forms, and materials required by the act and regulations to be filed with the board or division to renew any license or permit in accordance with the act.

*Runs Test* a mathematical statistic that determines the existence of recurring patterns within a set of data.

*Sensitive Keys* all keys, including originals and duplicates, used in the process of accessing cash or tokens. Sensitive keys also include, but are not limited to drop box release and content keys, gaming device cabinet keys except slot machine access keys, and all keys used to access secure areas. Sensitive keys also include any keys so designated in the licensee's internal controls as approved by the division and/or the board.

*Slot Machine Owner* any person who owns slot machines used in gaming in accordance with the provisions of the act and these regulations.

*Standard Chi-Squared Analysis* the sum of the squares of the difference between the expected result and the observed result.

*Statements on Auditing Standards* the auditing standards and procedures published by the American Institute of Certified Public Accountants.

*Supplier and/or Distributor of Gaming Devices and Equipment* any person that sells, leases, markets, offers, or otherwise distributes, directly or indirectly, any gaming devices or equipment for use or play in this state or sells, leases, or otherwise distributes any gaming devices or equipment.

*Tilt Condition* a programmed error state for an electronic gaming device which occurs when the gaming device detects an internal error, malfunction, or attempted cheating. The gaming device ceases processing further input,

output, or display information other than that indicating the tilt condition itself.

*Token* a metal representative of value, redeemable for cash, and issued and sold by a licensee for use in electronic gaming devices and slot machines at the eligible facility.

*Wager* a sum of money or thing of value risked on a game.

*Win* the total of all cash and property (including checks received by a licensee, whether collected or not) received by the licensee from gaming operations, less the total of all cash paid out in winnings to patrons.

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 26:

### **§1703. Ownership of Licenses and Permits**

A. Licenses and permits issued by the board as provided in the act and rules and regulations promulgated pursuant to the act are and shall remain the property of the board at all times.

B. All licenses and permits shall be surrendered to the board upon their expiration or revocation.

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 26:

### **§1705. Transfers of Licenses or Permits**

Licenses and permits are not transferable or assignable. If the status of the licensee or permittee should change such that the person no longer needs or is entitled to the license or permit, then the license or permit shall be canceled and any tangible item which evinces such a license or permit shall be surrendered to the board within five days of the change of status. Any license or permit surrendered pursuant to the Section shall be marked canceled or destroyed.

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 26:

## **Chapter 19. Administrative Procedures and Authority**

### **§1907. Issuance and Construction of Regulations and Administrative Matters**

A. Board Rules and Regulations; Promulgation, Approval

1. Construction of Regulations; Severability. Nothing contained in these regulations shall be so construed as to conflict with any provision of the act or any other applicable statute. If any regulation is held invalid by a final order of a court of competent jurisdiction at the state or federal level, such provision shall be deemed severed and the court's finding shall not be construed to invalidate any other regulation.

2. Definitions, Captions, Pronouns, and Gender. The terms defined in the act have the same meaning in the regulations as they have in the act, unless the context otherwise requires. Captions appearing at the beginning of regulations are descriptive only, are for convenient reference to the regulations and in no way define, limit or describe the scope, intent or effect of the regulation. Masculine or feminine pronouns or neuter gender may be used interchangeably and the plural shall be substituted for the singular form and vice-versa, in any place or places in the regulations where the context requires such substitution.

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 26:

## **Chapter 21. Licenses and Permits**

### **§2101. General Authority of the Board and Division**

The board and the division shall have the authority to call forth any person who, in the board's or division's opinion, has the ability to exercise influence over a licensee or permittee, or the pari-mutuel live racing industry, and such person shall be subject to all suitability requirements. In the event a person is required by the board to obtain a license or permit, and such license or permit is not applied for or denied, then the licensee and/or permittee shall cease association with such person(s).

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 26:

### **§2103. Applications in General**

Any license or permit issued by the board or division is deemed to be a revocable privilege, and no person holding such a license or permit is deemed to have acquired any vested rights therein. An applicant for a license or permit authorized by the act or these regulations, is seeking the granting of a privilege, and the burden of proving qualification to receive the license or permit is at all times on the applicant. An applicant accepts the risk of adverse public notice, embarrassment, criticism, or other action or financial loss that may result from action with respect to an application and expressly waives any claim for damages as a result thereof, except relating to willful misconduct by the board or division. The filing of an application under the act or these regulations constitutes a request for a decision upon the applicant's general suitability, character, integrity, and ability to participate or engage in or be associated with pari-mutuel live racing or other gaming activity authorized by law and by filing an application, the applicant specifically consents to the making of such a decision by the board and 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, Gaming Control Board, LR 26:

### **§2105. Investigations**

The board or division shall investigate all applications for licenses or permits or other matters requiring board approval. The board or division may investigate, without limitation, the background of the applicant, the suitability of the applicant, the suitability of the applicant's finances, the applicant's business probity, the suitability of the proposed premises for gaming, the suitability of a person with an economic interest in the applicant of five percent or more, the suitability of any person who in the opinion of the board or division has the ability to exercise influence over the activities of a licensee and the proposed establishment's compliance with all applicable federal, state, and local laws and regulations.

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 26:

### **§2107. Applicants in General; Restrictions**

A. The securing of a license or permit required under the act is a prerequisite for conducting, operating, or performing any activity regulated by the act. Each applicant must file a complete application.

1. Except as provided herein, if the applicant is a general partnership or joint venture, each individual partner and joint venturer must file a complete application.

2. If the license applicant is a corporation, each officer and director of the corporation must file a Part B personal history and financial form. Any shareholder with five percent or more of the corporation must file a completed Part B form, and if such shareholder is other than a natural person, then each officer, director, or person with an economic interest equal to or greater than five percent in the license applicant must file a Part B form.

3. If the license applicant is a limited partnership, the general partner and each limited partner having five percent or more interest must file a complete application. If the partner or limited partner is other than a natural person, then each officer, director, or person with an economic interest equal to or greater than five percent in the license applicant must file a Part B form.

4. If the license applicant is a limited liability company, pursuant to R.S. 12:1301 et seq., each officer or manager of the company must file a "Part B" form. Any member of five percent or more of the company must file a Part B form, and if such member is other than a natural person, then each officer, director or person with an economic interest equal to or greater than five percent in the license applicant must file a Part B form.

5. If the license applicant is a registered limited liability partnership, pursuant to R.S. 9:3431 et seq., the managing partner and each partner having five percent or more interest must file a Part B form. If the partner is other than a natural person, then each officer, director or person with an economic interest equal to or greater than five percent in the license applicant must file a Part B form.

6. An application may be required to be filed by any person who is shown by a preponderance of evidence to:

a. have influence over the operation of gaming at an eligible facility;

b. receive any share or portion of the gaming money or property won by the operator or owner of an eligible facility; or

c. receive compensation or remuneration in excess of \$50,000 per annum (as an employee of a licensee or in exchange for any service or thing) provided to the licensee; or

d. be a lessor or provider of goods or services; or

e. have any contractual agreement with a licensee.

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 26:

### **§2108. Nongaming Suppliers**

A. Except as provided in Subsections E. and F. of this Section, any supplier shall obtain a nongaming supplier permit from the division, upon providing goods and/or services to a Type A licensee in an amount in excess of \$50,000 during the preceding twelve month period.

B. Any nongaming supplier, regardless of whether having been permitted or not and regardless of the dollar

amount of goods or services provided to a licensee may be requested to apply to the division for a finding of suitability.

C. Unless otherwise notified by the division in writing, a licensee shall conduct business with a nongaming supplier only if:

1. such supplier possesses a valid nongaming permit which has been placed in an approved status by the division; or

2. such supplier has been issued a waiver from the division regarding the necessity of obtaining a permit, pursuant to the provisions of Subsections E. or F. of this Section, or

3. during the immediate preceding twelve month period, such supplier has received \$50,000 or less from the licensee as payment for providing nongaming services or goods to the licensee.

D. It shall be the responsibility of each Type A licensee to ensure that it has not paid more than \$50,000 to any nongaming supplier during the preceding twelve month period as payment for providing nongaming services or goods, unless such nongaming supplier holds a valid nongaming suppliers permit which has been placed in an approved status by the division or has been issued a waiver regarding the necessity of obtaining such a permit from the division pursuant to Subsections E. or F. of this Section.

E. The following nongaming suppliers shall be deemed to have been waived by the board and division from the necessity of obtaining a nongaming suppliers permit pursuant to this Section:

1. nonprofit charitable organizations, and educational institutions which receive funds from the licensee, including educational institutions that receive tuition reimbursement on behalf of employees of a licensee:

a. nonprofit charitable organization shall mean a nonprofit board, association, corporation, or other organization domiciled in this state and qualified with the United States Internal Revenue Service for an exemption from federal income tax under Section 501(c), (3), (4), (5), (6), (7), (8), (10), or (19) of the Internal Revenue Code;

2. entities which provide one or more of the following services to a licensee and which are the sole source provider of such service:

- a. water;
- b. sewage;
- c. electricity;
- d. natural gas; and
- e. local telephone services.

3. regulated insurance companies providing insurance to a licensee and its employees including providers of medical, life, dental, and property insurance;

4. administrators of employee benefit and retirement plans including incorporated 401K plans and employee stock purchase programs;

5. national or local professional associations which receive funds from a licensee for the cost of enrollment, activities, and membership;

6. all state, federal, and municipal operated agencies;

7. all liquor, beer and wine industries regulated by the Office of Alcohol and Tobacco Control;

8. state and federally regulated banks and savings and loan associations;

9. newspapers, television stations and radio stations which contract with licensees to provide advertising services; and

10. providers of professional services, including but not limited to accountants, architects, attorneys, consultants, engineers and lobbyists, when acting in their respective professional capacities.

F. Any nongaming supplier required to obtain a nongaming suppliers permit, other than those listed in Subsection E. in this Section may request a waiver of the necessity of obtaining a nongaming suppliers permit. The division may grant such a request upon showing of good cause by the nongaming supplier. The division may rescind any such waiver which has been previously granted upon written notice to the nongaming supplier.

G. Junket representatives shall be subject to the provisions of this Section in the same manner as other nongaming suppliers.

H. Each Type A licensee shall submit to the division, on a quarterly basis, a report containing a list of all nongaming suppliers which have received \$5,000 or more from the licensee during the previous quarter, or \$50,000 or more during the preceding twelve month period as payment for providing nongaming services or goods to the licensee. This report shall include the name and address of the nongaming supplier, a description of the type of goods or services provided, the nongaming supplier's nongaming permit number, if applicable, federal tax identification number, and the total amount of all payments made by the licensee, or any person acting on behalf of the licensee, to each nongaming supplier during the previous four quarters. For each of the nongaming suppliers listed in this quarterly report which is a provider of professional services as defined in Subsection E. 10. of this Section, 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 amount paid to each such provider by the licensee or any person acting on behalf of the licensee during the previous quarter. This report shall be received by the board and the division not later than the last day of the month following the quarter being reported.

I. The division shall determine whether nongaming suppliers providing goods and/or services to licensees are legitimate ongoing businesses and are not utilized for the primary purpose of compliance with voluntary procurement goals. In making such determination the division shall consider any or all of the following nonexclusive factors:

1. years in business providing specific goods and/or services procured by licensees;

2. total customer base;

3. dollar volume of all sales compared to sales to licensees;

4. existence and nature of warehouse and storage facilities;

5. existence and number of commercial vehicles owned or leased; and/or

6. existence and nature of business offices, equipment and facilities.

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 26:

**§2109. Suitability Determination**

A Type A gaming license shall be in the name of the owner of the eligible facility. The licensee, gaming operator, owner of facilities, officer or director, or any person having a five percent or more interest in such entity or any person who in the opinion of the board has the ability to exercise significant influence over the activities of a licensee shall be required to submit to an investigation to determine suitability. All costs associated with conducting an investigation for suitability of the licensee, operator of facilities, officer or director, or any person having any economic interest in such entity, shall be borne by the licensee.

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 26:

**§2110. Plans and Specifications**

A Type A licensee shall submit all plans and specifications of the eligible facility to the board and the division at the time of application. The licensee shall have an ongoing duty to inform the division of changes in the facility plans, specifying layout and design as they become available. The licensee shall have an ongoing duty to update the board and the division of changes in the facility plans, specifying the layout and design as they become available. Such changes are subject to prior approval by the board as the case may be.

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 26:

**§2111. License or Permit Disqualification Criteria**

The board shall not award a license or permit to any person who fails to prove by clear and convincing evidence that he is qualified in accordance with the provisions of the act or these regulations.

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 26:

**§2113. License and Permits; Suitability**

A. No person shall be eligible to receive a license or permit issued pursuant to the provisions of the act or these regulations unless the board finds that:

1. the applicant is a person of good character, honesty, and integrity; and has never been convicted of a felony offense;
2. the applicant is a person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of slot machine gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of slot machine gaming or the conducting of business and financial arrangements incidental thereto;
3. the applicant is capable of conducting the activity for which a license is sought, which means that the applicant can demonstrate the capability, through either training, education, business experience, or a combination of them, to conduct such activities.

4. particularly as to the owner of the eligible facility, the applicant can demonstrate that the proposed financing of slot machine gaming at the eligible facility is adequate for the nature of the proposed operation and from a source suitable and acceptable to the board.

5. the applicant, if a natural person, is a Louisiana domiciliary and if not, is a Louisiana corporation, partnership, limited liability company, or a registered limited liability partnership licensed to conduct business in the state of Louisiana.

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 26:

**§2114. Tax Clearances Required of an Applicant for a License**

A. The applicant, its officers, directors, any person with an economic interest of five percent or more in an applicant and any person who in the opinion of the board has the ability to exercise significant influence over the activities of a licensee shall receive tax clearances from the appropriate federal and state agencies prior to the granting of a license.

B. The applicant, its officers, directors and any person with an economic interest of five percent or more and any person who in the opinion of the board has the ability to exercise significant influence over the activities of a licensee shall remain current in filings of tax returns and the payments required pursuant to such returns.

C. The violation of this Section is grounds to condition, suspend, or revoke a permit or license.

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 26:

**§2115. Tax Clearances**

A. An applicant for a license or permit shall be current in filing all applicable tax returns and in the payment of all taxes, interest and penalties owed to the state of Louisiana and the Internal Revenue Service, excluding contested amounts pursuant to applicable statutes, and items for which the department of revenue and taxation or the Internal Revenue Service has accepted a payment schedule of back taxes.

B. It shall be the sole responsibility of a licensee or permittee to remain current in filing all applicable tax returns and in the payment of all taxes, interest and penalties owed to the state of Louisiana and the Internal Revenue Service, excluding contested amounts pursuant to applicable statutes, and items for which the Department of Revenue and Taxation or the Internal Revenue Service has accepted a payment schedule of back taxes.

1. Any failure to timely file all applicable tax returns or any tax deficiency shall be corrected within thirty days of the notice to the division of such failure to file or tax deficiency.

2. At the expiration of the thirty days, if the failure to file or the tax deficiency is not corrected to the appropriate taxing authority's satisfaction, administrative action shall be initiated by the division against the licensee or permittee.

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 26:

**§2121. Form of Application for a License**

A. An application for a license shall be filed by way of forms prescribed by and obtained from the board or division. Such forms may include, but are not limited to:

1. a history record regarding the background of the applicant;
2. a financial statement;
3. a statement disclosing the nature, source, and amount of any financing, the proposed uses of all available funds, the amount of funds available after opening for the actual operation of the eligible facility, and economic projections for the first three years of operation of the eligible facility;
4. an affidavit of full disclosure, signed by the applicant;
5. an authorization to release information to the board and division, signed by the applicant;
6. a standard bank confirmation form, signed by the applicant;
7. a release of all claims, signed by the applicant;
8. in addition, the board or division may require an applicant to provide such other information and details as it needs to discharge its duties properly. Failure to supply any information within the prescribed time periods, after receiving the board's or division's request, may constitute grounds for delaying consideration of the application and/or constitutes grounds for denial of the application; and

I. security statement explaining the type of security procedures, practices, and personnel to be utilized by the applicant.

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 26:

**§2123. Additional Type A Application Information Required**

A. Every application for a Type A license shall contain the following additional information including but not limited to:

1. two copies of detailed plans of design of the eligible facility, including a layout of the designated gaming area and areas wherein gaming operations will be conducted, stating the projected use of each area;
2. the total estimated cost of construction of the eligible facility proposed by this application, distinguishing between known costs and projections, and shall separately identify:
  - a. facility design expense;
  - b. land acquisition or site lease costs;
  - c. site preparation costs;
  - d. construction cost or renovation cost;
  - e. equipment acquisition cost;
  - f. cost of interim financing;
  - g. organization, administrative and legal expenses;
 and
  - h. projected permanent financing costs.
3. the construction schedule proposed for completion of the eligible facility; including therein a projected date of completion, and indication of whether the construction contract includes a performance bond;

4. explanation and identification of the source or sources of funds for the construction of the eligible facility;

5. description of the casino size and approximate configuration of slot machines, to include the type of slot machine and the proposed distributors and manufacturers of this equipment;

6. a detailed plan of surveillance equipment to be installed;

7. days and periods of time that the gaming area will be in operation; and

8. the proposed management of the facility, management personnel by function and organizational chart by position.

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 26:

**§2125. Access to Applicants' Premises and Records**

Each applicant shall upon request immediately make available for inspection by the division or agents of the division, all papers, books and records used, or to be used, in the licensed or permitted operation. The division, or any agent of the division, shall be given immediate access to any portion of the premises of any eligible facility or premises of a manufacturer or supplier for the purpose of inspecting or examining any records or documents required to be kept under the provisions of the act and these regulations and any gaming device or equipment or the conduct of any gaming activity. Access to the areas and records that may be inspected or examined by the division, or division agents, shall be granted to any such individual who displays division credentials.

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 26:

**§2127. Information Constituting Grounds for Delay or Denial of Application; Amendments**

A. It shall be grounds for denial of the application or enforcement action for any person to make any untrue statement of material fact in any application, or in any statement or report filed with the board or division, or willfully to omit in any such application, statement or report, any material fact which is required to be stated therein, or which is necessary to make the facts stated not misleading.

B. All information included in an application shall be true and complete to the best of the applicant's knowledge and in the opinion of the division as of the date submitted. An applicant shall immediately supply by amendment any new information based on facts occurring after the original application.

C. An application may be amended upon approval of the chairman or division supervisor. An amendment to an application may have the effect of establishing the date of such amendment as the filing date of the application with respect to the time requirements for action on the application. Request for amendment to an application shall be in writing.

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 26:

### **§2129. Other Considerations for Licensing**

A. Sections 2129-2137 set forth criteria which the board may consider when deciding whether to issue a Type A license. The various criteria set forth may not have the same importance in each instance. Other factors may present themselves in the consideration of an application for a license. The following criteria are not listed in order of priority.

1. Proper Financing. The board may consider whether the proposed eligible facility is properly financed.

2. Adequate Security and Surveillance. The board may consider whether the proposed eligible facility is planned in a manner which provides adequate security and surveillance for all aspects of its operation and for the people working or patronizing the eligible facility.

3. Character and Reputation. The board may consider the character and reputation of all persons identified with the ownership and operation of the eligible facility, and their capability to comply with the regulations of the board and the provisions of the act.

4. Miscellaneous. The board may consider such other factors as may arise in the circumstances presented by a particular application.

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 26:

### **§2131. Timetable for Financing and Construction**

In conjunction with an applicant's submission of its completed application, an applicant shall submit a timetable for financing arrangements, commencement and completion of construction activities and set forth the date upon which gaming activities will begin. This timetable will be subject to approval by the board.

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 26:

### **§2133. License Term and Filing of Application**

A. Type A licenses shall expire five years from the date the license was granted and may be renewed for succeeding five year periods.

B. Each application, including renewal applications, shall be deemed filed with the board when the application form has been received by the division, as evidenced by a signed receipt.

C. Renewal applications for Type A licenses shall be submitted to the division no later than one hundred twenty days prior to the expiration of the license.

D. All renewal applications for permits shall be submitted to the division no later than sixty days prior to the expiration of the permit.

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 26:

### **§2137. Fingerprinting**

An initial application is not complete unless the applicant, any person who is an officer, director or holder who has a five percent or greater economic interest in the applicant has

submitted to fingerprinting by or at the direction of 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, Gaming Control Board, LR 26:

### **§2141. Renewal Applications**

A. Applications for renewal of a license or permits shall be made by way of forms prescribed by the board and shall contain all information requested by the board. Prescribed forms shall contain a statement made, under oath, by the applicant, each officer or director of the applicant, and each person with a five percent or greater economic interest in the applicant that any and all changes in the history and financial information provided in the previous application have been disclosed.

B. Renewal applications shall further contain:

1. a list of all civil lawsuits to which the applicant is a party instituted since the previous application;

2. a current list of all stockholders of the applicant, if the applicant is a corporation, or list of all partners or persons with a five percent or greater economic interest in the applicant;

3. a list of all administrative actions instituted or pending in any other jurisdiction against or involving the applicant or parent corporation of the applicant, if applicable;

4. prior year's corporate or company tax return of the applicant;

5. a list of all charitable and political contributions made by the applicant during the last three years, indicating the recipient and amount contributed.

C. The board or division may require an applicant to provide all other such documentation or information as is necessary to determine suitability of the applicant or to discharge their duties under the act and rules.

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 26:

### **§2143. Conduct of Investigation; Time Requirements**

All investigations conducted by the division in connection with an application shall be conducted in accordance with the act.

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 26:

### **§2144. Reserved**

### **§2146. Subpoenas and Subpoenas Duces Tecum**

The division or the board shall have the authority to compel the attendance of witnesses or production of documents under the authority of the division or jurisdiction of the board.

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 26:

### **§2151. Waiver of Privilege**

An applicant may claim any privilege afforded by the Constitution of the United States or of the state of Louisiana in refusing to provide information to, answer questions of or

cooperate in any investigation by the division or board; but a claim of privilege with respect to any testimony or evidence may constitute sufficient grounds for denial of the application.

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 26:

#### **§2155. Withdrawal of Application**

A request for withdrawal of an application shall be made in writing to the chairman at any time prior to issuance by the board of its determination with respect to the application. The board may deny or grant the request with or without prejudice.

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 26:

#### **§2157. Application After Denial**

Any person whose application for license or permit has been denied by the board, and who has not successfully appealed the decision of denial, or whose application has been withdrawn with prejudice is not eligible to reapply for any approval authorized by the act for a period of five years unless the board rules that the denial is without prejudice.

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 26:

#### **§2158. Criteria for the Issuances of Permits**

All applicants for a permit issued by the board or division as authorized by these regulations shall meet the qualification requirements contained in the act and these regulations.

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 26:

#### **§2159. Gaming Employee Permits Required**

A. No person may be employed as a gaming employee unless such person is the holder of a valid gaming employee permit issued by the board.

B. The licensee shall secure an application and fingerprint cards from the division for each prospective employee.

C. The division may investigate the applicant and may either recommend approval, denial, or conditional approval of the gaming employee permit to the board.

D. The board may issue a conditional permit subject to denial of the application for a gaming employee permit. Upon the denial of the application, the employee shall surrender his permit to the division or a person designated by the division and cease working as a gaming employee. Since temporary gaming employee permits are issued as a convenience to the licensee and to the gaming employee, a temporary permit is not valid unless the applicant for the gaming employee permit shall agree in writing to the rules regarding temporary permits.

E. A gaming employee permit is not transferable.

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 26:

#### **§2161. Application for Gaming Employee Permit; Procedure**

An applicant for a gaming employee permit shall submit to fingerprinting at the direction of the division and supply two passport size photographs. The photographs must be satisfactory to the division and must have been taken not earlier than three months before the date of filing the application. The applicant shall also provide any other information requested 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, Gaming Control Board, LR 26:

#### **§2165. Display of Gaming Identification Badge**

A permittee shall have on his person and shall clearly display his gaming employee identification badge issued by the Type A licensee at all times during work hours. The badge shall meet all requirements of 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, Gaming Control Board, LR 26:

### **Chapter 23. Compliance, Inspections and Investigations**

#### **§2301. Applicability and Resources**

The division shall conduct inspections and investigations relative to compliance with the act and these rules and regulations. The board and division are empowered to employ such personnel as may be necessary for such inspections and investigations.

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 26:

#### **§2303. Inspections and Observations**

The division is empowered to make periodic inspections of all eligible facilities where gaming will be conducted, and the premises where gaming equipment or gaming devices are manufactured, sold or distributed, during construction and thereafter. The division shall further observe gaming activities and operations and inspect gaming equipment and supplies in and destined for eligible facilities to ensure compliance with the act and regulations. Such inspections and observations may or may not be made known to the applicant, licensee or permittee. All requests for access to premises and production of records and documents in connection with any inspection shall be granted in accordance with the provisions of the act and these regulations.

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 26:

#### **§2305. Inspections During Construction**

A. The division or agents of the division may inspect the eligible facility during construction. Upon presentation of identification, any designated agent of the division may demand and shall be given immediate access to any place where construction of the designated facility or any of its component parts is underway. The division shall ensure that the eligible facility:

1. complies with the plans and specifications and any applicable change orders; or

2. does not comply with the plans and specifications or applicable change orders, in which event a description of such noncompliance would be forwarded to the board.

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 26:

### **§2307. Investigations**

All investigations of any alleged violations of the act or of the rules and regulations by an applicant, licensee or permittee must be conducted by the division and may or may not be made known to the applicant, licensee or permittee before being completed.

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 26:

### **§2309. Investigative Powers of the Board and Division**

A. In conducting an investigation, the board and division are empowered to:

1. inspect and examine the entire premises wherein gaming activities are conducted, proposed to be conducted or gaming devices are maintained or repaired and where all papers, books, records, documents and electronically stored media are maintained;

2. summarily seize and remove gaming equipment and devices from such premises and impound any equipment for the purpose of examination and inspection;

3. have access to inspect, examine, photocopy and if necessary seize, all papers, books, records, documents and information of an applicant, licensee, or permittee pertaining to the licensed or permitted operation or activity, on all premises where such information is maintained;

4. review all papers, books, records, and documents pertaining to the licensed or permitted operation;

5. issue subpoenas, as provided in this chapter, in connection with any investigative hearing conducted by the division;

6. conduct investigative hearings; and

7. issue written interrogatories.

