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# Executive Orders

## EXECUTIVE ORDER KBB 07-19

Commandeering of Property Use—East of Harvey Canal Floodwall, Contract 1, Parish of Jefferson

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the governor of the state of Louisiana emergency powers to deal with, respond to, or recover from emergencies and disasters, including those caused by fire, flood, earthquakes, or other natural or man-made causes;

WHEREAS, Proclamation No. 48 KBB 2005, issued on August 26, 2005, declared a state of emergency for the state of Louisiana due to Hurricane Katrina's potential to cause severe storms, high winds, and torrential rain that could cause flooding and damage to private property and public facilities, and threaten the safety and security of the citizens of Louisiana; and Proclamation No. 48 KBB 2005 was extended by subsequent proclamations due to the extreme damage caused by Hurricane Katrina and the continuation of emergency/disaster conditions in the most affected areas;

WHEREAS, Hurricane Katrina struck the state of Louisiana causing catastrophic flooding and damage to southeastern Louisiana, including breaches to the levee system in the parishes of southeastern Louisiana, the effects of which have threatened and continues to threaten the safety, health, and security of the citizens of those parishes, along with private property and public facilities;

WHEREAS, R.S. 29:724(D)(4) provides that subject to applicable requirements for compensation, the governor may commandeer or utilize temporarily any private property if she finds this necessary to cope with the disaster or emergency;

WHEREAS, the Governor's Office, in consultation with the Attorney General's Office, has determined that the commandeering of private property to accelerate the construction of the levee protection project is necessary to cope with the effects of Hurricane Katrina and future requests for the commandeering or utilization of private property will be considered on a case by case basis.

WHEREAS, both the U.S. and Louisiana Constitutions and R.S. 29:724(D)(4) mandate that the private landowners affected by this Order receive just compensation; and

WHEREAS, at the request of the U.S. Army Corps of Engineers, Southeast Louisiana Flood Protection Authority West Bank, the Department of Transportation and Development, and West Jefferson Levee District, and upon the concurrence of the Attorney General's Office, the best interests of the citizens of the state would be served by commandeering the temporary use of certain property in the parish of Jefferson for the construction of the West Bank and Vicinity, New Orleans, Louisiana, Hurricane Protection Project, West of Algiers Canal, Contract 1 - Sector Gate to Boomtown Casino, East of Harvey Canal Floodwall, Jefferson Parish, Louisiana, Map File No. H-4-45741,

drawings R-1A through R-6A of 29, dated August 2, 2007 (Exhibit A);

NOW THEREFORE I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The state of Louisiana hereby commandeers the use of certain property located in the parish of Jefferson, state of Louisiana, situated in a portion of Section 56, Township 14 South, Range 24 East; containing approximately 22 acres and labeled "Limits of Required Rights-of-Way" on the attached map (Exhibit A), Map File No. H-4-45741, drawings R-1A through R-6A of 29, dated August 2, 2007.

SECTION 2: Said property shall be used by the U.S. Army Corps of Engineers, the Department of Transportation and Development and the West Jefferson Levee District for:

A. Temporary Underground Piling Easement—The project shall include the temporary and assignable right and easement to locate, construct, operate, maintain, alter, repair, replace and patrol the underground appurtenances for a flood control wall, including but not limited to steel or concrete pilings; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines;

B. Temporary Flood Protection Levee (Floodwall) Easement—The project shall include the temporary and assignable right and easement to construct, maintain, repair, operate, patrol and replace a flood protection levee/floodwall, including all appurtenances thereto; reserving, however, to the owners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; and

C. Temporary Work Area Easement—The project shall also include the temporary easement and right-of-way for use by the United States, its representatives, agents, and contractors as a work area, including the right to move, store and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the West Bank and Vicinity, New Orleans, Louisiana, Hurricane Protection Project, West of Algiers Canal, Contract 1 - Sector Gate to Boomtown Casino, East of Harvey Canal Floodwall, Jefferson Parish, Louisiana, together with the right to trim, cut, fell, and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing

easements for public roads and highways, public utilities, railroads, and pipelines.

SECTION 3: The state of Louisiana hereby commandeers the temporary use of the property required by the Department of the Army as indicated on the attached drawings (Exhibit A) as this overall project is reasonably related to the impact of Hurricanes Katrina and Rita. The temporary use of all property identified above is commandeered pursuant to R.S. 29:724(D)(4). Said owners of the property the use of which is so commandeered shall be identified and compensated by the Department of the Army. I take this action with the understanding that the Department of the Army shall take all necessary steps to initiate the process of expropriation and landowner compensation without unnecessary delays upon the issuance of this Order.

SECTION 4: The Division of Administration, State Land Office, shall take immediate steps to grant the right of entry to the property commandeered for the above purposes pursuant to this Order to ensure completion of the project without delay and to provide necessary safeguards to the citizens of the parish of Jefferson.

SECTION 5: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 24th day of September, 2007.

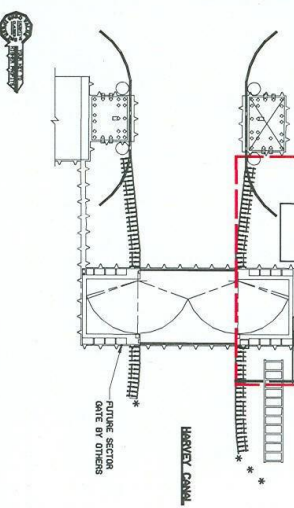
**SAFETY IS A PART OF YOUR CONTRACT**

**PORTION OF BLDG. TO BE DISMANTLED BY OWNER CONCURRENT WITH CONSTRUCTION**

**SECTION 56, T14S, R24E  
JEFFERSON PARISH, LA**

**2800 PETERS RD., LLC  
PROPERTY OWNER  
(NUVA, HERO & SON)  
(4 ACRES)**

**ENERGY COATINGS CO.  
PROPERTY OWNER  
C. ENT. NO. 88-47268  
(3.8 ACRES)**



--- LIMITS OF REQUIRED RIGHTS-OF-WAY  
— PROPERTY BOUNDARY LINE



SCALE: 1" = 50'



**URS**  
2800 PETERS RD., SUITE 100  
JEFFERSON PARISH, LA 70097  
PROJECT NO. 188818-0002

FILE  
NAME: 188818-0002  
DATE: 10/20/07

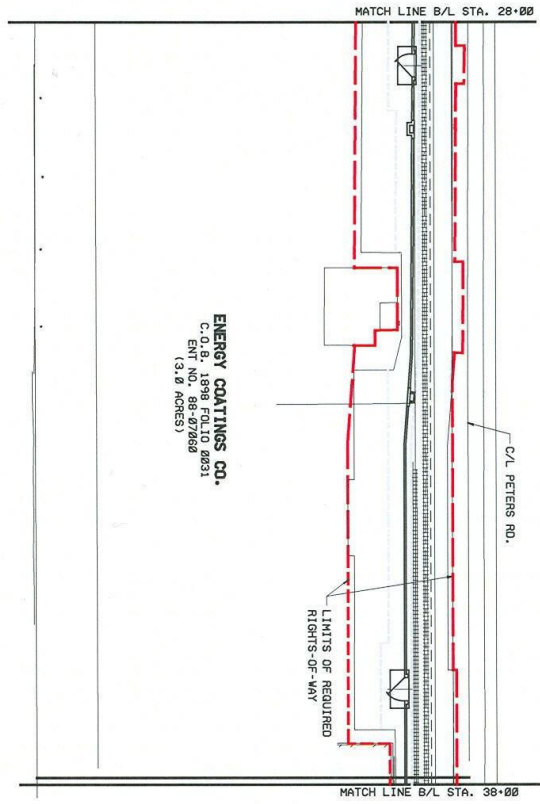
**U. S. ARMY ENGINEER DISTRICT, NEW ORLEANS**  
CORPS OF ENGINEERS  
NEW ORLEANS, LOUISIANA

**HURricane PROTECTION PROJECT  
(WEST OF ALBANY CANAL)  
CONTRACT 1 - BECTOR DATE TO BOOTHMAN CASINO  
SITE OF HARVEY CANAL, FLOODWALL  
RIGHTS-OF-WAY ACQUISITION PLAN  
B/L STATION 18-88 TO 28-88**

NO.	DESCRIPTION	DATE	APP'D	DATE	NO.	DESCRIPTION	DATE	APP'D

**SAFETY IS A PART  
OF YOUR CONTRACT**

SECTION 86, T14S, R24E  
JEFFERSON PARISH, LA



THIS DRAWING AND ALL RIGHTS THEREIN ARE THE PROPERTY OF URS CORPORATION. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY REUSE OR MODIFICATION OF THIS DRAWING WITHOUT THE WRITTEN PERMISSION OF URS CORPORATION IS STRICTLY PROHIBITED.

**URS**  
CORPORATION  
1000 PEARSON DRIVE  
FARMINGDALE, NY 11735  
PROJECT NO. 180813145.000000

U.S. ARMY ENGINEER DISTRICT, NEW ORLEANS  
CORPS OF ENGINEERS  
NEW ORLEANS, LOUISIANA

DESIGNED BY: K.L.L.  
CHECKED BY: K.L.L.  
DATE: 6/2/07

DESIGN FILE NAME: NEW ORLEANS  
SUBMITTED BY: K.L.L.  
REGISTRATION NO.: 040292-X

NO.	DESCRIPTION	DATE	APP'D	NO.	DESCRIPTION	DATE	APP'D

NO.	DESCRIPTION	DATE	APP'D	NO.	DESCRIPTION	DATE	APP'D







Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0710#068

### EXECUTIVE ORDER KBB 07-20

Commandeering of Property Use—East of Harvey Canal  
Floodwall, Contract 2A, Parish of Jefferson

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the governor of the state of Louisiana emergency powers to deal with, respond to, or recover from emergencies and disasters, including those caused by fire, flood, earthquakes, or other natural or man-made causes;

WHEREAS, Proclamation No. 48 KBB 2005, issued on August 26, 2005, declared a state of emergency for the state of Louisiana due to Hurricane Katrina's potential to cause severe storms, high winds, and torrential rain that could cause flooding and damage to private property and public facilities, and threaten the safety and security of the citizens of Louisiana; and Proclamation No. 48 KBB 2005 was extended by subsequent proclamations due to the extreme damage caused by Hurricane Katrina and the continuation of emergency/disaster conditions in the most affected areas;

WHEREAS, Hurricane Katrina struck the state of Louisiana causing catastrophic flooding and damage to southeastern Louisiana, including breaches to the levee system in the parishes of southeastern Louisiana, the effects of which have threatened and continues to threaten the safety, health, and security of the citizens of those parishes, along with private property and public facilities;

WHEREAS, R.S. 29:724(D)(4) provides that subject to applicable requirements for compensation, the governor may commandeer or utilize temporarily any private property if she finds this necessary to cope with the disaster or emergency;

WHEREAS, the Governor's Office, in consultation with the Attorney General's Office, has determined that the commandeering of private property to accelerate the construction of the levee protection project is necessary to cope with the effects of Hurricane Katrina and future requests for the commandeering or utilization of private property will be considered on a case by case basis.

WHEREAS, both the U.S. and Louisiana Constitutions and R.S. 29:724(D)(4) mandate that the private landowners affected by this Order receive just compensation; and

WHEREAS, at the request of the U.S. Army Corps of Engineers, Southeast Louisiana Flood Protection Authority West Bank, the Department of Transportation and Development, and West Jefferson Levee District, and upon the concurrence of the Attorney General's Office, the best interests of the citizens of the state would be served by commandeering the temporary use of certain property in the parish of Jefferson for the construction of the West Bank and

Vicinity, New Orleans, Louisiana, Hurricane Protection Project, West of Algiers Canal, Contract 2A - U.S. Minerals to Boomtown Casino, East of Harvey Canal Floodwall, Jefferson Parish, Louisiana, Map File No. H-4-46545, drawings 2 through 7 of 7, dated November 27, 2006 (Exhibit A);

NOW THEREFORE I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The state of Louisiana hereby commandeers the use of certain property located in the parish of Jefferson, state of Louisiana, situated in a portion of Section 56, Township 14 South, Range 24 East; containing approximately 14.3 acres and labeled "Limits of Required Rights of Way" on the attached map (Exhibit A), Map File No. H-4-46545, drawings 2 through 7 of 7, dated November 27, 2006.

SECTION 2: Said property shall be used by the U.S. Army Corps of Engineers, the Department of Transportation and Development and the West Jefferson Levee District for:

A. Temporary Underground Piling Easement—The project shall include the temporary and assignable right and easement to locate, construct, operate, maintain, alter, repair, replace and patrol the underground appurtenances for a flood control wall, including but not limited to steel or concrete pilings; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines;

B. Temporary Flood Protection Levee (Floodwall) Easement—The project shall include the temporary and assignable right and easement to construct, maintain, repair, operate, patrol and replace a flood protection levee/floodwall, including all appurtenances thereto; reserving, however, to the owners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; and

C. Temporary Work Area Easement—The project shall also include the temporary easement and right-of-way for use by the United States, its representatives, agents, and contractors as a work area, including the right to move, store and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the West Bank and Vicinity, New Orleans, Louisiana, Hurricane Protection Project, West of Algiers Canal, Contract 2A - U.S. Minerals to Boomtown Casino, East of Harvey Canal Floodwall, Jefferson Parish, Louisiana, together with the right to trim, cut, fell, and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing

easements for public roads and highways, public utilities, railroads, and pipelines.

SECTION 3: The state of Louisiana hereby commandeers the temporary use of the property required by the Department of the Army as indicated on the attached drawings (Exhibit A) as this overall project is reasonably related to the impact of Hurricanes Katrina and Rita. The temporary use of all property identified above is commandeered pursuant to R.S. 29:724(D)(4). Said owners of the property the use of which is so commandeered shall be identified and compensated by the Department of the Army. I take this action with the understanding that the Department of the Army shall take all necessary steps to initiate the process of expropriation and landowner compensation without unnecessary delays upon the issuance of this Order.

SECTION 4: The Division of Administration, State Land Office, shall take immediate steps to grant the right of entry to the property commandeered for the above purposes pursuant to this Order to ensure completion of the project without delay and to provide necessary safeguards to the citizens of the parish of Jefferson.

SECTION 5: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 24th day of September, 2007.

MARK	DESCRIPTION	DATE	APPROVED	REVISION	DATE

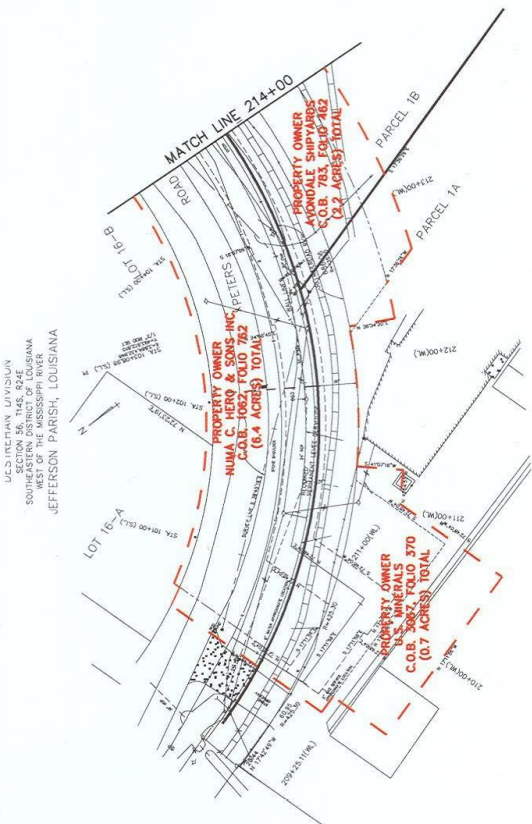
U.S. ARMY ENGINEER DISTRICT, NEW ORLEANS  
 CORPS OF ENGINEERS  
 NEW ORLEANS, LOUISIANA  
 PROJECT NO. 1127795  
 SHEET NO. 1  
 DATE: 11/27/05

EXISTING UTILITIES &  
 RIGHTS OF WAY PLAN  
 DRAWING NO. 1127795-1  
 DATE: 11/27/05  
 PROJECT NO. 1127795

UNFIELD, HUNTER & JUNIUS, INC.  
 CONSULTING ENGINEERS AND ARCHITECTS  
 8005 18th Street, Suite 200  
 Metairie, Louisiana 70002



UNFIELD, HUNTER & JUNIUS, INC.  
 CONSULTING ENGINEERS AND ARCHITECTS  
 8005 18th Street, Suite 200  
 Metairie, Louisiana 70002



--- LIMITS OF REQUIRED RIGHTS-OF-WAY  
 ——— PROPERTY BOUNDARY LINE

PARCEL	OWNER	ACQUISITION	AREA (SQ. FT.)
12-A	U.S. MARINE CORPS	COB 1007, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 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2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 2682, 2683, 2684, 2685, 2686, 2687, 2688, 2689, 2690, 2691, 2692, 2693, 2694, 2695, 2696, 2697, 2698, 2699, 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2710, 2711, 2712, 2713, 2714, 2715, 2716, 2717, 2718, 2719, 2720, 2721, 2722, 2723, 2724, 2725, 2726, 2727, 2728, 2729, 2730, 2731, 2732, 2733, 2734, 2735, 2736, 2737, 2738, 2739, 2740, 2741, 2742, 2743, 2744, 2745, 2746, 2747, 2748, 2749, 2750, 2751, 2752, 2753, 2754, 2755, 2756, 2757, 2758, 2759, 2760, 2761, 2762, 2763, 2764, 2765, 2766, 2767, 2768, 2769, 2770, 2771, 2772, 2773, 2774, 2775, 2776, 2777, 2778, 2779, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2787, 2788, 2789, 2790, 2791, 2792, 2793, 2794, 2795, 2796, 2797, 2798, 2799, 2800, 2801, 2802, 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2824, 2825, 2826, 2827, 2828, 2829, 2830, 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Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0710#069

**EXECUTIVE ORDER KBB 07-21**

Commandeering of Property Use—East of Harvey Canal  
Floodwall, Contract 3A, Parish of Jefferson

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the governor of the state of Louisiana emergency powers to deal with, respond to, or recover from emergencies and disasters, including those caused by fire, flood, earthquakes, or other natural or man-made causes;

WHEREAS, Proclamation No. 48 KBB 2005, issued on August 26, 2005, declared a state of emergency for the state of Louisiana due to Hurricane Katrina's potential to cause severe storms, high winds, and torrential rain that could cause flooding and damage to private property and public facilities, and threaten the safety and security of the citizens of Louisiana; and Proclamation No. 48 KBB 2005 was extended by subsequent proclamations due to the extreme damage caused by Hurricane Katrina and the continuation of emergency/disaster conditions in the most affected areas;

WHEREAS, Hurricane Katrina struck the state of Louisiana causing catastrophic flooding and damage to southeastern Louisiana, including breaches to the levee system in the parishes of southeastern Louisiana, the effects of which have threatened and continues to threaten the safety, health, and security of the citizens of those parishes, along with private property and public facilities;

WHEREAS, R.S. 29:724(D)(4) provides that subject to applicable requirements for compensation, the governor may commandeer or utilize temporarily any private property if she finds this necessary to cope with the disaster or emergency;

WHEREAS, the Governor's Office, in consultation with the Attorney General's Office, has determined that the commandeering of private property to accelerate the construction of the levee protection project is necessary to cope with the effects of Hurricane Katrina and future requests for the commandeering or utilization of private property will be considered on a case by case basis.

WHEREAS, both the U.S. and Louisiana Constitutions and R.S. 29:724(D)(4) mandate that the private landowners affected by this Order receive just compensation; and

WHEREAS, at the request of the U.S. Army Corps of Engineers, Southeast Louisiana Flood Protection Authority West Bank, the Department of Transportation and Development, and West Jefferson Levee District, and upon the concurrence of the Attorney General's Office, the best interests of the citizens of the state would be served by commandeering the temporary use of certain property in the parish of Jefferson for the construction of the West Bank and

Vicinity, New Orleans, Louisiana, Hurricane Protection Project, West of Algiers Canal, Contract 3A - Hero Pumping Station to Algiers Canal, East of Harvey Canal Floodwall, Jefferson Parish, Louisiana, Map File No. H-4-45691, drawing 1 of 3, dated June 25, 2007 (Exhibit A);

NOW THEREFORE I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The state of Louisiana hereby commandeers the use of certain property located in the parish of Jefferson, state of Louisiana, situated in a portion of Section 94, Township 14 South, and Range 24 East; containing approximately 1.1 acres and labeled "Limits of Required Rights-of-Way" on the attached map (Exhibit A), Map File No. H-4-45691, drawing 1 of 3, dated June 25, 2007.