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 26:

### **§2311. Seizure and Removal of Gaming Equipment and Devices**

A. Gaming devices and equipment may be summarily seized by the division. Whenever the division seizes and removes gaming equipment or devices:

1. an inventory of the equipment or devices seized will be made by the division, identifying all such equipment or devices as to make, model, serial number, type, and such other information as may be necessary for authentication and identification;

2. all such equipment or devices will be sealed or by other means made secure from tampering or alteration;

3. the time and place of the seizure will be recorded; and

4. the licensee or permittee will be notified in writing by the division at the time of the seizure, of the fact of the seizure, and of the place where the seized equipment or device is to be impounded. A copy of the inventory of the

seized equipment or device will be provided to the licensee or permittee 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, Gaming Control Board, LR 26:

### **§2315. Seized Equipment and Devices as Evidence**

A. All gaming equipment and gaming devices seized by the division shall be considered evidence, and as such shall be subject to the laws of Louisiana governing chain of custody, preservation and return, except that:

1. any article of property that constitutes a cheating device shall not be returned. All cheating devices shall become the property of the division upon their seizure and may be disposed of by the division, which disposition shall be documented as to date and manner of disposal;

2. the division shall notify by certified mail each known claimant of a cheating device that the claimant has 10 days from the date of the notice within which to file a written claim with the division to contest the characterization of the property as a cheating device;

3. failure of a claimant to timely file a claim as provided in Paragraph 2 above will result in the division's pursuit of the destruction of property;

4. if the property is not characterized as a cheating device, such property shall be returned to the claimant within fifteen days after final determination;

5. items seized for inspection or examination may be returned by the division without a court order.

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 26:

### **§2317. Subpoenas in Connection with Investigative Hearings**

The board has full power and authority to issue subpoenas and compel the attendance of witnesses in accordance with the act and these regulations and for investigative hearings at any place within the state, including subpoenas compelling production of documents, and to administer oaths and require testimony under oath. Any such subpoena issued by the board will be served in a manner consistent with the service of process and notices in civil actions. The board may require reasonable fees to be submitted with subpoenas, in order to pay transportation and related expenses that may occur.

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 26:

### **§2319. Contempt**

For failure or refusal to comply with any subpoena or order issued by the board and duly served, the board may cite the subpoenaed party for contempt and may impose a fine as provided in the laws of the state of Louisiana. Such contempt citations and fines may be appealed to the Nineteenth Judicial District Court.

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 26:

**§2321. Investigative Hearings**

Investigative hearings shall be conducted by the division or by a hearing officer appointed by the board, at such times and places, as may be convenient to the division. Investigative hearings may be conducted in private at the discretion of the division or hearing officer. A transcript of the hearing shall be made by a licensed court reporter.

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 26:

**§2323. Interrogatories**

All interrogatories propounded by the board and/or the division shall be in writing and shall be served in the manner consistent with the service of process in civil actions. The respondent is entitled to fifteen days within which to respond.

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 26:

**§2325. Imposition of Sanctions**

A. The division may access a civil penalty as provided for in the penalty schedule. The penalty schedule lists a base fine and proscriptive period for each violation committed by the licensee or permittee. The proscriptive period is the amount of time determined by the division in which a prior violation is still considered active for purposes of consideration in assessment of penalties. A prior violation is a past violation of the same type which falls within the current violation's proscriptive period. If one or more violations exist within the proscriptive period the violation of any rule may result in the assessment of a civil penalty, suspension, revocation, or other administrative action. If the calculated penalty exceeds the statutory maximum of \$100,000, the matter shall be forwarded to the board for further administrative action. In such case, the board shall determine the appropriate penalty to be assessed. Assisting in the violation of rules, laws, or procedures as provided in Section 2931 may result in a civil penalty in the same amount as provided in the penalty schedule for the respective violation.

B. The division may impose any sanction authorized by the act or these rules for violation of any condition, restriction, or limitation imposed on a license or permit by either the division or board.

C. The division may impose any sanction authorized by the act or these rules for violation of the licensee's internal controls as are approved by the division. For purposes of this Section, the licensee's internal control shall include:

1. accounting and financial controls including procedures to be utilized in counting, banking, storage and handling of cash;
2. procedures, forms, and where appropriate, formulas covering the calculation of hold percentages, revenue drop, expenses and overhead schedules, complimentary services, cash equivalent transactions, salary structure, and personnel practices;
3. job descriptions and the systems of personnel and chain-of-command, establishing a diversity of responsibility among employees engaged in gaming operations and

identifying primary and secondary supervisor positions for areas of responsibility, which areas shall not be so extensive as to be impractical for and individual to monitor;

4. procedures within the cashier's cage for the receipt, storage, and disbursal of cash, and other cash equivalents used in gaming, the payoff of jackpots, and the recording of transactions pertaining to gaming operations;

5. procedures for the counting and recordation of revenue;

6. procedures for the security, storage, and recordation of cash equivalents utilized in other gaming operations;

7. procedures for the transfer of monies or cash equivalents from and to the slot machines;

8. procedures and standards for the opening and security of slot machines;

9. procedures for the payment and recordation of slot machine jackpots;

10. procedures for the cashing and recordation of checks exchanged by patrons;

11. procedures governing the utilization of the private security force within the designated area;

12. procedures and security standards for the handling and storage of gaming devices, machines, and all other gaming equipment;

13. procedures and rules governing the conduct of particular games and the responsibilities of the gaming personnel in respect thereto; and

14. such other procedures, rules or standards that the division may impose on a licensee regarding its operations.

D. A sanction for purposes of this Section includes, but is not limited to suspension, revocation, or cancellation of license or permit, the imposition of a civil penalty and such other costs as the division deems appropriate, or other conditioning, limiting, or restricting of a license or permit.

Penalty Schedule.

Section Reference Description Base Fine Proscriptive Period (Months)

**Chapter 21 Licenses and Permits**

Section Reference	Description	Base Fine	Proscriptive Period (Months)
2101	General Authority of the Board and Division	\$10,000	18
2108	Nongaming Suppliers	\$10,000	18
2110	Plans and Specifications	\$10,000	18
2125	Access to Applicants' Premises and Records	\$25,000	60
2127.A	Information Constituting Grounds for Delay or Denial of an Application	\$10,000	24
2159.A	Gaming Employee Permits Required	\$10,000	18
2165	Display of Gaming Employee Identification Badge	\$500	12

**Chapter 23 Compliance, Inspections, and Investigations**

2325	Imposition of Sanctions	\$2,500	12
------	-------------------------	---------	----

**Chapter 25 Transfers of Interest in Licensees and Permittees;  
Loans and Restrictions**

2521	Loans and Lines of Credit	\$75,000	60
<b>Chapter 27 Accounting Regulation</b>			
2701	Procedures for Reporting and Paying Taxes and Fees		
2701	Late Reports	\$2,000	12
2701	Late Wire Transfers	\$5,000	12
2703.A-E	Accounting Records (per issue)	\$2,000	12
2705	Records of Ownership	\$500	12
2707	Records Retention	\$10,000	18
2709.A	Uniform chart of accounts	\$1,000	12
2709.B	Quarterly Financial Statements	\$1,000	12
2709.C	SEC Reports	\$500	12
2711.B	Required Signatures	\$500	12
2711.D	Change of CPA Requirements	\$10,000	60
2711.F	Audited Financial Statements (submission date)	\$10,000	60
2711.G	Change of Business Year	\$2,000	60
2711.H	Other CPA Reports	\$2,000	60
2711.I	Quarterly Net Win Reports	\$5,000	24
2711.J	Additional CPA Information	\$10,000	60
2713.D	Submission of Monthly Calculations	\$5,000	12
2713.E	Submission of Revised Calculated Amount	\$5,000	12
2715.A.1-7,11	General Requirements	\$2,500	12
2715.A.8-10, 12	Key Control & Entry Logs	\$10,000	24
2715.D	Internal Audit Department – Failure to Maintain Department or Develop Quarterly Report	Board Assessment	None
2715.E	Late Submission	\$10,000	60
2715.F	Amendment of Computerized Controls	\$25,000	24
2715.H	Amendments to Internal Controls required by the Division	\$20,000	24
2715.J-M	General Credit Requirements	\$5,000	18
2715.O	Monthly Credit Report	\$5,000	18
2715.P	Quarterly Vendor Report	\$5,000	18
2715.Q	Amendments to Internal Controls	\$25,000	24
2715.R	Licensee’s Continuing Duty to Review Internal Controls	Board Assessment	None
2716	Clothing Requirements	\$5,000	12
2717.P	Accounting and MIS Functions	\$5,000	12
2719.A & B	Handling of Cash	\$5,000	18
2721.A	Tips and Gratuities		
2721.B	Licensee Violation	\$2,000	12
2723	Internal Controls, Slots		
2723.B &	Jackpot Request	\$2,000	12

**C**

2723.D	Jackpot Payout Slip	\$2,000	12
2723.E	Jackpot Payout Slips greater than \$1,200	\$2,000	12
2723.F	Jackpot Payout Slips greater than \$5,000	\$2,000	12
2723.G	Jackpot Payout Slips greater than \$10,000	\$2,000	12
2723.H	Jackpot Payout Slips greater than \$10,000	\$2,000	12
Section Reference	Description	Base Fine	Proscriptive Period (Months)
2723.I	Slot Fill Slips	\$2,000	12
2723.J	Slot Drop	\$10,000	12
2723.K	Slot Count	\$10,000	12
2723.L	Hard Count Room	\$5,000	24
2723.M	Accurate and Current Records for each slot machine	\$5,000	24
2723.N	Slot Machines removed from gaming floor	\$5,000	12
2723.O	Key Control,& Entry Logs	\$10,000	24
2723.P	Sensitive Keys removed from Facility	\$10,000	24
2723.Q	Currency Acceptor Drop and Count Standards	\$10,000	24
2723.R	Computer Records	\$5,000	12
2723.S	Management Information Systems (MIS) Functions	\$5,000	18
2723.T	Accounting Department Audit Procedures	\$10,000	24
2723.U	Slot Department Requirements	\$2,000	12
2723.V	Progressive Slot Machines	\$2,000	12
2723.W	Training	\$5,000	12
2729	Cage and Credit		
2729.A-H	Cage Procedures	\$5,000	12
2729.I-HH	Credit Extension/Check Cashing	\$5,000	12
2729.II-NN	Other Credit Issues	\$5,000	12
2730	Exchange of Chips and Tokens	\$1,000	12
2731	Currency Transaction Reporting	\$5,000	12
2735	Net Slot Machine Proceeds Computation	\$5,000	12

**Chapter 29 Operating Standards**

2901	Methods of Operation Generally	\$10,000	24
2905	Weapons in the Designated Gaming Area	\$10,000	24
2911	Accessibility to Premises; Parking	\$1000	12
2913	Access to Premises and Production of Records	\$10,000	24
2915	Methods to Prevent Minors from Gaming Area	\$10,000	12

2919	Finder's Fees	\$10,000	12
2921.A	Agencies who may Collect	\$10,000	60
2921.B	Collection by Unsuitable Person	\$10,000	60
2921.C	Recordation of Collection Arrangements; Division Inspection	\$10,000	60
2933	Compulsive/Problem Gamblers - Telephone Info and Referral Service Posting	\$1000	24
2935	Entertainment Activities	\$5,000	12
2943	Gaming Employees Prohibited from Gaming	\$2,500	12
2945	Restrictive Areas	\$10,000	24
2953	Promotions and Tournaments	\$5,000	12
Chapter 33	Surveillance and Security		
3301	Required Surveillance Equipment	\$10,000	24
3303	Surveillance and Security Plans	\$25,000	24
3305.A	Division Room	\$10,000	24
3305.B	Access to Surveillance Equipment	\$10,000	24
3305.C	Surveillance Employees Prohibited from Other Gaming Duties	\$5,000	24
3305.D&E	Security of Division and Surveillance Rooms	\$10,000	24
3305.F	Division Agents Access to Surveillance Room	\$15,000	24
3305.G	Division Room Furnishings	\$10,000	24
3305.H	Licensee Surveillance	\$5,000	24
3307	Segregated Telephone Communication	\$5,000	24
3309.A	Maintaining Logs	\$10,000	24
3309.B	Logging of Unusual Occurrences	\$10,000	24
3311	Storage and Retrieval	\$20,000	24
3315	Maintenance and Testing	\$20,000	24
Section Reference	Description	Base Fine	Proscriptive Period (Months)
Chapter 35	Patron Disputes		
3501	Division Notification List of Excluded Persons	\$1,000	12
Chapter 37			
3705	Duty of Licensees and Permittees to Exclude Enforcement Actions	\$5,000	12
Chapter 41			
4101	Emergency Orders	\$50,000	60
4103	Chairman Action By Order	\$20,000	18
Chapter 42	Electronic Gaming Devices		
4202	Approval of Gaming Devices; Applications and Procedures; Manufacturers and Suppliers	\$10,000	12
4204	Progressive EGD's	\$5,000	12
4205	Computer Monitoring Requirements of Electronic	\$10,000	12

Gaming Devices		
4208	Certification by Manufacturer	\$1,000 12
4211	Duplication of Program Storage Media	\$20,000 24
4212	Marking, Registration, and Distribution of Gaming Devices	\$5,000 12
4213	Approval to Sell or Dispose of Gaming Devices	\$10,000 24
4214	Maintenance of Gaming Devices	\$20,000 24
4219	Approval of Associated Equipment; Application and Procedures	\$5,000 12

### Chapter 43 Specifications for Gaming Device and Equipment

4301	Approval of Chips and Tokens; Applications and Procedures	\$5,000	12
4309	Use of Chips and Tokens	\$1,000	12
4311	Receipt of Gaming Chips or Tokens from Manufacturer or Supplier	\$5,000	12
4313	Inventory of Chips	\$5,000	12
4315	Redemption and Disposal of Discontinued Chips and Tokens	\$5,000	12
4317	Destruction of Counterfeit Chips and Tokens	\$5,000	12
4319	Approval and Specifications for Dice	\$5,000	12
4321	Dice; Receipt, Storage, Inspections and Removal From Use	\$5,000	12
4323	Approval and Specifications for Cards	\$5,000	12
4325	Cards; Receipt, Storage, Inspections and Removal From Use	\$5,000	12

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 26:

#### §2327. Proof of Compliance

Any notice issued by the division to a licensee or permittee regarding a violation of the act or of the rules adopted pursuant to the act may include a statement that the licensee or permittee may submit proof of compliance with the act and of the rules adopted pursuant to the act.

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 26:

#### §2329. Notification of Vendor Recommendations or Solicitations

A. All licensees shall report on the last day of each month, in writing, to the gaming control board the name, address, and telephone number of any person or legal entity who or which recommends to or solicits through any agent,

employee or representative, who has authority to contract for the licensee, for the purpose of the licensee considering the purchase of goods and/or services from a particular vendor. The licensee shall report the name, address, and telephone number of the recommended vendor to the board at the same time. This provision shall only apply to the solicitation or purchase of goods and/or services with a value in excess of \$5,000. This provision shall not apply to any recommendations made to the licensee for the hiring of employees working in the day-to-day operations of the eligible facility.

B. Vendor, for the purposes of this rule, shall include, but is not limited to, any manufacturer, distributor, gaming supplier, nongaming supplier, junket representative, professional, independent contractor, consultant, or other person in the business of providing goods and services regardless of whether required to be licensed, permitted, or registered.

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 26:

### **§2331. Supplier Permit Criteria**

The division shall determine whether suppliers providing goods and/or services to licensees are legitimate ongoing businesses. In making such determination the division shall consider any or all of the following nonexclusive factors:

1. years in business providing goods and/or services procured by licensees;
2. number of employees;
3. total customer base;
4. dollar volume of all sales compared to sales to licensees;
5. existence and nature of warehouse and storage facilities;
6. existence and number of commercial delivery vehicles owned or leased;
7. existence and nature of business offices, equipment and facilities;
8. whether the goods and/or services provided to the licensee are brokered, and if so, whether the actual supplier distributes through brokers as a common business practice;
9. registration with and reporting to appropriate local, state and federal authorities, as applicable.

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 26:

## **Chapter 25. Transfers of Interest in Licensees and Permittees; Loans and Restrictions**

### **§2501. Transfers in General**

A. The transfer of a license, permit, or of an application for a license or permit is prohibited. The transfer of an interest in a license, permit, or of an application for a license or permit is also prohibited.

B. The transfer of more than fifty percent (50%) ownership interest in a licensee is prohibited. A transfer of ownership interest in the licensee that has the effect of transferring control of the licensee is prohibited. A transfer which would have the effect of transferring more than fifty percent (50%) ownership interest in a licensee or transferring control of a licensee shall not be made without prior board approval.

1. Ownership interest is defined to include owning shares or securities issued by a corporation, being a partner in any kind of partnership, being a member of a limited liability company, or owning or possessing any interest in any other kind of legal entity.

2. Economic interest means any interest in a license or licensee whereby a person receives or is entitled to receive, by agreement or otherwise, a profit, gain, thing of value, loss, credit, security interest, ownership interest, or other economic benefit.

C. No person shall sell, purchase, assign, lease, grant or foreclose a security interest, hypothecate or otherwise transfer, convey or acquire in any manner whatsoever, any of the following interests without prior written approval of the board by all persons involved in the transaction:

1. an economic interest of five percent or more in any licensee or permittee;
2. an ownership interest of five percent or more in any licensee or permittee other than a corporation;
3. an economic interest of five percent or more in any person required to meet the qualification requirements or suitability requirements of the act.

D. The acquisition of any interest in a licensee or permittee not listed in Subsections C. 1., C. 2. and C. 3. is conditional and ineffective if disapproved by the board. The persons involved in this type of acquisition may seek prior approval of the transaction from the board.

E. The requirements of Subsection C. shall apply should an accumulation of transfers occur wherein five percent or more ownership interest or economic interest is transferred.

F. Any person seeking any approval required by this Section shall comply with the provisions of this Chapter unless the division waives any or all of the requirements after the receipt of a written request made by such person.

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 26:

### **§2503. Requirements of Full Disclosure**

A. No person shall transfer or convey in any manner whatsoever any interest of any sort, in or to any person required to meet the qualification requirements and or suitability requirements of the act, by any person acting as an agent, trustee or other representative capacity for or on behalf of another person without first having fully disclosed all facts pertaining to such representation to the board and the division

B. Any person filing an application for approval of a transfer of any interest required by Section 2501 C. or D. must provide the following to the division:

1. any application forms including personal history forms required by the board or division;
2. all documents which evince the transfer of the interest including any financing agreements;
3. all documents which evince any side agreements or related agreements regarding the transfer of any interest;
4. any other documents the division may deem necessary for a full and complete evaluation of the transferees' qualifications and suitability to hold an interest in a licensee or permittee.

C. All costs associated with the division's investigation of the application for a transfer will be born by the person seeking to acquire the interest.

D. All persons required to obtain approval under this Chapter must meet the same qualification requirements and suitability requirements as a licensee or permittee as the case may be.

E. The board shall give the applicant notice of the granting or denying of its application for a transfer. The granting of an application for a transfer may be subject to any condition, limitation or restriction in the same manner as the granting of a license or permit. The applicant shall indicate its acceptance of any condition, limitation or restriction in a manner approved by the board. The notice required by this Subsection shall be sent by certified mail. An applicant served with notice of a denial may make a written request for a hearing before the board.

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 26:

#### **§2505. Prior Approval of Transfers Required**

A. No transfer of any interest for which prior approval is required pursuant to this Chapter may be completed unless the transfer and the transferee have been approved by the board in writing.

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 26:

#### **§2507. Transfer of Economic Interest Among Licensees and/or Permittees**

If a licensee, permittee, or person who has met the qualification requirements and suitability requirements of the act proposes to transfer an interest to another licensee, permittee, or person who has met the qualification requirements and suitability requirements of the act, then the following shall apply:

A. Both parties shall give written notice to the board of the proposed transfer, including the names and addresses of the parties, the extent of the interest proposed to be transferred and the consideration thereof;

B. The proposed transferee shall furnish the following to the board:

1. a sworn statement explaining and identifying the source of funds used in acquiring the interest;

2. a sworn statement by each person with an economic interest of five percent or more in the proposed transferee indicating that each person continues to meet the qualification and suitability requirements of the act;

3. all documents which evince the transfer of the interest including any financing agreements;

4. all documents which evince any side agreements or related agreements regarding the transfer of any interest;

5. any other documents the board may deem necessary for a full and complete evaluation of the transferees' qualifications and suitability to hold an interest in a licensee.

C. The notice is deemed filed with the board when all the items required have been accepted by the board as evidenced by a signed receipt.

D. Within ten days after the notice has been filed, the board shall notice the transferee that the notice is complete, or if incomplete, will request such additional information as is deemed necessary.

E. The division will conduct an investigation pertaining to the proposed transfer as is deemed appropriate.

F. The board shall grant or deny approval of the proposed transfer in the same manner as provided in Section 2503.E.

G. After receiving approval, the parties shall immediately notify the board when the approved transfer is actually effected.

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 26:

#### **§2509. Transfer of Economic Interest to Nonlicensee or Nonpermittee**

A. No person who owns an economic interest of five percent or more in any licensee or shall in any manner whatsoever, transfer that economic interest to any person who is not then a licensee, or person who has met the qualification requirements of the act. No person who owns an ownership interest of five percent or more in any licensee or other than a corporation shall in any manner whatsoever, transfer that economic interest to any person who is not then a licensee, or person who has met the qualification requirements of the act. No person who owns an economic interest of five percent or more in any person required to meet the qualification requirements or suitability requirements of the act shall in any manner whatsoever, transfer that economic interest to any person who is not then a licensee, or person who has met the qualification requirements of the act. None of the transfers described in this Subsection shall be effective for any purpose until the proposed transferee has applied for and obtained all licenses and permits required by the act and until the transferee has been approved by the board.

B. Should a cumulation of transfers occur wherein five percent or more of an interest is transferred, the entire transfer shall not be effective unless the transfer and the transferee have been approved by the board.

C. The application for approval of the transfer together with any license or permit applications must be filed at the same time with the board. All applicable fees must be paid at the time the applications are filed.

D. An investigation of any such application shall be conducted by the division. Prior to the commencement of the investigation, or while the investigation is on going, the division may request such additional information or documentation as it deems necessary for a complete investigation of the applicant.

E. The board shall grant or deny the approval for the transfer as provided for in Section 2503 E.

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 26:

#### **§2511. Statement of Restrictions Concerning Transfers**

A. All securities issued by a corporation that holds a license must bear on both sides of the certificate the following statement of restrictions:

1. "The purported sale, assignment, transfer, pledge, or other disposition of any security or securities issued by a corporation that holds a license is conditional and ineffective until approved by the Louisiana Gaming Control Board. If the board finds that the owner of this security does not meet the qualification requirements of the act, then the board may suspend or revoke the license or the board may condition the

license requiring that the disqualified person or persons may not:

- a. receive dividends or interest on the securities of the corporation;
- b. exercise directly or through a trustee or nominee, a right conferred by the securities of the corporation;
- c. receive remuneration from the licensee;
- d. receive any economic benefit from the licensee;
- e. continue in an ownership or economic interest in the licensee."

B. A publicly traded corporation incorporated prior to applying for a license under the provisions of the act, is only required to put the above statement of restrictions on securities issued after the corporation files its application for a license, permit or transfer approval with the board.

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 26:

### **§2513. Emergency Situations**

A. If the provisions of Section 2501C. apply to a transfer of an interest in a licensee, or person who is required to meet the qualification requirements and suitability requirements of the act, is contemplated, and in the opinion of the board, the exigencies of the situation require that a proposed transferee be permitted to take part in the conduct of operations or to make available financing or credit for use in connection with such operation during the pendency of an application for a license, permit, or determination that the applicant meets the qualification requirements and suitability requirements of the act, then the board may by emergency order implement the emergency procedures described in Section 2515.

B. An emergency as used in this Chapter may be deemed to include, but is not limited to any of the following:

1. the licensee, or person who was required to meet the qualification requirements and suitability requirements of the act has died or has been declared legally incompetent;
2. the licensee, or person who was required to meet the qualification requirements and suitability requirements of the act is a legal entity that has been dissolved by operation of law;
3. the licensee, or person who was required to meet the qualification requirements and suitability requirements of the act has filed a petition of bankruptcy, or in the opinion of the board is or will likely become insolvent;
4. the license or permit has been suspended or revoked;
5. a person with an interest in a licensee or who was required to meet the qualification requirements and suitability requirements of the act no longer meets the qualification requirements and suitability requirements of the act;
6. a licensee, or person who was required to meet the qualification requirements and suitability requirements of the act or an interest in a licensee or is subject to foreclosure or other forced sale permitted by law.

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 26:

### **§2515. Emergency Procedures**

A. A proposed transferee who seeks to participate in an operation pursuant to an emergency order as provided in Section 2513 must submit a written request to the board which shall contain the following:

1. a complete description of the extent to which and the manner in which the proposed transferee will participate in the operations pending the completion of the proposed transfer of an interest;
2. a complete description of the plan for effecting the proposed transfer of the interest;
3. a complete financial statement, including the sources for all funds to be used in the transfer and that will be used in the participation prior to the completion of the transfer;
4. full, true and correct copies of all documents pertaining to the proposed transfer, including but not limited to all agreements between the parties, leases, notes, mortgages or deeds of trust, and pertinent agreements or other documents with or involving third parties;
5. a complete description of any and all proposed changes in the manner or method of operations, including but not limited to the identification of all proposed changes of and additions to supervisory personnel;
6. all such additional documentation and information as may be requested by the board or division; and
7. a certification that a copy of the request for emergency participation has been provided to the board.