SECTION 2: Said property shall be used by the U.S. Army Corps of Engineers, the Department of Transportation and the West Jefferson Levee District for:

A. Temporary Underground Piling Easement—The project shall include the temporary and assignable right and easement to locate, construct, operate, maintain, alter, repair, replace and patrol the underground appurtenances for a flood control wall, including but not limited to steel or concrete pilings; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines;

B. Temporary Flood Protection Levee (Floodwall) Easement—The project shall include the temporary and assignable right and easement to construct, maintain, repair, operate, patrol and replace a flood protection levee/floodwall, including all appurtenances thereto; reserving, however, to the owners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; and

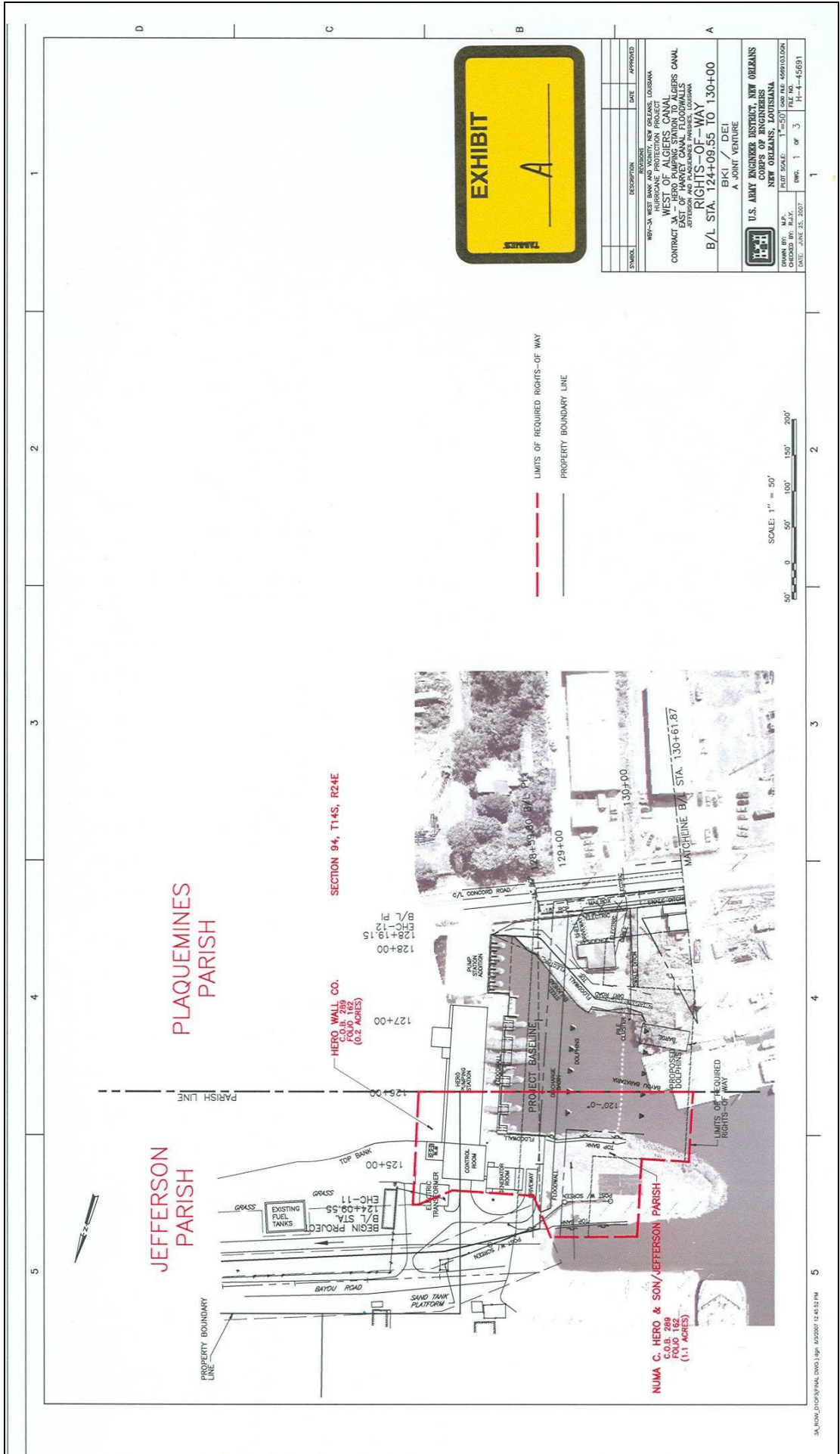
C. Temporary Work Area Easement—The project shall also include the temporary easement and right-of-way for use by the United States, its representatives, agents, and contractors as a work area, including the right to move, store and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the West Bank and Vicinity, New Orleans, Louisiana, Hurricane Protection Project, West of Algiers Canal, Contract 3A - Hero Pumping Station to Algiers Canal, East of Harvey Canal Floodwall, Jefferson Parish, Louisiana, together with the right to trim, cut, fell, and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads, and pipelines.

SECTION 3: The state of Louisiana hereby commandeers the temporary use of the property required by the Department of the Army as indicated on the attached drawings (Exhibit A) as this overall project is reasonably related to the impact of Hurricanes Katrina and Rita. The temporary use of all property identified above is commandeered pursuant to R.S. 29:724(D)(4). Said owners of the property the use of which is so commandeered shall be identified and compensated by the Department of the Army. I take this action with the understanding that Department of the Army shall take all necessary steps to initiate the process of expropriation and landowner compensation without unnecessary delays upon the issuance of this Order.

SECTION 4: The Division of Administration, State Land Office, shall take immediate steps to grant the right of entry to the property commandeered for the above purposes pursuant to this Order to ensure completion of the project without delay and to provide necessary safeguards to the citizens of the parish of Jefferson.

SECTION 5: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 24th day of September, 2007.



**EXHIBIT**  
A

SYMBOL	DESCRIPTION	DATE	APPROVED
	REVISION		

NEW ORLEANS, LOUISIANA  
 WEST OF ALGIERS CANAL  
 PUMP STATION TO ALGIERS CANAL  
 RIGHTS-OF-WAY  
 B/L STA. 124+09.55 TO 130+00

B/KI / DEI  
 A JOINT VENTURE  
 U.S. ARMY ENGINEER DISTRICT, NEW ORLEANS  
 CORPS OF ENGINEERS  
 NEW ORLEANS, LOUISIANA

DRAWN BY: M.P.  
 CHECKED BY: B.K.  
 DATE: JUL 21, 2007

PROJECT NO: 409103.02R  
 SHEET NO: 1 OF 3  
 DATE: 11-4-4681

JEFFERSON PARISH  
 PLAQUEMINES PARISH

SECTION 94, T14S, R24E

HERO WALL CO.  
 C.O.B. 282  
 FOLD 162  
 (0.2 ACRES)

NUMA C. HERO & SON/JEFFERSON PARISH  
 C.O.B. 282  
 FOLD 162  
 (1.1 ACRES)

SCALE: 1" = 50'  
 50' 0 50' 100' 150' 200'

SA\_KNOV\_PROJ079\FINAL DWG 169 - 9/25/07 12:45:52 PM

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0710#070

**EXECUTIVE ORDER KBB 07-22**

**Bond Allocation—Louisiana Housing Finance Agency**

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. KBB 2005-12 was issued to establish:

- (1). a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2007 (hereafter "the 2007 Ceiling");
- (2). the procedure for obtaining an allocation of bonds under the 2007 Ceiling; and
- (3). a system of central record keeping for such allocations; and

WHEREAS, the Louisiana Housing Finance Agency has requested an allocation from the 2007 Ceiling to provide single family mortgage financing to owner-occupied residences owned by low and moderate income persons throughout the state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2007 Ceiling in the amount shown.

Amount of Allocation	Name of Issuer	Name of Project
\$25,000,000	Louisiana Housing Finance Agency	Single Family Mortgage Revenue Bonds

SECTION 2: The allocation granted herein shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana's Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2007, provided that such bonds are delivered to the initial purchasers thereof on or before December 29, 2007.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: This Order is effective upon signature and shall remain in effect until amended, modified,

terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 2nd day of October, 2007.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0710#071

**EXECUTIVE ORDER KBB 07-23**

**Bond Allocation—Parish of Desoto, State of Louisiana  
Amend Executive Order No. KBB 2007-16**

WHEREAS, Executive Order No. KBB 2007-16, issued on July 19, 2007, granted a private activity bond allocation from the 2007 private activity bond volume limit to the parish of DeSoto to be used to finance the acquisition, construction, and equipping of ceratin sewage and solid waste disposal facilities at International Paper Company's paper mill located at 1202 Highway 509, city of Mansfield, parish of DeSoto, state of Louisiana, in accordance with the requirements of Section 146 of the Internal Revenue Code of 1986, as amended; and

WHEREAS, it is necessary to amend Executive Order No. KBB 2007-16 in order to extend the time period in which the bonds may be delivered to initial purchasers;

NOW THEREFORE I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 3 of Executive Order No. KBB 2007-16, issued on July 19, 2007, is hereby amended to provide as follows:

The granted allocation shall be valid and in full force and effect through December 31, 2007, provided that such bonds are delivered to the initial purchasers thereof on or before December 29, 2007.

SECTION 2: All other sections of Executive Order No. KBB 2007-16 shall remain in full force and effect.

SECTION 3: The provisions of this Order are effective upon signature.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 2nd day of October, 2007.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0710#072

**EXECUTIVE ORDER KBB 07-24**

**Bond Allocation—Calcasieu Parish Public Trust Authority**

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. KBB 2005-12 was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2007 (hereafter "the 2007 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2007 Ceiling; and

(3) a system of central record keeping for such allocations; and

WHEREAS, the Calcasieu Parish Public Trust Authority has requested an allocation from the 2007 Ceiling to provide single family mortgage revenue bonds for loans to home buyers in the Imperial Calcasieu Parish Area (Calcasieu, Cameron, Beauregard, Allen and Jefferson Davis Parishes), in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2007 Ceiling in the amount shown.

SECTION 2: The allocation granted herein shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana's Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2007, provided that such bonds are delivered to the initial purchasers thereof on or before December 29, 2007.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 2nd day of October, 2007.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0710#073

<b>Amount of Allocation</b>	<b>Name of Issuer</b>	<b>Name of Project</b>
\$15,000,000	Calcasieu Parish Public Trust Authority	Single Family Mortgage Revenue Bonds, Series 2007



# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Environmental Quality Office of the Secretary

Incorporation by Reference of 40 CFR 63  
(LAC 33:III.501, 3003, and 5122)(AQ290E)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality to use emergency procedures to establish rules, and under the authority of R.S. 30:2011, the secretary of the department hereby finds that imminent peril to the public welfare exists and declares that an emergency action is necessary to repeal the department's incorporation by reference of 40 CFR 63, Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (hereafter, the Boiler MACT) and the September 22, 2005, revisions to the definitions of *commercial and industrial solid waste incineration (CISWI) unit, commercial or industrial waste, and solid waste* found in 40 CFR 60.2265 and 60.2875 (hereafter, the CISWI Definitions Rule).

LDEQ incorporated by reference the provisions of the revisions to the definitions in 40 CFR 60.2265 and 60.2875 at LAC 33:III.3003, and the Boiler MACT at LAC 33:III.5122.A. On June 8, 2007, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Boiler MACT and the CISWI Definitions Rule (*Natural Resources Defense Council v. EPA*, D.C. Cir., No. 04-1385). The Court made its ruling effective on July 30, 2007.

In sum, the Court concluded that EPA's definition of "commercial or industrial waste" was too narrow in scope, thereby improperly limiting the number of solid waste incineration units subject to Section 129 of the Clean Air Act. Relevant passages from the decision follow.

[W]e conclude that EPA's definition of "commercial or industrial waste," as incorporated in the definition of "commercial and industrial solid waste incineration unit" (CISWI unit), is inconsistent with the plain language of section 129 and that the CISWI Definitions Rule must therefore be vacated. We further conclude that, because the Boilers Rule must be substantially revised as a consequence of our vacatur and remand of the CISWI Definitions Rule, the Boilers Rule as well must be vacated.

[I]f the court requires EPA to revise the CISWI Definitions Rule, as we do in this opinion, the Boilers Rule will need to be revised as well because the universe of boilers subject to its standards will be far smaller and more homogenous after all CISWI units, as the statute unambiguously defines them, are removed from its coverage.

Thus, the standard to which a number of sources will ultimately be subject—whether it be the "re-promulgated" Boiler MACT, federal rules for commercial and industrial solid waste incineration units (i.e., 40 CFR 60, Subpart CCCC), or Louisiana's §111(d) plan implementing 40 CFR 60, Subpart DDDD (69 FR 9949-9954, March 3, 2004)—is ambiguous at best and not likely to be resolved in the near term.

Consequently, arbitrarily requiring compliance with the Boiler MACT would not be without severe economic consequences for certain source types. For example, the owner or operator of a single existing, large solid fuel-fired boiler may incur capital costs in the range of \$450,000 and an annualized cost of approximately \$230,000. EPA's estimate of the capital and annual costs for new and existing sources is set forth at 68 FR 1687-1688 (January 13, 2003) and is summarized below.

Source	Subcategory	Estimated/ projected number of affected units	Annualized cost (106 \$/yr)	Capital costs (106 \$/yr)
Existing Units	Large solid units	3,481	814	1,605
	Small solid units	327	0	0
	Limited use solid units	249	23	105
	Liquid units	7,251	0	0
	Gaseous units	46,892	0	0
New Units	Large solid units	211	10	21
	Small solid units	25	3	3
	Limited use solid units	11	1	1
	Large liquid units	90	1	3
	Small liquid units	164	0	0
	Limited use liquid units	51	0.3	2
	Gaseous units	3,463	11	51

This Emergency Rule is effective on September 24, 2007, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning AQ290E, you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at [www.deq.louisiana.gov/portal/ tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx), and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

### Title 33 ENVIRONMENTAL QUALITY Part III. Air

#### Chapter 5. Permit Procedures §501. Scope and Applicability

A. - B.7. ...

8. Any term or condition in a permit that references 40 CFR Part 63, Subpart DDDDD shall be null and unenforceable, unless the condition was included in the permit in lieu of an alternative applicable, enforceable condition. Such terms or conditions shall be removed or modified, as appropriate, in the next modification or renewal of the permit.

C. - C.13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR:33

### **Chapter 30. Standards of Performance for New Stationary Sources (NSPS)**

#### **Subchapter A. Incorporation by Reference**

##### **§3003. Incorporation by Reference of 40 Code of Federal Regulations (CFR) Part 60**

A. - B.9, table. ...

10. The definitions of *commercial and industrial solid waste incineration (CISWI) unit*, *commercial or industrial waste*, and *solid waste* do not include the revisions to the definitions in 40 CFR 60.2265 and 60.2875, promulgated by the EPA on September 22, 2005 (70 FR 55568-55581).

C. ...

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 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:809 (May 2006), LR 32:1596 (September 2006), LR 33:1620 (August 2007), LR 33:

### **Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program**

#### **Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources**

##### **§5122. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources**

A. - C.2. ...

3. 40 CFR Part 63, Subpart D, Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants; Subpart E, Approval of State Programs and Delegation of Federal Authorities; Subpart J, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production; and Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters, are not included in this incorporation by reference.

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 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 29:1474 (August 2003), LR 30:1010 (May 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2449 (October 2005), LR 31:3115 (December 2005), LR 32:810 (May 2006), LR 33:1620 (August 2007), LR 33:

Mike D. McDaniel, Ph.D.  
Secretary

0710#010

### **DECLARATION OF EMERGENCY**

#### **Department of Environmental Quality Office of the Secretary Legal Affairs Division**

Sewage Sludge Regulatory Management  
(LAC 33:VII.301 and IX.107,  
6901-6913, and 7135)(OS066E7)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011 and 2074, which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to prevent the unauthorized disposal of sewage sludge in treatment works treating domestic sewage and other areas unprepared to receive the waste stream.

This is a renewal and revision of Emergency Rule OS066E6, which was effective on May 27, 2007, and published in the *Louisiana Register* on May 20, 2007. Language addressing standards for the transporter of sewage sludge and the vehicle used to transport the sewage sludge has been removed. The department has proposed a rule (OS066) to promulgate certain provisions of these regulations. This Emergency Rule includes revisions to the regulations to:

1. improve clarity and consistency;

2. clarify compliance dates for surface disposal and sanitary wastewater treatment facilities receiving domestic septage and/or portable toilet waste into their systems;

3. establish closure requirements for sanitary wastewater treatment facilities and sewage sludge disposal ponds/lagoons; and

4. establish standard conditions for all sewage sludge (biosolids) use or disposal permits.

Prior to the Emergency Rule issued September 1, 2005, sewage sludge was managed by three different programs within the state and the EPA. The multiple permitting process was a cumbersome and expensive process for both the state and the regulated community. This permitting process has resulted in inadequately permitted and/or designed facilities to accept the waste. The potential for dumping of sewage sludge presents a potential health risk to the public and the environment in areas of the state that are under-developed for receiving the waste. This Emergency Rule attempts to streamline and expedite the permitting process by removing the solid waste requirements for the management of sewage sludge from the solid waste regulations (LAC 33, Part VII). Sewage sludge will be managed by LAC 33:IX.Chapter 69 that is reflective of and equivalent to the Clean Water Act Section 503 program at the federal level.

This Emergency Rule is effective on September 24, 2007, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning OS066E7 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx) under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

#### **Title 33**

### **ENVIRONMENTAL QUALITY**

#### **Part VII. Solid Waste**

##### **Subpart 1. Solid Waste Regulations**

#### **Chapter 3. Scope and Mandatory Provisions of the Program**

##### **§301. Exempted Waste**

A. All *solid wastes*, as defined by the Act and these regulations, are subject to the provisions of these regulations, except as follows:

1. – 1.h. ...

i. sewage sludge (including domestic septage) that is generated, treated, processed, composted, blended, mixed, prepared, transported, used, or disposed of in accordance with LAC 33:IX.Chapter 69. Sewage sludge and domestic septage not managed in accordance with LAC 33:IX.Chapter 69 shall be managed in accordance with these regulations; and

2. – 2.f. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid

Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2515 (November 2000), LR 28:780 (April 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2485 (October 2005), LR 33:1027 (June 2007), LR 33:

#### **Part IX. Water Quality**

##### **Subpart 1. Water Pollution Control**

#### **Chapter 1. General Provisions**

##### **§107. Definitions**

\* \* \*

*Sewage Sludge*—any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. *Sewage sludge* includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. *Sewage sludge* does not include grit or screenings, or ash generated during the incineration of sewage sludge.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074 (B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2538 (November 2000), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

##### **Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program**

#### **Chapter 69. Standards for the Use or Disposal of Sewage Sludge**

##### **§6901. General Provisions**

A. Purpose and Applicability

1. Purpose

a. This Chapter establishes standards, which consist of general and other requirements, pollutant limits, general and other management practices, and operational standards, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works and of domestic septage. Standards are included in this Chapter for sewage sludge and domestic septage (hereafter referred to collectively as *sewage sludge* for the purposes of this Chapter) and a material derived from sewage sludge that is applied to the land and sewage sludge fired in a sewage sludge incinerator. Also included in this Chapter are pathogen and alternative vector attraction reduction requirements for sewage sludge and a material derived from sewage sludge applied to the land and the siting, operation, and financial assurance requirements for commercial preparers or land appliers of sewage sludge and a material derived from sewage sludge.

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

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

d. ...

2. Applicability

- a. This Chapter applies to:
  - i. any person who prepares sewage sludge or a material derived from sewage sludge, including the dewatering and solidification of sewage sludge;
  - ii. any person who applies sewage sludge or a material derived from sewage sludge to the land;
  - iii. any person who prepares sewage sludge, including dewatering and solidification, that is disposed in a Municipal Solid Waste Landfill;
  - iv. the owner/operator of a surface disposal site; and
  - v. the owner/operator of a sewage sludge incinerator.
- b. This Chapter applies to sewage sludge or a material derived from sewage sludge that is applied to the land or placed on a surface disposal site, to the land where the sewage sludge and a material derived from sewage sludge is applied, and to a surface disposal site.

c. ...

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

#### B. Compliance Period

1. - 3.a. ...

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

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

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

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

#### C. Permits and Permitting Requirements

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

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

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

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

necessary for the protection of human health and/or the environment;

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

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

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

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

iii. All treatment facilities that prepare sewage sludge for the use of land application and all land appliers of biosolids who are not presently operating under an effective standard solid waste permit shall apply for a permit within 180 days after June 1, 2006.

iv. All major sanitary wastewater treatment facilities that do not receive domestic septage and/or portable toilet waste into their systems shall apply for a permit as expeditiously as practicable, but in no case later than three years from June 1, 2006.

v. All minor sanitary wastewater treatment facilities that do not receive domestic septage and/or portable toilet waste into their systems shall apply for a permit as expeditiously as practicable, but in no case later than five years from June 1, 2006.

d. At least 180 days prior to expiration of the permit described in Clause C.1.b.ii of this Section, the owner/operator of the facility shall submit an application for permit issuance under this Chapter if the owner/operator intends to continue operations after that date.

e. The person who prepares or land-applies sewage sludge or a material derived from sewage sludge shall use the Sewage Sludge (Biosolids) Use or Disposal Permit Application form. The owner/operator of a sewage sludge incinerator shall apply for a permit in accordance with LAC 33:III.Chapter 5 and shall utilize both the Air Quality Permit Application and the Sewage Sludge (Biosolids) Use or Disposal Permit Application forms. The forms can be accessed through the department's website or by contacting the Office of Environmental Services, Water Permits Division.

f. Except as allowed in Subparagraph C.1.b of this Section, all permits issued in accordance with these regulations shall be effective for a period not to exceed five years. The standard five-year permit period may be reduced to a period of less than five years if deemed necessary by the administrative authority for the protection of human health and/or the environment.

2. The person who applies bagged sewage sludge or a bagged material derived from sewage sludge to the land is exempt from the requirement of obtaining a permit if the person applies bagged sewage sludge or a bagged material derived from sewage sludge that is *Exceptional Quality* as defined in Subsection I of this Section.

a. The person who applies bulk sewage sludge or a bulk material derived from sewage sludge to the land is exempt from the requirement of obtaining a permit if the person applies bulk sewage sludge or a bulk material derived from sewage sludge that was obtained from a facility that possesses an Exceptional Quality Permit under LAC 33:IX.6903.J.

b. The administrative authority may exempt any other person who applies sewage sludge or a material derived from sewage sludge to the land from the requirement of obtaining a permit, on a case-by-case basis, after determining that human health and the environment will not be adversely affected by the application of sewage sludge or a material derived from sewage sludge to the land.

3. The person who prepares sewage sludge, the person who applies sewage sludge to the land, the commercial preparer or land applicator of sewage sludge, and the owner and/or operator of a sewage sludge incinerator who desires to maintain a permit shall obtain adequate training and certification in the processing, treatment, land application, and incineration of sewage sludge.

a. To maintain certification, eight units of continuous education shall be obtained on an annual basis.

b. Classes, seminars, conferences, or conventions used for units must be approved by the administrative authority.