B. The proposed transferee shall file a complete application with the board for approval of the transfer of the interest and for any necessary license or permit as provided in Section 2507 within five days after an order for emergency participation has been issued. The board may waive any or all of the requirements of this Subsection upon written request of the proposed transferee with a showing of good cause.

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 26:

### **§2517. Emergency Permission to Participate; Investigation**

A. After the proposed transferee has complied with the requirements of Section 2515, the division shall determine if all the necessary documents and information have been provided by the applicant for approval for the transfer. If the division determines all of the necessary documents and information have been provided by the proposed transferee, then the division shall notify the proposed transferee of that fact in a manner deemed appropriate by the board.

B. After the notice described in Section 2517 A. has been provided to the proposed transferee, the division shall commence the background investigation of the proposed transferee. The division may request such additional documents and information during the investigation as it deems necessary. Upon the conclusion of the background investigation, the board may grant or deny the request for emergency participation. No hearing will be granted to review the denial of a request for emergency participation. Any conditions imposed by the board on a proposed transferee must be accepted by the proposed transferee in a

manner approved by the board prior to the board granting a request for emergency participation.

C. Emergency permission to participate shall be defined with respect to time, and must be limited as follows:

1. pending final action on the application of a proposed transferee, the existing licensee, or person who has met the qualification requirements and suitability requirements of the act and the transferee approved for emergency participation shall both be responsible for the payment of all taxes, fees and fines, and for acts or omissions of each;

2. no proposed transferee who has been granted emergency permission in writing to participate shall receive any portion of the net gaming proceeds from the gaming operations or any profits from other operations of the licensee until final approval of the proposed transfer of the interest has been granted subject to the exception contained in Section 2517 C. 3. If approval is granted, such approval shall be retroactive to the effective date of the emergency participation;

3. a proposed transferee who has been granted emergency permission to participate and who actually renders services to the licensed operation or the permitted operation may be compensated for any services actually rendered, but such compensation is subject to prior written approval by the board.

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 26:

#### **§2519. Effect of Emergency Permission to Participate; Withdrawal**

A. The granting of emergency permission to participate is a revocable privilege. The granting of emergency permission to participate is not a finding by the board that the applicant for emergency participation meets the qualification requirements or suitability requirements of the act. Such emergency permission to participate is without prejudice to any action that the board or the division may take with respect to any application for final approval of the proposed transfer of interest. All emergency permissions to participate are subject to the condition that they may be revoked or suspended at any time without a right to a hearing to review the board's decision. The provisions contained in this Section are to be considered a part of any emergency participation granted by the board, whether or not they are included in the order granting such emergency participation.

B. Upon notice that emergency permission to participate has been withdrawn, suspended, or revoked, the proposed transferee with such permission shall immediately terminate any participation whatsoever in the operations of the licensee, or person required to meet the qualification requirements and suitability requirements of the act. Anything of value, including money, contributed to the operations of the licensee, or person required to meet the qualification requirements and suitability requirements of the act shall be immediately returned to the proposed transferee. Noncompliance with this Section shall be considered a violation of the act and of the rules of the board by all concerned parties.

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 26:

#### **§2521. Loans and Lines of Credit**

No licensee, or person on behalf of a licensee shall borrow money, receive, accept, or make use of any cash, property, credit, line of credit, or guarantee, or grant any other form of security for any loan except in accordance with these regulations.

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 26:

#### **§2523. Board Actions Concerning Loans and Lines of Credit**

A. Whenever any licensee or person acting on behalf of a licensee ("borrower" herein), applies for, receives, accepts, or modifies the terms of any loan, line of credit, third-party financing agreement, sale with buy-back or lease-back provisions or similar financing transaction, or makes use of any cash, property, credit, loan or line of credit, or guarantees, or grants other form of security for a loan, such borrower shall notify the board in writing no less than sixty days prior to such transaction, unless more stringent conditions are imposed by the board. Such notice shall include the following:

1. the names and addresses of all the parties to the transaction;
2. the amounts and sources of funds;
3. the property or credit received or applied;
4. the nature and the amount of security provided by or on behalf of the borrower or person required to meet the applicable qualification requirements and suitability requirements of the act;
5. the specific nature and purpose of the transaction; and
6. such other information and documentation the board or division may require.

B. The report described in Subsection A. of this Section shall be signed under oath by the borrower, an authorized representative of the borrower, or person required to meet the applicable qualification requirements and suitability requirements of the act.

C. All transactions described in Subsection A. of this Section require prior written approval by the board unless:

1. the amount of the transaction does not exceed \$2,500,000 and all of the lending institutions involved therein are federally regulated financial institutions;
2. the loan amount of the transaction does not exceed \$1,000,000 and all of the lending entities are qualified parties;
3. the transaction is exempted from the prior written approval requirement pursuant to the provisions of Section 2524 of this Chapter;
4. the loan amount does not exceed \$500,000 and the transaction is one other than those described in Subsection C. 1, 2., or 3. of this Section;
5. the transaction modifies the terms of an existing loan or line of credit which has been previously approved pursuant to this Section, and after preliminary investigation pursuant to Subsection D. of this Section, the board determines that the modification does not substantially alter such terms.

D. The board, after preliminary review, shall determine whether the transaction is exempt from the requirement of prior written approval, and shall notify the borrower of the determination.

E. In the event the transaction is not determined exempt pursuant to Subsection C., the board shall render a decision approving or disapproving the transaction.

F. If the transaction is disapproved, the decision of the board shall be in writing and shall set forth detailed reasons for such disapproval.

G. The board may require that the transaction be subject to conditions which must be accepted by all parties prior to approval. The acceptance of such conditions shall be in a manner approved by the board.

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 26:

#### **§2524. Publicly Registered Debt and Securities**

If the transaction described in Subsection 2523 A. of this Chapter involves publicly registered debt and securities registered with the Securities and Exchange Commission (SEC), and sold pursuant to a firm underwriting understanding agreement, no board approval is required; however, in addition to filing the notice required in Subsections 2523 A. and B., the borrower shall:

A. file with the board, within one business day after filing with the SEC, copies of all registration statements and all final prospectus with respect to such debt securities and will give notice to the division within one business day of the effectiveness of such registration statement; and

B. file a report with the board within forty-five days after the completion of sales under such registration, setting forth the amount of securities sold and the identities of the purchasers thereof from the underwriters.

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 26:

#### **§2527. Escrow Accounts**

A. No money or other thing of value shall be paid, remitted, or distributed, directly or indirectly, to a proposed transferee, including a transferee with emergency permission to participate, until the board has approved the transfer and the transferee.

B. All money or other things of value to be paid, remitted, or distributed, directly or indirectly, to a proposed transferee, including a transferee with emergency permission to participate, shall be placed in escrow in a manner acceptable to the board until final approval of the board has been issued regarding the transfer and the transferee.

C. Upon approval of the transfer and the transferee, the money or other things of value held in escrow may be distributed to the transferee.

D. If the transfer or the transferee is disapproved by the board, any money or other thing of value placed in escrow shall be returned to the person depositing the money or other thing of value in escrow.

E. A transferee with emergency permission to participate may be paid such compensation for services rendered as has been approved by the board in writing without such compensation being placed in escrow.

F. Any violation of this Section shall be grounds to disapprove the transfer or the transferee.

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 26:

### **Chapter 27. Accounting Regulations**

#### **§2701. Procedure for Reporting and Paying Taxes and Fees**

A. All Daily Tax Remittance Summary reports, together with all necessary subsidiary schedules, shall be submitted to the division no later than forty-eight hours from the end of the licensed eligible facility's specified gaming day. For reporting purposes, licensed eligible facility's specified gaming day (beginning time to ending time) shall be submitted in writing to the division prior to implementation. For licensed eligible facilities which offer twenty-four hour gaming, gaming day is the twenty-four hour period by which the entity keeps its books and records for business, accounting, and tax purposes. Each licensed eligible facility shall have only one gaming day, common to all its departments. Any change to the gaming day shall be submitted to the division ten days prior to implementation of the change. All taxes related thereto must be electronically transferred to the State's or District's designated bank account as directed by the division. In addition to any other administrative action, civil penalties, or criminal penalties, licensed eligible facilities who are late in electronically transferring these taxes 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 taxes at the daily rate of .00041 multiplied by the amount of unpaid taxes 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, Gaming Control Board, LR 26:

#### **§2703. Accounting Records**

The following requirements shall apply throughout all of Chapter 27:

A. Each licensed eligible facility, 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 taxes under the act. Each licensed eligible facility shall keep records of all transactions impacting the financial statements of the licensed eligible facility, 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 licensed eligible facility 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 entity 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.

B. Each licensed eligible facility 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:

1. detailed records identifying revenues by day, expenses, assets, liabilities, and equity for each establishment;

2. detailed records of all markers, IOU's, returned checks, hold checks, or other similar credit instruments;

3. individual and statistical game records to reflect drop, win, and the percentage of win to drop for each slot machine, and to reflect drop, win, and the percentage of win to drop for each type of slot machine, for each day or other accounting periods approved by the division;

4. slot analysis reports which, by each machine, compare actual hold percentages to theoretical hold percentages;

5. for each licensed eligible facility, the records required by the licensed eligible facility's system of internal control;

6. journal entries and all workpapers (electronic or manual) prepared by the licensed eligible facility and its independent accountant;

7. 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 the licensed eligible facility shall be expended at an amount based upon the full cost of such services or items to the licensed eligible facility;

8. detailed token perpetual inventory records which identify the purchase, receipt, and destruction of 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 tokens;

9. workpapers supporting the daily reconciliation of cash and cash equivalent accountability;

10. financial statements and supporting documents; and

11. any other records that the division specifically requires be maintained.

C. Each licensed eligible facility shall create and maintain records sufficient to accurately reflect gross income and expenses relating to its gaming operations.

D. If a licensed eligible facility fails to keep the records used by it to calculate gross and net slot machine proceeds, or if the records kept by the licensed eligible facility to compute gross and net slot machine proceeds 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.

F. 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, Gaming Control Board, LR 26:

#### **§2705. Records of Ownership**

A. Each corporate licensed eligible facility shall keep on the premises of its gaming establishment the following documents pertaining to the corporation:

1. a certified copy of the articles of incorporation and any amendments;

2. a copy of the bylaws and any amendments;

3. a copy of the certificate issued by the Louisiana Secretary of State authorizing the corporation to transact business in Louisiana;

4. a list of all current and former officers and directors;

5. a certified copy of minutes of all meetings of the stockholders;

6. a certified copy of minutes of all meetings of the directors;

7. a list of all stockholders listing each stockholder's name, birth date, social security number, address, the number of shares held, and the date the shares were acquired;

8. the stock certificate ledger;

9. a record of all transfers of the corporation's stock;

10. a record of amounts paid to the corporation for issuance of stock and other capital contributions; and

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 licensed eligible facility 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 or joint venture 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 licensed eligible facility 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, Gaming Control Board, LR 26:

#### **§2707. Record Retention**

Upon request, each licensed eligible facility shall provide the division, at a location approved by the division, with the records required to be maintained by this Chapter. Each licensed eligible facility shall retain all such records for a minimum of five 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 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, Gaming Control Board, LR 26:

#### **§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 licensed eligible facilities shall prepare their financial statements in accordance with this chart or in a similar form that reflects the same information.

B. Each licensed eligible facility 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 sixty days following the end of each quarter.

C. Each licensed eligible facility 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 licensed eligible facility with the Securities and Exchange Commission or other domestic or foreign securities regulatory agency, within ten 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, Gaming Control Board, LR 26:

#### **§2711. Audited Financial Statements**

A. Each licensed eligible facility 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 licensed eligible facility'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 licensed eligible facility's business year as approved by the division. If the licensed eligible facility or a person controlling, controlled by, or under common control with the licensed eligible facility 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 licensed eligible facility.

D. Each licensed eligible facility 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 licensed eligible facility may select the independent CPA with the division's approval. Should the independent CPA previously engaged as the principal accountant to audit the licensed eligible facility's financial statements resign or be dismissed as the principal accountant, or if another CPA is engaged as principal accountant, the licensed eligible facility shall file a report with the division within ten days following the end of the month in which the event occurs, setting forth the following:

1. The date of the resignation, dismissal, or engagement;
2. any disagreements with a former accountant, in connection with the audits of the two most recent years, on any matter of accounting principles, or practice, financial statement disclosure, auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference in connection with his report to the subject matter of the disagreement; including a description of each such disagreement; whether resolved or unresolved;
3. whether the principal accountant's report on the financial statements for any of the past two 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 licensed eligible facility and addressed to the division stating whether he agrees with the statements made by the licensed eligible facility in response to this Section of the licensed eligible facility'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 licensed eligible facility shall submit to the division two originally signed copies of its audited financial statements and the applicable CPA's letter of engagement not later than one-hundred twenty days after the last day of the licensed eligible facility'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 licensed eligible facility or former licensed eligible facility shall, not later than one hundred twenty days after the event, submit to the division two 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 occurs within one hundred twenty days after the end of the business year for which a statement has not been submitted, the licensed eligible facility may submit statements covering both the business year and the final period of business.

G. If a licensed eligible facility changes its fiscal year, the licensed eligible facility 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 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 licensed eligible facility's financial statements must be submitted within one hundred twenty days after the end of the licensed eligible facility's business year. The CPA shall incorporate the guidelines established by the division into current procedures for preparing the reports.

I. Each licensed eligible facility shall engage an independent CPA to conduct a quarterly audit of the net gaming proceeds. Two signed copies of the auditor's report shall be forwarded to the division not later than sixty 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 licensed eligible facility or the licensed eligible facility's independent CPA, through the licensed eligible facility, 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, Gaming Control Board, LR 26:

**§2713. Cash Reserve and Bonding Requirements; General**

A. Each licensed eligible facility 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:

SLOTS: Nonprogressive:  
Number of Machines x \$50= \_\_\_\_\_  
Progressive:  
Total of all in house progressive jackpots: \_\_\_\_\_  
OTHER: Operating Accounts Payable: \_\_\_\_\_  
(amount equal to two weeks payables)  
Payroll for Two Weeks : \_\_\_\_\_  
Debt Service for One Month: \_\_\_\_\_

TOTAL REQUIREMENTS: \_\_\_\_\_  
CASH RESERVE COMPRISED OF

Cash in Cage : \_\_\_\_\_  
Cash in Banks, TCD, Savings, Etc.: \_\_\_\_\_  
Entity's Cash on Hand (Do not include slot machine bucket cash): \_\_\_\_\_  
Less: Safekeeping Money ( \_\_\_\_\_ )

TOTAL CASH RESERVE AVAILABLE: \_\_\_\_\_

B. Each licensed eligible facility 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 licensed eligible facility receives the division's written approval.

C. Each licensed eligible facility shall submit monthly calculations of its cash reserve to the division no later than thirty days following the end of each month.

D. Cash equivalents are defined as all highly liquid investments with an original maturity of twelve 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 of the total cash reserve requirement. Any changes to the initial computation submitted to the division shall require the licensed eligible facility 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.)

E. Each licensed eligible facility 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 taxes, 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 licensed eligible facility 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, Gaming Control Board, LR 26:

**§2715. Internal Control; General**

A. Each licensed eligible facility shall establish and implement beginning the first day of operations administrative and accounting procedures for the purpose of determining the licensed eligible facility's liability for

revenues and taxes under the act and for the purpose of exercising effective control over the licensed eligible facility's internal fiscal affairs. Each licensed eligible facility 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. all assets are safeguarded;
2. financial records are accurate and reliable;
3. transactions are performed only in accordance with the licensed eligible facility's internal controls as approved by the division;
4. transactions are recorded adequately to permit proper reporting of net slot machine proceeds, taxes, and all revenues deriving from the licensed eligible facility, terminal and related facilities and to maintain accountability for assets;
5. access to assets is permitted only in accordance with the licensed eligible facility's internal controls as approved by the division;
6. recorded accountability for assets is compared with actual assets at least annually and appropriate action is taken with respect to any discrepancies;
7. functions, duties, and responsibilities are appropriately segregated and performed in accordance with sound practices by competent, qualified personnel;
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. count room keys;
  - e. vault entrance key;
  - f. CCOM (processor) keys;
  - g. slot office storage box keys;
  - h. dual lock box keys;
  - i. change bank/booth keys;
  - j. weigh calibration key;
10. all other sensitive keys not listed in Section 2715A.9. are listed in the licensed eligible facilities' internal controls and are controlled as prescribed therein;
11. all damaged sensitive keys are disposed of timely and adequately. The licensed eligible facility 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 licensed eligible facility's internal controls as approved by the division;

13. only transparent trash bags are utilized in restricted areas.

B. Each licensed eligible facility 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 licensed eligible facility 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 licensed eligible facility'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 Section 2715 A. and Section 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 licensed eligible facility or a licensed owner attesting that the system satisfies the requirements of this Section;
6. other information as the division may require.

C. The licensed eligible facility may not implement its initial system of internal control procedures unless the division, in its sole discretion, determines that the licensed eligible facility's proposed system satisfies Section 2715 A., and approves the system in writing. In addition, the licensed eligible facility must engage an independent CPA to review the proposed system of internal control prior to implementation. The CPA shall forward two 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 licensed eligible facility, the parent company of the licensed eligible facility, 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 years.

E. Each licensed eligible facility shall require the independent CPA engaged by the licensed eligible facility for purposes of examining the financial statements to submit to the licensed eligible facility two originally signed copies of a written report of the continuing effectiveness and adequacy of the licensed eligible facility's written system of internal control one hundred fifty days after the end of the licensed eligible facility'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 days after the end of the licensed eligible facility's fiscal year, the licensed eligible facility shall submit an originally signed copy of the CPA's report and any other correspondence directly relating to the licensed eligible facility's system of internal control to the division accompanied by the licensed eligible facility'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 for monitoring slot machines or other games, or any other computerized equipment, the licensed eligible facility 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 licensed eligible facility'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 licensed eligible facility's internal controls previously approved by the division shall be submitted to the division for prior written approval as prescribed by the division.

H. If the division determines that a licensed eligible facility's administrative or accounting procedures or its internal controls do not comply with the requirements of this Section, the division shall so notify the licensed eligible facility in writing. Within thirty days after receiving the notification, the licensed eligible facility 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, tip box and slot jackpots, slot fills, 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 licensed eligible facility 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 licensed eligible facility 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 days. In the event that a patron has not paid a debt created under this Section within thirty days, a holder of an owner's license shall not further extend credit to the patron while such debt is outstanding.

N. A licensed eligible facility 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 licensed eligible facility 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 days of the end of each quarter.

P. Each licensed eligible facility shall submit to the division, on a quarterly basis, a report of all vendors who have received \$5,000 or more from the licensed eligible facility during the previous quarter, or \$50,000 or more during the immediate twelve month period as payment for providing goods and/or services to the licensed eligible facility. 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 licensed eligible facility or person(s) acting on behalf of the licensed eligible facility to each vendor during the previous four (4) quarters. For each provider of professional services listed in this report, each licensed eligible facility 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 licensed eligible facility or any person(s) acting on behalf of the licensed eligible facility 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 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 licensed eligible facility 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, Gaming Control Board, LR 26:

#### **§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. Cage employees shall not bring purses, handbags, briefcases, bags or any other similar item into the cage unless it is transparent.

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 26:

#### **§2717. Reserved**

#### **§2719. Internal Controls; Handling of Cash**

A. Each gaming employee, owner, or licensed eligible facility 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 appropriate place in the cashiers' cage cash register, or other repository 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, Gaming Control Board, LR 26:

#### **§2721. Internal Controls; Tips or Gratuities**

A. No gaming employee other than slot gaming employees, change persons, cashiers and bar tenders shall accept currency as a tip or gratuity from any patron, during or outside a shift unless immediately converted into value chips. Security personnel may accept currency as a tip or gratuity only outside the designated gaming areas of the licensed eligible facility.

B. No gaming employee who serves in a supervisory position shall solicit or accept, any tip or gratuity from any player or patron of the licensed eligible facility where he is employed. The licensed eligible facility shall not permit any practices prohibited by Subsection A 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, Gaming Control Board, LR 26:

#### **§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 licensed eligible facility'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 licensed eligible facility 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 licensed eligible facility's 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 licensed eligible facility 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 licensed eligible facility shift manager.

I. Each licensed eligible facility 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 licensed eligible facility 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 licensed eligible facility shall notify the division at least five days prior to implementing a change to this schedule, except in emergency situations. The division reserves the right to deny a licensed eligible facility'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 twenty-four 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 licensed eligible facility 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 licensed eligible facility'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 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.
- iii. 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:
  - (a) at least two members of the count/wrap team shall count the final wrapped slot drop independently from each other;
  - (b) the above counts shall be recorded on a summary report;
  - (c) 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 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 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 Section 2723 L. 4. and Section 2723 L. 5. shall be utilized.

M. Each licensed eligible facility 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 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 days.

P. Sensitive keys shall not be removed from the building in which the slot machines are housed. 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 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 twenty-four 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 licensed eligible facility 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. At least one surveillance or internal audit employee shall monitor the currency acceptor count process at least two randomly selected days per calendar month and shall be videotaped by surveillance. This employee shall record any exceptions or variations to established procedures observed during the count. If at any time surveillance observes the visibility of count team's hands or other activity is consistently obstructed, surveillance shall immediately notify count room employees.

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 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 facility unless to an extension of the facility 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 days.

R. Computer Records. At a minimum, the licensed eligible facility 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 polices 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 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 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 days. Document the investigation and retain the results for a minimum of five 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 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 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 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 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 progressive jackpot amount.

3. Each licensed eligible facility 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 entity 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 licensed eligible facility'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 licensed eligible facility's contributions shall not be reported to the division upon payout. Licensed eligible facility'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 licensed eligible facility 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 licensed eligible facility 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 licensed eligible facility; and

b. shall be certified as an instructor by the manufacturer and/or a licensed eligible facility's representative.

4. The licensed eligible facility 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, Gaming Control Board, LR 26:

§2725. Reserved

§2727. Reserved

#### §2729. Internal Controls; Cage, Vault and Credit

A. Each licensed eligible facility shall have a main bank which will serve as the financial consolidation of transactions relating to all gaming activity. Individuals accessing 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 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 years.

C. Increases and decreases to the cage inventory shall be supported by written documentation.

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 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 licensed eligible facility 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 licensed eligible facility 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 licensed eligible facility that extended gaming credit to the patron that the patron has previously paid substantially all of the debt to the other licensed eligible facility and the licensed eligible facility 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 through 5 for a patron who is not a resident of the United States, the licensed eligible facility shall receive in writing, information from an agent or employee of the licensed eligible facility 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, and document one of the credit checks set forth in Paragraphs 1 through 6.

M. In the case of third party checks for which cash or tokens have been issued to the patron or which were accepted in payment of another credit instrument, the licensed eligible facility 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 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;

4. amount of credit issued; and

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, tokens, 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 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 days of such occurrence.

Y. All payments received on outstanding credit instruments shall be permanently recorded on the licensed eligible facility'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 Section 2729 AA. 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 Section 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 Section 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 Section 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 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 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 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, Gaming Control Board, LR 26:

### **§2730. Exchange of Tokens**

A. A licensed eligible facility may exchange a patron's tokens issued by another licensed eligible facility or riverboat licensee only for its own tokens. A licensed eligible facility shall not exchange tokens issued by another licensed eligible facility or riverboat licensee for cash. A licensed eligible facility shall document the exchange in a manner approved by the division.

B. The exchange shall occur at a single cage designated by the licensed eligible facility in its internal controls and approved by the division.

C. The total dollar value of the tokens submitted by a patron for exchange shall equal the total dollar value of the tokens issued by the licensed eligible facility to the patron. Tokens shall not be exchanged for a discount or a premium.

D. All tokens received by a licensed eligible facility as a result of an exchange authorized by this Section shall be returned to the issuing licensed eligible facility or riverboat licensee for redemption within thirty days of the date the tokens were received as part of an exchange unless the division approves otherwise in writing. Both licensed eligible facilities and riverboat licensees shall document the redemption in a manner approved by the division.

E. A licensed eligible facility shall not accept tokens issued by another licensed eligible facility or riverboat licensee in any manner other than authorized in this Section. A licensed eligible facility shall not knowingly accept as a wager any token issued by another licensed eligible facility or riverboat licensee.

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 26:

### **§2731. Currency Transaction Reporting**

A. Each licensed eligible facility shall be responsible for proper reporting of certain monetary transactions to the federal government as required by the Bank Records and Foreign Transactions Act (Public Law 91-508), commonly referred to as the "Bank Secrecy Act" as codified in Title 31 Section 5311-5323, and Title 12 Sections 1730 (d), 1829, and 1951-1959. Specific requirements concerning record keeping and reports are delineated in Title 31 CFR 103 and shall be followed in the entirety. The "Bank Secrecy Act" and the rules and regulations promulgated by the federal government pursuant to the "Bank Secrecy Act" as they may be amended from time to time, are adopted by reference and are to be considered incorporated herein.

B. Civil and/or criminal penalties may be assessed by the federal government for willful violations of the reporting requirements of the Bank Secrecy Act. These penalties may be assessed against the licensed eligible facility, as well as any director, partner, official or employee that participated in the above referenced violations.

C. All employees of the licensed eligible facility shall be prohibited from providing any information or assistance to patrons in an effort to aid the patron in circumventing any, and all currency transaction reporting requirements.

D. Licensed eligible facility employees shall be responsible for preventing a patron from circumventing the currency transaction reporting requirements if the employee has knowledge, or through reasonable diligence in performing their duties, should have knowledge of the patron's efforts at circumvention.

E. For each required Currency Transaction Report, a clear surveillance photograph of the patron shall be taken and attached to the licensed eligible facility'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 licensed eligible facility shall maintain and make available for inspection all copies of Currency Transaction Reports, with the attached photographs, for a period of five years.

F. One 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. The licensed eligible facility shall be responsible for maintaining a single log which aggregates all transactions in excess of \$2,500 from the various multiple transaction logs as follows:

1. All cash transactions in excess of \$2,500 shall be recorded on a multiple transaction log for aggregation of the multiple transactions and signed by the employee handling the transaction. Records of the aforementioned transactions must be aggregated on the single log required by this Section.

2. Any multiple transaction log which reflects no activity shall be signed by the supervisor.

3. The employee handling the transaction shall be responsible for accurate and complete log entries. No log entry shall be omitted. Each log entry shall include the date and time, the amount of the transaction, the location of the transaction, the type of transaction, and the name and physical description of the patron.

4. Once any patron's cash activity has exceeded \$2,500, any and all additional cash activity shall be logged regardless of the amount or location.

5. Personnel of the cage shall ensure all cash transactions in excess of \$2,500 are properly logged and aggregated.

6. Personnel of the cage shall ensure any required Currency Transaction Reports are properly completed.

7. As the \$10,000 amount is about to be exceeded, the employee consummating the transaction shall be responsible for obtaining and verifying the patron's identification prior to completing the transaction.

8. All multiple transaction logs shall be turned in to the cage for submittal to the accounting department daily.

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, Gaming Control Board, LR 26:

### **§2735. Net Slot Machine Proceeds Computation**

A. For each slot machine, net slot machine 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 licensed eligible facility 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 licensed eligible facility 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.

B. If in any day the amount of net slot machine proceeds is less than zero, the licensed eligible facility may deduct the excess in the succeeding days, until the loss is fully offset against net slot machine proceeds.

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 26:

### **§2736. Reserved**

### **§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, Gaming Control Board, LR 26:

### **§2741. Petitions for Redetermination; Procedures**

A. A licensed eligible facility filing a petition for redetermination with the board shall serve a copy of the petition on the division.

B. A licensed eligible facility shall, within thirty days after the petition is filed:

1. pay all taxes, penalties, or interest not disputed in the petition and submit a schedule to the division that contains its calculation of the interest due on nondisputed 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 days after service of the licensed eligible facility's memorandum, file a

memorandum of points and authorities in opposition to the licensed eligible facility's petition and shall serve a copy on the licensed eligible facility. The licensed eligible facility may, within fifteen days after service of the division's memorandum, file a reply memorandum.

D. The division and the licensed eligible facility 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 licensed eligible facility 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, Gaming Control Board, LR 26:

### **§2743. Claims for Refunds; Procedures**

A. A licensed eligible facility filing a claim for refund with the board shall serve a copy of the claim on the division.

B. A licensed eligible facility shall, within thirty 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 licensed eligible facility'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 days after service of the licensed eligible facility's memorandum, file a memorandum of points and authorities in opposition to the licensed eligible facility's claim and shall serve a copy on the licensed eligible facility. The licensed eligible facility may, within fifteen days after service of the division's memorandum, file a reply memorandum.

D. The division and the licensed eligible facility 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, Gaming Control Board, LR 26:

### **§2744. Reserved**

### **§2745. Reserved**

## **Chapter 29. Operating Standards**

### **§2901. Methods of Operation Generally**

A. It is the policy of the board to require that all eligible facilities wherein gaming is conducted be operated in a manner suitable to protect the public health, safety, morals, good order and general welfare of the inhabitants of the state of Louisiana and in a manner that will foster and promote economic development and growth of the tourism industry within the state of Louisiana.

B. Responsibility for the employment and maintenance of suitable methods of operation rests with the licensee and willful or persistent use or toleration of methods of operation deemed unsuitable is grounds for disciplinary action.

C. The board may deem any activity on the part of a licensee, permittee, his agents or employees that is inimical to the public health, safety, morals, good order and general welfare of the people of the state of Louisiana or that would reflect or tend to reflect discredit upon the state of Louisiana or the tourism industry to be an unsuitable method of operation and grounds for disciplinary action.

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 26:

### **§2903. Compliance with Laws**

Acceptance of a license or permit or renewal thereof constitutes an agreement on the part of the licensee or permittee to be bound by all of the applicable provisions of the act and the regulations. It is the responsibility of the licensee or permittee to keep informed of the content of all such laws, and ignorance thereof will not excuse violations. Violation of any applicable provision of the act, the regulations of the commission or regulations of the board or division by a licensee or permittee or by the agent, employee or representative of a licensee or permittee is contrary to the public health, safety, morals, good order and general welfare of the inhabitants of the state of Louisiana and constitutes grounds for enforcement action.

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 26:

### **§2905. Weapons in the Designated Gaming Area**

Weapons as defined in the Louisiana Criminal Code are not permitted in the designated gaming area other than those in the possession of full-time commissioned law enforcement officers who are on duty and within their respective jurisdiction and licensed gaming security personnel who are on duty.

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 26:

### **§2907. Reserved**

### **§2909. Reserved**

### **§2911. Accessibility to Premises; Parking**

A. Each licensee shall provide adequate parking to accommodate three full size vehicles for exclusive use by division agents. Parking shall be in close proximity to the division office or the designated gaming area. The location of the parking spaces shall meet division specifications and approval.

B. Each licensee shall ensure that division agents are provided an expedient means for entry and departure in regard to access to premises. For the purpose of this Section, premises includes but is not limited to private roads, parking lots, buildings, vessels, structures, and land which the licensee owns, leases or uses in relationship to the eligible facility.

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 26:

### **§2913. Access to Premises and Production of Records**

A licensee shall upon request immediately make available for inspection by the board and division or the agents

thereof, all papers, books and records used in the licensed or permitted operation. The division, or any agent of the division shall be given immediate access to any portion of the premises of any eligible facility or premises of a manufacturer, distributor or supplier for the purpose of inspecting or examining any records or documents required to be kept under the provisions of the act and the regulations and any gaming device or equipment or the conduct of any gaming activity. Immediate access to the areas and records that may be inspected or examined by the division or division agents must be granted to any such individual who displays division credentials.

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 26:

### **§2915. Methods to Prevent Minors from Gaming Area**

A. The Type A licensee must implement methods to prevent minors from entering the designated gaming area of the eligible facility. Such methods shall be part of the licensee's system of internal controls and shall include, but shall not be limited to the following:

1. Posting signs at all entrances to the gaming area notifying patrons that persons under twenty-one years of age are not permitted to loiter in or about the gaming area. The signs shall be displayed in English, Spanish, and Vietnamese.

2. Posting signs or other approved means displaying the date of birth of a person who is twenty-one years old that date.

B. No licensee, or any agent or employee thereof, shall intentionally allow a person under the age of twenty-one to play or operate a slot machine.

C. Licensees shall each quarter report and remit to the division all winnings withheld from customers who are determined to be under the age of twenty-one.

D. The license of any person issued pursuant to the provisions of the act, who is found by the board to have committed or allowed a violation of Subsection B., shall be revoked.

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 26:

### **§2917. Reserved**

### **§2919. Finder's Fees**

A. Except as limited by Subsection B, the term "finder's fee" means any compensation in money in excess of the sum of \$5,000 annually, or real or personal property valued in excess of the sum of \$5,000 annually, which is paid or transferred or agreed to be paid or transferred to any person in consideration for the arranging or negotiation of an extension of credit to a licensee, a registered company, or applicant for licensing or registration if the proceeds of such extension of credit are intended to be used for any of the following purposes:

1. the acquisition of an interest in an eligible facility or registered company;

2. to finance the gaming operations of an eligible facility, license or registered company.

B. The term "finder's fees" shall not include:

1. compensation to the person who extends the credit;

2. normal and customary payments to employees of the person to whom the credit is extended if the arranging or negotiation of credit is part of their normal duties;

3. underwriting discounts paid to a member of the National Association of Securities Dealers, Inc.

C. It is an unsuitable method of operation or practice for any licensee, registered company or applicant for licensing or registration to pay a finder's fee without the prior approval of the division. An application for approval of payment of a finder's fee shall make a full disclosure of all material facts. The division may disapprove any such application if the person to whom the finder's fee is proposed to be paid does not demonstrate that he is suitable to hold a license.

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 26:

#### **§2921. Collection of Gaming Credit**

A. Only bonded, duly licensed collection agencies, or a licensee's employees, independent agent, attorneys, or affiliated or wholly-owned corporation and their employees may collect, on the licensee's behalf and for any consideration, gaming credit extended by the licensee.

B. Notwithstanding the provisions of Subsection A, no licensee shall permit any person who has been found unsuitable, or who has been denied a gaming license or permit, or who has had a permit revoked, to collect, on the licensee's behalf and for any consideration, gaming credit extended by the licensee.

C. Each licensee shall maintain for the division's inspection, records that describe credit collection arrangements and shall include any written contract entered into with persons described in Subsection A, unless such persons are the licensee's key employees or junket representatives duly registered and 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, Gaming Control Board, LR 26:

#### **§2923. Identification Card Issuance Equipment**

The Type A licensee shall be required to furnish and maintain all necessary equipment for the production and issuance of gaming employee identification badges. The equipment and design of the gaming employee badge(s) shall be approved by the board.

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 26:

#### **§2925. Junkets and Related Activities**

The board may require registration and provide a procedure and forms for the regulation of junkets and for the licensing of junket representatives.

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 26:

#### **§2927. Advertising**

The board may establish procedures for the regulation of advertising of licensed gaming activities. More specifically the board may require a licensee to advertise or publish specified information, slogans and telephone numbers

relating to avoidance and treatment of compulsive or problem gambling or gaming.

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 26:

#### **§2929. Conservatorship**

A. Definitions. The following words and terms, when used in this Subchapter, shall have the following meanings unless the context clearly indicates otherwise.

*Conservator* a fiduciary appointed by the board concerning conservatorship.

*Conservatorship Action* an action brought pursuant to the board's appointing of a conservator.

*Creditor* the holder of any claim, of whatever character, against a person, whether secured or unsecured, matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

*Debt* any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

*Encumbrance* a mortgage, security interest, lien or charge of any nature in or upon property.

*License* any license issued pursuant to this act which authorizes the holder thereof to own or operate an eligible facility.

*Property* real property, tangible and intangible personal property, and rights, claims and franchises of every nature.

*Transfer* the sale and every other method, direct or indirect, of disposing of or parting with property or with an interest therein, or with the possession thereof, or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, payment, pledge, mortgage, lien, encumbrance, gift, security or otherwise; the retention of a security interest in property delivered to a corporation shall be deemed a transfer suffered by such corporation.

B. Institution of Conservatorship and Appointment of Conservators. Upon the suspension or revocation of a gaming license the board may appoint and constitute a conservator to, among other things, take over and into his possession and control all the property and business of the licensee relating to the licensed eligible facility.

1. Notwithstanding the foregoing, no conservator shall be constituted and appointed in any instance in which the for which the license has been issued has not been, in fact, in operation and open to the public.

2. The board may proceed in a conservatorship action in a summary manner or otherwise and shall have the power to appoint and remove one or more conservators.

C. Qualification of Conservator. No person shall be appointed as a conservator unless the board is satisfied that he is individually qualified according to the standard applicable to key employees, except that casino experience shall not be necessary for qualification.

The board shall investigate and report to the commission with regard to the qualifications of each person who is proposed as a candidate to serve as a conservator.

D. Bonding of Conservators. Every conservator shall, before assuming his duties, execute and file a bond for the faithful performance of his duties payable to the "Louisiana

Gaming Control Board” in the Office of the Attorney General, with such surety or sureties and in such form as the board shall approve and in such amount as the board shall prescribe.

E. Powers of Multiple Conservators. When more than one conservator is appointed, the provisions of this Subchapter applicable to one conservator shall be applicable to all and the debts and property of the former or suspended licensee may be collected and received by any of them and the powers and rights conferred upon them shall be exercised by a majority of them.

F. Powers and Jurisdiction of the Board. At the time of the commencement of a conservatorship action, or at any time thereafter, the board shall have the power to enjoin the former or suspended licensee from exercising any of its privileges and franchises, from collecting or receiving any debts and from paying out, selling, assigning or transferring any of its property to other than a conservator, except as the board may otherwise order.

1. A conservator shall at all times be subject to the act and such regulations, limitations, restrictions, terms and conditions as the board may from time to time prescribe.

2. The board shall have such further powers as shall be appropriate for the fulfillment of the purposes of the act.

G. Effect of the Conservatorship on Licensees. Except as may be otherwise provided, during the period of conservatorship the operation in the form of the conservatorship shall be deemed a licensed and any reference in the act or regulations to any obligations or responsibilities incumbent upon a licensee or those persons dealing with, affiliated with, having an interest in, employed by a licensee shall be deemed to apply to said operation.

H. Powers, Authorities and Duties of Conservators

1. Upon his appointment, the conservator shall become vested with the title of all the property of the former or suspended licensee or permittee relating to the licensed eligible facility, subject to any and all valid liens, claims, and encumbrances.

2. The conservator shall have the duty to conserve and preserve the assets so acquired to the end that such assets shall continue to be operated on a sound and businesslike basis.

3. Subject to the general supervision of the board and pursuant to any specific order it may deem appropriate, a conservator shall have power to:

a. take into his possession all the property of the former or suspended licensee relating to the, including its books, records and papers;

b. institute and defend actions by or on behalf of the former or suspended licensee;

c. settle or compromise with any debtor or creditor of the former or suspended licensee, including any taxing authority;

d. continue the business of the former or suspended licensee or permittee and to that end enter into contracts, borrow money and pledge, mortgage or otherwise encumber the property of the former or suspended licensee as security for the repayment of the conservator's loans; provided, however, that such power shall be subject to any provisions and restrictions in any existing credit documents;

e. hire, fire and discipline employees;

f. review all outstanding agreements to which the former or suspended licensee is a party and advise the board as to which, if any, of such agreements should be the subject of scrutiny, examination or investigation by the board; and

g. do all further acts as shall best fulfill the purposes of the act.

4. Except during the pendency of a suspension or during the pendency of an appeal from any action or event which precipitated the conservatorship or in instances in which the board finds that the interests of justice so require, the conservator, subject to the prior approval of and in accordance with such terms and conditions as may be prescribed by the board, and after appropriate prior consultation with the former licensee or permittee as to the reasonableness of such terms and conditions, shall endeavor to and be authorized to sell, assign, convey or otherwise dispose of in bulk, subject to any and all valid liens, claims, and encumbrances, all the property of a former licensee relating to the only upon written notice of all creditors and other parties in interest and only to such persons who shall be eligible to apply for and shall qualify as a licensee in accordance with the provisions of the act.

a. Prior to any such sale, the former licensee shall be granted, upon request, a summary review by the board of such proposed sale.

b. As an incident of its prior approval pursuant to this Subsection of the sale, assignment, conveyance or other disposition in bulk of all property of the former licensee relating to the eligible facility, the board may, in its discretion, require that the purchaser thereof assume in a form and substance acceptable to the board all of the outstanding debts of the former licensee that arose from or were based upon the operation of the eligible facility.

5. The board may require that the conservator, for an indefinite period of time, retain the property and continue the business of the former or suspended licensee relating to the eligible facility. During such period of time or any period of operation by the conservator, he shall pay when due, without in any way being personally liable, all secured obligations and shall not be immune from foreclosure or other legal proceedings to collect the secured debt, nor with respect thereto shall such conservator have any legal rights, claims, or defenses other than those which would have been available to the former or suspended licensee.

I. Compensation of Conservators and Others. In any conservatorship action, the board shall allow a reasonable compensation for the services, costs and expenses of the conservator, the attorney for the conservator, the appraiser, the auctioneer, the accountant and such other persons as the board may appoint in connection with the conservatorship action.

J. Required Reports of the Conservator. A conservator shall file with the board such reports with regard to the administration of the conservatorship in such form and at such intervals as the board may prescribe.

1. The reports of the conservator to the board pursuant to this Subsection shall be available for examination and inspection by any creditor or party in interest.

2. The board may direct that copies of any such reports of a conservator to the board pursuant to this Subsection be mailed to such creditors or other parties in interest as it may designate and that summaries of any such

reports be published in such newspapers of general circulation as it may designate.

K. Review of Action of Conservator. Any creditor or party in interest aggrieved by any alleged breach of a fiduciary obligation of a conservator in the discharge of his duties shall be entitled to a review thereof upon petitioning the board in writing. Such petition shall set forth in detail the pertinent facts and the reasons why such facts constitute the alleged breach. The board shall summarily review any petition filed pursuant to this Subsection and take whatever action, if any, that it deems appropriate.

L. Payment of Net Earnings During the Period of Conservatorship. No payment of net earnings during the period of conservatorship may be made by the conservator without the prior approval of the board.

1. The board may, in its discretion, direct that all or any part of net earnings during the period of conservatorship be paid either to the suspended or former licensee or to the Enforcement Fund.

2. Subject to Subsection D of this Section the board shall direct the payment of net earnings, or any portion thereof, to the Enforcement Fund unless the board determines that the policies of the act and public confidence in the integrity of legalized gaming operations would not be eroded by the payment of such net earnings to the former or suspended licensee.

3. Notwithstanding any other provisions of this Section, the former or suspended licensee shall be entitled to a fair rate of return out of net earnings, if any, during the period of conservatorship on the property retained by the conservator, taking into consideration that which amounts to a fair rate of return in the industry.

M. Payments Following a Bulk Sale. Following any sale, assignment, conveyance or other disposition in bulk of all the property subject to the conservatorship, the net proceeds therefrom, if any, after payment of all obligations owing to the state of Louisiana and political subdivisions thereof and of those allowances set forth in the act, shall be paid by the conservator to the former or suspended licensee.

N. Discontinuation of Conservatorship. The board shall direct the discontinuation of any conservatorship action when the conservator has, pursuant to the act and with the prior approval of the board, consummated the sale, assignment, conveyance or other disposition in bulk of all the property of the former licensee relating to the licensed eligible facility.

1. The board may direct the discontinuance of a conservatorship action when it determines that for any reason the cause for which the action was instituted no longer exists.

2. Upon the discontinuation of the conservatorship action and with the approval of the board, the conservator shall take such steps as may be necessary in order to effect an orderly transfer of the property of the former or suspended licensee.

3. The sale, assignment, transfer, pledge or other disposition of the securities issued by a former or suspended licensee during the pendency of a conservatorship action shall neither divest, have the effect of divesting, nor otherwise affect the powers conferred upon a conservator by the act.

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 26:

### **§2931. Assisting in Violations**

No employee, agent or representative of a licensee or permittee shall intentionally assist another person in violating any provision of the act, these rules or a licensee's approved system of internal control procedures. Such assistance shall constitute a violation of these rules. It is incumbent upon a licensee, permittee, employee, agent or representative of a licensee to promptly notify the board of any possible violation of the act, these rules adopted pursuant to the act, the licensee's internal controls or any order of the board or division.

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 26:

### **§2933. Compulsive or Problem Gamblers-Telephone Information and Referral Service-Posting**

The Type A licensee shall post one or more signs at points of entry to the designated gaming areas to inform customers of the toll-free telephone number available to provide information and referral services regarding compulsive or problem gambling.

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 26:

### **§2935. Entertainment Activities**

A. No motion picture shall be exhibited within the designated gaming area either by direct projection or by closed circuit television which would be classified as obscene material.

B. No live entertainment shall be permitted within the designated gaming area which includes:

1. the performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

2. the actual or simulated touching, caressing or fondling of breasts, buttocks, anus or genitals; or

3. the actual or simulated display of the pubic hair, vulva, genitals, anus, female nipple or female areola.

C. No entertainment shall be offered within the designated gaming area unless the licensee receives approval from the board to provide such entertainment. The licensee shall file a written submission with the board at least five days prior to the commencement of such entertainment, which submission shall include, at a minimum, the following information:

1. the date and time of the scheduled entertainment;

2. a detailed description of the type of entertainment to be offered;

3. the number of persons involved in the entertainment;

4. the exact location of the entertainment in the designated gaming area;

5. a description of any additional security measures that will be implemented as a result of the entertainment; and

6. a certification from the licensee that the proposed entertainment will not adversely affect the security and integrity of gaming operations.

D. The submission in the above Section shall be deemed approved by the board unless the licensee is notified in writing to the contrary within five days of filing.

E. The board may at any time after the granting of approval require the licensee to immediately cease any entertainment offered within the designated gaming area if the entertainment provided is in any material manner different from the description contained in the submission filed pursuant to the above Section, or in any way compromises the integrity of gaming operations.

F. In reviewing the suitability of an entertainment proposal, the board shall consider the extent to which the entertainment proposal:

1. may unduly interfere with efficient gaming operations;

2. may unduly interfere with the security of the casino or any of the games therein or any restricted area; or

3. may unduly interfere with surveillance operations.

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 26:

### **§2937. Distributions**

The board shall receive written notice within five days of the completion of the following transactions:

A. withdrawal of capitol in excess of five percent of the licensee's net gaming proceeds for the preceding twelve-month period;

B. the granting of a loan or any other extension of credit in excess of five percent of the licensee's net gaming proceeds for the preceding twelve-month period;

C. any advance or other distribution of any type of asset in excess of five percent of the licensee's net gaming proceeds for the preceding twelve-month period;

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 26:

### **§2939. Action Based Upon Order of Another**

#### **Jurisdiction**

The board may take enforcement action against a licensee or other person who has been disciplined in another jurisdiction for gaming related activity.

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 26:

### **§2941. Access by Board to Licensee Computer Systems**

The board may require a licensee to place a computer terminal in the board room whereby the board has contemporaneous access to records and data relating to the gaming operations. Such data shall include but not be limited to credit transactions, amounts wagered and paid to winners, player tracking information and expenses relating to payment of compensation to employees. Board agents shall have unrestricted access to all records of a licensee.

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 26:

### **§2943. Gaming Employees Prohibited from Gaming**

A licensee or the holder of a permit is prohibited from participating as a patron or a player in any slot gaming activity where the person is employed or performs a gaming function.

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 26:

### **§2944. Waivers and Authorizations**

All waivers of the board policies, special requests, and additional approvals by the board, except matters concerning emergency situations, must be submitted, in writing, to the board no less than ninety days prior to the licensee's planned implementation date of such. No waiver or board approval is valid until such time as the licensee receives an authorization number and written approval from the board, except approvals to ship gaming devices into the state in which case the board shall give an approval number for the shipment. The board declares the right to determine what constitutes an emergency situation on a case-by-case basis.

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 26:

### **§2945. Restrictive Areas**

A. Only authorized persons as provided in Chapter 27 of these rules, or in the licensee's internal controls as approved by the board, may enter restrictive areas within the eligible facility. For the purpose of this Subsection, restrictive areas shall include, but are not limited to the following:

1. cage and cashier areas;
2. casino vault;
3. soft count and hard count;
4. surveillance room;
5. any other area designated by the licensee and/or the board.

B. licensee shall implement procedures to insure compliance with this Section. The board may require the licensee to erect barriers, stanchions, signage, and other such equipment as necessary to prohibit unauthorized persons from entering these areas.

C. The licensee may submit for approval to the board internal control procedures which allow housekeeping and maintenance personnel access to sensitive areas for maintenance purposes.

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 26:

### **§2947. Comfort Letters**

A. The chairman may authorize the issuance of comfort letters by the board or division. A comfort letter may be issued on any matter over which the board has regulatory power or enforcement power as authorized by the act or by the board's rules. A comfort letter may be a prior approval for a matter for which such prior approval is not required by the act or by these rules, a statement of no objection by the board or division for a matter for which an approval is not required by the act or these rules, or such other matters as the chairman may deem appropriate.

B. A request for a comfort letter must be in writing and must be received by the board or division at least sixty days

in prior to the event, transaction, occurrence or other matter for which the comfort letter is sought. The sixty-day requirement may be waived by the supervisor upon a showing of good cause.

C. A comfort letter shall only be a statement of the board's or division's position on a matter as is outlined or described in the written request authorized by this Section. Any matter over which a comfort letter has been issued is still subject to board approval after an appropriate investigation as is authorized by the act or these rules.

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 26:

#### **§2951. Approvals**

All approvals issued by the board or division are conditional and ineffective unless they are in writing and signed by the chairman or supervisor or by an agent authorized to sign on behalf of the supervisor.

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 26:

#### **§2953. Promotions and Tournaments**

A. All promotion programs or marketing programs shall be subject to prior written approval by the board unless otherwise provided in this rule.

B. All slot tournaments conducted by or on behalf of the licensee are subject to prior written approval by the board.

1. A slot tournament is a contest or event wherein persons play a game or games previously authorized by the board in competition with each other to determine the winner of a prize or prizes.

2. A slot tournament shall include, but is not limited to any contest or event wherein an entry fee is paid to play a game previously approved by the board. An entry fee shall include any fee paid directly or indirectly, by or on behalf of the person playing in the tournament.

3. A request for approval of a slot tournament shall be made in writing and received by the board at least thirty days prior to the commencement date of the tournament. The request for approval shall contain a complete description of the tournament, the manner of entry, a description of those persons eligible to enter the tournament, the entry fee assessed if any, the prizes to be awarded, the manner in which the prizes are to be awarded and the dates of the tournament. The board may request additional information prior to rendering a decision. Any incomplete request for approval shall be denied.

4. All entry fees shall be included in gross gaming proceeds for purposes of determining net slot machine gaming proceeds. No cost incurred by the licensee associated with holding the tournament shall be deducted from the entry fees before to calculating net slot machine gaming proceeds. All cash prizes awarded in the tournament may be deducted as payouts for purposes of calculating net slot machine gaming proceeds. No other deductions shall be made for purposes of calculating net slot machine gaming proceeds. The licensee shall not deduct the cost of any noncash prizes awarded as a result of the tournament for purposes of calculating net slot machine gaming proceeds.

5. All entry fees and cash prizes shall be reported on the daily tax remittance summaries in a manner approved by

the board. Copies of source documents such as transfer slips of the participant's entry fees to either the vault or cage and transfer slips of participant's winnings paid out from either the cage or the vault must accompany the daily tax remittance summary on which the entry fee or payout is reported.

6. All tournament slot meters shall be read both electronically and manually before the machine's EPROM is changed for tournament play and again once the tournament EPROM has been installed. The meters for these machines shall be read both electronically and manually once tournament play has ended. All meter readings shall be recorded and such recordation retained in accordance with the board's rules concerning record retention in Chapter 27.