4. Sanitary Wastewater Treatment Facilities and Sewage Sludge Disposal Ponds/Lagoons Closure Requirements

a. The use or disposal options for the closure of a facility that was utilized for the treatment of sanitary wastewater or the disposal of sewage sludge shall consist of:

i. removal and disposal in a permitted municipal solid waste landfill;

ii. obtaining Exceptional Quality Biosolids certification without further soil or site restrictions; or

iii. approval for land application as a Non-exceptional Quality Biosolids with soil or site restrictions.

b. In closing a facility that was utilized for sanitary wastewater treatment, the liquid portion must be removed in a manner that meets the requirements of LAC 33:IX.Subpart 2.

c. A closure plan for removal and disposal of the sewage sludge in a permitted solid waste landfill shall be submitted prior to site closure to the Office of Environmental Services, Water Permits Division, including but not limited to, the following information:

i. the name, mailing address, physical address, and contact person of the facility that is proposed for closure;

ii. an aerial photograph showing the location of the facility that is proposed for closure;

iii. the amount of sewage sludge that will be removed and disposed at a permitted landfill;

iv. a sampling and analysis plan for the sewage sludge. The sampling and analysis plan shall include:

(a). either a schematic drawing or aerial photograph that indicates where the samples will be taken;

(b). the lab methods utilized;

(c). the name of the laboratory where the samples will be analyzed; and

(d). any other information the department may require; and

v. the name, location, and contact person at the site where the sewage sludge will be disposed.

d. Approval or disapproval of the closure plan required in Subparagraph C.4.c of this Section shall be granted by the administrative authority after receipt and review of the plan.

e. A request for an Exceptional Quality Biosolids certification without further soil or site restrictions shall be submitted to the Office of Environmental Services, Water Permits Division, including but not limited to, the following information.

i. A sampling and analysis plan shall be submitted to the administrative authority in accordance with Subsection H of this Section. The sewage sludge shall be sampled and analyzed in a laboratory that is certified by the state of Louisiana. The minimum sampling and analysis requirements are as follows:

(a). toxicity characteristic leaching procedure (TCLP)—one composite sample;

(b). pollutants listed in Table 1 of LAC 33:IX.6903.D—at least four separate, random, representative samples of pollutants listed in the table;

(c). fecal coliform or *Salmonella sp.*—for each pollutant a minimum of four separate, random, representative samples. Report the geometric mean of the separate samples collected and analyzed. The samples must be analyzed by using Part 9221-E of "Standard Methods for the Examination of Water & Wastewater" for fecal coliform and Part 9260 of "Standard Methods for the Examination of Water & Wastewater" for *Salmonella sp.*;

(d). vector attraction reduction—for each pollutant a minimum of four separate, random, representative samples. If specific sampling and analysis methods are listed in Subsection H of this Section for vector attraction reduction, then the methods listed must be used for the determination of vector attraction reduction;

(e). PCB—one composite sample; and

(f). total nitrogen, nitrates, total phosphorus, total potassium, and pH—one composite sample from four or more separate samples collected from the treatment facility or from each cell of an oxidation pond, lagoon, or surface impoundment.

ii. Results of the analyzed samples, along with QA/QC documentation, must be submitted to the administrative authority, along with the following additional information:

(a). the name of the facility that utilized the treatment facility;

(b). the LPDES (sanitary wastewater discharge) Permit Number for the treatment facility;

(c). the design capacity of the treatment facility. If the facility was an oxidation pond, include the size of the pond (in acres) and the number of cells of the pond (1-cell, 2-cell, or 3-cell);

(d). the approximate tons of sewage sludge to be disposed;

(e). the location of the facility delineated on an aerial photograph;

(f). the future plans for the site where the treatment plant is located;

(g). the demographics within the area of the facility (businesses, hospitals, nursing homes, day-care centers, schools, walk-in clinics, etc.);

(h). potable water wells within a 1-mile radius of the facility (locate on an aerial photograph; include private and public potable water wells);

(i). the name of the drinking water aquifer.

f. After receipt and review of the results of the laboratory analyses and the additional information required in Clause C.4.e.ii of this Section, a decision shall be rendered by the administrative authority regarding Exceptional Quality Biosolids certification.

g. If closure is through land application of the sewage sludge as Non-exceptional Quality Biosolids, an official application for a Sewage Sludge (Biosolids) Use or Disposal Permit must be submitted to the Office of Environmental Services, Water Permits Division, utilizing the application form that can be accessed on the department's website or by contacting the Office of Environmental Services, Water Permits Division.

5. Environmental Impact Supplementary Information. In addition to the requirements of this Chapter, all sewage sludge use or disposal permit applications must include a response to each of the following:

a. a detailed discussion demonstrating that the potential and real adverse environmental effects of the proposed facility have been avoided to the maximum extent possible;

b. a cost benefit analysis that balances the environmental impact costs against the social and economic benefits of the facility and demonstrates that the latter outweigh the former;

c. a discussion and description of possible alternative projects that would offer more protection to the environment than the proposed facility without unduly curtailing non-environmental benefits;

d. a detailed discussion of possible alternative sites that would offer more protection to the environment than the proposed facility site without unduly curtailing non-environmental benefits; and

e. a discussion and description of mitigating measures that would offer more protection to the environment than the facility as proposed without unduly curtailing non-environmental benefits.

D. Sewage Sludge Disposed in a Municipal Solid Waste Landfill

1. - 2. ...

3. The person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill shall provide the following to the Office of Environmental Services, Water Permits Division:

a. proof that the sewage sludge is being disposed at an approved landfill by furnishing the name, address, and permit number of the landfill; and

b. copies of all records of sampling and laboratory analyses of the sewage sludge that are required by the owner/operator of the landfill.

E. Reserved.

F. Prohibitions, Restrictions, and Additional or More Stringent Requirements

1. No person shall use or dispose of sewage sludge or a material derived from sewage sludge through any practice for which requirements have not been established in this Chapter.

2. *Surface disposal*, as defined in Subsection I of this Section, is prohibited as a use or disposal method of sewage sludge or of a material derived from sewage sludge.

3.a. *Storage of sewage sludge*, as defined in Subsection I of this Section, is allowed for a period not to exceed six consecutive months when:

i. necessary for the upgrade, repair, or maintenance of a treatment works treating domestic sewage or for agricultural storage purposes when the sewage sludge is to be used for *beneficial use* as defined in Subsection I of this Section;

ii. notification has been made by the person who wishes to store the sewage sludge to the administrative authority; and

iii. subsequent approval by the administrative authority has been received.

b.i. The administrative authority may approve the storage of sewage sludge for commercial preparers or land appliers of sewage sludge or for purposes other than those listed in Subparagraph F.3.a of this Section, for a period greater than six consecutive months, if the person who stores the sewage sludge demonstrates that the storage of the sewage sludge will not adversely affect human health and the environment.

ii. The demonstration shall be in the form of an official request forwarded to the administrative authority at least 90 days prior to the storage of the sewage sludge and shall include, but is not limited to:

(a). the name and address of the person who prepared the sewage sludge;

(b). the name and address of the person who either owns the land or leases the land where the sewage sludge is to be stored, if different from the person who prepared the sewage sludge;

(c). the location, by either street address or latitude and longitude, of the land;

(d). an explanation of why the sewage sludge needs to remain on the land;

(e). an explanation of how human health and the environment will not be affected;

(f). the approximate date when the sewage sludge will be stored on the land and the approximate length of time the sewage sludge will be stored on the land; and

(g). the final use and disposal method after the storage period has expired.

iii.(a). The administrative authority shall make a determination as to whether or not the information submitted is complete and shall issue the determination within 30 days of having received the request. If the information is deemed incomplete, the administrative authority will issue a notice of deficiency. The commercial preparer or land applier of sewage sludge shall have 45 days, thereafter, to respond to the notice of deficiency.

(b). Within 30 days after deeming the information complete, the administrative authority will then make and issue a determination to grant or deny the request for the storage of sewage sludge.

4. The use of ponds or lagoons is allowed for the *treatment of sewage sludge*, as defined in Subsection I of this Section, only after a permit has been granted under these regulations and the applicable air and water discharge permits have been applied for and granted by the administrative authority.

a. The person who makes use of a pond or lagoon to treat or for treatment of sewage sludge shall provide documentation to the Office of Environmental Services, Water Permits Division, that indicates the final use or disposal method for the sewage sludge and shall apply for the appropriate permit for the chosen final use or disposal in accordance with this Chapter.

b. The person who makes use of a pond or lagoon to treat or for treatment of sewage sludge shall provide documentation by a qualified groundwater scientist to the Office of Environmental Services, Water Permits Division, that indicates that the area where the pond or lagoon is located will adequately protect against potential groundwater contamination either by natural soil conditions or by a constructed soil or synthetic liner that has a hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second or less, and protect from the potential to *contaminate an aquifer* as defined in Subsection I of this Section.

5. Materials Prohibited from Feedstock or Supplements That Are Blended, Composted, or Mixed with Sewage Sludge

a. The blending, composting, or mixing of sewage sludge with feedstock or supplements containing any of the materials listed in Table 1 of LAC 33:IX.6901.F is prohibited.

b. The administrative authority may prohibit the use of other materials as feedstock or supplements if the use of such materials has a potential to adversely affect human health or the environment, as determined by the administrative authority.

c. Material utilized as feedstock or supplements and blended, composted, or mixed with sewage sludge must be sampled and analyzed on an annual basis to determine if the material is nonhazardous by a hazardous waste determination in accordance with 40 CFR 261 and/or LAC 33:Part V.

d. Results of the sampling and analysis required in Subparagraph F.5.c of this Section must be submitted to the administrative authority on an annual basis.

<b>Table 1 of LAC 33:IX.6901.F</b>
<b>Materials Prohibited from Feedstock or Supplements That Are Blended, Composted, or Mixed with Sewage Sludge</b>
Antifreeze
Automotive (lead-acid) batteries
Brake fluid
Cleaners (drain, oven, toilet)
Gasoline and gasoline cans
Herbicides
Household (dry cell) batteries
Oil-based paint
Pesticides
Photographic supplies
Propane cylinders

<b>Table 1 of LAC 33:IX.6901.F</b>
<b>Materials Prohibited from Feedstock or Supplements That Are Blended, Composted, or Mixed with Sewage Sludge</b>
Treated wood containing the preservatives CCA and/or PCP
Tubes and buckets of adhesives, caulking, etc.
Swimming pool chemicals
Unmarked containers
Used motor oil

6.a. Sewage sludge composting operations shall not be located on airport property unless an exemption or approval is granted by the U.S. Department of Transportation's Federal Aviation Administration.

b. If an exemption or approval is granted by the U.S. Department of Transportation's Federal Aviation Administration to allow a sewage sludge composting operation to be located on airport property, the location restrictions at LAC 33:IX.6905.A.1.f and g for off-airport property operations shall apply.

7.a. The use of raw or untreated sewage sludge as daily, interim, or final cover at a Municipal Solid Waste Landfill is prohibited.

b. The use of sewage sludge as daily, interim, or final cover at a Municipal Solid Waste Landfill is allowed only if the sewage sludge meets the requirements and is used in accordance with the requirements in LAC 33:IX.Chapter 69.

8. Sewage sludge mixed with grease shall be disposed in a permitted landfill and shall not be introduced into any part of a treatment works, including its collection system, or applied to the land.

9. On a case-by-case basis, the permitting authority may impose requirements in addition to or more stringent than the requirements in this Chapter when necessary to protect human health and the environment from any adverse effect of a pollutant in the sewage sludge.

G. Exclusions

1. Co-Firing of Sewage Sludge

a. Except for the co-firing of sewage sludge with *auxiliary fuel*, as defined in LAC 33:IX.6911.B, this Chapter does not establish requirements for sewage sludge co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge and other wastes are co-fired.

b. This Chapter does not establish requirements for sewage sludge co-fired with auxiliary fuel if the auxiliary fuel exceeds 30 percent of the dry weight of the sewage sludge and auxiliary fuel mixture.

2. Sludge Generated at an Industrial Facility. This Chapter does not establish requirements for the use or disposal of sludge generated at an industrial facility during the treatment of industrial wastewater, including sewage sludge generated during the treatment of industrial wastewater combined with domestic sewage.

3. Hazardous Sewage Sludge. This Chapter does not establish requirements for the use or disposal of sewage sludge or a material derived from sewage sludge that is hazardous under 40 CFR Part 261 and/or LAC 33:Part V.

4. Sewage Sludge with High PCB Concentration. This Chapter does not establish requirements for the use or disposal of sewage sludge with a concentration of

polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

5. Incinerator Ash. This Chapter does not establish requirements for the use or disposal of ash generated during the firing of sewage sludge in a sewage sludge incinerator.

6. Grit and Screenings. This Chapter does not establish requirements for the use or disposal of grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.

7. Drinking Water Treatment Sludge. This Chapter does not establish requirements for the use or disposal of sludge generated during the treatment of either surface water or groundwater used for drinking water.

#### H. Sampling and Analysis

##### 1. Sampling

a. The permittee shall collect and analyze representative samples of sewage sludge or a material derived from sewage sludge that is applied to the land, and sewage sludge fired in a sewage sludge incinerator.

b. The permittee shall create and maintain records of sampling and monitoring information that shall include:

- i. the date, exact place, and time of sampling or measurements;
- ii. the individual(s) who performed the sampling or measurements;
- iii. the date(s) analyses were performed;
- iv. the individual(s) who performed the analysis;
- v. the analytical techniques or methods used; and
- vi. the results of such analysis.

2. Methods. The materials listed below are incorporated by reference in this Chapter. The materials are incorporated as they exist on the date of approval, and notice of any change in these materials will be published in the *Louisiana Register*. They are available for inspection at the Office of the Federal Register, 7th Floor, Suite 700, 800 North Capitol Street, NW, Washington, DC, and at the Office of Water Docket, Room L-102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC. Copies may be obtained from the standard producer or publisher listed in the regulation. Information regarding other sources of these documents is available from the Department of Environmental Quality, Office of Environmental Services, Water Permits Division. Methods in the materials listed below shall be used to analyze samples of sewage sludge.

a. Enteric Viruses. ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludges," 1992 Annual Book of ASTM Standards: Section 11—Water and Environmental Technology, ASTM, 1916 Race Street, Philadelphia, PA 19103-1187.

b. Fecal Coliform. Part 9221 E or Part 9222 D, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

c. Helminth Ova. Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB 88-154273/AS).

d. Inorganic Pollutants. *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, Second Edition (1982) with Updates I (April 1984) and II (April 1985) and Third Edition (November 1986) with Revision I (December 1987). Second Edition and Updates I and II are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB-87-120-291). Third Edition and Revision I are available from Superintendent of Documents, Government Printing Office, 941 North Capitol Street, NE, Washington, DC 20002 (Document Number 955-001-00000-1).

e. *Salmonella sp.* Bacteria. Part 9260 D, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005; or Kenner, B.A. and H.P. Clark, "Detection and Enumeration of *Salmonella* and *Pseudomonas Aeruginosa*," *Journal of the Water Pollution Control Federation*, Vol. 46, No. 9, September 1974, pp. 2163-2171. Water Environment Federation, 601 Wythe Street, Alexandria, VA 22314.

f. Specific Oxygen Uptake Rate. Part 2710 B, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

g. Total, Fixed, and Volatile Solids. Part 2540 G, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

h. Incineration of Sewage Sludge—Standards of Performance and Particulate Matter. Materials and Methods at 40 CFR Part 60 as incorporated by reference at LAC 33:III.3003.

i. Incineration of Sewage Sludge—National Emission Standards for Beryllium and for Mercury. Materials, Methods, and Standards at 40 CFR Part 61 as incorporated by reference at LAC 33:III.5116.

j. Composting of Sewage Sludge. *Test Methods for the Examination of Composting and Compost*, The US Composting Council Research and Education Foundation and USDA, TMECC Website: <http://tmecc.org/tmecc/index.html>.

k. Nutrients—*Methods of Soil Analysis*, Soil Science Society of America Series (Most Recent Editions).

I. General Definitions. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

*Administrative Authority*—the Secretary of the Department of Environmental Quality or his designee or the appropriate assistant secretary or his designee.

*Air Operations Area*—any area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft. An *air operations area* includes paved areas or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft, in addition to those areas' associated runways, taxiways, or aprons.

*Apply Sewage Sludge or Sewage Sludge Applied to the Land*—land application of sewage sludge.

*Base Flood*—a flood that has a 1 percent chance of occurring in any given year (i.e., a flood with a magnitude equaled once in 100 years).



*Beneficial Use*—using sewage sludge or a material derived from sewage sludge for the purpose of soil conditioning or crop or vegetative fertilization in a manner that does not pose adverse effects upon human health and the environment or cause any deterioration of land surfaces, soils, surface waters, or groundwater.

*Bulk Sewage Sludge*—sewage sludge that is not sold or given away in a bag or other container for application to the land.

*Class I Sludge Management Facility*—for the purpose of this Chapter:

a. any *publicly owned treatment works (POTW)* or *privately owned sanitary wastewater treatment facility (POSWTF)*, as defined in this Subsection, regardless of ownership, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage;

b. the person who prepares sewage sludge or a material derived from sewage sludge, including commercial preparers of sewage sludge;

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

d. the person who applies sewage sludge or a material derived from sewage sludge to the land (includes commercial land applicers of sewage sludge).

*Commercial Preparer or Land Applier of Sewage Sludge*—any person who prepares or land-applies sewage sludge or a material derived from sewage sludge for monetary profit or other financial consideration and either the person is not the generator of the sewage sludge or the sewage sludge was obtained from a facility or facilities not owned by or associated with the person.

*Contaminate an Aquifer*—to introduce a substance that causes the maximum contaminant level for nitrate in 40 CFR 141.62(b) to be exceeded in the groundwater, or that causes the existing concentration of nitrate in groundwater to increase when existing concentration exceeds the maximum contaminant level for nitrate in 40 CFR 141.62(b).

*Cover Crop*—a small grain crop, such as oats, wheat, or barley, not grown for harvest.

*Domestic Septage*—either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. *Domestic septage* does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater, and does not include grease removed from a grease trap at a restaurant.

*Domestic Sewage*—waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

*Dry Weight Basis*—calculated on the basis of having been dried at 105°C until reaching a constant mass (i.e., essentially 100 percent solids content).

*Exceptional Quality*—sewage sludge or a material derived from sewage sludge that meets the ceiling concentrations in Table 1 of LAC 33:IX.6903.D, the pollutant concentrations in Table 3 of LAC 33:IX.6903.D, the pathogen requirements in LAC 33:IX.6909.C.1, one of the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-h, and the concentration of PCBs of less than 10 mg/kg of total solids (dry weight).

*Feed Crops*—crops produced primarily for consumption by animals.

*Feedstock*—primarily biologically decomposable organic material that is blended, mixed, or composted with sewage sludge.

*Fiber Crops*—crops such as flax and cotton.

*Food Crops*—crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

*Food Service Facility*—any facility that prepares and/or packages food or beverages for sale or consumption, on- or off-site, with the exception of private residences. *Food service facilities* include, but are not limited to, food courts, food manufacturers, food packagers, restaurants, grocery stores, bakeries, lounges, hospitals, hotels, nursing homes, churches, and schools.

*Grease*—a material, either liquid or solid, composed primarily of fat, oil, or grease from animal or vegetable sources. The terms *fats, oils, and grease; oil and grease; and oil and grease substances* shall all be included within this definition.

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

*Industrial Park*—an area that is legally zoned for the purpose of the construction and operation of a group of industries and businesses and entered as legally zoned for such purpose in the public records of the state, parish, city, town, or community where the park is located.

*Industrial Wastewater*—wastewater generated in a commercial or industrial process.

*Land Application*—the beneficial use of sewage sludge or a material derived from sewage sludge by either spraying or spreading onto the land surface, injection below the land surface, or incorporation into the soil.

*Other Container*—either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of 1 metric ton or less.

*Permitting Authority*—either EPA or a state with an EPA-approved sludge management program.

*Person Who Prepares Sewage Sludge*—the person who generates sewage sludge during the treatment of domestic sewage in a treatment works, the person who treats sewage sludge, or the person who derives a material from sewage sludge.

*Pollutant*—an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the administrative authority, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

*Pollutant Limit*—a numerical value that describes the amount of a pollutant allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare); or the volume of a

material that can be applied to a unit area of land (e.g., gallons per acre).

*Private Land Applier*—a person who land-applies sewage sludge or a material derived from sewage sludge for private benefit purposes, where the land application is not for monetary profit or other financial consideration and either the person did not generate or prepare the sewage sludge or a material derived from sewage sludge, or the facility or facilities from which the sewage sludge or a material derived from sewage sludge was obtained are not owned by or associated with the private land applier.

*Privately Owned Sanitary Wastewater Treatment Facility (POSWTF)*—a privately owned treatment works that is utilized to treat sanitary wastewater and is not a *publicly owned treatment works (POTW)*, as defined in this Subsection.

*Publicly Owned Treatment Works (POTW)*—a treatment works, as defined by Section 212 of the Clean Water Act, that is owned by a *state* or *municipality* as defined by Section 504(2) of the Clean Water Act. This includes all devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW; and the municipality, as defined by Section 502(4) of the Clean Water Act, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

*Qualified Groundwater Scientist*—an individual with a baccalaureate or post-graduate degree in the natural sciences or engineering who has sufficient training and experience in groundwater hydrology, subsurface geology, and/or related fields, as may be demonstrated by state registration, professional certification, or completion of accredited university programs, to make sound professional judgments regarding groundwater monitoring, pollutant fate and transport, and corrective action.