C. A slot jackpot may be increased as part of a promotion program or marketing program. The increased portion of the jackpot which results from the promotion shall not be paid by the machine itself. The increased portion of the jackpot shall be paid manually and shall not be considered a payout for purposes of calculating the licensee's net slot machine proceeds. The increased payout shall be considered a promotional expense of the licensee and accounted on the licensee's books accordingly.

D. Licensees are allowed to conduct "giveaways" of prizes and cash awards only under the following conditions:

1. All persons twenty-one years of age and older shall be eligible to receive a prize or cash award.

2. All persons under twenty-one years of age shall be ineligible to receive any prize or cash award.

3. A person eligible to receive a prize or cash award shall not be required to purchase any thing of value, including the purchase of tokens from the licensee, or from any other business.

4. Those persons eligible to win must not be required participate in any gaming activity in the eligible facility.

5. Those persons eligible to win must not be required to participate in any activity or event for which that person must put up anything of value or pay an entry fee.

6. The licensee shall give and the board shall receive at least five days written notice, exclusive of weekends and holidays, of any giveaway. Such notice shall describe the giveaway in detail including the manner in which a person becomes eligible to receive the prize or cash award and the prize or cash award to be given away. The notice shall also provide the full name, telephone number, and complete address of a contact person who has authority to make decisions relative to the giveaway.

7. Prior approval for a giveaway is not required. The board may disapprove a giveaway at any time. If the board disapproves a giveaway, then the giveaway may not be conducted. If a giveaway is already underway, the giveaway shall be discontinued upon notice of disapproval by the board. A disapproval does not need to be in writing to be effective, but any oral disapproval must be followed by written notice of the disapproval within three days of the oral disapproval.

8. Giveaways do not include increased jackpots.

9. Giveaways are prohibited by licensees who assess an admission fee unless all persons paying the admission fee receive something of value.

E. Promotion in which a person may become eligible to receive anything of value including cash as a result of a

drawing from tickets or other items evincing a right to participate are prohibited unless the following conditions are met:

1. A person shall be able to enter the drawing without the payment of money or without putting up anything else of value.

2. Entry forms for a drawing shall be made available to the general public at a location not included in the designated gaming area. The location of the entry forms shall be conveyed to the general public in a prominent manner. Entry forms may be made available by the licensee, but the licensee shall not automatically give entry forms to persons playing any authorized game.

3. The licensee shall give and the board shall receive at least three days written notice, exclusive of weekends and holidays, of any drawing. Such notice shall describe the drawing in detail including the manner in which a person becomes eligible to receive the prize or cash award offered in the drawing. The notice shall also provide the full name, telephone number, and complete address of a contact person who has authority to make decisions relative to the drawing.

4. Prior approval for a drawing is not required. The board may disapprove a drawing at any time. If the board disapproves a drawing, then the drawing may not be conducted. If a drawing is already underway, the drawing shall be discontinued upon notice of disapproval by the board. A disapproval does not need to be in writing to be effective, but any oral disapproval must be followed by written notice of the disapproval within three days of the oral disapproval.

F. The following activities are prohibited.

1. Pull Tabs. A single or banded tickets or cards, each with its face covered to conceal one or more numbers or symbols, wherein one or more card or ticket in each set has been designed in advance as a winner.

2. A game of chance commonly known as a raffle or raffles played by drawing for prizes or the allotment of prizes by chance by the selling of shares tickets, or rights to participate in such game or games. Raffle does not include a drawing authorized in Subsection E. Raffle does not include a giveaway authorized in Subsection D.

G. Any other promotion not expressly authorized by this rule, nor expressly prohibited by this rule shall be subject to prior written approval by the board. The licensee shall give and the board shall receive sixty days written notice of the promotion.

H. The board may alter or waive the requirements of this rule upon a showing of good cause.

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 26:

#### **§2955. Key Employee on Premises**

A permitted key employee of the Type A licensee shall be on the premises of the eligible facility at all times during 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, Gaming Control Board, LR 26:

## **Chapter 33. Surveillance and Security**

### **§3301. Required Surveillance Equipment**

A. The holder of a Type A license shall install in the eligible facility a closed circuit television system, in accordance with the specifications herein, and shall provide for access at all times to the system or its signal by agents of the division. The closed circuit television system must meet or exceed specifications established by the division to include:

1. solid state, black and white cameras, as approved by the division, installed in fixed positions with matrix control and/or with pan, tilt, and zoom capabilities, secreted from public and nonsurveillance personnel view to effectively and clandestinely monitor in detail, from various vantage points, the following:

a. the gaming conducted at the electronic gaming devices; including, but not limited to the coin and currency acceptor area, the payout tray, and the designated house number assigned to the device or its location;

b. the count processes conducted in the count rooms;

c. the movement of cash, drop boxes, token storage boxes, and drop buckets within the eligible facility and any area of transit of uncounted tokens, cash and cash equivalents;

d. any area where tokens or other cash equivalents can be purchased or redeemed;

e. the entrance and exits to the eligible facility, designated gaming area and the count rooms;

f. such other areas as the division designates.

2. individual solid state, color television cameras, as approved by the division, with matrix control and/or pan, tilt, and zoom capabilities, secreted from public and nonsurveillance personnel view, augmented with appropriate color corrected lighting to effectively and clandestinely monitor in detail, from various vantage points, the operations conducted at the fills and credit area of the cashier's cage(s).

3. Video monitors that meet or exceed the resolution requirement for video cameras with solid state circuitry, and time and date insertion capabilities for taping what is being viewed by any camera in the system. Each video monitor screen must measure diagonally at least twelve inches and all controls must be front mounted.

4. Video printers capable of adjustment and possessing the capability to generate instantaneously, upon command, a clear, color and/or black and white, copy of the image depicted on the videotape recording.

5. Date and time generators based on a synchronized, central or master clock, recorded on tape and visible on any monitor when recorded.

6. Wiring to prevent tampering. The system must be supplemented with a back-up gas/diesel generator power source which is automatically engaged in case of a power outage and capable of returning to full power within seven to ten seconds.

7. An additional uninterrupted power supply system so that time and date generators remain active and accurate, and switching gear memory and video surveillance of all eligible facility and designated gaming area entrances/exits and cage areas is continuous.

8. Video switchers capable of both manual and automatic sequential switching for the appropriate cameras.

9. Video tape recorders, as approved by the division, capable of producing high quality first generation pictures and recording on a standard 1/2-inch VHS tape with high speed scanning and flickerless playback capabilities in real time, or other medium approved by the division. Such videotape recorders must possess time and date insertion capabilities for taping what is being viewed by any camera in the system.

10. Audio capability in the soft count room.

11. Adequate lighting in all areas where camera coverage is required. The lighting shall be of sufficient intensity to produce clear videotape and still picture production, and correct color correction where color camera recording is required. The video must demonstrate a clear picture, in existing light under normal operating conditions.

12. At all times during the conduct of gaming, the licensee shall have as a reserve, at a minimum, one back-up camera and one video recording device in the event of failure.

13. The division may allow alternative surveillance equipment at the supervisors discretion.

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 26:

### **§3303. Surveillance and Security Plans**

A. Every applicant for a Type A license shall submit to the division a surveillance system plan no later than one hundred twenty days prior to the start of gaming operations. The surveillance system plan must include a floor plan that shows the placement of all surveillance equipment in relation to the locations required to be covered by this regulation and a detailed description of the casino surveillance system and its equipment. The plan must also include a detailed description of the layout the surveillance room and the configuration of the monitoring equipment. In addition, the plan may include other information that evidences compliance with this Subsection by the applicant including, but not limited to, a casino configuration detailing the location of all gaming devices and equipment.

B. Any changes to the surveillance room or the surveillance system shall be submitted to the division for prior approval as provided in these rules.

C. Every applicant for a Type A license shall submit to the division a security plan as part of the licensee's system of internal controls no later than 120 days prior to the start of gaming operations. The security plan must include, at a minimum, the following:

1. a detailed description by position of each security officer/employee, to include their duties, assignments and responsibilities;

2. the number of security employees assigned by shift;

3. general procedures for handling incidents requiring the assignment of a security officer;

4. radio protocol and a description of authorized radio codes to be used;

5. training requirements and procedures; and

6. other information required by the division that evidences compliance with this chapter by the applicant.

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 26:

### **§3305. Surveillance and Division Room Requirements**

A. There shall be, for the exclusive use of division agents and for the use by employees of the licensee, rooms at each eligible facility for monitoring and recording purposes. The room for the exclusive use of the division shall be designated the division room. The room for the use of the licensee shall be designated the surveillance room.

B. All equipment that is utilized to monitor or record must remain solely accessible to the surveillance room personnel and be exclusively for licensee gaming operations surveillance, except when such equipment is being repaired or replaced, unless otherwise approved by the division.

C. Employees of the licensee assigned to monitoring duties in the surveillance room shall have no other gaming-related duties within the gaming operation, and are prohibited from being employed by another licensee.

D. The interior of the division room and the surveillance room shall not be visible to the public.

E. Each eligible facility shall have a minimum of five monitors in the surveillance room, and two monitors in the division room. Each room shall have appropriate switching capabilities to insure that all surveillance cameras are accessible to monitors in both rooms. The equipment in the division room must be able to monitor and record, without being over ridden, anything visible by monitor to employees of the licensee.

F. Agents of the division, upon presentation of proper division credentials, shall be provided immediate access to the surveillance room and other surveillance areas upon request. In addition, agents are to be provided, upon request, copies of recorded videotapes of activities as well as copies of any images produced on a video printer. The division shall have absolute, unfettered access to the surveillance room at all times and the division shall have the right to take control of said room.

G. The division room shall be furnished with all necessary furniture and fixtures as specified by the division and be equipped with a security radio, house telephone and shall house a dedicated computer which provides computer accessibility to division agents to review, monitor and record data identical to that specified in Chapter 42 and 43 of these rules.

H. The surveillance room shall be manned by approved surveillance operators at all times, unless otherwise authorized by the division. The supervisor reserves the right to require additional surveillance personnel should he determine that an inadequacy of surveillance monitoring exist.

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 26:

### **§3307. Segregated Telephone Communication**

A segregated telephone communication system shall be provided for use by division agents in the division room.

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 26:

### **§3309. Security and Surveillance Logs**

A. The Type A licensee shall be required to maintain a surveillance log approved by the division. The log shall be maintained by surveillance room personnel in the surveillance room. The division shall have access at all times to the log. A log entry shall be made in the surveillance log of each surveillance activity. Each log entry shall include the following:

1. all persons entering and exiting the surveillance room;
2. summary, including date, time and duration, of each surveillance activity;
3. record of any equipment or camera malfunctions;
4. description of any unusual events occurring; and
5. any additional information as required by the division.

B. The Type A licensee shall be required to maintain a security log of any and all unusual occurrences for which the assignment of a security department employee is made. Each incident, without regard to materiality, shall be assigned a sequential number and an entry made in the log containing, at a minimum, the following information:

1. the assignment number;
2. the date;
3. the time;
4. the nature of the incident;
5. the person involved in the incident; and
6. the security department employee assigned.

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 26:

### **§3311. Storage and Retrieval**

A. All videotape recordings shall be retained for at least seven days, unless these rules provide otherwise, and shall be listed on a log by surveillance personnel with the date, times, and identification of the person monitoring or changing the tape in the recorder. Original videotape recordings will be released to the division upon demand.

B. Any videotape recording of illegal or suspected illegal activity shall, upon completion of the tape, be removed from the recorder and etched with date, time and identity of surveillance personnel. The videotape shall be placed in a separate, secure area and notification given to the division.

C. All videotape recordings relating to the following shall be retained in a secure area approved by the division for at least fifteen days and shall be listed on a log maintained by surveillance personnel:

1. all count room areas;
2. the vault area; and
3. all credit and fill slip confirmation recordings.

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 26:

### **§3313. Reserved**

### **§3315. Maintenance and Testing**

A. At various times, all surveillance equipment shall be subject to impromptu division testing of minimum standards of resolution and operation. Any malfunction of surveillance equipment shall necessitate the immediate replacement of the faulty equipment. If immediate replacement is not possible, alternative live monitoring must be provided by

security personnel. The licensee shall promptly notify the division of the malfunction. The division shall determine if gaming should continue with live monitoring and shall have authority to cease gaming operations not monitored by the CCTV surveillance system. At no time shall gaming be allowed to continue using live monitoring for longer than a reasonable period of time to make repairs to the system.

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 26:

### **Chapter 35. Patron Disputes**

#### **§3501. Licensee Duty to Notify Division of Patron Dispute**

Whenever a licensee refuses to pay winnings claimed by a patron and the patron and the licensee are unable to resolve the dispute, the licensee shall notify the division in writing of the dispute within seven days of the licensee being notified of the dispute. Such notice shall identify the parties involved in the dispute, and shall state all known relevant facts regarding the dispute.

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 26:

### **Chapter 37. List of Excluded Persons**

#### **§3701. Contents of the Exclusion List**

Contents of the Exclusion List. The following information shall be provided for each excluded person:

- A. the full name of the person and any known aliases the person is believed to have used;
- B. a description of the person's physical appearance, including height, weight, type of build, color of hair and eyes, and any other physical characteristics that may assist in identifying the person;
- C. the date of birth of the person;
- D. the date of the order mandating exclusion of the person;
- E. a photograph of the person, if available and the date thereof; and
- F. the person's occupation and his current home and business address.

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 26:

#### **§3703. Maintenance and Distribution of the List**

A. The division shall maintain a list of persons to be excluded or ejected from the designated gaming area of an eligible facility.

B. The list shall be open to public inspection.

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 26:

#### **§3705. Duty of Licensees to Exclude**

Whenever an excluded person enters or attempts to enter the designated gaming area of an eligible facility licensed pursuant to the act, and is recognized by the licensee or his agents or employees, the licensee and his agents and employees shall:

- A. immediately notify the division of the presence of the excluded person, and

B. require such excluded person to not to enter the designated gaming area. The division may impose sanctions on a licensee if the licensee or his agents or employees knowingly fails to exclude from the designated gaming area a person placed on the list 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, Gaming Control Board, LR 26:

#### **§3707. Standards for Exclusion**

A person shall not be placed on the list based on the individual's race, color, creed, national origin, or sex. Any one of the following criteria is sufficient to justify naming the individual on the list, and any of the criteria is deemed satisfied if such person:

A. has been convicted of a gaming crime;

B. has performed any act or has a notorious or unsavory reputation that would adversely affect public confidence and trust in gaming, including, but not limited to, being identified with criminal activities in published reports of various federal and state legislative and executive bodies that have inquired into criminal activities;

C. has been named on any valid and current Exclusion List from another jurisdiction in the United States or foreign country;

D. has been convicted of cheating or has been convicted of cheating in any other jurisdiction;

E. has been convicted of any crime related to the integrity 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, Gaming Control Board, LR 26:

#### **§3709. Voluntary Exclusion by Request**

Any individual may request exclusion by providing evidence thereof satisfactory to the division and by voluntarily entering into a written agreement with the division whereby the supervisor is asked and authorized to notify each licensee of the request. Such person shall be named on a separate list designated requested exclusion.

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 26:

#### **§3711. Notice and Opportunity to be Heard**

Upon a determination by the division that one or more of the standards for being named on the excluded list are satisfied, such person shall be deemed a candidate and the division shall serve notice of exclusion upon such person by certified mail. The notice shall:

A. identify the candidate by name, including aliases, and last known address;

B. specify the nature and scope of the circumstances or reasons for such person's candidacy;

C. inform the candidate of his right to request a hearing to review the decision of the division in the same manner as is provided for hearings on denials of permits

D. inform the candidate that the failure to timely request a hearing shall result in the decision becoming final and a waiver of any further review.

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 26:

#### **§3713. Effect of Notice**

A person named in a notice of exclusion is prohibited from further contact of any kind with any gaming operation licensed by the board unless and until a determination is made by the hearing officer at a hearing requested by the candidate that the candidate should not be so excluded. If the hearing officer determines at a requested hearing that the candidate should be excluded, the exclusion shall be final and shall continue pending any appeal of the decision.

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 26:

#### **§3721. Effect of a Finding that a Candidate Should Not be Excluded**

If the hearing officer at a hearing requested by a candidate determines the candidate should not be excluded, or if the hearing officer's decision to exclude the person is reversed on appeal, the candidate's name shall be removed from the list and his exclusion shall be terminated as of the date of the action taken by the hearing officer, board or court.

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 26:

### **Chapter 41. Enforcement Actions**

#### **§4101. Emergency Orders**

A. An emergency order may only be issued by or on behalf of the chairman.

B. An emergency order is effective immediately upon issuance and notice to the licensee.

C. An emergency order is subject to appeal in the same manner as other board orders.

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 26:

#### **§4103. Chairman Action by Order**

If the board, after investigation, is satisfied that a license or other authorization should be limited, conditioned, suspended or revoked, on an emergency basis, or that other action is necessary or appropriate to carry out the provisions of the act or regulations, the chairman shall issue an order:

A. limiting or restricting a license or authorization; or

B. suspending or revoking a license or authorization; or

C. directing actions deemed necessary to carry out the intent of the act or regulations, including, but not limited to, requiring a licensee to keep an individual from the licensed premises, prohibiting payment for services rendered, prohibiting payment of profits, income, or accruals, or investment in the licensee or its operations.

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 26:

#### **§4105. Criteria for Sanctions**

In determining his decision, the chairman shall consider the factors identified in the act and these regulations as factors to be considered in determining sanctions.

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 26:

**Chapter 42. Racetracks: Electronic Gaming Devices**

**§4201. Division's Central Computer System (DCCS)**

A. An electronic gaming device offered for play in the designated gaming area of an eligible facility shall be linked by telecommunications to a central computer system for purposes of monitoring and reading device activities.

B. The central computer system shall be located within and administrated by the division.

C. The central computer system shall be capable of monitoring and reading financial aspects of each electronic gaming device such as:

1. Coin in, coin out, coins to the drop, games played, hand paid jackpots, bills/paper currency accepted, and bills/paper currency by denomination accepted shall all be reported to the central computer system.

2. Any device malfunction that causes any meter information to be altered, cleared, or otherwise inaccurate shall require immediate disablement of the electronic gaming device from patron play by the division.

3. No electronic gaming device shall be enabled for patron play after a meter malfunction until authorized by a division agent.

4. Meter information required in C.1 of this Section will have been reported and documented by the central computer system on a previous event and will be used to provide all meter information prior to the device malfunction. Subsequent adjustments after the meter malfunction shall document a "meter reasonableness" as determined by the following procedures:

a. The meter information recorded prior to the device malfunction shall be verified as accurate by an operator of the DCCS;

b. A coin and bill validator test shall be performed on the electronic gaming device in the presence of a division agent;

c. Upon successful completion of the coin and bill validator test, all final meter information shall be documented on forms prescribed by the division; and

d. The final meter information shall be reported to the DCCS operator and all final meter information shall be entered into the central computer system prior to the enablement of the electronic gaming device for patron play.

D. The central computer system shall provide for the monitoring and reading of exception code reporting to insure direct scrutiny of conditions detected and reported by the electronic gaming device, including any tampering, device malfunction, and any door opening to the drop areas:

1. Exception or event codes that signal illegal door opening(s) shall necessitate an investigation by a division agent, which may result in an administrative action against the Licensee.

2. All events that can be reported by an electronic gaming device shall be transmitted to the DCCS. The events reported are, but not limited to, as follows:

- a. machine power loss;
- b. main door open/closed;
- c. BVA or stacker accessed;
- d. hard drop door open/closed;
- e. logic board accessed;
- f. reel tilt;

- g. hopper empty;
- h. excess coin dispensed by the hopper;
- i. hopper jam;
- j. coin diverter error;
- k. battery low;
- l. jackpot win;
- m. jackpot reset; or
- n. logic board failure

3. In the event of any exception or event code, or combination thereof, that is reported to the DCCS, the division may require the disablement of the electronic gaming device.

E. No new electronic gaming device or EGD monitoring system shall be authorized for operation unless the electronic gaming device or EGD monitoring system meets the minimum requirements of Section 4201.

F. The DCCS shall not provide for the monitoring or reading of personal or financial information concerning any patron's gaming activities conducted at an eligible facility.

G. Any reference to slot machine or slots in this Chapter includes all electronic gaming devices, herein referred to as EGD's.

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 26:

**§4202. Approval of Electronic Gaming Devices;**

**Applications and Procedures; Manufacturers and Suppliers**

A. A manufacturer or supplier shall not sell, lease or distribute EGD's or equipment in this state and a licensee shall not offer EGD's for play without first obtaining the requisite permit or license and obtaining prior approval by the division or board for such action. This Section shall not apply to those manufacturers or suppliers licensed or permitted to sell, lease or distribute EGD's or equipment in the state to an entity licensed under a provision of state law other than these rules when those manufacturers or suppliers are selling or distributing to such licensed entity.

B. Applications for approval of a new EGD shall be made and processed in such manner and using such forms as the division may prescribe. Licensees may apply for approval of a new EGD. Each application shall include, in addition to such other items or information as the division may require:

1. a complete, comprehensive, and technically accurate description and explanation in both technical and lay language of the manner in which the device operates, signed under penalty of perjury; and

2. a statement, under penalty of perjury, that to the best of the applicant's knowledge, the EGD meets the standards set forth in this Chapter.

C. No game or EGD other than those specifically authorized in this Chapter may be offered for play or played at an eligible facility except that the division may authorize the operation of progressive electronic EGD's as part of a network of separate gaming operations licensed by the division with an aggregate prize or prizes.

D. Approval shall be obtained from the division prior to changing, adding, or altering the casino configuration once such configuration has received final divisional approval. For the purpose of this Section, altering the casino

configuration does not include the routine movement of EGD's for cleaning and/or maintenance purposes.

E. All components, tools, and test equipment used for installation, repair or modification of EGD's shall be stored in the slot technician repair office. Such office shall be kept secure, and only authorized personnel shall have access. Any compartment or room that contains communications equipment used by the EGD's and the EGD monitoring system shall be kept secure.

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 26:

#### **§4203. Minimum Standards for Electronic Gaming Devices**

All EGD's submitted for approval:

A. shall be electronic in design and operation and shall be controlled by a microprocessor or micro-controller or the equivalent;

B. shall theoretically pay out a mathematically demonstrable percentage of all amounts wagered, which shall not be less than eighty percent and not more than ninety nine point nine percent (99.9%) for each wager available for play on the device;

C. shall use a random selection process to determine the game outcome of each play of a game. The random selection process shall meet ninety-nine percent confidence limits using a standard chi-squared test for goodness of fit and in addition:

1. each possible permutation or combination of game elements which produce winning or losing game outcomes shall be available for random selection at the initiation of each play; and

2. the selection process shall not produce detectable patterns of game elements or detectable dependency upon any previous game outcome, the amount wagered, or upon the style or method of play.

D. shall display an accurate representation of the game outcome. After selection of the game outcome, the EGD shall not make a variable secondary decision which affects the result shown to the player;

E. shall display the rules of play and payoff schedule;

F. shall not automatically alter pay-tables or any function of the device based on internal computation of the hold percentage;

G. shall be compatible to on-line data monitoring;

H. shall have a separate locked internal enclosure within the device for the control circuit board and the program storage media;

I. shall be able to continue a game with no data loss after a power failure;

J. shall have current game and the previous two games data recall;

K. shall have a complete set of nonvolatile meters including coins-in, coins-out, coins dropped and total jackpots paid;

L. shall contain a surge protector on the line that feeds power to the device. The battery backup or an equivalent for the electronic meter information shall be capable of maintaining accuracy of all information required for one hundred eighty days after power is discontinued from the device. The backup shall be kept within the locked logic board compartment;

M. shall have an on/off switch that controls the electrical current used in the operation of the device which shall be located in an accessible place within its interior;

N. shall be designed so that it shall not be adversely affected by static discharge or other electromagnetic interference;

O. shall have at least one electronic coin acceptor and may be equipped with an approved currency acceptor. Coin and currency acceptors shall be designed to accept designated coins and currency and reject others. The coin acceptor on a device shall be designed to prevent the use of cheating methods such as slugging, stringing, or spooning. All types of coin and currency acceptors are subject to the approval by the division. The control program shall be capable of handling rapidly fed coins so that occurrences of inappropriate "coin-ins" are prevented;

P. shall not contain any hardware switches that alter the pay-tables or payout percentages in its operation. Hardware switches may be installed to control graphic routines, speed of play, and sound;

Q. shall contain a nonremovable identification plate containing the following information, appearing on the exterior of the device:

1. manufacturer;
2. serial number; and
3. model number.

R. shall have a communications data format from the EGD to the EGD monitoring system approved by the division;

S. shall be capable of continuing the current game with all current game features after a malfunction is cleared. This rule does not apply if a device is rendered totally inoperable. The current wager and all credits appearing on the screen prior to the malfunction shall be returned to the patron;

T. shall have attached a locked compartment separate from any other compartment of the device for housing a drop bucket. The compartment shall be equipped with a switch or sensor that provides detection of the drop door opening and closing by signaling to the EGD monitoring system;

U. shall have a locked compartment for housing currency, if so equipped with a currency acceptor;

V. shall, at a minimum, be capable of detecting and displaying the following error conditions which an attendant may clear:

1. coin-in jam;
2. coin-out jam;
3. currency acceptor malfunction or jam;
4. hopper empty or time-out;
5. program error;
6. hopper runaway or extra coin paid out;
7. reverse coin-in;
8. reel error; and
9. door open.

W. shall use a communication protocol which ensures that erroneous data or signal will not adversely affect the operation of the device;

X. shall have a mechanical, electrical, or electronic device that automatically precludes a player from operating the device after a jackpot requiring a manual payout and requires an attendant to reactivate the device; and

Y. shall be outfitted with any other equipment required by this Chapter or the act.

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 26:

#### **§4204. Progressive Electronic Gaming Devices**

A. This Section authorizes the use of progressive EGD's within one eligible facility provided that the EGD's meet the requirements stated in this Chapter and any additional requirements imposed by these rules.