*Runoff*—rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

*Sewage Sludge*—any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. *Sewage sludge* includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. *Sewage sludge* does not include grit or screenings, or ash generated during the incineration of sewage sludge.

*Surface Disposal*—the use or disposal of sewage sludge that does not meet the criteria of *land application* as defined in this Subsection. This may include, but is not limited to, ponds, lagoons, sewage sludge only landfills (monofills), or landfarms.

*Supplements*—for the purpose of this Chapter, materials blended, composted, or mixed with sewage sludge or other feedstock and sewage sludge in order to raise the moisture level and/or to adjust the carbon to nitrogen ratio, and materials added during composting or to compost to provide attributes required by customers for certain compost products.

*To Store, or Storage of, Sewage Sludge*—the temporary placement of sewage sludge on land.

*To Treat, or Treatment of, Sewage Sludge*—the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, blending, mixing, composting, thickening, stabilization, and dewatering and solidification of sewage sludge. This does not include storage of sewage sludge.

*Transporter of Sewage Sludge*—repealed.

*Treatment Works*—a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:781 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:

### **§6903. Land Application**

#### **A. Applicability**

1. This Section applies to any person who prepares sewage sludge or a material derived from sewage sludge that is applied to the land, to any person who applies sewage sludge or a material derived from sewage sludge to the land, to sewage sludge or a material derived from sewage sludge that is applied to the land, and to the land on which sewage sludge or a material derived from sewage sludge is applied.

2.a.i. The general requirements in Paragraph C.1 of this Section, the other requirements in Paragraph E.1 of this Section, the general management practices in Subparagraph C.2.a of this Section, and the other management practices in Paragraph E.2 of this Section do not apply when bulk sewage sludge is applied to the land if the bulk sewage sludge is *Exceptional Quality* as defined in LAC 33:IX.6901.I and the preparer has received and maintains an Exceptional Quality Permit under the requirements in Subsection J of this Section.

ii. The general requirements in Paragraph C.1 of this Section, the other requirements in Paragraph E.1 of this Section, the general management practices in Subparagraph C.2.a of this Section, and the other management practices in Paragraph E.2 of this Section do not apply when a bulk material derived from sewage sludge is applied to the land if the derived bulk material is *Exceptional Quality* as defined in LAC 33:IX.6901.I and the preparer has received and maintains an Exceptional Quality Permit under the requirements in Subsection J of this Section.

b. ...

3.a.i. The general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section do not apply if sewage sludge sold or given away in a bag or other container is *Exceptional Quality* as defined in LAC 33:IX.6901.I and the preparer has received and maintains an Exceptional Quality Permit under the requirements in Subsection J of this Section.

ii. The general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section do not apply if a material

derived from sewage sludge is sold or given away in a bag or other container and the material is *Exceptional Quality* as defined in LAC 33:IX.6901.I and the preparer has received and maintains an Exceptional Quality Permit under the requirements in Subsection J of this Section.

iii. The general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section do not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge from which the material is derived is *Exceptional Quality* as defined in LAC 33:IX.6901.I and the preparer has received and maintains an Exceptional Quality Permit under the requirements in Subsection J of this Section.

A.3.b. - C.1.a.ii.(c). ...

b. No person shall apply sewage sludge or a material derived from sewage sludge to the land except in accordance with the requirements in this Chapter.

c. The person who applies sewage sludge or a material derived from sewage sludge to the land shall obtain information needed to comply with the requirements in this Chapter.

d. Sewage sludge or a material derived from sewage sludge shall not be applied to the land until a determination has been made by the administrative authority that the land application site is a legitimate beneficial use site.

2. General Management Practices

a. All Sewage Sludge or Material Derived from Sewage Sludge

i. ...

ii. Sewage sludge or material derived from sewage sludge shall be applied to the land only in accordance with the requirements pertaining to slope in Table 1 of LAC 33:IX.6903.C.

iii. In addition to the restrictions addressed in Clause C.2.a.ii of this Section, all sewage sludge or material derived from sewage sludge having a concentration of PCBs equal to or greater than 10 mg/kg of total solids (dry wt.) must be incorporated into the soil regardless of slope.

iv. When sewage sludge or a material derived from sewage sludge is applied to agricultural land, forest, or a reclamation site, the following buffer zones shall be established for each application area, unless otherwise specified by the administrative authority:

(a). - (b). ...

(c). established school, hospital, institution, business, day-care facility, nursing home, hotel/motel, playground, park, golf course, or restaurant/food establishment—1,000 feet, unless special permission is granted by a qualified representative of the established school, hospital, institution, business, day-care facility, nursing home, hotel/motel, playground, park, golf course, or restaurant/food establishment. The permission must be in the form of a notarized affidavit executed by the owner waiving the 1,000-foot buffer zone. However, in no case shall the application area be located less than 200 feet from any of the above establishments;

(d). property boundary—100 feet, unless special permission is granted by the property owner(s); and

(e). occupied residential home or structure—500 feet, unless special permission is granted by the owner and/or lessee of the occupied residential home or structure.

The permission must be in the form of a notarized affidavit executed by the owner and/or lessee waiving the 500-foot buffer zone. However, in no case shall land application of sewage sludge be conducted less than 200 feet from the occupied residential home or structure.

v. Sewage sludge or a material derived from sewage sludge shall not be applied to agricultural land, forest, or a reclamation site during the months when the water table is less than or at 2 feet below the soil surface as indicated in the Parish Soil Surveys or the Water Features Data published by the Natural Resources Conservation Service (NRCS); or some form of monitoring device shall be provided to ensure that the annual high water table is greater than 2 feet below the soil surface at the time of application.

vi. The person who applies sewage sludge or a material derived from sewage sludge to agricultural or forest land shall provide proof to the administrative authority that a full nutrient management plan has been developed for the agricultural or forest land where the sewage sludge or a material derived from sewage sludge is applied. The full nutrient management plan shall be developed by the Natural Resource Conservation Service, a certified soil scientist, a certified crop advisor, or a local LSU Agricultural Center Cooperative Extension Service agent.

b. - b.ii.(d). ...

Table 1 of LAC 33:IX.6903.C	
Slope Limitations for Land Application of Sewage Sludge	
Slope Percent	Application Restriction
0-3	None, except drainage to prevent standing water shall be provided.
3-6	A 100-foot vegetated runoff area should be provided at the down slope end of the application area if a liquid is applied. Measures should be taken to prevent erosion.
6-12	Liquid material must be injected into the soil. Solid material must be incorporated into the soil if the site is not covered with vegetation. A 100-foot vegetated runoff area is required at the down slope end of the application area for all applications. Measures must be taken to prevent erosion. Terracing may be required if deemed a necessity by the administrative authority to prevent runoff from the land application site and erosion.
>12	Unsuitable for application unless terraces are constructed and a 200-foot vegetated buffer area with a slope of less than 3 percent is provided at the down slope edge of the application area and the material is incorporated (solid material) and injected (liquid material) into the soil. Measures must be taken to prevent runoff from the land application site and to prevent erosion.

D. - D.2.d.Table 4....

3. Repealed.

Equation (1). Repealed.

E. - F.1.c. ...

2. Vector Attraction Reduction—Sewage Sludge

a. One of the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-j shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

b. One of the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-h shall be met when sewage sludge or a material derived from sewage sludge is applied to a lawn or a home garden.

c. One of the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-h shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

G. Frequency of Monitoring

1. The frequency of monitoring for the pollutants listed in Table 1, Table 2, Table 3, and Table 4 of LAC 33:IX.6903.D; the frequency of monitoring for pathogen density requirements in LAC 33:IX.6909.C.1 and 2.b; and the frequency of monitoring for vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-d and g-h shall be the frequency specified in Table 1 of LAC 33:IX.6903.G.

Table 1 of LAC 33:IX.6903.G	
Frequency of Monitoring—Land Application	
Amount of Sewage Sludge <sup>1</sup> (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year)
Equal to or greater than 15,000	Once per month (12 times per year)

<sup>1</sup>Either the amount of bulk sewage sludge applied to the land or the amount of sewage sludge prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).

2. After the sewage sludge has been monitored for two years at the frequency in Table 1 of LAC 33:IX.6903.G, the permitting authority may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in LAC 33:IX.6909.C.1.e.ii and iii.

H. Recordkeeping

1. All *Class I sludge management facilities*, as defined in LAC 33:IX.6901.I, that prepare sewage sludge shall keep a record of the annual production of sewage sludge (i.e., dry ton or dry metric tons) and of the sewage sludge management practice used and retain such record for a period of five years.

2. Additional Recordkeeping

a. The recordkeeping requirements for the person who prepares the sewage sludge or a material derived from sewage sludge that is land applied and meets the criteria in Subparagraph A.2.a or 3.a of this Section are those indicated in Subparagraph J.4.a of this Section.

b. - b.ii.(c), Certification. ...

c. For bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site and that meets the pollutant concentrations in Table 3 of LAC 33:IX.6903.D, the Class B pathogen requirements in LAC 33:IX.6909.C.2, and one of the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-j:

i. - ii.(b). ...

(c). when the vector attraction reduction requirement in either LAC 33:IX.6909.D.2.i or j is met, a description of how the vector attraction reduction requirement is met;

(d). - (e), Certification. ...

d. For bulk sewage sludge applied to the land that is agricultural land, forest, a public contact site, or a reclamation site whose cumulative loading rate for each pollutant does not exceed the cumulative pollutant loading

rate for each pollutant in Table 2 of LAC 33:IX.6903.D and that meets the Exceptional Quality or Class B pathogen requirements in LAC 33:IX.6909.C, and the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-j:

d.i. - e.ii.(a). ...

(b). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.6903.C.2.a.i-v and b.i was prepared for each site on which sewage sludge given away or sold in a bag or other container is applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment."

I. Reporting

1. All *Class I sludge management facilities*, as defined in LAC 33:IX.6901.I, that prepare sewage sludge shall submit the information in Paragraph H.1 of this Section to the Office of Environmental Services, Water Permits Division, on February 19 of each year.

2. Additional Reporting Requirements

a. Reporting requirements for a person who prepares the sewage sludge or a material derived from sewage sludge having an Exceptional Quality Permit are as indicated in Subparagraph J.4.b of this Section.

b. All other *Class I sludge management facilities*, as defined in LAC 33:IX.6901.I, that apply bulk sewage sludge to the land and are required to obtain a permit under LAC 33:IX.6901.C, shall submit the information in Paragraph H.2 of this Section for the appropriate requirements, to the Office of Environmental Services, Water Permits Division, as indicated in the following clauses.

i. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.6903.G of once per year, the reporting period and the report due date shall be as specified in Table 1 of LAC 33:IX.6903.I.

ii. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.6903.G of once per quarter (four times per year), the reporting period and the report due date shall be as specified in Table 2 of LAC 33:IX.6903.I.

iii. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.6903.G of once per 60 days (six times per year), the reporting period and the report due date shall be as specified in Table 3 of LAC 33:IX.6903.I.

iv. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.6903.G of once per month (12 times per year), the reporting period and the report due date shall be as specified in Table 4 of LAC 33:IX.6903.I.

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

Table 2 of LAC 33:IX.6903.I	
Reporting—Land Application	
Monitoring Period <sup>1</sup> (Once per Quarter)	Report Due Date
January, February, March	August 28
April, May, June	

Table 2 of LAC 33:IX.6903.I	
Reporting—Land Application	
Monitoring Period <sup>1</sup> (Once per Quarter)	Report Due Date
July, August, September	February 28
October, November, December	
<sup>1</sup> Separate reports must be submitted for each monitoring period.	

Table 3 of LAC 33:IX.6903.I	
Reporting—Land Application	
Monitoring Period <sup>1</sup> (Once per 60 Days)	Report Due Date
January, February	June 28
March, April	
May, June	October 28
July, August	
September, October	February 28
November, December	
<sup>1</sup> Separate reports must be submitted for each monitoring period.	

Table 4 of LAC 33:IX.6903.I	
Reporting—Land Application	
Monitoring Period <sup>1</sup> (Once per Month)	Report Due Date
January	May 28
February	
March	
April	August 28
May	
June	
July	November 28
August	
September	
October	February 28
November	
December	
<sup>1</sup> Separate reports must be submitted for each monitoring period.	

3. The administrative authority may require any facility indicated in Subparagraph I.2.a of this Section to report any or all of the information required in Subparagraph I.2.b of this Section if deemed necessary for the protection of human health or the environment.

**J. Exceptional Quality Permit**

1.a. The person who prepares the sewage sludge or a material derived from sewage sludge who desires to receive an Exceptional Quality Permit must prepare sewage sludge that is of *Exceptional Quality* as defined in LAC 33:IX.6901.I and shall forward to the Office of Environmental Services, Water Permits Division, an Exceptional Quality Permit Request Form having the following information:

i. - vi.(h). ...

b. Samples required to be collected in accordance with Clauses J.1.a.i-v of this Section shall be from at least four representative samplings of the sewage sludge or the material derived from sewage sludge taken at least 60 days apart within the 12 months prior to the date of the submittal of an Exceptional Quality Permit Request Form.

2. Any Exceptional Quality Permit shall have a term of not more than five years.

3.a. For the term of the Exceptional Quality Permit, the preparer of the sewage sludge or material derived from sewage sludge shall conduct continued sampling at the

frequency of monitoring specified in Paragraph G.1 of this Section. The samples shall be analyzed for the parameters specified in Clauses J.1.a.i-iii of this Section, and for the pathogen and vector attraction reduction requirements in Clauses J.1.a.iv and v, as required by LAC 33:IX.6909.

b. If results of the sampling indicate that the sewage sludge or the material derived from sewage sludge no longer is *Exceptional Quality* as defined in LAC 33:IX.6901.I, then the preparer must cease any land application of the sewage sludge as an Exceptional Quality sewage sludge.

c. If the sewage sludge that is no longer of Exceptional Quality is used or disposed, the exemption for Exceptional Quality sewage sludge no longer applies and the sewage sludge must meet all the requirements and restrictions of this Chapter that apply to a sewage sludge that is not Exceptional Quality.

d. The sewage sludge or material derived from sewage sludge shall not be applied to the land as an Exceptional Quality sewage sludge until the sample analyses have shown that the sewage sludge or material derived from sewage sludge meets the criteria for *Exceptional Quality* as defined in LAC 33:IX.6901.I.

4.a. Recordkeeping. The person who prepares the sewage sludge or a material derived from sewage sludge shall develop the following information and shall retain the information for five years:

i. the results of the sample analysis required in Subparagraph J.3.a of this Section; and

ii. the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Exceptional Quality pathogen requirements in LAC 33:IX.6909.C.1 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

b. Reporting. The person who prepares the sewage sludge or a material derived from sewage sludge shall forward the information required in Subparagraph J.4.a of this Section to the Office of Environmental Services, Water Permits Division, on a quarterly basis. The schedule for quarterly submission is contained in the following table.

Schedule For Quarterly Submission	
Monitoring Period	Report Due Date
January, February, March	May 28
April, May, June	August 28
July, August, September	November 28
October, November, December	February 28

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074.B.(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:785 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**§6905. Siting and Operation Requirements for Commercial Preparers of Sewage Sludge**

A. Exemption. A *publicly owned treatment works (POTW)*, as defined in LAC 33:IX.6901.I, shall be exempted from the siting requirements in LAC 33:IX.6909.B and the facility closure requirements in Paragraph C.3 of this Section if the POTW prepares sewage sludge or a sewage sludge treatment facility is located within the POTW's perimeter.

B. Siting

1. Location Characteristics

a. Facilities shall not be located less than 200 feet from a property line. A reduction in this requirement shall be allowed only with the permission, in the form of a notarized affidavit, of the adjoining landowners and occupants. A copy of the notarized affidavit waiving the 200-foot buffer zone shall be entered in the mortgage and conveyance records of the parish for the adjoining landowner's property.

b. Facilities that are not located within the boundaries of a legally zoned and established industrial park:

i. shall not be located less than 1,000 feet from an established school, hospital, institution, day-care facility, nursing home, hotel/motel, playground, park, golf course, or restaurant/food establishment unless special permission is granted by the owner of the established school, hospital, institution, day-care facility, nursing home, hotel/motel, playground, park, golf course, or restaurant/food establishment. The permission must be in the form of an affidavit executed by the owner waiving the 1,000-foot buffer zone. However, in no case shall the facility be located less than 200 feet from any of the above establishments;

ii. shall not be located less than 500 feet from an established home residence unless special permission has been granted by the owner and/or lessee of the established home residence in the form of an affidavit executed by the owner and/or lessee waiving the 500-foot buffer zone. However, in no case shall the facility be located less than 200 feet from an established home residence.

c. Facilities shall not be located less than 300 feet from a private potable water supply or a private water supply elevated storage tank or ground storage tank unless special permission is granted by the private potable water supply owner.

d. Facilities shall not be located less than 300 feet from a public potable water supply or a public water supply elevated storage tank or ground storage tank unless special permission is granted by the Department of Health and Hospitals.

e. Untreated sewage sludge and/or supplement or feedstock material to be utilized at a facility shall not be located less than 25 feet from a subsurface drainage pipe or drainage ditch that discharges directly to waters of the state.

f. Facilities that prepare or compost only sewage sludge or blend, mix, or compost sewage sludge and have only woodchips or yard waste (e.g., leaves, lawn clippings, or branches) as feedstock or supplements shall not be located closer than the greater of the following distances:

i. 1,200 feet from any aircraft's approach or departure airspace or *air operations area* as defined in LAC 33:IX.6901.I; or

ii. the distance called for by the U. S. Department of Transportation Federal Aviation Administration's airport design requirements.

g. Facilities that prepare sewage sludge that include food or other municipal solid waste as feedstock or supplements or prepare sewage sludge with grease that was pumped or removed from a food service facility shall not be located closer than:

i. 5,000 feet from any airport property boundary (including any aircraft's approach or departure airspace or air operations area) if the airport does not sell Jet-A fuel and serves only piston-powered aircrafts; or

ii. 10,000 feet from any airport property boundary (including any aircraft's approach or departure airspace or air operations area) if the airport sells Jet-A fuel and serves turbine-powered aircrafts or sells Jet-A fuel and is designed to serve turbine-powered and/or piston-powered aircrafts.

h. Facilities shall not be located less than 100 feet from wetlands, surface waters (streams, ponds, lakes), or areas historically subject to overflow from floods.

i. Facilities shall only be located in a hydrologic section where the historic high water table is at a minimum of a 3-foot depth below the surface, or the water table at the facility shall be controlled to a minimum of a 3-foot depth below this zone.

j. Storage and processing of sewage sludge or any material derived from sewage sludge is prohibited within any of the buffer zones indicated in Subparagraphs B.1.a-i of this Section.

k. Facilities located in, or within 1,000 feet of, swamps, marshes, wetlands, estuaries, wildlife-hatchery areas, habitat of endangered species, archaeological sites, historic sites, publicly owned recreation areas, and similar critical environmental areas shall be isolated from such areas by effective barriers that eliminate probable adverse impacts from facility operations.

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

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

2. Facility Characteristics

a. Perimeter Barriers, Security, and Signs

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

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

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

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

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

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

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

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

3. Facility Surface Hydrology

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

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

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

4. Facility Geology

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

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

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

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

6. Facility Administrative Procedures

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

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

C. Operations

1. Composters, Mixers, Blenders, and Preparers

a. Facility Operations and Maintenance Manual

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

ii. The Facility Operations and Maintenance Manual must describe, in specific detail, how the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge (if applicable) will be managed during all phases of processing operations. At a minimum, the manual shall address the following:

(a) site and project description;  
(b) regulatory interfaces;  
(c) process management plan;  
(d) pathogen treatment plan;  
(e) odor management plan;  
(f) worker health and safety management plan;  
(g) housekeeping and nuisance management plan;

(h) emergency preparedness plan;  
(i) security, community relations, and public access plan;

(j) regulated chemicals (list and location of regulated chemicals kept on-site);

(k) recordkeeping procedures;  
(l) feedstock, supplements, and process management;

(m) product distribution records;  
(n) operator certification; and  
(o) administration of the operations and maintenance manual.

iii. The Facility Operations and Maintenance Manual shall be kept on-site and readily available to employees and, if requested, to the administrative authority or his/her duly authorized representative.

b. Facility Operational Standards

i. The facility must include a receiving area, mixing area, curing area, compost storage area for composting operations, drying and screening areas, and truck wash area located on surfaces capable of preventing groundwater contamination (periodic inspections of the surface shall be made to ensure that the underlying soils and the surrounding land surface are not being contaminated).

ii. All containers shall provide containment of the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge and thereby control litter and other pollution of adjoining areas.

iii. Provisions shall be made for the daily cleanup of the facility, including equipment and waste-handling areas.

iv. Treatment facilities for washdown and contaminated water shall be provided or the wastewater contained, collected, and transported off-site to an approved wastewater treatment facility.

v. Leachate Management. Leachate produced in the composting process:

(a). must be collected and disposed off-site at a permitted facility; or

(b). must be collected, treated, and discharged on-site in accordance with LAC 33:IX.Chapters 23-67; or

(c). may be reused in the composting process as a source of moisture.

vi. Sufficient equipment shall be provided and maintained at all facilities to meet their operational needs.

vii. Odor Management

(a). The production of odor shall be minimized.

(b). Processed air and other sources of odor shall be contained and, if necessary, treated in order to remove odor before discharging to the atmosphere.

viii. Other feedstock and supplements that are blended, composted, or mixed with sewage sludge shall be treated for the effective removal of sharps including, but not limited to, sewing needles, straight pins, hypodermic needles, telephone wires, and metal bracelets.

## 2. Composters Only

a. Any compost made from sewage sludge that cannot be used according to these regulations shall be reprocessed or disposed in an approved solid waste facility.

b. Composted sewage sludge shall be used, sold, or disposed at a permitted disposal facility within 36 months of completion of the composting process.