B. Wide area progressive games that link EGD's located on more than one eligible facility shall be approved by the board and division on a case-by-case basis.

##### **C. Progressive EGD's Defined**

1. A progressive EGD is an electronic gaming device with a payoff that increases uniformly as the EGD or another device on the same link is played.

2. "Base amount" means the amount of the progressive jackpot offered before it increases.

3. "Incremental amount" means the difference between the amount of a progressive jackpot and its base amount.

4. A progressive jackpot may be won where certain preestablished criteria, which does not have to be a winning combination, are satisfied.

5. A bonus game where certain circumstances are required to be satisfied prior to awarding a fixed bonus prize is not a progressive EGD and is not subject to this Chapter.

##### **D. Transferring of Progressive Jackpot which is in Play:**

1. A progressive jackpot which is currently in play may be transferred to another progressive EGD on the eligible facility in the event of:

- a. EGD malfunction;
- b. EGD replacement; or
- c. other good reason deemed appropriate by the division or board to ensure compliance with this Chapter.

2. If the events set forth above do not occur, the progressive award shall be permitted to remain until it is won by a player or transfer is approved by the division.

##### **E. Recording, Keeping and Reconciliation of Jackpot Amount**

1. The licensee shall maintain a record of the amount shown on a progressive jackpot meter on the eligible facility and/or dockside premises. The progressive jackpot meter information shall be read and documented, at a minimum, every twenty-four hours. Electronic meter information shall be recorded when a primary jackpot occurs on an EGD.

2. Supporting documents shall be maintained to explain any reduction in the payoff amount from a previous entry.

3. The records and documents shall be retained for a period of five years.

4. The licensee shall confirm and document, on a quarterly basis, that proper communication was maintained on each EGD linked to the progressive controller during that time.

5. The licensee shall record the progressive liability on a daily basis.

6. The licensee shall review, on a quarterly basis, the incremented rate and reasonableness of the progressive liability by either a physical coin-in test or by meter readings to calculate incremental coin-in multiplied by the rate

incremented to arrive at the increase in, and reasonableness of, the progressive jackpot amount.

7. Each licensee shall formally adopt the manufacturer's specified internal controls, as approved by the division, as part of the licensee's system of internal controls.

F. The Progressive Meter. The EGD shall be linked to a progressive meter or meters showing the current payoff to all players who are playing an EGD which may potentially win the progressive amount. A meter that shows the amount of the progressive jackpot shall be conspicuously displayed at or near the machines to which the jackpot applies.

G. Consistent Odds on Linked EGD's. When more than one progressive EGD is linked together, each EGD in the link shall be the same denomination and have the same probability of hitting the combination that will award the progressive jackpot or jackpots as every other machine in the link.

##### **H. Operation of Progressive Controller-Normal Mode**

1. During the normal operating mode of the progressive controller, the controller shall do the following:

- a. Continuously monitor each EGD attached to the controller to detect inserted coins or credits wagered.
- b. Multiply the accepted coins by the denomination and the programmed rate progression in order to determine the correct amounts to apply to the progressive jackpot.

2. The progressive display shall be constantly updated as play on the link is continued. It will be acceptable to have a slight delay in the update so long as when a jackpot is triggered the jackpot amount is shown immediately.

##### **I. Operation of Progressive Controller-Jackpot Mode**

1. When a progressive jackpot is recorded on an EGD which is attached to the progressive controller or another attached approved component or system, hereinafter "progressive controller", the progressive controller shall allow for the following:

- a. Display of the winning amount.
- b. Display of the EGD identification that caused the progressive meter to activate if more than one EGD is attached to the controller.

2. The progressive controller is required to send to the EGD the amount that was won. The EGD is required to update its electronic meters to reflect the winning jackpot amount consistent with this Chapter.

3. When more than one progressive EGD is linked to the progressive controller, the progressive controller shall automatically reset to the reset amount and continue normal play. During this time, the progressive meter or another attached approved component or system shall display the following information:

- a. The identity of the EGD that caused the progressive meter to activate.
- b. The winning progressive amount.
- c. The new normal mode amount that is current on the link.

4. A wide area progressive EGD and/or a progressive device where a jackpot of one hundred thousand dollars (\$100,000) or more is won shall automatically enter into a nonplay mode which prohibits additional play on the device after a primary jackpot has been won on the device. Upon conclusion of necessary inspections and tests by the division, the device may be offered for play.

J. Alternating Displays. When this procedure prescribes multiple items of information to be displayed on a progressive meter, it is sufficient to have the information displayed in an alternating fashion.

K. Security of Progressive Controller

1. Each progressive controller linking two or more progressive EGD's shall be housed in a double keyed compartment in a location approved by the division. All keys shall be maintained in accordance with Chapter 27.

2. The division may require possession of one of the keys.

3. Persons having access to the progressive controller shall be approved by the division.

4. A list of persons having access to a progressive controller shall be submitted to the division.

L. Progressive Controller

1. A progressive controller entry authorization log shall be maintained within each controller. The log shall be on a form prescribed by the division and completed by each individual who gains entrance to the controller.

2. Security restrictions shall be submitted in writing to the division for approval at least sixty days before their enforcement. All restrictions approved by the division shall be made on a case by case basis in the case of a stand-alone progressive where the controller is housed in the logic area.

3. The progressive controller shall keep the following information in nonvolatile memory which shall be displayed upon demand:

a. The number of progressive jackpots won on each progressive level if the progressive display has more than one winning amount.

b. The cumulative amounts paid on each progressive level if the progressive display has more than one winning amount.

c. The maximum amount of the progressive payout for each level displayed.

d. The minimum amount or reset amount of the progressive payout for each level displayed.

e. The rate of progression for each level displayed.

M. Limits on jackpot of progressive EGD's. A licensee may impose a limit on the jackpot of a progressive EGD if the limit imposed is greater than the possible maximum jackpot payout on the EGD at the time the limit is imposed. The eligible facility licensee shall inform the public with a prominently posted notice of progressive EGD's and their limits.

N. Licensee shall not reduce the amount displayed on a progressive jackpot meter or otherwise reduce or eliminate a progressive jackpot unless:

1. a player wins the jackpot;

2. the licensee adjusts the progressive jackpot meter to correct a malfunction or to prevent the display of an amount greater than a limit imposed pursuant to Section 4204 M. and the licensee documents the adjustment and the reasons for it;

3. the licensee's gaming operations at the establishment cease for any reason other than a temporary closure where the same licensee resumes gaming operations at the same establishment within a month;

4. the licensee distributes the incremental amount to another progressive jackpot at the licensee's establishment and:

a. the licensee documents the distribution;

b. any machine offering the jackpot to which the licensee distributes the incremental amount does not require that more money be played on a single play to win the jackpot, than the machine from which the incremental amount is distributed;

c. any machine offering the jackpot to which the incremental amount is distributed complies with the minimum theoretical payout requirement of Section 4203 B.; and

d. The distribution is completed within thirty days after the progressive jackpot is removed from play or within such longer period as the division may for good cause approve; or

e. the division approves a reduction, elimination, distribution, or procedure not otherwise described in this Subsection, which approval is confirmed in writing.

5. Licensees shall preserve the records required by this Section for at least five years.

O. Individual Progressive EGD Controls

1. Individual EGD's 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.

P. Link Progressive EGD Controls

1. 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.

2. 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."

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 26:

**§4205. Computer Monitoring Requirements of Electronic Gaming Devices**

A. The Licensee shall have a computer connected to all EGD's on the eligible facility to record and monitor the activities of such devices. No EGD's shall be operated unless it is on-line and communicating to a computer monitoring system approved by a designated gaming laboratory specified by the division or board. Such computer monitoring system shall provide on-line, real-time monitoring and data acquisition capability in the format and media approved by the division.

1. Any occurrence of malfunction or interruption of communication between the EGD's and the EGD monitoring system shall immediately be reported to the division. These malfunctions include, but are not limited to, zeroed meters, invalid meters and any variance between EGD drop meters and the actual count of the EGD drop.

2. Prior written approval from the division is required before implementing any changes to the computerized EGD monitoring system.

3. Each and every modification of the software shall be approved by a designated gaming laboratory specified by the division or board.

B. The computer permitted by Paragraph 1 of this Subsection shall be designed and operated to automatically perform and report functions relating to EGD meters, and other exceptional functions and reports in the eligible facility as follows:

1. record the number and total value of tokens placed in the EGD for the purpose of activating play;

2. record the total value of credits received from the currency acceptor for the purpose of activating play;

3. record the number and total value of tokens deposited in the drop bucket of the EGD;

4. record the number and total value of tokens automatically paid by the EGD as the result of a jackpot;

5. record the number and total value of tokens to be paid manually as the result of a jackpot. The system shall be capable of logging in this data if such data is not directly provided by EGD.

6. have an on-line computer alert, alarm monitoring capability to insure direct scrutiny of conditions detected and reported by the EGD, including any device malfunction, any type of tampering, and any open door to the drop area. In addition, any person opening the EGD or the drop area shall complete the machine entry authorization log including time, date, machine identity and reason for entry;

7. be capable of logging in and reporting any revenue transactions not directly monitored by token meter, such as tokens placed in the EGD as a result of a fill, and any tokens removed from the EGD in the form of a credit; and

8. identify any EGD taken off-line or placed on-line of the computer monitor system, including date, time, and EGD identification number.

9. report the time, date and location of open doors or error conditions, as specified in Section 4201. D. 2., by each EGD.

C. The licensee shall store, in machine-readable format, all information required by Subsection B. for the period of five years. The licensee shall store all information in a secure area and certify that this information is complete and unaltered. This information shall be available upon request by a division agent in the format and media 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, Gaming Control Board, LR 26:

#### **§4206. Employment of Individual to Respond to Inquires from the Division**

Each manufacturer shall employ or retain an individual who understands the design and function of each of its EGD's who shall respond within the time specified by the division to any inquires from him concerning the EGD or any modifications to the device. Each manufacturer shall on or before December 31st of each year report in writing the name of the individual designated pursuant to this Section and shall report in writing any change in the designation within fifteen days of the change.

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 26:

#### **§4207. Evaluation of New Electronic Gaming Devices**

A. The division may require transportation of not more than two working models of a new EGD to a designated gaming laboratory for review and inspection. The manufacturer seeking approval of the device shall pay the cost of the inspection and investigation. The designated gaming laboratory may dismantle the models and may destroy electronic components in order to fully evaluate the device. The division may require that the manufacturer provide specialized equipment or the services of an independent technical expert to evaluate the device.

B. The division may require the manufacturer or supplier seeking approval to provide specialized equipment or the services of an independent technical expert to evaluate the equipment, and may employ an outside designated gaming laboratory to conduct the evaluation.

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 26:

#### **§4208. Certification by Manufacturer**

After completing its evaluation of a new EGD, the lab shall send a report of its evaluation to the division and the manufacturer seeking approval of the device. The report shall include an explanation of the manner in which the device operates. The manufacturer shall return the report within fifteen days and shall either:

A. certify under penalty of perjury that to the best of its knowledge the explanation is correct; or

B. make appropriate corrections, clarifications, or additions to the report and certify under penalty of perjury that to the best of its knowledge the explanation of the EGD is correct amended.

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 26:

#### **§4209. Approval of New Electronic Gaming Devices**

After completing its evaluation of the new EGD, the division shall determine whether the application for approval of the new EGD should be granted. In considering whether a new EGD will be given final approval, the division shall consider whether approval of the new EGD is consistent with this Chapter. Division approval of a EGD does not constitute certification of the device's safety.

##### **A. Equipment Registration and Approval**

1. All electronic or mechanical EGD's shall be approved by the division and/or its approved designated gaming laboratory and registered by the division prior to use.

2. The following shall not be used for gaming by any licensee without prior written approval of the division:

a. bill acceptors or bill validators;

b. coin acceptors;

c. progressive controllers;

d. signs depicting payout percentages, odds, and/or rules of the game;

e. associated gaming equipment as provided for in Chapter 42 of the Administrative Rules.

3. The licensee and/or manufacturer's request for approval shall describe with particularity the equipment or device for which the division's approval is requested.

4. The division may request additional information or documentation prior to issuing written approval.

B. Testing

1. The following shall be tested prior to registration or approval for use:

- a. all EGD's;
- b. EGD monitoring systems;
- c. any other device or equipment as the division may deem necessary to ensure compliance with this.

2. The division may employ the services of a designated gaming laboratory to conduct testing.

a. Any new EGD not presently approved by the division shall first meet the approval and testing criteria of the division/board's recognized designated gaming laboratory, who shall evaluate and test the product and issue a written opinion to the division of all test results. The licensee, manufacturer or supplier shall incur all costs associated with the testing of the product. This may include costs for field test, travel, laboratory test, and/or other associated costs. Failure on the part of the requesting party to timely pay these cost may be grounds for the denial of the request and cause for enforcement action by the division. Recommendations of approval by the designated gaming laboratory with regard to program approval(s) shall constitute division approval and do not require separate written approval by the division. Other test determinations shall be reviewed by the division and a written decision shall be issued by the division. In situations wherein the need for specific guidelines and internal controls are required, the division will work in concert with the designated gaming laboratory to develop guidelines for each licensee. Licensees shall be required to comply with these guidelines and they shall become part of the licensee's system of internal controls. At no time shall an unauthorized program, gaming device, associated equipment and/or component be installed, stored, possessed, or offered for play by a licensee, permittee, its agent, representative, employee or other person in the Louisiana pari-mutuel gaming industry.

3. Registration and/or approval shall not be issued unless payment for all costs of testing is current.

4. Registration, approval, or the denial of EGD's, or any other device or equipment shall be issued in accordance with these rules.

5. EGD's shall meet all specifications as required in Section 4203 and shall meet the following security and audit specifications:

- a. be controlled by a microprocessor;
- b. be connected and communicating to an approved on-line EGD monitoring system;
- c. have an internal enclosure for the circuit board which is locked or sealed, or both, prior to and during game play;
- d. be able to continue a game with no loss of data after a power failure;
- e. have game data recall for the current game and the previous two games;
- f. have a random selection process that satisfies the ninety-nine percent confidence level using the following tests which shall not be predictable by players:
  - i. standard chi-squared;
  - ii. runs; and
  - iii. serial correlation.

g. clearly display applicable rules of play and the payout schedule;

h. display an accurate representative of each game outcome utilizing:

- i. rotating wheels;
- ii. video monitoring; or
- iii. any other type of display mechanism that accurately depicts the outcome of the game.

6. All EGD's shall be registered with the division and shall have a registration sticker affixed to the device on or near the right inside portion of the device. It is incumbent on each licensee to ensure that the registration sticker is properly affixed and is valid. In the event the registration sticker becomes damaged or voided, the licensee shall immediately notify the division in writing. The division shall issue a replacement sticker and re-register the device as soon as practical.

7. All EGD's shall be located within the designated gaming area. This is inclusive of all "Free Pull" machines or similar devices. A device which is not in use may be stored in a secured area if approved in writing by the division.

8. Each licensee shall maintain a current inventory report of all EGD's and equipment. The inventory report shall include, but is not limited to, the following:

- a. the serial number assigned to the EGD by the manufacturer;
- b. the registration number issued by the division;
- c. the type of game the EGD is designed and used for;
- d. the denomination of tokens or coins accepted by each EGD;
- e. the location of EGD's equipped with bill validators and any bill validators that stand alone;
- f. the manufacturer of the EGD;
- g. the location or house number of the EGD.

9. This inventory report shall be submitted to the division's Operational Section on a diskette, in a data text format, upon request by the division.

10. All EGD's offered for play shall be given a house number by the licensee. This house number shall not be altered or changed without prior written approval from the division. The licensee shall issue the house numbers in a systematic manner which provides for easy recognition and location of the device's location. This number shall be a part of the licensee's "On-Line Computer EGD Monitoring System", and shall be displayed, in part, on all on-line system reports. Each EGD shall have its respective house number attached to the device in a manner which allows for easy recognition by division personnel and surveillance cameras.

11. Control Program Requirements:

a. EGD control programs shall test themselves for possible corruption caused by failure of the program storage media.

b. The test methodology shall detect ninety-nine and ninety-nine one hundredths percent (99.99%) of all possible failures.

c. The control program shall allow for the EGD to be continually tested during game play.

d. The control program shall reside in the EGD which is contained in a storage medium not alterable through any use of the circuitry or programming of the EGD itself.

- e. The control program shall check the following:
  - i. corruption of RAM locations used for crucial EGD functions;
  - ii. information relating to the current play and final outcome of the two prior games;
  - iii. random number generator outcome; and
  - iv. error states.
- f. The control RAM areas shall be checked for corruption following game initiation, but prior to display of the game outcome to the player.
- g. Detection of corruption is a game malfunction that shall result in a tilt condition which identifies the error and causes the EGD to cease further function.
- h. The control program shall have the capacity to display a complete play history for the current game and the previous two games.
  - i. The control program shall display an indication of the following:
    - i. the game outcome or a representative equivalent;
    - ii. bets placed;
    - iii. credits or coins paid;
    - iv. credits or coins cashed out; and
    - v. any error conditions;
  - j. The control program shall provide the means for on-demand display of the electronic meters via a key switch or other mechanism on the exterior of the EGD.

#### 12. Accounting Meters

- a. EGD's shall be equipped with electronic meters;
- b. EGD's electronic meters shall have at least eight digits;
- c. EGD's shall tally totals to eight digits and be capable of rolling over when the maximum value is reached.
- d. The required electronic meters are as follows:
  - i. The coin-in meter shall cumulatively count the number of coins wagered by actual coins inserted or credits bet, or both.
  - ii. The coin-out meter shall cumulatively count the number of coins that are paid by the hopper as a result of a win, or credits that are won, or both;
  - iii. The coins-dropped meter shall maintain a cumulative count of the number of coins that have been diverted into a drop bucket and credit value of all bills inserted into the bill validator for play.
  - iv. The jackpots-paid meter shall reflect the cumulative amounts paid by an attendant for progressive and nonprogressive jackpots.
  - v. The games-played meter shall display the cumulative number of games played (handle pulls).
  - vi. The drop door meter shall display the number of times the drop door was opened.
  - vii. If the EGD is equipped with a bill validator, the device shall be equipped with a bill validator meter that records:
    - (1) the total number of bills that were accepted;
    - (2) a breakdown of the number of each denomination of bill accepted; and
    - (3) the total dollar amount of bills accepted.

e. EGD's shall be designed so that replacement of parts, modules, or components required for normal maintenance does not affect the electronic meters.

f. EGD's shall have meters which continuously display the following information relating to the current play or monetary transaction:

- i. the number of coins or credits wagered in the current game;
- ii. the number of coins or credits won in the current game, if applicable;
- iii. the number of coins paid by the hopper for a credit cash out or a direct pay from a winning outcome;
- iv. the number of credits available for wagering, if applicable.

g. Electronically stored meter information required by this Section shall be preserved after power loss to the EGD by battery backup and be capable of maintaining accuracy of electronically stored meter information for a period of at least one hundred eighty days.

13. No EGD may have a mechanism that causes the electronic accounting meters to clear automatically when an error occurs.

14. Clearing of the electronic accounting meters may be done only if approved in writing by the division. Meter readings, as prescribed by the division, shall be recorded before and after any electronic accounting meter is cleared or a modification is made to the device.

#### 15. Hopper

a. EGD's shall be equipped with a hopper which is designed to detect the following and force the EGD into a tilt condition if one of the following occurs:

- i. jammed coins;
- ii. extra coins paid out;
- iii. hopper runaways; and
- iv. hopper empty conditions.

b. The EGD control program shall monitor the hopper mechanism for these error conditions in all game states in accordance with this Chapter.

c. All coins paid from the hopper mechanism shall be accounted for by the EGD including those paid as extra coins during hopper malfunction.

d. Hopper pay limits shall be designed to permit compliance by licensees with all applicable taxation laws, rules, and regulations.

16. Communication Protocol. An EGD which is capable of a bi-directional communication with internal or external associated equipment shall use a communication protocol which ensures that erroneous data or signals will not adversely affect the operation of the EGD.

17. EGD's installed and/or modified shall be inspected and/or tested by division agents prior to offering these devices for live play. Accordingly, no device shall be operated unless and until each regulated program storage media has been tested and sealed into place by division agent(s). The division's security tape shall at all times remain intact and unbroken. It is incumbent on the licensee to routinely inspect every device to ensure compliance with this procedure. In the event a licensee discovers that the security tape has been broken or tampered with, the power to the EGD shall be immediately turned off, surveillance shall be immediately notified and shall take a photograph of the logic board. The board shall be maintained in the surveillance office until a division agent has the opportunity to inspect the board. A copy of the device's "MEAL" card shall be made and shall accompany the board.

18. No Licensee or other person shall modify an EGD without prior written approval from the division. A request shall be made by completing form(s) prescribed by the division/board and filing it with the respective field office. The licensee shall ensure that the information listed on the EGD form(s) is true and accurate. Any misstatement or omission of information shall be grounds for denial of the request and may be cause for enforcement action.

19. EGD's shall meet the following minimum and maximum theoretical percentage payout during the expected lifetime of the EGD:

a. The EGD shall pay out at least eighty percent and not more than ninety-nine and nine tenths percent (99.9%) of the amount wagered.

b. The theoretical payout percentage shall be determined using standard methods of the probability theory. The percentage shall be calculated using the highest level of skill where player skill impacts the payback percentage.

c. An EGD shall have a probability of obtaining the maximum payout greater than one in fifty million (50,000,000).

d. An EGD shall be capable of continuing the current play with all the current play features after an EGD malfunction is cleared.

20. Modifications to an EGD's program shall be considered only if the new program has been approved by the designated gaming laboratory, and if the existing program has met the minimum requirements as set forth herein. The minimum program change requirements are unique to each program or program storage media. Therefore, it is not practical to list each one. In general, a program shall meet the ninety-nine percent confidence interval range of eighty percent to ninety-nine point nine and nine tenths percent (99.9%) prior to being removed or replaced. As stated, this confidence interval varies by program and manufacturer. The confidence interval is determined by the designated gaming laboratory who tests each program and determines the interval. For the purpose of these procedures, an interval shall be determined by the games played on the existing program. An EGD's program shall not be approved for change unless the existing program has met or exceeded the minimum required games played. Exceptions to this procedure are those situations in which it can be reasonably determined that a program chip is defective or malfunctioning, or during a ninety day trial period of a newly approved program.

21. A licensee shall be allowed to test, on a limited basis, newly approved programs. The licensee shall file an EGD 96-01 form and indicate in field 21 that the request is for a ninety-day trial period. Failure to do so may be grounds for denial of the request to remove the program prior to reaching the ninety nine and nine tenths (99.9%) confidence interval. The licensee, upon approval, shall be allowed to test the program and will be allowed to replace it during this ninety day period with cause. If a request to replace the test program is not filed with the division prior to the expiration of the ninety day approval, the program shall not be replaced and the program replacement criteria as stated in these procedures shall be applicable.

22. When an approved denomination change is made to an EGD which used or uses tokens, the licensee shall make necessary adjustments to the initial hopper fill listed on the

Daily Fee Remittance Summary. Additionally, an adjustment shall be made to the Daily Fee Remittance Summary to reflect the change in the initial hopper fill each time an EGD is taken off the floor or out of play. A final drop shall be made for that machine, including the hopper. The initial hopper load should be deducted to determine the final net drop for the device.

#### 23. Randomness Events/Randomness Testing

a. Events in EGD's are occurrences of elements or particular combinations of elements which are available on the particular EGD.

b. A random event has a given set of possible outcomes which has a given probability of occurrence called the distribution.

c. Two events are called independent if the following conditions exist:

i. the outcome of one event has no influence on the outcome of the other event;

ii. the outcome of one event does not affect the distribution of another event.

d. An EGD shall be equipped with a random number generator to make the selection process. A selection process is considered random if the following specifications are met:

i. the random number generator satisfies at least ninety-nine percent (99%) confidence level using chi-squared analysis;

ii. the random number generator does not produce a measurable statistic with regard to producing patterns of occurrences. Each reel position is considered random if it meets at least the ninety-nine percent (99%) confidence level with regard to the runs test or any similar pattern testing statistic.

iii. the random number generator produces numbers which are independently chosen.

#### 24. Safety Requirements

a. Electrical and mechanical parts and design principles shall not subject a player to physical hazards.

b. Spilling a conductive liquid on the EGD shall not create a safety hazard or alter the integrity of the EGD's performance.

c. The power supply used in an EGD shall be designed to make minimum leakage of current in the event of an intentional or inadvertent disconnection of the alternate current power ground.

d. A surge protector shall be installed on each EGD. Surge protection can be internal or external to the power supply.

e. A battery backup device shall be installed and capable of maintaining accuracy of required electronic meter information after power is disconnected from the EGD. The device shall be kept within the locked or sealed logic board compartment and be capable of sustaining the stored information for one hundred and eighty days.

f. Electronic discharges. The following shall not subject the player to physical hazards:

i. electrical parts;

ii. mechanical parts; and

iii. design principles of the EGD and its component parts.

25. On and Off Switch. An on and off switch that controls the electrical current used to operate the EGD shall

be located in an accessible place and within the interior of the EGD.

26. Power Supply Filter. EGD power supply filtering shall be sufficient to prevent disruption of the EGD by a repeated fluctuation of alternating current.

27. Error Conditions and Automatic Clearing:

a. EGD's shall be capable of detecting and displaying the following conditions:

- i. power reset;
- ii. door open; and
- iii. inappropriate coin-in if the coin is not automatically returned to the player.

b. The conditions listed above shall be automatically cleared by the EGD upon initiation of a new play sequence.

28. Error Conditions; Clearing by Attendant

a. EGD's shall be capable of detecting and displaying the following error conditions which an attendant may clear:

- i. coin-in jam;
- ii. coin-out jam;
- iii. hopper empty or timed-out;
- iv. RAM error;
- v. hopper runaway or extra coin paid out;
- vi. program error;
- vii. reverse token-in;
- viii. reel spin error of any type, including a mis-index condition for rotating reels. The specific reel number shall be identified in the error indicator;
- ix. low RAM battery, for batteries external to the RAM itself, or low power source.

b. A description of EGD error codes and their meanings shall be affixed inside the EGD.