## 3. Facility Closure Requirements

a. Notification of Intent to Close a Facility. All permit holders shall notify the administrative authority in writing at least 90 days before closure or intent to close, seal, or abandon any individual unit within a facility and shall provide the following information:

i. date of planned closure;

ii. changes, if any, requested in the approved closure plan; and

iii. closure schedule and estimated cost.

b. Closure Requirements

i. An insect and rodent inspection is required before closure. Extermination measures, if required, must be provided.

ii. All remaining sewage sludge or a material derived from sewage sludge, other feedstock, and supplements shall be removed to a permitted facility for disposal.

iii. The permit holder shall verify that the underlying soils have not been contaminated in the operation of the facility. If contamination exists, a remediation/removal program developed to meet the requirements of Subparagraph C.3.c of this Section must be provided to the administrative authority.

c. Remediation/Removal Program

i. Surface liquids and sewage sludges containing free liquids shall be dewatered or removed.

ii. If a clean closure is achieved, there are no further post-closure requirements. The plan for clean closure must reflect a method for determining that all waste has been removed, and such a plan shall, at a minimum, include the following:

(a). identification (analysis) of the sewage sludge, other feedstock, and supplements that have entered the facility;

(b). selection of the indicator parameters to be sampled that are intrinsic to the sewage sludge, other feedstock, and supplements that have entered the facility in order to establish clean-closure criteria. Justification of the parameters selected shall be provided in the closure plan;

(c). sampling and analyses of the uncontaminated soils in the general area of the facility for a determination of background levels using the indicator parameters selected. A diagram showing the location of the area proposed for the background sampling, along with a description of the sampling and testing methods, shall be provided;

(d). a discussion of the sampling and analyses of the "clean" soils for the selected parameters after the waste and contaminated soils have been excavated. Documentation regarding the sampling and testing methods (i.e., including a plan view of the facility, sampling locations, and sampling quality-assurance/quality-control programs) shall be provided;

(e). a discussion of a comparison of the sample(s) from the area of the excavated facility to the background sample. Concentrations of the selected parameter(s) of the bottom and side soil samples of the facility must be equal to or less than the background sample to meet clean closure criteria;

(f). analyses to be sent to the Office of Environmental Services, Water Permits Division, confirming that the requirements of Subparagraph C.3.b of this Section have been satisfied;

(g). identification of the facility to be used for the disposal of the excavated waste; and

(h). a statement from the permit holder indicating that, after the closure requirements have been met, the permit holder will file a request for a closure inspection with the Office of Environmental Services, Water Permits Division, before backfilling takes place. The administrative authority will determine whether the facility has been closed properly.

iii. If sewage sludge or a material derived from sewage sludge or other feedstock and supplements used in the blending, composting, or mixing process remains at the facility, the closure and post-closure requirements for industrial (Type I) solid waste landfills or non-industrial landfills (Type II), as provided in LAC 33:Part VII, shall apply.

iv. If the permit holder demonstrates that removal of most of the sewage sludge or a material derived from sewage sludge or other feedstock and supplements to achieve an alternate level of contaminants based on indicator parameters in the contaminated soil will be adequately protective of human health and the environment (including groundwater) in accordance with LAC 33:I.Chapter 13, the administrative authority may decrease or eliminate the post-closure requirements.

(a). If levels of contamination at the time of closure meet residential standards as specified in LAC 33:I.Chapter 13 and approval of the administrative authority is granted, the requirements of Clause C.3.c.iv of this Section shall not apply.

(b). Excepting those sites closed in accordance with Subclause C.3.c.iv.(a) of this Section, within 90 days after a closure is completed, the permit holder must have



entered in the mortgage and conveyance records of the parish in which the property is located, a notation stating that solid waste remains at the site and providing the indicator levels obtained during closure.

v. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:794 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:

### **§6907. Financial Assurance Requirements for Commercial Preparers or Land Appliers of Sewage Sludge**

A. - A.2. ...

a. Evidence of liability insurance may consist of either a signed duplicate original of a commercial preparer or land applier of sewage sludge liability endorsement, or a certificate of insurance. All liability endorsements and certificates of insurance must include:

2.a.i. - 5.a.i. ...

ii. the guarantor is the parent corporation of the permit holder or applicant of the commercial preparer or land applier of sewage sludge facility or facilities to be covered by the guarantee, and the guarantee extends to certain facilities;

A.5.a.iii. - B.8.d. ...

i. a list of commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, owned or operated by the permit holder or applicant of the facility, for which financial assurance for liability coverage is demonstrated through the use of financial tests, including the amount of liability coverage;

ii. a list of commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, owned or operated by the permit holder or applicant, for which financial assurance for the closure or post-closure care is demonstrated through the use of a financial test or self-insurance by the permit holder or applicant, including the cost estimates for the closure and post-closure care of each facility;

iii. a list of the commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, owned or operated by any subsidiaries of the parent corporation for which financial assurance for closure and/or post-closure is demonstrated through the financial test or through use of self-insurance, including the current cost estimate for the closure or post-closure care for each facility and the amount of annual aggregate liability coverage for each facility; and

iv. a list of commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for closure or post-closure care is not demonstrated through the financial test, self-insurance, or other substantially equivalent state mechanisms, including the estimated cost of closure and post-closure of such facilities.

e. - i.i. ...

ii. the guarantor is the parent corporation of the permit holder or applicant of the commercial preparer or land applier of sewage sludge facility or facilities to be covered by the guarantee, and the guarantee extends to certain facilities;

iii. *closure plans*, as used in the guarantee, refers to the plans maintained as required by the Louisiana commercial preparer or land applier of sewage sludge rules and regulations for the closure and post-closure care of facilities, as identified in the guarantee;

8.i.iv. - 12.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:796 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:

### **§6909. Pathogens and Vector Attraction Reduction**

A. Scope. This Section contains the following:

1. ...

2. the site restrictions for land on which a Class B sewage sludge is applied; and

3. the alternative vector attraction reduction requirements for sewage sludge that is applied to the land.

B. Special Definitions. In addition to the terms referenced and defined at LAC 33:IX.6901.I, the following definitions apply to this Section.

\* \* \*

C. Pathogens

1. Sewage Sludge—Exceptional Quality

a. - b. ...

c. Exceptional Quality—Alternative 1

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

c.ii. - d. ...

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

ii.(a). - ii.(c). ...

e. Exceptional Quality—Alternative 3

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable

Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

ii.(a). - iii.(d). ...

f. Exceptional Quality—Alternative 4

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

ii. ...

iii. The density of viable helminth ova in the sewage sludge shall be less than one per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

g. Exceptional Quality—Alternative 5

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

ii. ...

h. Exceptional Quality—Alternative 6

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

1.h.ii. - 2.e.v. ...

vi. Turf grown on land where sewage sludge is applied shall not be harvested for one year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the administrative authority.

vii. - viii. ...

3. Repealed.

a. Repealed.

b. Repealed.

D. - D.1.c. ...

d. Repealed.

2.a. - 2.j.ii. ...

k. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:806 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**§6911. Incineration**

A. - A.2. ...

B. Special Definitions. All terms not defined below shall have the meaning given them in LAC 33:IX.6901.I and in LAC 33:III.111.

\*\*\*

C. - C.2.f. ...

3. In conducting the performance tests required in Paragraph C.2 of this Section, the owner or operator shall use as reference methods and procedures the test methods referenced in LAC 33:IX.6901.H or other methods and procedures as specified in this Section, except as provided for in Subparagraph C.2.b of this Section.

C.4.a. - D.6.b.iv. ...

v. samples of the sewage sludge charged to the incinerator shall be collected in nonporous jars at the beginning of each run and at approximately 1-hour intervals thereafter until the test ends, and "2540 G Total Fixed and Volatile Solids in Solid and Semisolid Samples" shall be used to determine dry sewage sludge content of each sample (total solids residue), except that:

D.6.v.(a). - I.3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:809 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**§6913. Standard Conditions Applicable to All Sewage Sludge (Biosolids) Use or Disposal Permits**

A. General Conditions

1. Introduction. In accordance with the provisions of this Chapter all Sewage Sludge (Biosolids) Use or Disposal Permits shall incorporate either expressly or by reference all conditions and requirements applicable to the preparation and use or disposal of sewage sludge set forth in the Louisiana Environmental Quality Act, as amended, as well as all applicable regulations.

2. Duty to Comply. The permittee must comply with all conditions of an issued final permit. Any permit noncompliance constitutes a violation of the Louisiana

Environmental Quality Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

### 3. Enforcement Actions

a. The department may take enforcement action as prescribed by state law or regulation against any person who:

i. fails to submit a permit application as required by law;

ii. knowingly makes any false statement, representation, or certification in any application, record, report, or other document filed with the department pursuant to the act or these regulations. Violations of this provision may subject the violator to the penalties provided for in the act for perjury or false statements;

iii. fails to correct deficiencies in the permit application, or upon becoming aware that any relevant facts or information were omitted in a permit application or in any report to the department, fails to promptly submit such facts or information;

iv. fails to take any necessary action to complete the permit issuance, such as payment of fees or publication of required notices; or

v. fails to comply with any condition of the permit.

b. Exception. In cases where the permit application is withdrawn by the applicant, a written notification shall be provided to the Office of Environmental Services, Water Permits Division, stating that no sewage sludge use or disposal practice or other activity that would require a permit from the Office of Environmental Services, Water Permits Division, is currently taking place. Provided that the application was not made in response to previous enforcement action, the applicant is then exempt from enforcement action for causes listed under this Paragraph.

### 4. Toxic Pollutants

a. If any sewage sludge use or disposal standard or prohibition is promulgated under this Chapter or Section 405 of the Clean Water Act for a pathogen, pollutant, vector attraction reduction, management practice, etc., and that standard or prohibition is more stringent than any applicable requirement in an existing permit, the administrative authority shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the sewage sludge use or disposal standard or prohibition.

b. The permittee shall comply with sewage sludge use or disposal standards or prohibitions established under this Chapter within the time frame provided in the regulations that established these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Duty to Reapply for an Individual Permit. If the permittee wishes to continue an activity regulated by an existing permit after the expiration date of that permit, the permittee must apply for and obtain a new permit. The new application shall be submitted at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the administrative authority. (The administrative authority shall not grant permission for applications to be submitted later than the expiration date of the existing permit.) A permit that was issued in accordance with these regulations and that has expired shall be

administratively continued until such time as a decision on an application to continue an activity under the permit has been issued by the administrative authority, if the application was received by the department at least 180 days prior to the permit expiration.

6. Permit Action. The conditions set forth in LAC 33:IX.2903, 2905, 2907, 3105, and 6509 for cause for modification, revocation and reissuance, and for termination of a permit shall apply to permits issued in accordance with these regulations.

7. Property Rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

8. Duty to Provide Information. The permittee shall furnish to the administrative authority, within a reasonable time, any information that the administrative authority may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the administrative authority, upon request, copies of records required to be kept by the permit.

9. State Laws. Nothing in the permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation.

10. Severability. If any provision of these regulations, or the application thereof, is held to be invalid, the remaining provisions of these regulations shall not be affected, so long as they can be given effect without the invalid provision. To this end, the provisions of these regulations are declared to be severable.

11. Draft Permits. The conditions set forth in LAC 33:IX.3107.A for draft permits shall also pertain to permits issued in accordance with these regulations.

12. Fact Sheet. A fact sheet shall be prepared for each draft permit issued in accordance with these regulations. The fact sheet shall include, but not be limited to, the following:

- a. the name of the applicant;
- b. the name of the facility;
- c. the address of the facility;
- d. the physical location of all facilities that are utilized to prepare sewage sludge or a material derived from sewage sludge;
- e. the physical location of all land application sites;
- f. general and management practices;
- g. soil and site restrictions;
- h. monitoring, sampling and analysis, and reporting requirements; and
- i. all other information that is pertinent to the facility and to the permitting process.

13. Public Notice and Public Comment Period. The conditions set forth in LAC 33:IX.3113 for public notices and the public comment period shall apply to all permits issued in accordance with these regulations.

14. Public Comments and Requests for Public Hearings. The conditions set forth in LAC 33:I.1505 and IX.3115 for public comments and requests for public hearings shall apply to all permits issued in accordance with these regulations.

15. Public Hearings. The conditions set forth in LAC 33:IX.3117 for public hearings shall apply to all permits issued in accordance with these regulations.

16. Obligations to Raise Issues and Provide Information during the Public Comment Period. The conditions set forth in LAC 33:IX.3119 for the obligations to raise issues and provide information during the public comment period shall apply to all permits issued in accordance with these regulations.

17. Reopening of the Public Comment Period. The conditions set forth in LAC 33:IX.3121 for reopening of the public comment period shall apply to all permits issued in accordance with these regulations.

18. Issuance of a Final Permit Decision. After the close of the public comment period under Paragraph A.13 of this Section on a draft permit, the administrative authority shall issue a final permit decision. The administrative authority shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a Sewage Sludge (Biosolids) Use or Disposal Permit. For the purposes of this Section a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

19. Response to Comments. The conditions set forth in LAC 33:IX.3125 for responding to comments shall apply to all permits issued in accordance with these regulations.

#### B. Proper Operation and Maintenance

1. Need to Halt or Reduce Not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

2. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any sewage sludge use or disposal practice in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment. The permittee shall also take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying practice.

#### 3. Proper Operation and Maintenance

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

b. The permittee shall provide an adequate operating staff that is duly qualified to carry out operation and maintenance and other functions necessary to ensure compliance with the conditions of the permit.

#### C. Monitoring and Records

1. Inspection and Entry. The conditions set forth in LAC 33:IX.6513 for inspection and entry shall apply to all permits issued in accordance with these regulations.

2. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under LAC 33:IX.6901.H or, unless otherwise specified in 40 CFR Part 503, as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the sludge reporting form specified by the administrative authority.

#### 3. Laboratory Accreditation

a. LAC 33:IX.Chapters 45-59 provide requirements for an accreditation program specifically applicable to commercial laboratories, wherever located, that provide chemical analyses, analytical results, or other test data to the department, by contract or by agreement, and the data is:

i. submitted on behalf of any facility, as defined in R.S.30:2004;

ii. required as part of any permit application;

iii. required by order of the department;

iv. required to be included on any monitoring report submitted to the department;

v. required to be submitted by a contractor; or

vi. otherwise required by department regulations.

b. The department laboratory accreditation program is designed to ensure the accuracy, precision, and reliability of the data generated, as well as the use of department-approved methodologies in generation of that data. Laboratory data generated by commercial environmental laboratories that are not accredited under these regulations will not be accepted by the department. Retesting of analyses will be required by an accredited commercial laboratory. Where retesting is not possible, the data generated will be considered invalid and in violation of the LPDES permit.

c. Regulations on the environmental laboratory accreditation program and a list of laboratories that have applied for accreditation are available on the department's website. Questions concerning the program may be directed to the Office of Environmental Assessment, Laboratory Services Division.

#### D. Reporting Requirements

1. Facility Changes. The permittee shall give notice to the Office of Environmental Services, Water Permits Division, as soon as possible of any planned physical alterations or additions to the permitted facility.

2. Anticipated Noncompliance. The permittee shall give advance notice to the Office of Environmental Services, Water Permits Division, of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers. A permit is not transferable to any person except after notice to the Office of Environmental Services, Water Permits Division. The administrative authority may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Louisiana Environmental Quality Act. Except as provided in LAC 33:IX.2901.A, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made to identify the new permittee and incorporate such other requirements as may be necessary under the Louisiana Environmental Quality Act.

4. Compliance Schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of a permit shall be submitted no later than 14 days following each schedule date.

5. Other Noncompliance. The permittee shall report all instances of noncompliance not reported under Paragraph D.4 of this Section at the time monitoring reports are submitted.

6. Other Information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the administrative authority, it shall promptly submit such facts or information.

7. Signatory Requirements. All applications, reports, or information submitted to the administrative authority shall be signed and certified.

a. All permit applications shall be signed as follows:

i. for a corporation—by a responsible corporate officer. For the purpose of this Section, a *responsible corporate officer* means:

(a). a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation. These responsible corporate officers are presumed to have the authority to sign permit applications unless the corporation has notified the administrative authority to the contrary; or

(b). the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to ensure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and the authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals;

ii. for a partnership or sole proprietorship—by a general partner or the proprietor, respectively; or

iii. for a municipality, state, federal, or other public agency—by either a principal executive officer or ranking elected official. For purposes of this Paragraph, a principal executive officer of a federal agency includes:

(a). the chief executive officer of the agency; or

(b). a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA).

b. All reports required by permits and other information requested by the administrative authority shall be signed by a person described in Subparagraph D.7.a of this Section, or by a duly authorized representative of that

person. A person is a duly authorized representative only if:

i. the authorization is made in writing by a person described in Subparagraph D.7.a of this Section;

ii. the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or a position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and

iii. the written authorization is submitted to the administrative authority.

c. Changes to Authorization. If an authorization under Subparagraph D.7.b of this Section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Subparagraph D.7.b of this Section must be submitted to the administrative authority prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

d. Certification. Any person signing a document under the provisions of Subparagraph D.7.a or b of this Section, shall make the following certification.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with the system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

8. Availability of Reports. All recorded information (completed permit application forms, fact sheets, draft permits, or any public document) not classified as confidential information under R.S. 30:2030(A) and 2074(D) and designated as such in accordance with LAC 33:IX.2323.A and C and LAC 33:IX.6503 shall be made available to the public for inspection and copying during normal working hours in accordance with the Public Records Act, R.S. 44:1 et seq. Claims of confidentiality for the following will be denied:

a. the name and address of any permit applicant or permittee;

b. permit applications, permits, and effluent data;

c. information required by the Sewage Sludge (Biosolids) Use or Disposal Permit Application forms provided by the administrative authority. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

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

**Chapter 71. Appendices**

**§7135. Appendix R—Financial Assurances Documents**

**Document 1. Liability Endorsement**

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE  
LIABILITY ENDORSEMENT  
\* \* \*

[See Prior Text in Liability Endorsement]

**Document 2. Certificate of Insurance**

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
CERTIFICATE OF LIABILITY INSURANCE  
\* \* \*

[See Prior Text in Certificate of Liability Insurance]

**Document 3. Letter of Credit**

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
IRREVOCABLE LETTER OF CREDIT  
\* \* \*

[See Prior Text in Irrevocable Letter of Credit]

(A). A final judgment issued by a competent court of law in favor of a governmental body, person, or other entity and against [permit holder's or applicant's name] for sudden and accidental occurrences for claims arising out of injury to persons or property due to the operation of the commercial preparer or land applier of sewage sludge site at the [name of permit holder or applicant] at [site location] as set forth in the Louisiana Administrative Code (LAC), Title 33, Part IX.6907.A.

\* \* \*

[See Prior Text in Irrevocable Letter of Credit]

**Document 4. Trust Agreement**

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
TRUST AGREEMENT/STANDBY TRUST AGREEMENT

This Trust Agreement (the "Agreement") is entered into as of [date] by and between [name of permit holder or applicant], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the state of" or "a national bank" or "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the state of Louisiana, has established certain regulations applicable to the Grantor, requiring that a permit holder or applicant for a permit of a commercial preparer or land applier of sewage sludge processing facility shall provide assurance that funds will be available when needed for [closure and/or post-closure] care of the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected [the Trustee] to be the trustee under this Agreement, and [the Trustee] is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

\* \* \*

[See Prior Text in Trust Agreement]

**Document 5. Surety Bond**

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
FINANCIAL GUARANTEE BOND

Date bond was executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_

Surety: [name and business address]

[agency interest number, site name, facility name, facility permit number, and current closure and/or post-closure amount(s) for each facility guaranteed by this bond]

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where Sureties are corporations acting as cosureties, we the sureties bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit or liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001, et seq. and specifically 2074(B)(4), to have a permit in order to own or operate the commercial preparer or land applier of sewage sludge facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required by the *Louisiana Administrative Code* (LAC), Title 33, Part IX.6907, when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of the facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to close is issued by the administrative authority or a court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:IX.6907.B and obtain written approval from the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority from the Surety,

THEN, this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to perform as guaranteed by this bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification or amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the

administrative authority. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety has received written authorization for termination of the bond by the administrative authority.

Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.6907.B and the conditions of the commercial preparer or land applier of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

\* \* \*

[See Prior Text in Financial Guarantee Bond]

**Document 6. Performance Bond**

**COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
PERFORMANCE BOND**

Date bond was executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_

Surety: [name(s) and business address(es)]

[agency interest number, site name, facility name, facility permit number, facility address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and/or post-closure costs separately)]

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons by These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where Sureties are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001, et seq. and specifically 2074(B)(4), to have a permit in order to own or operate the commercial preparer or land applier of sewage sludge facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all

applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

AND, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide financial assurance as specified in Louisiana Administrative Code (LAC), Title 33, Part IX.6907.B and obtain written approval of the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of LAC 33:IX.6905.C.3, or of its permit, for the facility for which this bond guarantees performances of closure, the Surety shall either perform closure, in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has been found in violation of the post-closure requirements of the LAC 33:IX.6905.C.3, or of its permit for the facility for which this bond guarantees performance of post-closure, the Surety shall either perform post-closure in accordance with the closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance, as specified in LAC 33:IX.6907.B, and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to closure plans, permit, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have lapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.6907.B and the conditions of the commercial preparer or land applier of sewage sludge facility permit so that it guarantees a new closure and/or

post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

\* \* \*

[See Prior Text in Facility Performance Bond]

**Document 7. Letter of Credit**

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
IRREVOCABLE LETTER OF CREDIT

\* \* \*

[See Prior Text in Irrevocable Letter of Credit]

**Document 8. Certificate of Insurance**

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR  
POST-CLOSURE CARE

\* \* \*

[See Prior Text in Certificate of Insurance]

**Document 9. Letter from the Chief Financial Officer**

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
LETTER FROM THE CHIEF FINANCIAL OFFICER  
(LIABILITY COVERAGE, CLOSURE, AND/OR  
POST-CLOSURE)

\* \* \*

[See Prior Text in Letter]

(A). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, for which liability coverage is being demonstrated through the financial test specified in LAC 33:IX.6907.A. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

(B). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for [insert "closure," "post-closure," or "closure and post-closure"] is demonstrated through a financial test similar to that specified in LAC 33:IX.6907.B or other forms of self-insurance. The current [insert "closure," "post-closure," or "closure and post-closure"] cost estimates covered by the test are shown for each facility:

(C). This firm guarantees through a corporate guarantee similar to that specified in [insert "LAC 33:IX.6907.B" or "LAC 33:IX.6907.A and B"], [insert "liability coverage," "closure," "post-closure," or "closure and post-closure"] care of the following commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, of which [insert the name of the permit holder or applicant] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure and/or post-closure care so guaranteed is shown for each facility:

(D). This firm is the owner or operator of the following commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for liability coverage, closure and/or post-closure care is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:IX.6907.A and/or B. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

\* \* \*

[See Prior Text in Letter]

**Document 10. Corporate Guarantee**

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
CORPORATE GUARANTEE FOR LIABILITY COVERAGE,  
CLOSURE, AND/OR POST-CLOSURE CARE

\* \* \*

[See Prior Text in Corporate Guarantee]

(B). [Subsidiary] is the [insert "permit holder," or "applicant for a permit"] hereinafter referred to as [insert "permit holder" or "applicant"] for the following commercial preparer or land applier of sewage sludge facility covered by this guarantee: [List the agency interest number, site name, facility name, and facility permit number. Indicate for each facility whether guarantee is for liability coverage, closure, and/or post-closure and the amount of annual aggregate liability coverage, closure, and/or post-closure costs covered by the guarantee.]

[Fill in Paragraphs (C) and (D) below if the guarantee is for closure and/or post-closure.]

\* \* \*

[See Prior Text in Corporate Guarantee]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:818 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2519 (October 2005), LR 33:

Mike D. McDaniel, Ph.D.  
Secretary

0710#011

**DECLARATION OF EMERGENCY**

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

Home and Community Based Services Waivers  
New Opportunities Waiver—Emergency Opportunities  
(LAC 50:XXI.13707)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities proposes to amend LAC 50:XXI.13707 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:95(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Appropriations Bill of the 2004 regular session of the Legislature allocated funds for the establishment of 66 emergency slots for the New Opportunities Waiver (NOW) program and mandated the development and enforcement of rules established under the Administrative Procedure Act to create an equitable and precise methodology for defining an emergency and the issuance of such slots. The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities promulgated an



Emergency Rule that established the provisions governing emergency waiver opportunities. In addition, the bureau repealed the rules governing programmatic allocation of MR/DD Waiver slots and adopted those provisions to govern the programmatic allocation of waiver opportunities for NOW (*Louisiana Register*, Volume 30, Number 8). Subsequently, the bureau amended the August 20, 2004 Rule to clarify the provisions governing allocation of waiver opportunities for persons transitioning from publicly operated to private ICF-MR facilities (*Louisiana Register*, Volume 31, Number 11). The department by emergency rule amended the provisions of the November 20, 2005 Rule to create an additional 100 emergency waiver opportunities (*Louisiana Register*, Volume 33, Number 3). This Emergency Rule is being promulgated to continue the provisions of the March 1, 2007 Emergency Rule.

This action is being taken to promote the health and welfare of those individuals with developmental disabilities by facilitating access to waiver services.

Effective October 28, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends the provisions governing the programmatic allocation of waiver opportunities in the New Opportunities Waiver.

#### **Title 50**

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

#### **Subpart 11. New Opportunities Waiver**

#### **Chapter 137. General Provisions**

#### **§13707. Programmatic Allocation of Waiver Opportunities**

A. - C.6. ...

7. One hundred and sixty-six waiver opportunities shall be used for qualifying individuals with developmental disabilities who require emergency waiver services. In the event that a waiver opportunity is vacated, the opportunity will be returned to the emergency pool for support planning based on the process for prioritization. Once the 166 waiver opportunities are filled, then supports and services based on the priority determination system will be identified and addressed through other resources currently available for individuals with developmental disabilities.

C.8. - D. ...

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 31:2900 (November 2005), amended LR 33:

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0710#058

## **DECLARATION OF EMERGENCY**

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

Facility Need Review (LAC 48:I.12501)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, amends LAC 48:I.12501 as authorized by R.S. 40:2116, and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 378 of the 2007 Regular Session of the Louisiana Legislature amended R.S. 40:2116 to create an exception to the bed abeyance criteria established for nursing facilities in the Washington Parish service area when access to care is compromised. Certified nursing facilities in Washington Parish shall be allowed to take Medicaid bed approvals out of abeyance and re-enroll those beds in the Medicaid Program when the department determines that access to care is an issue.

In compliance with the directives of Act 378, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend the provisions governing the facility need review process to allow for an exception to the bed abeyance criteria. This action is being taken to avoid imminent peril to the health, safety or welfare of Washington Parish residents who require nursing facility care. It is anticipated that the implementation of this Emergency Rule will be cost neutral for state fiscal year 2007-2008.

Effective September 17, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the facility need review process to allow for an exception to the bed abeyance criteria.

#### **Title 48**

### **PUBLIC HEALTH—GENERAL Part I. General Administration Subpart 5. Health Planning**

#### **Chapter 125. Facility Need Review**

#### **§12501. Introduction**

A. - G.8. ...

a. Exception for Washington Parish Service Area. If the department determines that utilizing the average annual occupancy rate may cause a potential access to care problem with existing facilities in the Washington Parish Service area, the department may allow a certified facility in that area to take the Medicaid bed approvals out of abeyance and re-enroll those beds in the Medicaid Program.

b. Certified nursing facilities in the Washington Parish service area may re-enroll Medicaid beds under the following conditions:

i. the certified nursing facility must send a written request to the department asking for permission to

take the Medicaid nursing home bed approvals out of abeyance;

ii. the written request must include a written, notarized attestation from the facility's administrator or owner that states that Medicaid nursing home residents have requested admission into the facility;

iii. the most recent LTC-2 report must show that all other certified nursing facilities in the Washington Parish service area have a 93 percent or greater occupancy rate.

c. Upon receipt of a completed written request and upon verifying that the above provisions are satisfied, the department will send out a notice to the requesting facility that the Medicaid nursing home bed approvals may be taken out of bed abeyance and re-enrolled in the Medicaid Program.

i. The requesting facility shall be allowed to remove a certain number of the Medicaid nursing home bed approvals from abeyance and re-enroll those beds into the Medicaid Program. The remainder of the Medicaid nursing home bed approvals will automatically expire. The number of Medicaid nursing home bed approvals shall be determined as follows:

(a). a nursing facility with 120 or fewer Medicaid bed approvals may re-enroll all of its Medicaid nursing home bed approvals;

(b). a nursing facility with 121 to 160 Medicaid bed approvals may re-enroll up to 80 percent of its Medicaid nursing home bed approvals, but in no case shall the facility be required to re-enroll fewer than 120 beds;

(c). a nursing facility with 161 or more Medicaid bed approvals may re-enroll 75 percent of its Medicaid nursing home bed approvals, but in no case shall it be required to return fewer than 128 beds, nor shall it be allowed to return more than 175 beds; or

(d). a nursing facility may choose to re-enroll fewer beds than are allowed under the provisions of this section, and if the facility does so choose, the balance of the bed approvals shall be considered expired.

ii. The requesting facility must re-enroll the Medicaid nursing home bed approvals in the Medicaid Program within 30 days of receipt of the notice from the department. Any Medicaid nursing home bed approval not re-enrolled in the Medicaid Program within this time period will automatically expire.

G.9. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 33:

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, May 29, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North 4th Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either 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.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

0710#028

## DECLARATION OF EMERGENCY

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

Federally Qualified Health Centers  
Reimbursement Methodology  
Payment for Adjunct Services  
(LAC 50:XI.10703)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XI.10703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing established provisions governing provider enrollment and clarified the provisions governing services and the reimbursement methodology for federally qualified health centers (*Louisiana Register*, Volume 32, Number 10). Act 18 of the 2007 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program to reimburse professional services providers, including federally qualified health centers (FQHCs), who provide and report services rendered in settings other than hospital emergency departments during evening, weekend or holiday hours. In compliance with the directives of Act 18, the department now proposes to adopt provisions to allow for the reimbursement of an additional payment to FQHCs for professional services provided in settings other than hospital emergency departments during evening, weekend or holiday hours.

This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring recipient access to primary and urgent care that can be acquired in a setting other than hospital emergency departments. It is estimated that implementation of this Emergency Rule will increase expenditures for professional services by approximately \$125,858 for state fiscal year 2007-2008.

Effective for dates of service on or after October 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology governing FQHCs to adopt provisions establishing reimbursement for the payment of adjunct services when professional services are provided in a setting other than hospital emergency departments during evening, weekend or holiday hours.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XI. Clinic Services**

**Subpart 13. Federally Qualified Health Centers**

**Chapter 107. Reimbursement Methodology**

**§10703. Payment for Adjunct Services**

A. Effective for dates of service on or after October 20, 2007, the Medicaid Program shall provide reimbursement for the payment of adjunct services in addition to the encounter rate paid for professional services provided by federally qualified health centers (FQHCs) when these professional services are rendered during evening, weekend or holiday hours.

1. A payment for adjunct services is not allowed when the encounter is for dental services only.

B. The reimbursement for adjunct services is a flat fee in addition to the reimbursement for the associated office encounter.

C. Reimbursement is limited to services rendered between the hours of 5 p.m. and 8 a.m., Monday through Friday, on weekends and state legal holidays. Documentation relative to this reimbursement must include the time that the services were rendered.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Implementation of the provisions of this proposed Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0710#052

**DECLARATION OF EMERGENCY**

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

**Home Health Services—Extended Nursing Services  
Reimbursement Increase (LAC 50:XIII.701)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:XIII.701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted revised provisions governing extended and multiple daily nursing visits for recipients up to age 21 under the Home Health Program in LAC 50:XIII.305 (*Louisiana Register*, Volume 32, Number 3). The bureau, by Emergency Rule, increased the rates paid for extended nursing services in the Home Health Program (*Louisiana Register*, Volume 33, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 20, 2007 Emergency Rule.

This action is being taken to promote the health and well-being of recipients by assuring continued access to services through assisting providers to recruit and retain sufficient nursing staff. In addition, the proposed Rule will assure access to medically necessary services for Chisholm Class members and Early and Periodic Screening, Diagnosis and Treatment Program eligibles.

Effective for dates of service on or after November 18, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing reimbursement rates paid to home health agencies for extended nursing services.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XIII. Home Health**

**Subpart 1. Home Health Services**

**Chapter 7. Reimbursement Methodology**

**§701. Nursing and Home Health Aide Services**

A. Effective for dates of service on or after July, 20, 2007, the reimbursement rates for extended nursing services are increased as follows:

1. nurse care in home performed by a registered nurse (RN) is increased to \$34 per hour;
2. nurse care in home performed by a licensed practical nurse (LPN) is increased to \$32 per hour;
3. multiple visits—nurse care in home performed by an RN is increased to \$17 per hour; and
4. multiple visits—nurse care in home performed by an LPN is increased to \$16 per hour.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Implementation of the provisions of this Emergency Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid Offices.

Roxane A. Townsend, M.D.  
Secretary

0710#057

## DECLARATION OF EMERGENCY

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

#### Hospital Services—Inpatient Hospitals Disproportionate Share Hospital Payment Methodologies (LAC 50:V.Chapter 3)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:V.Chapter 3 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated an Emergency Rule to repeal and replace all Rules governing disproportionate share hospital (DSH) payment methodologies (*Louisiana Register*, Volume 31, Number 6). In compliance with Act 182 and Act 323 of the 2005 Regular Session, the June 20, 2005 Emergency Rule was amended to establish provisions for provider fees levied on hospitals as a result of the Healthcare Affordability Act (*Louisiana Register*, Volume 31, Number 7) and to revise the definition of a small rural hospital (*Louisiana Register*, Volume 31, Number 9). The June 20, 2005 Rule was subsequently amended to incorporate the provisions of the July 1, 2005 and September 1, 2005 Emergency Rules (*Louisiana Register*, Volume 31, Number 10).

The October 25, 2005 Emergency Rule was amended to: 1) change the provisions governing DSH payments to other uninsured hospitals; 2) establish provisions governing payments to private community hospitals for services rendered to displaced, uninsured citizens from mandatory evacuation parishes affected by Hurricanes Katrina and Rita; 3) change the provisions governing DSH payments to high uninsured hospitals and to establish provisions governing payments to public community hospitals (*Louisiana Register*, Volume 32, Number 7); and 4) revise the provisions governing disproportionate share hospital payments to non-rural community hospitals as a result of the allocation of additional funds by the Legislature during the 2006 Regular Session (*Louisiana Register*, Volume 32, Number 9). The department subsequently amended the October 25, 2005 Emergency Rule to incorporate the provisions of the June 28, 2006 and September 15, 2006 Emergency Rules (*Louisiana Register*, Volume 32, Number 10) and to revise the definition of a small rural hospital (*Louisiana Register*, Volume 33, Number 1). The department amended the October 23, 2006 Emergency Rule to incorporate the provisions of the December 18, 2006 Emergency Rule (*Louisiana Register*, Volume 33, Number 2). In compliance with the directives of Act 6 of the 2007 Regular Session of the Louisiana Legislature, the department amended the February 21, 2007 Emergency Rule to revise the DSH qualifications and reimbursement methodologies for the state fiscal year 2007 payment to non-rural

community hospitals (*Louisiana Register*, Volume 33, Number 7).

Act 18 of the 2007 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program for disproportionate share payments to non-rural community hospitals for state fiscal year 2008. In compliance with the directives of Act 18, the department now proposes to repeal the provisions of the June 27, 2007 Emergency Rule governing DSH payments to public and private community hospitals, and to repeal and replace the provisions governing non-rural community hospitals. It is estimated that the implementation of this proposed Rule will increase revenues by approximately \$87,000,000 for state fiscal year 2007-08. This action is being taken to enhance federal revenue.

Effective October 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing disproportionate share hospital payments.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Medical Assistance Program—Hospital Services

##### Subpart 1. Inpatient Hospitals

#### Chapter 3. Disproportionate Share Hospital Payment Methodologies

##### §301. General Provisions

A. The reimbursement methodology for inpatient hospital services incorporates a provision for an additional payment adjustment for hospitals serving a disproportionate share of low income patients.

B. The following provisions govern the disproportionate share hospital (DSH) payment methodologies for qualifying hospitals.

1. Total cumulative disproportionate share payments under any and all disproportionate share hospital payment methodologies shall not exceed the federal disproportionate share state allotment for Louisiana for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The department shall make necessary downward adjustments to hospital's disproportionate share payments to remain within the federal disproportionate share allotment and the state disproportionate share appropriated amount.

2. Appropriate action including, but not limited to, deductions from DSH, Medicaid payments and cost report settlements shall be taken to recover any overpayments resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

3. DSH payments to a hospital determined under any of the methodologies described in this Chapter 3 shall not exceed the hospital's net uncompensated cost as defined in §§305-313 or the disproportionate share limits as defined in Section 1923(g)(1)(A) of the Social Security Act for the state fiscal year to which the payment is applicable. Any Medicaid profit shall be used to offset the cost of treating the uninsured in determining the hospital specific DHH limits.

4. Qualification is based on the hospital's latest filed cost report and related uncompensated cost data as required by the department. Qualification for small rural hospitals is based on the latest filed cost report. Hospitals must file cost reports in accordance with Medicare deadlines, including

extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments with the exception of public state-operated hospitals, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

5. Hospitals shall be notified by letter at least 60 days in advance of calculation of DSH payment to submit documentation required to establish DSH qualification. Only hospitals that timely return DSH qualification documentation will be considered for DSH payments. The required documents are:

- a. obstetrical qualification criteria;
- b. low income utilization revenue calculation;
- c. Medicaid cost report; and
- d. uncompensated cost calculation.

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

C. A hospital receiving DSH payments shall furnish emergency and non-emergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

### **§303. Disproportionate Share Hospital Qualifications**

A. In order to qualify as a disproportionate share hospital, a hospital must:

1. have at least two obstetricians who have staff privileges and who have agreed to provide obstetric services to individuals who are Medicaid eligible. In the case of a hospital located in a rural area (i.e., an area outside of a metropolitan statistical area), the term *obstetrician* includes any physician who has staff privileges at the hospital to perform nonemergency obstetric procedures; or

2. treat inpatients who are predominantly individuals under 18 years of age; or

3. be a hospital which did not offer nonemergency obstetric services to the general population as of December 22, 1987; and

4. have a utilization rate in excess of one or more of the following specified minimum utilization rates:

a. Medicaid utilization rate is a fraction (expressed as a percentage). The numerator is the hospital's number of Medicaid (Title XIX) inpatient days. The denominator is the total number of the hospital's inpatient days for a cost reporting period. Inpatient days include newborn and psychiatric days and exclude swing bed and skilled nursing days. Hospitals shall be deemed disproportionate share providers if their Medicaid utilization rates are in excess of

the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments; or

b. hospitals shall be deemed disproportionate share providers if their low-income utilization rates are in excess of 25 percent. Low-income utilization rate is the sum of:

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

ii. the fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for inpatient services which are attributable to charity (free) care in a period, less the portion of any cash subsidies as described in §303.A.4.b.i in the period which are reasonably attributable to inpatient hospital services. The denominator is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero. This numerator shall not include contractual allowances and discounts (other than for indigent patients ineligible for Medicaid), i.e., reductions in charges given to other third-party payers, such as HMOs, Medicare, or Blue Cross; nor charges attributable to Hill-Burton obligations. A hospital providing "free care" must submit its criteria and procedures for identifying patients who qualify for free care to the Bureau of Health Services Financing for approval. The policy for free care must be posted prominently and all patients must be advised of the availability of free care and the procedures for applying. Hospitals not in compliance with free care criteria will be subject to recoupment of DSH and Medicaid payments; or

5. effective November 3, 1997, be a small rural hospital as defined in §311.A.2.a-h; or

6. effective June 28, 2006, be a public community hospital as defined in §305.A.; or

7. effective June 28, 2006, be a private community hospital as defined in §307.A.; or

8. effective September 15, 2006, be a non-rural community hospital as defined in §308.A.; and

9. effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

### **§305. Public Community Hospitals**

Repealed.

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

HISTORICAL NOTE: Repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

### **§307. Private Community Hospitals**

Repealed.

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

HISTORICAL NOTE: Repealed by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

### §308. Non-Rural Community Hospitals

#### A. Definitions

*Non-Rural Community Hospital*—a non-state hospital that does not receive disproportionate share payments under any other qualification category. These hospitals may be either publicly or privately owned. In addition, psychiatric, rehabilitation and long term hospitals may qualify for this category.

B. DSH payments to a public, non-rural community hospital shall be calculated as follows.

1. Each qualifying public, non-rural community hospital shall certify to the Department of Health and Hospitals its uncompensated care costs. The basis of the certification shall be 100 percent of the hospital's allowable costs for these services, as determined by the most recently filed Medicare/Medicaid cost report. The certification shall be submitted in a form satisfactory to the department no later than October 1st of each fiscal year. The department will claim the federal share for these certified public expenditures. The department's subsequent reimbursement to the hospital shall be in accordance with the qualifying criteria and payment methodology for non-rural community hospitals included in Act 18 and may be more or less than the federal share so claimed. Qualifying public, non-rural community hospitals that fail to make such certifications by October 1st may not receive Title XIX claim payments or any disproportionate share payments until the department receives the required certifications.

C. Private, non-rural community hospitals located in the New Orleans and Lake Charles Metropolitan Statistical Areas (MSA) shall be reimbursed as follows:

1. If the hospital's qualifying uninsured cost is less than 3.5 percent of total hospital cost, the payment shall be 30 percent of qualifying uninsured cost.

2. If the hospital's qualifying uninsured cost is equal to or greater than 3.5 percent of the total hospital cost, but less than 6.5 percent, the payment shall be 50 percent of qualifying uninsured cost.

3. If the hospital's qualifying uninsured cost is equal to or greater than 6.5 percent of total hospital cost, but less than or equal to 8 percent, the payment shall be 80 percent of qualifying uninsured cost.

4. If the hospital's qualifying uninsured cost is greater than 8 percent of total hospital cost, the payment shall be 90 percent of qualifying uninsured cost for the portion in excess of 8 percent and 80 percent of qualifying uninsured cost for the portion equal to 8 percent of total hospital cost.

D. Private, non-rural community hospitals located in all other parts of the state shall be reimbursed as follows:

1. If the hospital's qualifying uninsured cost is less than 3.5 percent of total hospital cost, no payment shall be made.

2. If the hospital's qualifying uninsured cost is equal to or greater than 3.5 percent of total hospital cost, but less than 6.5 percent, the payment shall be 50 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 3.5 percent of total hospital cost.

3. If the hospital's qualifying uninsured cost is equal to or greater than 6.5 percent of total hospital cost, but less

than or equal to 8 percent, the payment shall be 80 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 3.5 percent of total hospital cost.

4. If the hospital's qualifying uninsured cost is greater than 8 percent of total hospital cost, the payment shall be 90 percent of qualifying uninsured cost for the portion in excess of 8 percent of total hospital cost and 80 percent of an amount equal to 4.5 percent of total hospital cost.

5. Qualifying uninsured cost as used for this distribution shall mean the hospital's total charges for care provided to uninsured patients multiplied by the hospital's appropriate cost-to-charge ratio for the applicable cost report period.

E. The department shall determine each qualifying hospital's uninsured percentage on a hospital-wide basis utilizing charges for dates of service from July 1, 2006 through June 30, 2007.

F. Hospitals shall submit supporting patient specific data in a format specified by the department, reports on their efforts to collect reimbursement for medical services from patients to reduce gross uninsured costs and their most current year-end financial statements. Those hospitals that fail to provide such statements shall receive no payments and any payment previously made shall be refunded to the department. The deadline for submission of data used to determine qualification and the initial payment is November 20, 2007. Submitted hospital charge data must agree with the hospital's monthly revenue and usage reports which reconcile to the monthly and annual financial statements. The submitted data shall be subject to verification by the department before DSH payments are made.

1. repealed.

2. repealed.

G. In the event that the total payments calculated for all recipient hospitals are anticipated to exceed the total amount appropriated, the department shall reduce payments on a pro rata basis in order to achieve a total cost that is not in excess of the amounts appropriated for this purpose. The \$87,000,000 appropriation for the non-rural community hospital pool shall be effective only for state fiscal year 2008 and distributions from the pool shall be considered nonrecurring.

H. Of the total appropriation for the non-rural community hospital pool, \$7,000,000 shall be allocated to public and private non-rural community hospitals with a distinct part psychiatric unit.

1. To qualify for this payment, hospitals must be a public or private non-rural community hospital, as defined in §308.A., that has a Medicaid enrolled distinct part psychiatric unit with uninsured cost of 3.5 percent or greater, as defined in §308.D.5.

2. Payment shall be calculated by dividing each qualifying hospital's distinct part psychiatric unit's uninsured days by all qualifying psychiatric unit qualifying uninsured days and multiplying by \$7,000,000.

I. The DSH payment shall be made as an annual lump sum payment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§309. Federally Mandated Statutory Hospitals Not Included In Any Other Group**

**A. Definition**

*Federally Mandated Statutory Hospital Not Included In Any Other Group*—a hospital that meets the federal DSH statutory utilization requirements in §303.A.4.a-b.ii. and is not included in any other qualifying group.

B. DSH payments to individual federally mandated statutory hospitals shall be based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the Medicaid days pool is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

C. Disproportionate share payments for individual hospitals in this group shall be calculated based on the product of the ratio determined by:

1. dividing each qualifying hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by the department from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified hospitals included in this group. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days; then

2. multiplying by the state disproportionate share appropriated amount for this pool of hospitals.

D. A pro rata decrease necessitated by conditions specified in §301.B.1-6 for hospitals in this group will be calculated based on the ratio determined by:

1. dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in this group; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

**§311. Small Rural Hospitals**

**A. Definitions**

*Net Uncompensated Cost*—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients. Any uncompensated costs of providing health care services in a rural health clinic licensed as part of a small rural hospital as defined below shall be considered outpatient hospital services in the calculation of uncompensated costs.

*Small Rural Hospital*—a hospital (excluding a long-term care hospital, rehabilitation hospital, or freestanding psychiatric hospital but including distinct part psychiatric units) that meets the following criteria:

a. had no more than 60 hospital beds as of July 1, 1994 and is located in a parish with a population of less than

50,000 or in a municipality with a population of less than 20,000; or

b. meets the qualifications of a sole community hospital under 42 CFR §412.92(a); or

i. met the qualifications of a sole community hospital as of June 30, 2005 and subsequently converts to critical access hospital status; or

c. had no more than 60 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 60 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 50,000 or a municipality with a population of less than 20,000; or

e. had no more than 60 hospital beds as of June 30, 2000 and is located in a municipality with a population, as measured by the 1990 census, of less than 20,000; or

f. had no more than 60 beds as of July 1, 1997 and is located in a parish with a population, as measured by the 1990 and 2000 census, of less than 50,000; or

g. was a hospital facility licensed by the department that had no more than 60 hospital beds as of July 1, 1994, which hospital facility:

i. has been in continuous operation since July 1, 1994;

ii. is currently operating under a license issued by the department; and

iii. is located in a parish with a population, as measured by the 1990 census, of less than 50,000; or

h. has no more than 60 hospital beds or has notified the department as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located in a municipality with a population of less than 13,000 and in a parish with a population of less than 32,000 as measured by the 2000 census; or

i. has no more than 60 hospital beds or has notified DHH as of December 31, 2003 of its intent to reduce its number of hospital beds to no more than 60 and is located:

i. as measured by the 2000 census, in a municipality with a population of less than 7,000;

ii. as measured by the 2000 census, in a parish with a population of less than 53,000; and

iii. within 10 miles of a United States military base; or

j. has no more than 60 hospital beds as of September 26, 2002 and is located:

i. as measured by the 2000 census, in a municipality with a population of less than 10,000; and

ii. as measured by the 2000 census, in a parish with a population of less than 33,000; or

k. has no more than 60 hospital beds as of January 1, 2003 and is located:

i. as measured by the 2000 census, in a municipality with a population of less than 11,000; and

ii. as measured by the 2000 census, in a parish with a population of less than 90,000; or

l. has no more than 40 hospital beds as of January 1, 2005, and is located:

i. in a municipality with a population of less than 3,100; and

ii. in a parish with a population of less than 15,800 as measured by the 2000 census.

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

1. *Public (Nonstate) Small Rural Hospitals*—small rural hospitals as defined in §311.A.2 which are owned by a local government.

2. *Private Small Rural Hospitals*—small rural hospitals as defined in §311.A.2 that are privately owned.

C. Payment to hospitals included in §311.B.1-2. is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for each pool. If the cost reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year.

D. Pro Rata Decrease

1. A pro rata decrease necessitated by conditions specified in §301.B.1-6 for rural hospitals described in this §311 will be calculated using the ratio determined by:

a. dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals in §311; then

b. multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH appropriated amount.

2. No additional payments shall be made after the final payment is disbursed by the department for the state fiscal year. Recoupment shall be initiated upon completion of an audit if it is determined that the actual uncompensated care costs for the state fiscal year for which the payment is applicable is less than the actual amount paid.

E. Qualifying hospitals must meet the definition for a small rural hospital contained in §311.A.2. Qualifying hospitals must maintain a log documenting the provision of uninsured care as directed by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

### §313. Public State-Operated Hospitals

A. Definitions

*Net Uncompensated Cost*—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

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

B. DSH payments to individual public state-owned or operated hospitals shall be up to 100 percent of the hospital's net uncompensated costs. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

C. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment, the department

shall calculate a pro rata decrease for each public state-owned or operated hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public state-owned or operated hospitals during the state fiscal year; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment.

D. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Acute hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and

2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips at Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0710#054

### DECLARATION OF EMERGENCY

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

Inpatient Hospital Services—Non-Rural, Non-State  
Hospitals (LAC 50:V.951, 953 and 1331)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:V.951, 953 and 1331 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of



the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule in June of 1994 which established the prospective reimbursement methodology for inpatient services provided in private (non-state) acute care general hospitals (*Louisiana Register*, Volume 20, Number 6). A rule was subsequently adopted to revise the reimbursement methodology for inpatient psychiatric services rendered in free-standing psychiatric hospitals and distinct part psychiatric units (*Louisiana Register*, Volume 30, Number 11). In compliance with the directives of Act 17 of the 2006 Regular Session of the Louisiana Legislature, the bureau amended the reimbursement methodology for inpatient hospital services to increase the Medicaid reimbursement rates paid to private hospitals and free-standing and distinct part psychiatric units (*Louisiana Register*, Volume 33, Number 2).

In compliance with the directives of Act 18 of the 2007 Regular Session of the Louisiana Legislature, the bureau amended the reimbursement methodology for inpatient hospital services to increase the Medicaid reimbursement rates paid to non-rural private (non-state) acute care hospitals, long term hospitals, hospital intensive neurological rehabilitation units, free-standing psychiatric hospitals and distinct part psychiatric units (*Louisiana Register*, Volume 33, Number 9). The department now proposes to amend the September 1, 2007 Emergency Rule to provide for a supplemental Medicaid payment to non-rural, non-state acute care hospitals for having a Medicaid inpatient utilization greater than 30 percent or furnishing additional graduate medical education services as a result of the suspension of training programs at the Medical Center of Louisiana at New Orleans due to the impact of Hurricane Katrina.

This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program and recipient access to providers of these medically necessary services. It is estimated that the implementation of this proposed Rule will increase expenditures for inpatient hospital services rendered in non-rural, non-state acute care hospitals by approximately \$10,000,000 for state fiscal year 2007-08.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

##### **Subpart 1. Inpatient Hospitals**

##### **Chapter 9. Non-Rural, Non-State Hospitals**

###### **Subchapter A. General Provisions**

###### **§901. Definitions**

*Non-Rural, Non-State Hospital*—A hospital which is either owned and operated by a private entity, a hospital service district or a parish and does not meet the definition of a rural hospital as set forth in R.S. 40:1300.143(3)(a).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

## **Subchapter B. Reimbursement Methodology**

### **§953. Acute Care Hospitals**

A. For dates of service on or after September 1, 2007, the prospective per diem rate paid to non-rural, non-state acute care hospitals for inpatient services shall be increased by 4.75 percent of the rate on file for August 31, 2007.

B. Effective for dates of services on or after October 1, 2007, a quarterly supplemental payment will be issued to non-rural, non-state acute care hospitals that qualify as a high Medicaid hospital.

1. **Qualifying Criteria.** A hospital is considered to be a "high Medicaid hospital" if it has a Medicaid inpatient utilization percentage greater than 30 percent based on the 12 month cost report period ending in SFY 2006. For the purposes of calculating the Medicaid inpatient utilization percentage, Medicaid days shall include nursery and distinct part psychiatric unit days, but shall not include Medicare crossover days.

2. Each eligible hospital will receive a quarterly supplemental payment which shall be calculated based on the pro rata share of each qualifying hospital's paid Medicaid days (including covered nursery and distinct part psychiatric unit days) for dates of service in SFY 2007 to the total Medicaid days of all eligible hospitals multiplied by \$5,000,000 which is the amount appropriated for these supplemental payments.

3. Rehabilitation hospitals, long term acute care hospitals and free-standing psychiatric hospitals are not eligible for this supplemental payment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

## **Chapter 13. Teaching Hospitals**

### **Subchapter B. Reimbursement Methodology**

#### **§1331. Acute Care Hospitals**

A. Effective for dates of services on or after October 1, 2007, a quarterly supplemental payment will be issued to non-rural, non-state acute care hospitals that furnish additional graduate medical education (GME) services.

B. **Qualifying Criteria.** In order to qualify for the supplemental payment, an acute care hospital must meet the following criteria. The hospital must:

1. be a non-rural, non-state hospital;

2. have a documented affiliation agreement with a Louisiana medical school accredited by the Liaison Committee on Medical Education (LCME);

3. have greater than five additional intern and resident full time equivalencies (FTEs) in SFY 2007 and the first six months of 2008 as compared to the Pre-hurricane Katrina period of SFY 2005;

a. these additional intern and residency FTEs must directly result from the graduate medical education (GME) programs that were formerly taught at the Medical Center of Louisiana at New Orleans (MCLNO) and the suspension of training at MCLNO due to the impact of Hurricane Katrina; and

4. reimburse the medical school for the direct GME costs. Direct GME costs are defined as the costs of the residents' salaries and the faculty and administrative costs from the medical school.

C. Each qualifying hospital shall be paid their pro rata share of the \$5,000,000 supplemental GME payment pool based on their weighted Medicaid days. Paid Medicaid days (including newborn days included with the mother's stay) for dates of service in SFY 2007 shall be weighted using the following factor(s) as applicable:

1. 1.0—if the qualifying hospital has average additional resident FTEs of greater than 5, but less than or equal to 10; or

2. 1.5—if the qualifying hospital has average additional resident FTEs of equal to or greater than 10, but less than or equal to 20; or

3. 2.0—if the qualifying hospital has an average additional resident FTEs of equal to or greater than 20; and

4. 1.5—if the qualifying hospital's cost is at least 20 percent more than the current Medicaid per diem rate.

D. Payment of one-third of \$5,000,000 will be made at the beginning of each calendar quarter in SFY 2007 beginning with October 2007.

E. Rehabilitation hospitals, long term acute care hospitals and free-standing psychiatric hospitals are not eligible for this supplemental payment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Implementation of the provisions of this proposed Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0710#030

## **DECLARATION OF EMERGENCY**

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

#### **Medicaid Eligibility Family Opportunity Act Medicaid Program (LAC 50:III.2303 and 10305)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:III.2303 and 10305 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Family Opportunity Act, signed into law by Congress as part of the Deficit Reduction Act of 2005, contains provisions which allow states to offer a Medicaid buy-in program for children with disabilities. This optional Medicaid coverage is available to families with income above the financial standards for Supplemental Security Income (SSI) benefits but less than 300 percent of the federal poverty level. In compliance with the directives of the Family Opportunity Act, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to implement a Medicaid buy-in program, known as the Family Opportunity Act Medicaid Program, to provide health care coverage to children with disabilities who are not eligible for SSI disability benefits due to excess income or resources. This action is being taken to secure enhanced federal revenue. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$2,077,906 for state fiscal year 2007-2008.

Effective October 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts provisions to implement a Medicaid buy-in program for children with disabilities.

### **Title 50**

## **PUBLIC HEALTH—MEDICAL ASSISTANCE**

### **Part III. Eligibility**

#### **Subpart 3. Eligibility Groups and Factors**

#### **Chapter 23. Eligibility Groups and Programs**

#### **§2303. Family Opportunity Act Medicaid Program**

A. The Family Opportunity Act, signed into law by Congress as part of the Deficit Reduction Act of 2005, allows states to offer a Medicaid buy-in program to families with income up to 300 percent of the Federal Poverty Level (FPL) for children with disabilities who are not eligible for Supplemental Security Income (SSI) disability benefits due to excess income or resources. The department hereby implements a Medicaid buy-in program called the Family Opportunity Act Medicaid Program to provide Medicaid coverage to children with disabilities.

B. Eligibility Requirements. Children born on or after October 1, 1995, and who meet the following requirements may receive health care coverage through the Family Opportunity Act Medicaid Program.

1. The child must have a disability which meets the Social Security Administration's childhood disability criteria.

2. Gross family income cannot exceed 300 percent of the federal poverty level (FPL) using the income methodologies of the SSI program.

a. For the purpose of determining family income, the family unit shall consist of the following members:

- i. child(ren) with disabilities;
- ii. natural or legal parent(s); and
- iii. siblings under age 19.

b. Step-parents and step-siblings are excluded from the income determination.

3. The child may be uninsured or underinsured.

a. Parents are required to enroll in available employer-sponsored health plans when the employer contributes at least 50 percent of the annual premium costs. Participation in such employer-sponsored health plans is a condition of continuing Medicaid coverage.

C. Children eligible under the Family Opportunity Act Medicaid Program shall receive coverage of medically necessary health care services provided under the Medicaid State Plan.

D. Premium Payments. Families with gross income above 200 percent, up to 300 percent of the FPL, are required to pay premiums for Medicaid coverage. Families with gross income up to 200 percent of the FPL are not required to pay premiums for Medicaid coverage.

1. The amounts paid for premiums for Medicaid-required family coverage and other cost-sharing may not exceed 5 percent of a family's income for families with income up to 200 percent of the FPL and 7.5 percent of a family's income for families with income above 200 percent of the FPL.

2. For families with gross income between 200 percent and 300 percent of the FPL, the premium amount for Medicaid is determined by whether the natural or legal parent(s) living in the household is paying for other creditable health insurance that covers the child(ren) with disabilities.

a. Families who have other creditable health insurance that provides coverage to the child(ren) with disabilities will pay a family Medicaid premium of \$15 per month.

b. Families who do not have other creditable health insurance that provides coverage to the child(ren) with disabilities will pay a family Medicaid premium of \$35 per month.

3. The first premium is due the month following the month that eligibility is established. Prepayment of premiums is not required. A child's eligibility for medical assistance will not terminate on the basis of failure to pay a premium until the failure to pay continues for at least 60 days from the date on which the premium was past due.

4. The premium may be waived in any case where it is determined that requiring a payment would create an undue hardship for the family. Undue hardships exist when a family:

a. is homeless or displaced due to a flood, fire, or natural disaster;

b. resides in an area where there is a presidential-declared emergency in effect;

c. presents a current notice of eviction or foreclosure; or

d. has other reasons as determined by the department.

5. Families whose eligibility has been terminated for non-payment of premiums must pay any outstanding premium balances for Medicaid-covered months before eligibility can be re-established, unless:

a. the liability has been canceled by the Bureau of Appeals or the Medicaid Recovery Unit; or

b. there has been a lapse in Medicaid coverage of at least 12 months.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

## Subpart 5. Financial Eligibility

### Chapter 103. Income

#### §10305. Income Disregards

A. For recipients in the Family Opportunity Act Medicaid Program, an income disregard of \$85 will be applied to total gross (earned and unearned) family income and then half of the remaining income will be disregarded.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0710#050

## DECLARATION OF EMERGENCY

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

#### Nursing Facilities—Evacuation and Temporary Sheltering Costs (LAC 50:VII.1319)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:VII.1319 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule to establish a prospective payment system for nursing facilities based on recipient care needs that incorporates acuity measurements as determined under the Resource Utilization Group III (RUG III) resident classification methodology (*Louisiana Register*, Volume 28, Number 8). The August 20, 2002 Rule was subsequently amended to adopt provisions governing a quarterly adjustment of individual nursing facility rates based on overall case mix and allow for the offset of installation costs for automatic fire sprinkler systems and two-hour rated walls in Medicaid-certified nursing facilities (*Louisiana Register*, Volume 32, Number 12).

Act 540 of the 2006 regular session of the Louisiana Legislature directed the department, in consultation with the

Governor's Office of Homeland Security, to adopt provisions governing emergency preparedness requirements for nursing facilities, including facility-specific reimbursement for documented and allowable evacuation and temporary sheltering costs of a Medicaid-certified nursing facility. In compliance with the directives of Act 540, the department by emergency rule adopted provisions governing the reimbursement methodology for nursing facilities to provide for the facility-specific reimbursement of evacuation and temporary sheltering costs of Medicaid-certified nursing facilities (*Louisiana Register*, Volume 33, Number 3). This Emergency Rule is being promulgated to continue the provisions of the March 20, 2006 Emergency Rule. This action is being taken to prevent imminent peril to the health and well-being of nursing facility residents who may be evacuated as a result of disasters or other emergencies.

Effective November 16, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part VII. Long Term Care Services**

##### **Subpart 1. Nursing Facilities**

#### **Chapter 13. Reimbursement**

##### **§1319. Evacuation and Temporary Sheltering Costs**

A. Nursing facilities required to participate in an evacuation, as directed by the appropriate parish or state official, or which act as a host shelter site may be entitled to reimbursement of its documented and allowable evacuation and temporary sheltering costs.

1. The expense incurred must be in excess of any existing or anticipated reimbursement from any other sources, including the Federal Emergency Management Agency (FEMA) or its successor.

2. Nursing facilities must first apply for evacuation or sheltering reimbursement from all other sources and request that the department apply for FEMA assistance on their behalf.

3. Nursing facilities must submit expense and reimbursement documentation directly related to the evacuation or temporary sheltering of Medicaid nursing home residents to the department.

B. Eligible Expenses. Expenses eligible for reimbursement must occur as a result of an evacuation and be reasonable, necessary, and proper. Eligible expenses are subject to audit at the department's discretion and may include the following.

1. Evacuation Expenses. Evacuation expenses include expenses from the date of evacuation to the date of arrival at a temporary shelter or another nursing facility. Evacuation expenses include:

a. resident transportation and lodging expenses during travel;

b. nursing staff expenses when accompanying residents, including:

i. transportation;

ii. lodging; and

iii. additional direct care expenses, when a direct care expense increase of 10 percent or more is documented:

(a). the direct care expense increase must be based on a comparison to the average of the previous two

pay periods or other period comparisons determined acceptable by the department;

c. any additional allowable costs as defined in the CMS Publication 15-1 that are directly related to the evacuation and that would normally be allowed under the nursing facility case-mix rate.

2. Non-Nursing Facility Temporary Sheltering Expenses. Non-nursing facility temporary sheltering expenses include expenses from the date the Medicaid residents arrive at a non-nursing facility temporary shelter to the date all Medicaid residents leave the shelter. A non-nursing facility temporary shelter includes shelters that are not part of a licensed nursing facility and are not billing for the residents under the Medicaid case-mix reimbursement system or any other Medicaid reimbursement system. Non-nursing facility temporary sheltering expenses may include:

a. additional nursing staff expenses including:

i. lodging; and

ii. additional direct care expenses, when a direct care expense increase of 10 percent or more is documented:

(a). the direct care expense increase must be based on a comparison to the average of the previous two pay periods or other period comparisons determined acceptable by the department;

b. care-related expenses as defined in the nursing facility case-mix rate system and incurred in excess of care-related expenses prior to the evacuation;

c. additional medically necessary equipment such as beds and portable ventilators that are not available from the evacuating nursing facility and are rented or purchased specifically for the temporary sheltered residents, and:

i. these expenses will be capped at a daily rental fee not to exceed the total purchase price of the item;

ii. the allowable daily rental fee will be determined by the department;

d. any additional allowable costs as defined in the CMS Publication 15-1 that are directly related to the temporary sheltering and that would normally be allowed under the nursing facility case-mix rate.

3. Host Nursing Facility Temporary Sheltering Expenses. Host nursing facility temporary sheltering expenses include expenses from the date the Medicaid residents are admitted to a licensed nursing facility to the date all temporary sheltered Medicaid residents are discharged from the nursing facility, not to exceed a six-month period.

a. The host nursing facility shall bill for the residents under Medicaid's case-mix reimbursement system.

b. Additional direct care expenses may be submitted when a direct care expense increase of 10 percent or more is documented.

i. The direct care expense increase must be based on a comparison to the average of the previous two pay periods or other period comparisons determined acceptable by the department.