29. Coin Acceptors

a. At least one electronic coin acceptor shall be installed in each EGD.

b. All acceptors shall be approved by the division or the designated gaming laboratory.

c. Coin acceptors shall be designed to accept designated coins and to reject others.

d. The coin receiver on an EGD shall be designed to prevent the use of cheating methods, including, but not limited to:

- i. slugging;
- ii. stringing; and
- iii. spooling.

e. Coins which are accepted but not credited to the current game shall be returned to the player by activation of the hopper or credited toward the next play of the EGD control program and shall be capable of handling rapidly fed coins so that frequent occurrences of this type are prevented.

f. EGD's shall have suitable detectors for determining the direction and speed of the coin(s) travel in the receiver. If a coin traveling at improper speed or direction is detected, the EGD shall enter an error condition and display the error condition which shall require attendant intervention to clear.

30. Bill Validators

a. EGD's may contain a bill validator that will accept the following:

- i. one dollar (\$1) bills;
- ii. five dollar (\$5) bills;

- iii. ten dollar (\$10) bills;
- iv. twenty dollar (\$20) bills;
- v. fifty dollar (\$50) bills; and
- vi. one hundred dollar (\$100) bills.

b. The bill acceptors may be for single denomination or combination of denominations.

31. Automatic Light Alarm

a. A light shall be installed on the top of the EGD that automatically illuminates when the door to the EGD is opened or associated equipment that may affect the operation of the EGD is exposed.

32. Access to the Interior

a. The internal space of an EGD shall not be readily accessible when the door is closed.

b. The following shall be in a separate locked or sealed area within the EGD's:

- i. logic boards;
- ii. ROM;
- iii. RAM; and
- iv. program storage media.

c. No access to the area described above is allowed without prior notification to the licensee's surveillance room.

d. The division shall be allowed immediate access to the locked or sealed area. An eligible facility licensee shall maintain its copies of the keys to EGD's in accordance with the administrative rules and the licensee's system of internal controls. A licensee shall provide the division a master key to the door of an approved EGD, if so requested. Unauthorized tampering or entrance into the logic area without prior notification in accordance with this Subsection is grounds for enforcement action.

33. Tape Sealed Areas. An EGD's logic boards and/or any program storage media in a locked area within the EGD shall be sealed with the division's security tape. The security tape shall be affixed by a division agent. The security tape may only be removed by, or with approval from, a division agent.

34. Hardware Switches

a. No hardware switches may be installed which alter the pay tables or payout percentages in the operation of an EGD.

b. Hardware switches may be installed to control the following:

- i. graphic routines;
- ii. speed of play;
- iii. sound; and
- iv. other approved cosmetic play features.

35. Display of Rules of Play

a. The rules of play for EGD's shall be displayed on the face or screen of all EGD's. Rules of play shall be approved by the division or board prior to play.

b. The division or board may reject the rules if they are:

- i. incomplete;
- ii. confusing;
- iii. misleading; or
- iv. for any other reason stated by the division/board.

c. Rules of play shall be kept under glass or another transparent substance and shall not be altered without prior approval from the division.

d. Stickers or other removable devices shall not be placed on the EGD face unless their placement is approved by the division.

### 36. Manual Jackpot Payout

a. Whenever a patron wins a jackpot that is not totally and automatically paid directly from the EGD, a slot attendant shall prepare and process according to the licensee's internal controls, a request for jackpot payout form which shall contain, at a minimum, the following information:

- i. the EGD house number;
- ii. the denomination of the EGD;
- iii. number of coins played;
- iv. line of the payout;
- v. combination of reel characteristics;
- vi. amount the machine paid, and
- vii. amount of the hand paid jackpot.

b. If a jackpot is one thousand two hundred dollars (\$1,200.00) or greater in value, the following information shall be obtained by the slot attendant for preparation of a form W-2G:

- i. name, physical address, and social security number of the patron;
- ii. amount of the jackpot; and
- iii. any other information required for completion of the form W-2G

c. On a three-part jackpot slip, the coin cashier preparing the payout shall record the following information:

- i. the date and time during which the jackpot occurred;
- ii. the denomination;
- iii. the machine and asset number of the EGD on which the jackpot was registered.
- iv. the number of coins played;
- v. the line of the combination;
- vi. the winning combination of reel characters constituting the jackpot;
- vii. the amount to be paid by the coin cashier in both numeric and alpha form; and,
- viii. the signature of the coin cashier, slot attendant and security officer.

d. If the jackpot is over five thousand dollars (\$5,000.00) a surveillance photograph shall be taken of the winner and the payout form shall be signed by the slot manager or casino shift manager in addition to Subsection b. and c.

e. In addition to the other provisions of this Subsection, if the jackpot is over ten thousand dollars (\$10,000.00) the slot attendant shall notify a slot technician who shall remove the electronic control board, or program storage media, and position the board or program storage media in a manner to allow a surveillance photograph to be taken showing the division security tape covering said program storage media.

f. If the jackpot is one hundred thousand dollars (\$100,000) or more, the licensee shall notify the division immediately. A division agent shall be present prior to the opening of the EGD. Surveillance shall constantly monitor the EGD until payment of the jackpot has been completed or until otherwise directed by a division agent. Once a division agent is present, the electronic control board, or the program storage media shall be removed by a slot technician, and the

program storage media shall be inspected and tested in a manner prescribed by the division. Upon completion of the jackpot payout transaction, the division agent shall reseal the electronic control board or program storage media and ensure the replacement of the electronic board or program storage media.

37. Manufacturer's Operating and Field Manuals and Procedures. A licensee shall comply with written guidelines and procedures concerning installations, modifications, and/or upgrades of components and associated equipment established by the manufacturer of an EGD, component, on-line system, software, and/or associated equipment unless otherwise approved in writing by the division/board, or if the guideline(s) and/or procedure(s) conflict with any portion of 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, Gaming Control Board, LR 26:

### **§4210. Electronic Gaming Device Tournaments**

A. EGD tournaments may be conducted by licensees, upon written approval by the division.

B. All tournament play shall be on machines which have been tested and approved by the division, and for which the tournament feature has been enabled.

C. All EGD's used in a single tournament shall utilize the same electronics and machine settings. Licensees shall utilize, and each device shall be equipped with an approved program which allows for tournament mode play to be enabled by a switch key (reset feature) and/or total replacement of the logic board, with an approved tournament board. Replacement of program storage media is not permissible for tournament play only. Form(s) as prescribed by the division are required to be submitted for each device used in tournament play when the nontournament logic board is removed. The licensee shall submit, in writing, procedures regarding the storage and security of the both tournament and nontournament boards when not in use.

D. EGD's enabled for tournament play shall not accept or pay out coins. The EGD's shall utilize credit points only.

E. Tournament credits shall have no cash value.

F. Tournament play shall not be credited to accounting or electronic (soft) meters of the EGD.

G. At the licensee's discretion, and in accordance with applicable laws and rules, the licensee may establish qualification or selection criteria to limit the eligibility of players in a tournament.

#### H. Rules of Tournament Play

1. The eligible facility licensee shall submit rules of tournament play to the division in accordance with Section 2953 or within such time period as the division may designate. The rules of play shall include, but are not limited to, the following:

- a. the amount of points, credits, and playing time players will begin with.
- b. the manner in which players will receive EGD assignments and how reassignments are to be handled.
- c. how players are eliminated from the tournament and how the winner or winners are to be determined.
- d. the number of EGD's each player will be allowed to play.
- e. the amount of entry fee for participating in the tournament.

- f. the number of prizes to be awarded.
- g. an exact description of each prize to be awarded.
- h. any additional house rules governing play of the tournament.
- i. any rules deemed necessary by the division or board to ensure compliance with this Chapter.

2. A licensee shall not permit any tournament to be played unless the rules of the tournament play have been approved, in writing, by the division or board.

3. The rules of tournament play shall be provided to all tournament players and each member of the public who requests a copy of the rules.

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 26:

**§4211. Duplication of Program Storage Media**

**A. Personnel and Certification**

1. Only the licensee's director of slot operations, assistant director of slot operations, or the slot technical manager shall be allowed to duplicate program storage media.

2. The licensee shall provide to the division certified documentation, from the manufacturer or copyright holder of the program storage media which is being duplicated, stating that the duplication of the program storage media is authorized.

3. The licensee shall assume the responsibility of complying with all rules and regulations regarding copyright infringement. Program storage media protected by the manufacturer's federal copyright laws will not be duplicated for any reason or circumstance, unless approved otherwise by the manufacturer and/or the division.

4. Each duplicated program storage media shall be certified by the designated gaming laboratory's signature for that program storage media.

**B. Required Documentation**

1. Each Licensee shall maintain an program storage media duplication log which shall contain:

- a. the name of the program storage media manufacturer and the program storage media identification number of each program storage media to be erased;
- b. serial number of program storage media eraser and duplicator;
- c. printed name and signature of individual performing the erasing and duplication of the program storage media;
- d. identification number of the new program storage media;
- e. the number of program storage media duplicated;
- f. the date of the duplication;
- g. machine number (source and destination);
- h. reason for duplication; and
- i. disposition of permanently removed program storage media.

2. The log shall be maintained on record for a period of five (5) years.

3. Corporate internal auditors shall verify compliance with program storage media duplication procedures at least twice annually.

**C. Program Storage Media Labeling**

1. Each duplicated program storage media shall have an attached white adhesive label containing the following:

- a. manufacturer name and serial number of the new program storage media;
- b. designated gaming laboratory signature verification number;
- c. date of duplication;
- d. initials of personnel performing duplication.

**D. Storage of Program Storage Media and Duplicator/Eraser**

1. Program storage media duplication equipment shall be stored with the security department or other department approved by the division.

2. Equipment shall be release only to the director or assistant director of slot operations.

3. At no time shall the director or assistant director of slot operations leave unattended the program storage media duplication equipment.

4. Program storage media duplication equipment shall only be released from the security department, or other department approved by the division, for a period not to exceed four hours within a twenty-four hour period.

5. An equipment control log shall be maintained by the licensee and shall include the following:

- a. Date, time, name of employee taking possession of, or returning equipment, and name of Security officer taking possession of, or releasing equipment.

6. All program storage media shall be kept in a secure area and the licensee shall maintain an inventory log of all program storage media.

**E. Internal Controls**

1. The licensee shall adopt, and have approved by the division, internal controls which are in compliance with this Section prior to duplicating program storage media.

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 26:

**§4212. Marking, Registration, and Distribution of Gaming Devices**

A. No one, including a licensee, permittee, manufacturer or supplier may ship or otherwise transfer a gaming device into this state, out of this state, or within this state unless:

- 1. A serial number (which shall be the same number as given the device pursuant to the provisions of §15 U.S.C. 1173 of the Gaming Device Act of 1962) permanently stamped or engraved in lettering no smaller than five millimeters on the metal frame or other permanent component of the EGD and on a removable metal plate attached to the cabinet of the EGD; and

2. A manufacturer, supplier, or licensee shall file forms as prescribed by the division/board before receiving authorization to ship a device for use in the Louisiana pari-mutuel gaming industry.

3. Each manufacturer or supplier shall keep a written list of the date of each distribution, the serial numbers of the devices, the division approval number, and the name, state of residence, addresses and telephone numbers of the person to whom the gaming devices have been distributed and shall provide such list to the division immediately upon request.

4. A registration fee of one hundred dollars \$100.00 per device shall be paid by company check, money order, or certified check made payable to" State of Louisiana, Department of Public Safety." This fee is not required on devices which are currently registered with the division and

display a valid registration certificate. Upon receipt of the appropriate shipping forms and fees, the division shall issue a written authorization to ship for approved devices. This fee is applicable only to gaming devices destined for use in Louisiana by licensed eligible facility entities or suppliers.

5. Prior to actual receipt of the shipment, the licensee shall notify the division of the arrival. The division shall require that the shipper's manifest or other shipping documents are verified against the letter of authorization for that shipment. The shipment shall also have been sealed at the point of origin, or the last point of shipment. The seal number shall be recorded on the shipping documents and attached to the licensee's copy of the letter of authorization.

6. The storage of the shipment, once properly received, shall be in a containment area that is secure from any other equipment. There shall be a dual key locking system for the containment area. The containment area shall have been inspected and approved in writing by the division prior to any EGD storage. All electronic control boards and/or program storage media shall be securely stored in a separate containment area from the EGD's. The containment area shall have been inspected and approved in writing by the division prior to any electronic control board and/or program storage media storage.

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 26:

#### **§4213. Approval to Sell or Disposal of Gaming Devices**

No gaming device registered by the division shall be destroyed, scrapped, or otherwise disassembled without prior written approval of the division. A licensee shall not sell or deliver a gaming device to a person other than its affiliated companies or a permitted manufacturer or supplier without prior written approval of the division/board. Applications for approval to sell or dispose of a registered gaming device shall be made, processed, and determined in such manner and using such forms as the division/board may prescribe.

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 26:

#### **§4214. Maintenance of Electronic Gaming Devices**

A licensee shall not alter the operation of an approved EGD except as provide otherwise in the board's rules and shall maintain the EGD's as required by this Chapter. Each licensee shall keep a written list of repairs made to the EGD offered for play to the public that require a replacement of parts that affect the game outcome, and any other maintenance activity on the EGD, and shall make the list available for inspection by the division upon request. The written list of repairs for all EGD's shall be kept in a "maintenance log book" in the slot tech office.

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 26:

#### **§4215. Analysis of Questioned Electronic Gaming Devices**

A. If the operation of any EGD is questioned by any licensee, patron or an agent of the division and the question

cannot be resolved, the questioned device will be examined in the presence of an agent of the division and a representative of the licensee. If the malfunction can not be cleared by other means to the satisfaction of the division, the patron and the licensee, the EGD will be subjected to an program storage media memory test to verify "signature" comparison by the division.

B. In the event that the malfunction can not be determined and corrected by this testing, the EGD may be removed from service and secured in a remote, locked compartment. The EGD may then be transported to the designated gaming laboratory selected by the division or board where the device shall be fully analyzed to determine the status and cause of the malfunction. All costs for transportation and analysis shall be borne by the licensee.

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 26:

#### **§4216. Summary Suspension of Approval of Electronic Gaming Devices**

The division or board may issue an order suspending approval of an EGD if it is determined that the EGD does not operate in the manner certified by the designated gaming laboratory pursuant to this Chapter. The division/board after issuing an order may thereafter seal or seize all models of that EGD not in compliance with 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, Gaming Control Board, LR 26:

#### **§4217. Seizure and Removal of Electronic Gaming Equipment and Devices**

A. EGD's and associated equipment may be summarily seized by the division. Whenever the division seizes and removes EGD's and/or associated equipment:

1. an inventory of the equipment or EGD's seized will be made by the division/board, identifying all such equipment or EGD's as to make, model, serial number, type, and such other information as may be necessary for authentication and identification;

2. all such equipment or EGD's will be sealed or by other means made secure from tampering or alteration;

3. the time and place of the seizure will be recorded; and

4. the licensee or permittee will be notified in writing by the division at the time of the seizure, of the fact of the seizure, and of the place where the seized equipment or EGD is to be impounded. A copy of the inventory of the seized equipment or EGD will be provided to the licensee or permittee 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, Gaming Control Board, LR 26:

#### **§4218. Seized Equipment and EGD's as Evidence**

A. All gaming equipment and EGD's seized by the division shall be considered evidence, and as such shall be subject to the laws of Louisiana governing chain of custody, preservation and return, except that:

1. any article of property that constitutes a cheating device shall not be returned. All cheating devices shall become the property of the division upon their seizure and

may be disposed of by the division, which disposition shall be documented as to date and manner of disposal.

2. the division shall notify by certified mail each known claimant of a cheating device that the claimant has ten days from the date of the notice within which to file a written claim with the division to contest the characterization of the property as a cheating device.

3. failure of a claimant to timely file a claim as provided in Subsection B. above will result in the division's pursuit of the destruction of property.

4. if the property is not characterized as a cheating device, such property shall be returned to the claimant within fifteen days after final determination.

5. items seized for inspection or examination may be returned by the division/board without a court order.

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 26:

#### **§4219. Approval of Associated Equipment; Applications and Procedures**

A. A manufacturer or supplier of associated equipment and/or nongaming products shall not distribute associated equipment and/or nongaming products unless such manufacturer and/or supplier has been approved by the division or board. Applications for approval of associated equipment and/or nongaming products shall be made and processed in such manner and using such forms as the division or board may prescribe. Each application shall include, in addition to such other items or information as the division or board may require:

1. the name, permanent address, social security number or federal tax identification number of the manufacturer or supplier of associated equipment and nongaming products unless the manufacturer or supplier is currently permitted by the division or board. If the manufacturer or supplier of associated equipment and nongaming products is a corporation, the names, permanent addresses, social security numbers, and driver's license numbers of the directors and officers shall be included. If the manufacturer or supplier of associated equipment and nongaming products is a partnership, the names, permanent addresses, social security numbers, driver's license numbers, and partnership interest of the partners shall be included. If social security numbers or driver's license numbers are not available, the birth date of the partners may be substituted;

2. a complete, comprehensive and technically accurate description and explanation in both technical and nontechnical language of the equipment and its intended usage, signed under penalty of perjury;

3. detailed operating procedures; and

4. details of all tests performed and the standards under which such tests were performed.

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 26:

#### **Chapter 43. Specifications for Gaming Tokens and Associated Equipment**

##### **§4301. Approval of Tokens; Applications and Procedures**

A. A licensee shall not issue any tokens for use at the eligible facility, or sell or redeem any such tokens, unless the

tokens have been approved in writing by the division. A licensee shall not issue any tokens for use at the eligible facility, or sell or redeem any such tokens, that are modifications of tokens previously approved by the division, unless the modifications have been approved in writing by the division.

B. Applications for approval of tokens, and modifications to previously approved tokens must be made, processed, and determined in such manner as the division may prescribe. Only licensees may apply for such approval. Each application must include, in addition to such other items or information as the division may require:

1. an exact drawing, in color or in black and white, of each side and the edge of the proposed token, drawn to actual size or drawn to larger than actual size and in scale, and showing the measurements of the proposed token in each dimension;

2. written specifications for the proposed tokens;

3. the name and address of the manufacturer; and

4. the licensee's intended use for the proposed tokens.

C. If, after receiving and reviewing the items and information described in Subsection B, the division is satisfied that the proposed tokens conform with the requirements of this Chapter, the division shall notify the licensee in writing and shall request, and the licensee shall thereupon submit, a sample of the proposed tokens in final, manufactured form. If the division is satisfied that the sample conforms with the requirements of this regulation and with the information submitted with the licensee's application, the division shall approve the proposed tokens and notify the licensee in writing. As a condition of approval of issued for use at the eligible facility the division may prohibit the licensee from using the tokens other than at specified games. The division may retain the sample tokens submitted pursuant to this Subsection.

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 26:

##### **§4303. Specifications for Tokens**

A. Tokens must be designed, manufactured, and constructed in compliance with all applicable statutes, regulations, and policies of the United States, Louisiana, and other states, and so as to prevent counterfeiting of the tokens to the extent reasonably possible. Tokens must not resemble any current or past coinage of the United States or any other nation.

B. In addition to such other specifications as the division may approve:

1. the name of the issuing gaming establishment must be inscribed on each side of each token, and the city or other locality and the state where the establishment is located must be inscribed on at least one side of each token;

2. the value of the token must be inscribed on each side of each token;

3. the manufacturer's name or a distinctive logo or other mark identifying the manufacturer must be inscribed on at least one side of each token; and

C. The names of the city or other locality and the state where the establishment is located must be inscribed on at least one side of each token unless the division finds, after application by a licensee, that such an inscription is not necessary because:

1. the name of the issuing establishment is unique to one readily identifiable establishment in all gaming jurisdictions; or

2. the inclusion of the city or other locality and the state is not necessary or beneficial for any regulatory purpose relating to the applicant.

D. Any request submitted pursuant to Subsection C. must be signed by the chief executive officer of the licensee.

E. Any approval by the division for the deletion of such an inscription shall be in writing and be limited to that period of time in which the name of the licensee is limited to one establishment and conditioned so that it may be withdrawn in the future if the division determines that the deletion results in confusion with the tokens of another establishment or if such inclusion is deemed necessary or beneficial for any regulatory purpose.

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 26:

#### **§4305. Specifications for Tokens**

A. Unless the division approves otherwise, tokens must be disk-shaped and must measure as follows:

1. \$0.25 tokens must be from 0.983 through 0.989 inches in diameter, from 0.064 through 0.070 inches thick, and if the token has reeds or serrations on its edges, the number of reeds or serrations must not exceed 100;

2. \$1 denomination tokens must be from 1.459 through 1.474 inches in diameter, from 0.095 through 0.115 inch thick, and, if the token has reeds or serrations on its edges, the number of reeds or serrations must not exceed 150;

3. \$5 denomination tokens must be 1.75 inches in diameter, from 0.115 through 0.135 inch thick, and, if the token has reeds or serrations on its edges, the number of reeds or serrations must not exceed 175;

4. \$25 denomination tokens must be larger than 1.75 inches but no larger than 1.95 inches in diameter, except that such tokens may be 1.654 inches (42 millimeters) in diameter if made of 99.9 percent pure silver, must be 0.10 inch thick, and, if the token has reeds or serrations on its edges, the number of reeds or serrations must not exceed 200; and

5. tokens of other denominations must have such measurements and edge reeds or serrations as the division may approve or require.

B. Tokens must not be manufactured from material possessing sufficient magnetic properties so as to be accepted by a coin mechanism, other than that of an electronic gaming device.

C. Tokens must not be manufactured from a three-layered material consisting of a copper-nickel alloy clad on both sides of a pure copper core, nor from a copper-based material, unless the total of zinc, nickel, aluminum, magnesium, and other alloying materials is at least twenty percent of the token's weight.

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 26:

#### **§4307. Use of Tokens**

A. A licensee that uses tokens at its gaming establishment shall:

1. comply with all applicable statutes, regulations, and policies of Louisiana and of the United States pertaining to tokens;

2. sell tokens only to patrons of its gaming establishment and only at their request;

3. promptly redeem its own tokens from its patrons;

4. post conspicuous signs at its establishment notifying patrons that federal law prohibits the use of the licensee's tokens outside the establishment for any monetary purpose whatever; and

5. take reasonable steps, including examining tokens and segregating those issued by other licensees or gaming operators to prevent sales to its patrons of tokens issued by another gaming operator.

B. A licensee shall not accept tokens as payment for any goods or services offered at the licensee's gaming establishment with the exception of the specific use for which the tokens were issued, and shall not give tokens as change in any other nongaming transaction.

C. A licensee shall not redeem its tokens if presented by a person who the licensee knows or reasonably should know is not a patron of its gaming establishment, except that a licensee shall promptly redeem its tokens if presented by:

1. another licensee, or licensed gaming operator who represents that it redeemed the tokens from its patrons or received them unknowingly, inadvertently, or unavoidably;

2. an employee of the licensee who presents the tokens in the normal course of employment; or

3. an employee of the licensee who received the token as gratuity or tip.

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 26:

#### **§4309. Receipt of Gaming Tokens from Manufacturer or Supplier**

A. When tokens are received from the manufacturer or supplier thereof, they shall be opened and checked by at least two employees of the licensee from different departments. Any deviation between the invoice accompanying the tokens and the actual tokens received or any defects found in such tokens shall be reported promptly to the division. An agent of the division will be notified of the time of delivery of any tokens to the licensee.

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 26:

#### **§4311. Redemption and Disposal of Discontinued Tokens**

A. A licensee that permanently removes from use or replaces approved tokens at its gaming establishment, or that ceases gaming operations, whether because of closure or sale of the eligible facility or any other reason, shall prepare a plan for redeeming discontinued tokens that remain outstanding at the time of discontinuance. The licensee shall submit the plan in writing to the division not later than thirty days before the proposed removal, replacement, sale, or closure, unless the closure or other cause for discontinuance of the tokens cannot reasonably be anticipated, in which event the licensee must submit the plan as soon as reasonably practicable. The division may approve the plan or require reasonable modifications as a condition of approval.

Upon approval of the plan, the licensee shall implement the plan as approved.

B. In addition to such other reasonable provision's as the division may approve or require, the plan shall provide for:

1. redemption of outstanding or discontinued tokens, in accordance with this Subsection, for at least one hundred twenty days after the removal or replacement of the tokens or for at least one hundred twenty days after operations cease, as the case may be, or for such longer or shorter period as the division may for good cause approve or require;

2. redemption of the tokens at the premises of the eligible facility or at such other location as the division may approve;

3. publication of notice of the discontinuance of the tokens and of the redemption and the pertinent times and locations in at least two newspapers of general circulation in Louisiana at least twice during each week of the redemption period, subject to the division's approval of the form of the notice, the newspapers selected for publication, and the specific days of publication;

4. conspicuous posting of the notice described in Subsection B. 3. at the eligible facility or other redemption location;

5. destruction or such other disposition of the discontinued tokens as the division may approve or require; and

6. such destruction must be to the satisfaction of 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, Gaming Control Board, LR 26:

#### **§4313. Destruction of Counterfeit Tokens**

A. As used in this Section, "counterfeit tokens" means any token-like objects that have not been approved pursuant to this Chapter, including objects commonly referred to as "slugs," but not including coins of the United States or any other nation.

B. Unless a court of competent jurisdiction orders otherwise in a particular case, licensees shall destroy or otherwise dispose of tokens discovered at their establishments in such manner as the division may approve or require.

C. Unless a court of competent jurisdiction orders otherwise in a particular case, licensees may dispose of coins of the United States or any other nation discovered to have been unlawfully used at their establishments by including them in their coin inventories or, in the case of foreign coins, by exchanging them for United States currency or coins and including same in their currency or coin inventories, or by disposing of them in any other lawful manner.

D. Each licensee shall record, in addition to such other information as the division may require:

1. the number and denominations, actual and purported, of the coins and tokens destroyed or otherwise disposed of pursuant to this Section;

2. the month during which they were discovered;

3. the date, place, and method of destruction or other disposition, including, in the case of foreign coin exchanges, the exchange rate and the identity of the bank, exchange company, or other business or person at which or with whom the coins are exchanged; and

4. the names of persons carrying out the destruction of other disposition on behalf of the licensee.

E. Each licensee shall maintain each record required by this Section for five years unless the division approves a lesser time period.

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 26:

### **Chapter 45. Labor Organizations**

#### **§4501. Labor Organization Registration Required**

A. Each labor organization, union or affiliate representing or seeking to represent employees regulated by the board and employed by a licensee, shall register with the division annually.

B. The division may exempt any labor organization, union or affiliate from registration requirements where it is found that such labor organization, union or affiliate:

1. is not the certified bargaining representative of any employee regulated by the board or employed by a licensee; and

2. is neither involved nor seeking to be involved actively, directly, or substantially in the control or direction of the representation of any such employee.

3. Such exemption shall be subject to revocation upon disclosure of information which indicates that the affiliate does not or no longer meets the standards for exemption.

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 26:

#### **§4503. Registration Statement**

A. In order to register, a labor organization, union or affiliate shall file with the division a "Labor Organization Registration Statement." These requirements shall be completed and approved by the division prior to the labor organization becoming the certified bargaining representative for employees occupationally licensed to work for a licensed operator.

B. Said statement shall be in the form prescribed by the board and shall include, without limitation, the following:

1. the names of all labor organizations affiliated with the registrant;

2. information as to whether the registrant is involved or seeking to be involved actively, directly or substantially in the control or direction of the representation of any employee regulated by the board and employed by a licensee;

3. information as to whether the registrant holds, directly or indirectly, any financial interest whatsoever in the eligible facility whose employees it represents;

4. the names of any pension and welfare systems maintained by the registrant and all officers and agents of such systems;

5. the names of all officers, agents and principal employees of the registrant; and

6. all written assurances, consents, waivers and other documentation required of a registrant 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, Gaming Control Board, LR 26:

### **§4505. Registration Renewal**

A labor organization registration shall be effective for one year. Any such registration may be renewed upon filing of an updated "Labor Organization Registration Statement" no later than 120 days prior to the expiration of the current registration. The division shall act upon such application for renewal no later than 30 days prior to the date of expiration of the current registration.

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 26:

### **§4507. Continuing Duty to Disclose**

Every registered labor organization shall be under a continuing duty to promptly disclose any change in the information contained in the "Labor Organization Registration Statement" or otherwise requested 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, Gaming Control Board, LR 26:

### **§4509. Federal Reports Exception**

Notwithstanding the reporting requirements imposed by the regulations of the board, no labor organization, union, affiliate or person shall be required to furnish any information which is included in a report filed by any labor organization, union, affiliate or person with the secretary of labor, pursuant to 29 U.S.C., Section 431, et seq. (Labor-Management Reporting and Disclosure Act) if a copy of such report, or if the portion thereof containing such information, is furnished to the division pursuant to the aforesaid federal provisions.

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 26:

### **§4511. Qualification of Officers, Agent, and Principal Employees**

Every officer, agent and principal employee of a labor organization, union or affiliate required to register with the division shall be qualified in accordance with criteria contained in these regulations.

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 26:

### **§4513. Qualification Procedure**

A. In order to be qualified, every officer, agent and principal employee of a labor organization, union or affiliate required to register with the division shall file with the division a "Labor Organization Individual Disclosure Form," which shall be completed, signed and filed in accordance with the requirements of this Chapter, provided, however, that such a form need not be filed by an officer of a national or international labor organization where that officer exercises no authority, discretion or influence over the operation of such labor organization with regard to any employment matter relating to employees licensed under the act and employed by a licensee; and provided further, that any such officer of a national or international labor organization may be directed by the division to file a "Labor Organization Individual Disclosure Form" or to provide any

other information in the same manner and the same extent as may be required of any other officer of a labor organization which is required to register under this Chapter.

B. Each officer, agent or principal employee required to file, a "labor organization individual disclosure form" shall do so initially at the time the pertinent labor organization, union or affiliate applies or should apply for registration or at the time the individual is elected, appointed or hired, whichever is later.

C. Following an initial finding of qualification, each qualified individual who has filed an initial "Labor Organization Individual Disclosure Form" shall annually file with the division a properly completed, updated "Labor Organization Individual Disclosure Form."

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 26:

### **§4515. Waiver of Disqualification Criteria**

Notwithstanding the qualification requirements as to any such officer, agent or principal employee, the division may waive any disqualification criteria upon a finding that the interests of justice so require.

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 26:

### **§4517. Interest in Operator's License Prohibited**

Neither a labor organization, union, or affiliate nor its officers, and agents not otherwise individually licensed under the act and employed by a licensed operator may hold any financial interest whatsoever in the licensee whose employees they represent.

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 26:

### **§4519. Failure to Comply; Consequences**

A. No labor organization, union or affiliate required to register with the division shall receive any dues from or on behalf of or administer any pension, welfare funds from or on behalf of any licensed employee and employed by a licensee or its agent:

1. if the said labor organization, union, or affiliate shall fail to properly register with the division or provide all information requested by the division in accordance with the provisions of these regulations;

2. if any officer, agent or principal employee of such labor organization, union, or affiliate shall fail to qualify in accordance with the provisions of these regulations; or

3. if the said labor organization, union, affiliate or any officer or agent thereof shall hold a prohibited interest in a licensee.

B. Nothing herein shall be construed to limit the right of the division to impose any sanctions or take any action authorized by these regulations and the act.

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 26:

### **FAMILY IMPACT STATEMENT**

Pursuant to the provisions of La. R.S. 49:953 A., the Louisiana Gaming Control Board, through its chairman, has

considered the potential family impact of the proposed adoption of LAC 42:VII.1701 et seq.

It is accordingly concluded that the adoption of 42:VII.1701 et seq. would appear to have no impact on any of the following:

1. the effect on stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;
5. the effect on the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed rule.

All interested persons may contact Tom Warner, Attorney General's Gaming Division, telephone (225) 342-2465, and may submit comments relative to these proposed rules, through January 9, 2000, to 339 Florida Street, Suite 500, Baton Rouge, LA 70801.

Hillary J. Crain  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: *Pari-Mutuel Live Racing Facility Slot  
Machine Gaming***

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
Enactment of La. R.S. 27:351 et seq. (Act 721 of 1997) will require the Board and State Police to regulate a new gaming industry. However, these rules provide a regulatory scheme and will not directly result in implementation costs. The costs estimated to be incurred for regulation during the first year of device operation, FY 2000-2001 are \$342,355 for the Attorney General's Office and \$396,938 per track for State Police. 2 tracks will likely be operating slot machines in FY 2000-2001, Bossier and St. Landry Parish. The voters in Calcasieu Parish approved this gaming activity on November 20, 1999, however, if and when that track will commence device operators is uncertain.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Revenue collections should increase as a result of enactment of La. R.S. 27:351 et seq. However, these rules LAC 42:VII.1701 et seq. will have no direct effect on revenue collections. No fees are provided for in these rules. Revenue collections from slot machine operations at the Bossier and St. Landry Parish race tracks during FY 2000-2001 are projected to be \$12.7 million in State General Fund revenue and \$5.1 million in Statutory Dedications. A third track in Calcasieu Parish may begin slot machine gaming at an unknown later date.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Enactment of La. R.S. 27:351 et seq. authorizing a new gaming industry, slot machine gaming at race tracks, will require expenditures by licensees (Bossier, St. Landry and possibly Calcasieu Parish race tracks) to design and construct a gaming area to be approved by the Board. Certain requirements of these rules LAC 42:VII.1701 et seq. may result in cost to licensees. However, the amount of such costs cannot be estimated at this time.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Creation of a new gaming industry by enactment of La. R.S. 27:351 et seq. should result in new jobs for gaming employees. However, these rules LAC 42:VII.1701 et seq. will have no direct effect on employment or competition and the amount of an increase in employment cannot be accurately estimated.

Hillary J. Crain  
Chairman  
9912#032

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT  
Department of Revenue  
Tax Commission**

Ad Valorem Taxation  
(LAC 61:V.101, 303, 703, 907, 1103, 1305, 1307, 1503, 2503, 2703-2707, 2711, 2713, 2717, 3101-3105, and 3501)

In accordance with provisions of the Administrative Procedure Act (R.S. 49:950, et seq.), and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, notice is hereby given that the Tax Commission intends to adopt, amend and/or repeal sections of the Louisiana Tax Commission Real/Personal Property Rules and Regulations for use in the 2000 (2001 Orleans Parish) tax year.

The full text of these proposed rules may be viewed in the Emergency Rule Section of this issue of the *Louisiana Register*.

Interested persons may submit written comments on the proposed rules until 4 p.m., January 4, 2000, at the following address: E. W. "Ed" Leffel, Property Tax Specialist, Louisiana Tax Commission, Box 66788, Baton Rouge, LA 70896.

Malcolm B. Price, Jr.  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: *Ad Valorem Tax Rules and Regulations***

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
Implementation costs to the agency are the costs of preparation, reproduction and distribution of updated regulations and complete manuals. These costs are estimated at \$7,500.00 for the 1999-2000 fiscal year and are being reimbursed through an existing user service fee of \$15.00 per update set.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Local Governmental Units  
These revisions will generally decrease 2000 certain real and personal property assessments for property of similar age and condition in comparison with equivalent assessments in 1999. Composite multiplier tables for assessment of most personal property will decrease by 2.2 percent. Specific valuation tables for assessment of oil and gas wells will generally increase by an estimated 10 percent and timber lands

by 5 percent. Drilling Rigs will decrease by an estimated 8 percent and agricultural lands by 13 percent. The net effect of these revisions is estimated to decrease assessments by 1.4 percent and tax collections by \$5,708,000 on the basis of existing statewide average millage. However, these revisions will not necessarily effect revenue collections of local government units as any net increase or decrease in assessed valuations are authorized to be offset by millage adjustment provisions of Article VII, Section 23 of the state Constitution.

#### State Governmental Units

Under authority granted by R.S. 47:1838, the Tax Commission will receive state revenue collections generated by assessment service fees estimated to be \$318,000 from Public Service companies, and \$97,000 from Financial Institutions and Insurance companies all of which are assessed by the Tax Commission.

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

The affects of these new rules on assessments of individual items of equivalent real and personal property will generally be lower in 2000 than in 1999. Specific assessments will depend on the age and condition of the property subject to assessment.

The estimated costs that will be paid by affected persons as a result of the assessment and user service fees as itemized above total \$415,000 to be paid by public service property owners, financial institutions and insurance companies for 1999/2000.

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

The impact on competition and employment cannot be quantified. Inasmuch as the proposed changes in assessments and charges are relatively small, the impact is thought to be minimal.

James D. Peters  
Administrator  
9912#062

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Social Services Office of Community Services

Central Registry Child Abuse and Neglect Cases  
(LAC 67:V.1103)

The Department of Social Services, Office of Community Services, proposes to amend the rule entitled a "Central Registry-Child Abuse/Neglect Cases" published in the *Louisiana Register*, Vol. 23 No. 5, May 20, 1997, page 590. This rule is mandated by R.S. 46:56(F)(10).

#### Title 67

### SOCIAL SERVICES

#### Part V. Office of Community Services

#### Subpart 3. Child Protective Services

#### Chapter 11. Administration and Authority

#### §1103. State Central Registry

A. ...

1. - 2. ...

3. The Office of Community Services will disclose limited information on a State Central Registry records check when requested by an employer or prospective employer of a person who will be exercising supervisory authority over that employer's minor children or other

dependent person as part of that person's employment as a caregiver. The written request for the information will be a signed and notarized request form which must be signed by the employee and employer. The form will be provided upon request from the employer, prospective employer, employee or prospective employee. The information which will be disclosed will include whether or not a record of a valid finding of abuse or neglect was found which identifies the employee or prospective employee as a perpetrator. The information will be disclosed to the employer or prospective employer.

4. The Office of Community Services will disclose information in records of reports of child abuse or neglect when requested in writing from persons cited in LA R.S. 46:56 (F)(10)(a). The information to be disclosed includes whether or not the agency has a report which has been determined to be valid, the status of the investigation, the determination made by the department and any action taken by the agency. Action taken by the agency will include the following: case closed, referred for services, continued services, and child taken into custody.

B. ...

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 46:56 (F)(10), the Louisiana Children's Code, Title VI, Child in Need of Care, Chapter 5, Articles 615 and 616, and Title XII, Adoption of Children, Chapter 2, Article 1173, and R.S.14:403(H).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 18:79 (January 1992), amended LR 20:199 (February 1994), LR 21:583 (June 1995), LR 23:590 (May 1997), LR 26:

Interested persons may submit written comments for forty days from the date of this publication to the following address: Shirley Goodwin, Assistant Secretary, P.O. Box 3318, Baton Rouge, LA 70821. She is the person responsible for responding to inquiries.

#### Family Impact Statement

1. The Effect on the Stability of the Family. The request for clearance on an employee or potential employee would allow a family to maintain their stability by protecting the family from known perpetrators of child abuse/neglect.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. The ability to obtain a clearance from OCS increases the rights of parents to protect their children from potential harm, as well as provides parents the authority to make decisions that impact the safety and well-being of the entire family.

3. The Effect on the Functioning of the Family. Obtaining a clearance on an employee or future employee can provide increased confidence in maintaining the family's safety.

4. The Effect on Family Earnings and Family Budget. The greatest financial effect would be the expense involved with requesting and obtaining the clearance, including the cost of a notary.

5. The Effect on the Behavior and Personal Responsibility of Children. The effect of requesting a clearance would be positive due to the knowledge gained and the resultant decision to not employ an individual who could have an adverse effect on the safety and behavior of the children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule.

The employer will be able to request information which will enable that individual to maintain a safe environment for his/her family.

J. Renea Austin-Duffin  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Central Registry Child Abuse and Neglect Cases

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

The only cost in FY 99/2000 will be \$500 to print manual material. There will be no saving as a result of the revision to agency policy.

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

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

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

There will not be any costs nor economic benefits to directly affected persons or non-governmental groups.

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

There will be no effect on revenue competition and employment.

Robert J. Hand  
Director  
9912#052

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Transportation and Development Highways/Engineering

#### Design-Build Contracting Pilot Program (LAC 70:III.Chapter 27)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., notice is hereby given that the Department of Transportation and Development intends to promulgate a rule entitled "Department of Transportation and Development Design-Build Contracting Pilot Program", in accordance with R.S. 48:250.2. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

### Title 70

### TRANSPORTATION

### Part III. Highways/Engineering

### Chapter 27. DOTD Design-Build Contracting Pilot Program

#### §2701. Purpose

A. The following rules and procedures are adopted by the Louisiana Department of Transportation and Development pursuant to R.S. 48:250.2. The purpose of the pilot program is to study and evaluate the feasibility of combining the design and construction phases of a transportation project into a single contract arrangement.

B. The pilot program will be limited to one contract not to exceed five million (\$5,000,000.00) dollars. Should experience with the pilot program result in further pursuit of the Design-Build concept, the size, complexity and cost of future projects will likely far exceed the limitations placed upon the pilot program. Some of the procedures and requirements described are intended to apply to larger and more complex projects and are included for the purpose of consideration by all concerned, including design/construction service providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:250.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Highways/Engineering, LR 26:

#### §2703. Qualification Requirements for Bidders

A. To qualify for Design/Build contracting with the Department, a single legal entity must possess professional engineering design capability, as well as qualified construction contracting capability.

B. The Department's standard technical qualification requirements for firms providing professional engineering services, set forth in R.S. 48:290, shall apply to the components providing design services.

C. The standard contractor qualifications requirements, set forth in R. S. 37:2150-2164 and the current rules and regulations of the State of Louisiana Licensing Board for Contractors, shall apply to the component providing construction services within or utilized by the Design-Build firm, based upon the applicable categories for the specific project.

D. All referenced qualification requirements for each component must be in place prior to the closing date for the submittal of letters of interest.

#### §2705. Public Announcement Procedures

A. A notice of intent to select a firm for Design-Build services and to request letters of interest and statements of qualifications from qualified firm/teams shall be distributed:

1. through advertisement in the Daily Journal of Commerce;

2. through advertisement in the Baton Rouge Advocate;

3. by appearance on the Department's Internet Home Page; and

4. by means of other newspapers, trade journals, and other forms of media which may be appropriate for specialty services and to insure adequate response.

B. Notices of intent shall be advertised a minimum of thirty days prior to the deadline for receipt of responses.

C. The notice of intent will contain a brief description of the project and required scope of services and sufficient information for design/construction firms to determine their interest and to submit a letter of interest and statement of qualifications.

D. If the number of responses received is inadequate, the notice of intent may be re-advertised using additional media or publications in an attempt to get additional responses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:250.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Highways/Engineering, LR 26:

**§2707. Requirements of Letters of Interest by Competitors for the Design-Build Contract**

A. All required information will be identified in the notice of intent and in the standard response forms provided by the Department. The notice will include statements of qualification by credential and experience of design team members for the areas of expertise specific to the project and statements of qualification by experience and resources of the construction team component.

B. The completed response form, with any other required information, must be transmitted to the Department by the responding firm prior to the deadline shown in the notice of intent.

C. Responses which do not meet all of the requirements provided for in the notice of intent will not be considered. The Department shall consider false or misrepresented information furnished in response to a notice of intent as grounds for rejection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:250.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Highways/Engineering, LR 26:

**§2709. Criteria and Procedures for Choosing a Short List from Responding Firms**

A. A primary evaluation committee, with membership as defined in R.S. 48:291(A), will evaluate the responses to the Notice of Intent.

B. The general criteria to be used by the evaluation committee in evaluating responses to a notice of intent for Design-Build services will apply to both the design entity and the construction entity of any responding firm or team as follows:

1. experience, of both the firm and of key personnel, as related to the project under consideration;
2. past performance on Department projects; and
3. any project-specific criteria as may apply to project needs.

C. The primary evaluation committee will evaluate the responding firms or teams on the basis of the above criteria, and will select a short list of not fewer than three nor more than five of the highest rated firms.

D. The selected firms will be invited to submit a detailed technical and cost proposal for the Design-Build project.

E. At its discretion, the primary committee may be assisted by other Department personnel, but it will not consider recommendations by others in its evaluation of the firms' qualifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:250.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Highways/Engineering, LR 26:

**§2710. Requirements for Bid Proposals by Competitors for Design-Build Contracts**

A. Depending upon the complexity of the project and the degree of flexibility in approach to design and/or construction method, the specific requirements of the technical proposal will be identified to the firms making the short list by means of a "Scope of Services Package".

B. Generally, the technical proposal will include the following:

1. discussions of design strategy and preliminary design concepts;
2. construction sequencing, technique, materials and methods;
3. a time line for beginning and completion of all phases of work; and
4. a lump sum cost for all services; all in fulfillment of the requirements and within the constraints of the "Scope of Services Package".
5. for more complex projects and those with scopes which permit flexibility and innovation in design and construction approach, the Department will compensate all short-listed firms for the expense of preparing the technical proposal. The amount of compensation will be predetermined by the Department, and will be made known to the firm when it is notified of selection to the short list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:250.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Highways/Engineering, LR 26:

**§2711. Composition and Appointment by the Secretary to the Technical Review Committee Grading and Judging the Technical Proposals for Ranking and Recommendation to the Chief Engineer**

A. The primary evaluation committee includes representatives from the following divisions of the Department:

1. Construction
2. Road Design
3. Bridge Design
4. Planning

B. With the approval of the Chief Engineer, the committee will assign a Project Coordinator who will become a member of the Technical Review Committee for the project.

C. The Technical Review Committee (with Project Coordinator) will identify, depending upon the characteristics of the project, specific technical elements to be included in the Technical Score, and will choose, with the approval of the Chief Engineer, additional committee members to score each technical element.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:250.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Highways/Engineering, LR 26:

**§2713. Selection and Process of Award by the Chief Engineer and Execution of the Design-Build Contract by the Secretary for a Stipulated Sum**

A. Adjusted Score

1. An adjusted score approach will be used to determine the winning proposal.
2. The adjusted score will typically be determined from three components:
  - a. the technical score determined by the Technical Review Committee;
  - b. the time value, consisting of the product of the proposed contract time (days) and the value-per-day (dollars) established by the Department and included in the "Scope of Services Package"; and
  - c. the price proposal.

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Design-Build Contracting Pilot Program**

3. The adjusted score will be the sum of the time value and price proposal divided by the technical score. The selected proposal will be the one with the lowest adjusted score. The components of the adjusted score are discussed in more detail as follows.

**B. Technical Score**

1. Weighting factors may be assigned to each element, depending upon its relative magnitude or significance to the overall project. Each Technical Review Committee member will rate his assigned element for the proposal from each of the firms on the short list and will submit his scores to the chairman of the Technical Review Committee.

2. The price bid will not be made known to the Technical Review Committee during the scoring process.

3. The chairman will adjust the scores for any applicable weighting factors and will determine the total Technical Score for each proposal.

**C. Time Value**

1. The Design/Build process will normally include a bid adjustment for the value of time. This adjustment will be based upon the firm's proposed number of days to complete the project multiplied by the value per day established by the Department (number of days times \$/day = price proposal adjustment (increase)).

2. This adjustment will be used for selection purposes only and shall not affect the Department's liquidated damages schedule or constitute an incentive/disincentive to the contract.

**3. Adjusted Score**

a. The Adjusted Score for each technical proposal will be determined by the formula:

$$\text{Adjusted Score} = (\text{Price Bid} + \text{Time Value}) / \text{Technical Score}$$

b. If the Time Value is not used, the Adjusted Score will be:

$$\text{Adjusted Score} = \text{Price Bid} / \text{Technical Score}$$

c. The winning proposal will be the one with the lowest Adjusted Score.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 48:250.2.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Highways/Engineering, LR 26:

All interested persons so desiring shall submit oral or written data, views, comments, or arguments no later than 30 days from the date of publication of this Notice of Intent to Sherryl J. Tucker, Senior Attorney, Department of Transportation and Development, P. O. Box 94245, Baton Rouge, LA 70804-9245, Telephone (225)237-1359.

Kam K. Movassaghi, Ph.D., P.E.  
Secretary

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

There are no foreseeable direct costs or savings associated with the implementation of the Design-Build Contracting Pilot Program. Having a single entity responsible for both the design and construction of a transportation improvement project should reduce the total time to completion when compared to conventional design/bid/build contracting. The total cost to deliver a project should not be significantly greater or less than existing project costs. These types of projects should simply proceed at a quicker pace.

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

There is no anticipated effect upon revenue collections at either state or local levels.

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

Because the concept of "design/build" contracting has not been previously used by the Department, the road building contractors in Louisiana are not experienced in the concept and may not be equipped with the design capabilities. For current Louisiana road contractors to compete for a design/build contract, they will have to affiliate with an existing design firm or otherwise add design capabilities to their companies. Smaller contractors may be more negatively affected than the larger firms. The amount of said impact, if any, cannot be estimated at this time.

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

Initially, those firms with capability in both design and build functions and which have experience with such projects will probably compete more successfully in this program than those traditional Louisiana road contractors who must either form business alliances or otherwise become design capable. However, the total impact upon the contracting industry should be minimal, because the statute currently limits the number and magnitude of projects for which the Department can utilize "design/build", i.e. one project not to exceed five million dollars. If the pilot program is successful and the Department is authorized to continue, it is expected that the concept will be applied to only a limited number of special projects. The majority of Departmental contracts and contractors will continue as before.

Kam K. Movassaghi, Ph.D., P.E.  
Secretary

9912#050

Robert E. Hosse  
General Government  
Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Reef Fish Daily Take, Possession and Size Limits (LAC 76:VII.335)

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule, LAC 76:VII.335, changing the minimum size limit for the harvest of red snapper. Authority for adoption of this Rule is included in R.S. 56:6(25)(a), 56:326.1, and 56:326.3. Said Rule is attached to and made a part of this Notice of Intent.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 3. Saltwater Sport and Commercial Fishery

#### §335. Reef Fish Daily Take, Possession and Size Limits Set by Commission

A. - G. ...

H. Species Minimum Size Limits

1. Red Snapper - 16 inches total length (Recreational).
2. 15 inches total length (Commercial).

H.3. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:326.1 and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:539 (June 1990), amended LR 19:1442 (November 1993), LR 20:797 (July 1994), LR 21:1267 (November 1995), LR 22:860 (September 1996), LR 24:1138 (June 1998), LR 24:1139 (June 1998), LR 24:1972 (October 1998), LR 26:

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to Randy Pausina, Marine Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Wednesday, February 2, 2000.

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Bill A. Busbice, Jr.  
Chairman

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

#### RULE TITLE: Reef Fish Daily Take, Possession and Size Limits

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

There will be no state or local governmental implementation costs.

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

There will be no effect on revenues to any state or local governmental units from the proposed rule.

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

The rule is intended to provide consistent regulations for recreational harvest of red snapper in state waters and in adjacent Federal waters. Increase in the recreational minimum size limit of red snapper should not reduce benefits to recreational harvesters. This size limit would help to slow the harvest rate and extend the recreational season compared to the previous 15 inch minimum size limit. Any effects caused by this change would be in Federal waters rather than State waters, as most fishing activity toward red snapper occurs in Federal waters. Overall benefit reductions are not estimable at this time. Long-term benefits may also accrue to harvesters in both recreational and commercial sectors as a result of possible increases in the stocks protected by the proposed limits. No additional costs, permits, fees, workload or paperwork will occur from the proposed rule change.

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

There will be little or no effect on employment in the public or private sector. Some harvesters may redirect their fishing efforts to other species, geographic areas, or into non-fishing activities.

James Patton  
Undersecretary  
9912#023

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office