#### **C. Payment of Eligible Expenses**

1. For payment purposes, total eligible Medicaid expenses will be the sum of non resident-specific eligible expenses multiplied by the facility's Medicaid occupancy percentage plus Medicaid resident-specific expenses.

a. If Medicaid occupancy is not easily verified using the evacuation resident listing, the Medicaid

occupancy from the most recently filed cost report will be used.

2. Payments shall be made as quarterly lump-sum payments until all eligible expenses have been submitted and paid. Eligible expense documentation must be submitted to the department by the end of each calendar quarter.

3. All eligible expenses documented and allowed under §1319 will be removed from allowable expense when the nursing facility's Medicaid cost report is filed. These expenses will not be included in the allowable cost used to set case-mix reimbursement rates in future years.

a. Equipment purchases that are reimbursed on a rental rate under §1319.B.2.c may have their remaining basis included as allowable cost on future costs reports provided that the equipment is in the nursing facility and being used. If the remaining basis requires capitalization under CMS Publication 15-1 guidelines, then depreciation will be recognized.

4. Payments shall remain under the upper payment limit cap for nursing facilities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0710#056

## **DECLARATION OF EMERGENCY**

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

Professional Services Program  
Physicians Services—Payment for Adjunct Services  
(LAC 50:IX.15121)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:IX.15121 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 18 of the 2007 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program to reimburse professional services providers who provide and report services rendered in settings other than hospital emergency departments during evening, weekend or holiday hours. In compliance with the directives of Act 18, the department now proposes to adopt provisions to allow for the reimbursement of an additional payment to professional services providers for services provided in settings other than hospital emergency departments during evening, weekend or holiday hours.

This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring recipient access to primary and urgent care that can be acquired in a setting other than hospital emergency departments. It is estimated that implementation of this Emergency Rule will increase expenditures for professional services by approximately \$3,475,832 for state fiscal year 2007-2008.

Effective for dates of service on or after October 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology governing professional services to adopt provisions establishing reimbursement for the payment of adjunct services when professional services are provided in a setting other than hospital emergency departments during evening, weekend or holiday hours.

### **Title 50**

## **PUBLIC HEALTH—MEDICAL ASSISTANCE**

### **Part IX. Professional Services Program**

#### **Subpart 15. Reimbursement**

#### **Chapter 151. Reimbursement Methodology**

##### **§15121. Payment for Adjunct Services**

A. Effective for dates of service on or after October 20, 2007, the Medicaid Program shall provide reimbursement for the payment of adjunct services in addition to the reimbursement for evaluation and management services and the associated ancillary services when these professional services are rendered in settings other than hospital emergency departments during evening, weekend or holiday hours.

B. The reimbursement for adjunct services is a flat fee in addition to the reimbursement for the associated evaluation and management and ancillary services.

C. Reimbursement is limited to services rendered between the hours of 5 p.m. and 8 a.m., Monday through Friday, on weekends and State legal holidays. Documentation relative to this reimbursement must include the time that the services were rendered.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Implementation of the provisions of this proposed Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0710#051

## DECLARATION OF EMERGENCY

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

#### Professional Services Program—Physician Services Reimbursement Methodology (LAC 50:IX.15103)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:IX.15103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Current Procedural Terminology (CPT) codes and Healthcare Common Procedure Coding System (HCPCS) codes. Act 17 of the 2006 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program to increase the Medicaid reimbursement rates paid to physicians. In compliance with the directives of Act 17, the Bureau promulgated a Rule to increase the reimbursement rates paid to physicians for services provided in the following service areas: 1) outpatient office evaluation and management services; 2) outpatient office consultation services; 3) emergency department services; 4) preventive medicine services; and 5) General/Integumentary System CPT codes (*Louisiana Register*, Volume 33, Number 12). Act 18 of the 2007 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program to adjust the Medicaid reimbursement rates paid for physician services. In compliance with Act 18, the bureau now proposes to amend the provisions contained in the December 20, 2003 and April 20, 2005 Rules governing the reimbursement methodology for physician services. In addition, the bureau proposes to repeal the provisions contained in the following Rule governing the reimbursement methodology for physician services: December 20, 2000; May 20, 2001; August 20, 2002; and February 20, 2007.

This action is being taken to promote the health and welfare of Medicaid recipients and to maintain access to physician services by encouraging the continued participation of providers in the Medicaid Program. It is

estimated that implementation of this Emergency Rule will increase expenditures for physician services by approximately \$50,250,000 for state fiscal year 2007-2008.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part IX. Professional Services Program

##### Subpart 15. Reimbursement

#### Chapter 151. Reimbursement Methodology

##### §15103. Physician Services

A. Effective for dates of service on or after October 15, 2007, the reimbursement for selected physician services shall be 90 percent of the 2007 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount, unless otherwise stipulated.

B. The reimbursement shall remain the same for those services that are currently being reimbursed at a rate that is between 90 percent and 120 percent of the 2007 Louisiana Medicare Region 99 allowable.

C. For those services that are currently reimbursed at a rate above 120 percent of the 2007 Louisiana Medicare Region 99 allowable, effective for dates of service on or after October 15, 2007, the reimbursement for these services shall be reduced to 120 percent of the 2007 Louisiana Medicare Region 99 allowable.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0710#048

## DECLARATION OF EMERGENCY

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

#### Rural Health Clinics—Reimbursement Methodology Payment for Adjunct Services (LAC 50:XI.16703)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XI.16703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing services, provider participation and reimbursement methodology for rural health clinics (*Louisiana Register*, Volume 32, Number 12). Act 18 of the 2007 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program to reimburse professional services providers, including rural health clinics, who provide and report services rendered in settings other than hospital emergency departments during evening, weekend or holiday hours. In compliance with the directives of Act 18, the department now proposes to adopt provisions to allow for the reimbursement of an additional payment to rural health clinics for professional services provided in settings other than hospital emergency departments during evening, weekend or holiday hours.

This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring recipient access to primary and urgent care that can be acquired in a setting other than hospital emergency departments. It is estimated that implementation of this Emergency Rule will increase expenditures for professional services by approximately \$293,676 for state fiscal year 2007-2008.

Effective for dates of service on or after October 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology governing rural health clinics to adopt provisions establishing reimbursement for the payment of adjunct services when professional services are provided in a setting other than hospital emergency departments during evening, weekend or holiday hours.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XI. Clinic Services**

#### **Subpart 15. Rural Health Clinics**

#### **Chapter 167. Reimbursement Methodology**

#### **§16703. Payment for Adjunct Services**

A. Effective for dates of service on or after October 20, 2007, the Medicaid Program shall provide reimbursement for the payment of adjunct services in addition to the encounter rate paid for professional services provided by rural health clinics when these professional services are rendered during evening, weekend or holiday hours.

1. A payment for adjunct services is not allowed when the encounter is for dental services only.

B. The reimbursement for adjunct services is a flat fee in addition to the reimbursement for the associated office encounter.

C. Reimbursement is limited to services rendered between the hours of 5 p.m. and 8 a.m., Monday through Friday, on weekends and State legal holidays. Documentation relative to this reimbursement must include the time that the services were rendered.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Implementation of the provisions of this proposed Rule shall be contingent upon the approval of the U.S.

Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0710#053

### **DECLARATION OF EMERGENCY**

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

Targeted Case Management  
Nurse Family Partnership Program  
(LAC 50:XV.11101-11103)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50.XV.11101-11103 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing clarified the provisions governing the Nurse Family Partnership (NFP) Program by adopting all existing Rules in codified format in Title 50 of the *Louisiana Administrative Code* (*Louisiana Register*, Volume 30, Number 5). The Nurse Family Partnership Program provides case management services to a targeted population group composed of first-time mothers in certain Department of Health and Hospitals (DHH) administrative regions. The bureau amended the May 20, 2004 Rule to expand the DHH administrative regions served and to amend the eligibility criteria and staffing qualifications (*Louisiana Register*, Volume 31, Number 8). The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) has provided clarification that eligibility for targeted case management services is not transferable between target groups. In compliance with the CMS directive, the bureau amended the August 20, 2005 Rule to clarify that the first-time mother continues to be the focus of the NFP Program after the birth of the child (*Louisiana Register*, Volume 32, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 20, 2006 Emergency Rule. This action is being taken to avoid federal sanctions.

Effective November 16, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the August 20, 2005 Rule addressing the program description and recipient qualifications in the Nurse Family Partnership Program.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part XV. Services for Special Populations**  
**Subpart 7. Targeted Case Management**  
**Chapter 111. Nurse Family Partnership Program**

**§11101. Introduction**

A. Nurse Family Partnership (NFP) targeted case management is a prenatal program designed to improve the health and social functioning of Medicaid eligible first-time mothers and their babies.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services LR 30:1041 (May 2004), amended LR 31:2028 (August 2005), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 33:

**§11103. Recipient Qualifications**

A. A Medicaid recipient must not be beyond the twenty-eighth week of pregnancy and must attest that she meets one of the following definitions of a first-time mother in order to receive NFP case management services. The recipient:

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

C. Nurse Family Partnership case management services to the mother may continue up to two years after the birth of the child.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services LR 30:1041 (May 2004), amended LR 31:2028 (August 2005), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 33:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Roxane A. Townsend, M.D.  
Secretary

0710#055

**DECLARATION OF EMERGENCY**

**Department of Insurance**  
**Office of the Commissioner**

Regulation 82—Insure Louisiana Incentive Program  
(LAC 37:XIII.Chapter 123)

The Department of Insurance (Department) hereby exercises the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., adopts Emergency Rule 82 which is necessary to create standards,

guidelines, and procedures pertaining to property insurers' participation in the Insure Louisiana Incentive Program. Emergency Rule 82 establishes, among other provisions, the eligibility, application, award, disbursement and reporting process under the Insure Louisiana Incentive Program. Emergency Rule 82 shall be effective October 1, 2007, and unless extended, it shall remain in effect for a period of 120 days or until adoption of the final Regulation 82 through the normal rulemaking process, whichever occurs first.

Emergency action is necessary due the demand for affordable and available property insurance caused by Hurricane Katrina and Hurricane Rita. The state of Louisiana experienced catastrophic effects from these hurricanes. As a result, the state of Louisiana is currently experiencing a crisis in the availability and affordability of property insurance. Many insurers have reduced their participation in the voluntary market for residential and commercial property insurance thereby placing property insurance at risk for being unaffordable and unavailable in this state. Such reduction has led to a decline in competitive insurance rates among insurance companies, higher premiums for property owners, and assessments for both insurers and property owners. Property owners who cannot afford the increased premiums and assessments may be forced to seek coverage from the Louisiana Citizens Property Insurance Corporation (Citizens) for their insurance needs which may expose Citizens to additional financial deficits and assessments.

Acts 2007, No. 447 establishes the Insure Louisiana Incentive Program and directs the Commissioner of Insurance (commissioner) to adopt provisions relative to its implementation. It further creates the Insure Louisiana Incentive Program Fund and authorizes the commissioner to grant matching capital funds to qualified insurers participating in the Insure Louisiana Incentive Program. In compliance with the directives of Acts 2007, No. 447, the department now proposes to implement the application and grant process to gather information needed in order to expedite the award and allocation of grants. Since funds have been appropriated by the legislature for the Insure Louisiana Incentive Program and are available to begin disbursements to qualified property insurers on or after January 1, 2008, it is necessary that this Rule is adopted on an emergency basis in order to begin accepting and processing grant applications without further delay. Failure to adopt this Rule on an emergency basis would result in a delay in the implementation process which further delays the availability and affordability of insurance to property owners of this state. Moreover, rapid implementation of Acts 2007, No. 447 will allow the Insure Louisiana Incentive Program to begin immediately thereby enhancing economic growth and allowing qualified property insurers to act more quickly in response to the market demands and conditions.

The department has an interest in protecting the citizens of this state. Due to the lack of affordable and available property insurance and in order to maintain and strengthen the viability of this state's insurance market, there is an emergent need to have standards and procedures in place as soon as possible for insurers to utilize in the application and grant process so that these insurers may provide Louisiana citizens with the property coverage they need in order to avoid the imminent peril that would result from a property



loss due to a hurricane or other natural disaster. Therefore, the immediate implementation of Emergency Rule 82 is being taken to avoid the imminent threat to, as well as to promote the health, safety, and welfare of the citizens of the state of Louisiana prior to adoption of the final Regulation 82 through the regular rulemaking process.

Emergency Rule 82 is available on the internet at [www.lti.state.la.us](http://www.lti.state.la.us) and is available for inspection between the hours of 8 a.m. until 4:30 p.m. at the Louisiana Department of Insurance, 1702 N. Third Street, Baton Rouge, LA 70802.

**Title 37**  
**INSURANCE**

**PART XIII. Regulations**

**Chapter 123. Regulation 82—Insure Louisiana Incentive Program**

**§12301. Purpose**

A. The purpose and intent of Regulation 82 is to exercise the authority and carry out the duties and responsibilities of the Commissioner of Insurance for implementation and regulation of the Insure Louisiana Incentive Program, hereinafter referred to as the "Incentive Program." Regulation 82 sets forth rules and procedural requirements which the Commissioner of Insurance deems necessary for participation in the Incentive Program by qualified property insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

**§12303. Authority**

A. Regulation 82 is promulgated pursuant to the authority and responsibility delegated to the Commissioner of Insurance under R.S. 22:3301-3311 and pursuant to the general powers granted by law to the commissioner and the Department of Insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

**§12305. Applicability and Scope**

A. Regulation 82 applies to all property insurers with respect to their qualification and participation in the Incentive Program.

B. Regulation 82 governs all aspects of the Incentive Program including, but not limited to, the application process for grants, the qualifications of grantees, the award of grants, the use of grant funds, the reporting requirements for grantees, the requirements for matching capital funds, the requirements for minimum capital and surplus, the requirements for earned capital and other regulation and administration of the Incentive Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

**§12307. Definitions**

A. For the purposes of Regulation 82, the following terms shall have the meaning or definition as indicated herein.

*Approved Unauthorized Insurer*—an insurer without a certificate of authority, or otherwise qualified under the provisions of Title 22, and which is on the list of approved unauthorized insurers under the provisions of R.S. 22:1262.1, and from which a licensed surplus lines broker may procure insurance under the provisions of R.S. 22:1257.

*Commissioner*—the Commissioner of Insurance of the state of Louisiana.

*Department*—the Department of Insurance of the state of Louisiana.

*Domestic Insurer*—an insurer formed under the laws of the state of Louisiana that has been authorized by the department to sell insurance products in the state of Louisiana.

*Grantee*—a property insurer to whom a grant is made from the Incentive Program Fund.

*Incentive Program* (where capitalized)—the Insure Louisiana Incentive Program as created, authorized and administered pursuant to R.S. 22:3301 et seq., and Regulation 82.

*Incentive Program Fund* (where capitalized)—the Insure Louisiana Incentive Program Fund established and created pursuant to R.S. 22:3311 and Regulation 82.

*Net Written Premiums*—the total premiums, exclusive of assessments and other charges, paid by policyholders to an insurer for policies that comply with Regulation 82, minus any return premiums or other premium credits due policyholders, as defined in R.S. 22:3309(A).

*Non-Admitted Insurer*—an insurer that has not been licensed by the department to sell insurance products in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

**§12309. Matching Capital Grants**

A. From funds appropriated by the legislature for the Incentive Program Fund established and created in the state treasury under R.S. 22:3311, the commissioner may grant matching capital funds to qualified property insurers in accordance with the requirements of R.S. 22:3301 through 3311 and Regulation 82.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

**§12311. Public Invitation for Grant Applications**

A. Pursuant to R.S. 22:3301 et seq., and Regulation 82, the commissioner shall issue an initial public invitation to property insurers to submit applications for grants under the Incentive Program.

B. The invitation shall be published for at least a 30-day period on the department's web site and in state and national insurance journals and publications as the commissioner deems appropriate.

C. The invitation shall describe the Incentive Program and provide general information about the grant application process.

D. The invitation shall set a deadline for receipt of grant applications. All grant applications should be submitted to

the department either by certified mail, return receipt requested, or actual delivery by a commercial interstate courier. Failure to timely submit a grant application may render the insurer ineligible to participate in the Incentive Program. However, for good cause shown, the commissioner may extend the deadline and consider applications received after the deadline or give an insurer the opportunity to cure a non-substantive deficiency in the application.

E. In the event that all monies in the Incentive Program Fund are not allocated in response to the first invitation, the commissioner shall issue a second invitation for grant applications in the form and pursuant to the procedures utilized for the first invitation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

### **§12313. Applications**

A. The department shall prepare an application form to be fully completed by grant applicants. The application form may be revised by the department as it deems appropriate.

B. The grant application shall require the property insurer to designate a point of contact with a telephone number and physical address to represent the property insurer on all matters pertaining to the grant process and the Incentive Program.

C. The grant application shall be filed contemporaneously with the application for licensure with the department by a non-admitted insurer. The application for licensure expresses the applicant's intent to become licensed in this state and, if specifically requested in writing by the grant applicant in the application for licensure, will be processed contingent upon approval of the allocation of a grant award.

D. Only fully completed grant applications or those deemed acceptable by the commissioner shall be considered for a grant award.

E. The grant application, whether completed by an admitted or non-admitted insurer, shall be submitted to the department's Office of Financial Solvency.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

### **§12315. Qualifications for Applying for Grant Funds**

A. Minimum Solvency Requirements. Grants shall be made only to property insurers who initially satisfy and thereafter maintain the following minimum solvency requirements:

1. capital and surplus in an amount not less than \$25 million;
2. A.M. Best rating of B++ or better or an equivalent rating by a nationally recognized rating service;
3. risk-based capital ratio of 500 percent; and
4. sufficient reinsurance to demonstrate that its reinsurance program is sufficient for the amount of business to be written pursuant to the Incentive Program.

B. Certificate of Authority

1. A property insurer must have an existing certificate of authority in Louisiana for the line or lines of insurance which the insurer applicant will write pursuant to the

Incentive Program or documentation that an application for such licensure has been filed with the Company Licensing Division of the department contemporaneous with the filing of the grant application.

C. Satisfactory Prior Experience

1. Grants shall be made only to property insurers with satisfactory prior experience in writing property insurance or to new property insurers whose management has satisfactory experience in property insurance. The grant application shall accurately disclose the prior experience of property insurers and their management. The commissioner may request additional information from the applicant insurer and conduct such investigation of prior experience as the commissioner deems appropriate.

2. The commissioner shall determine whether an applicant insurer has adequate or satisfactory prior experience.

D. Other Requirements

1. Applicant shall maintain premium to surplus ratio no greater than 4 to 1 pursuant to R.S. 22:891.1.A.

2. Applicant shall not insure more than 10 percent of its surplus in any one risk pursuant to R.S. 22:1470.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

### **§12317. Award and Allocation of Grants**

A. Subject to the requirements of this Section, the commissioner shall award and allocate grants among qualified property insurers who have applied for grants as the commissioner deems appropriate to carry out the purpose and intent of the Incentive Program. The commissioner has the discretion to create an advisory committee to assist in the analysis of grant applications. If created, the advisory committee will be composed of up to seven members, designated to serve thereon by the commissioner.

B. The factors considered in awarding grants shall include, but are not limited to, the following:

1. the financial strength and satisfactory prior experience of the applicant;
2. the ability of the applicant to invest new capital and to comply with the other requirements of the grant;
3. the potential of the applicant for providing property insurance as required by the Incentive Program at reasonable and competitive costs, particularly for property owners in the Louisiana parishes included in the federal Gulf Opportunity Zone Act of 2005. The current 37 parishes in the Gulf Opportunity Zone are Acadia, Allen, Ascension, Assumption, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, West Baton Rouge, and West Feliciana. These parishes may be subject to change by subsequent legislation;
4. the marketing and claims handling capability and experience of the applicant, and particularly its ability to market property insurance in areas affected by Hurricane Katrina and Hurricane Rita and to handle future claims that may arise;

5. the applicant's longevity in the Incentive Program including a statement or plan of operation by the applicant demonstrating its intent to remain in this state following the completion of the Incentive Program;

6. the current licensure of the applicant where preference and priority will be given to those admitted insurers that are currently licensed to do business in this state for the line or lines of business that are the subject of the grant; and

7. any other factors that the commissioner deems applicable, relevant and appropriate in carrying out the purpose and intent of the Incentive Program.

C. For grant applications in response to the initial invitation, the commissioner shall not allocate individual grants less than \$2 million nor in excess of \$10 million.

D. For the initial allocation of grants only, the commissioner shall allocate at least 20 percent of the total amount available for grants to domestic insurers unless the commissioner has not received sufficient applications from qualified domestic insurers to allocate such sum.

E. If the commissioner issues a second invitation for grant application, the commissioner shall not allocate individual grants less than \$2 million nor in excess of \$10 million. Insurers who have been allocated a grant in response to the first invitation may apply for and receive an additional grant, provided the total of the grants to an insurer does not exceed \$10 million.

F. In no event shall the total amount of the grant to an insurer exceed 20 percent of that insurer's capital and surplus as reported to and verified by the department.

G. Prior to the award of a grant, such grant shall be subject to the review and approval of the Joint Legislative Committee on the Budget. The commissioner shall provide written notice to the committee of the grant awards that have been approved. Upon written approval by the committee, the commissioner will be authorized to award the grant and deliver the amount of the grant to the grantee from monies in the Incentive Program Fund.

H. In the event that monies remain in the Incentive Program Fund after allocations pursuant to the second invitation, the commissioner shall cause all remaining monies to be returned to the state general fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

#### **§12319. Authorized Insurers**

A. A non-admitted insurer, including an approved unauthorized insurer, may apply for a grant, provided that the non-admitted insurer shall, contemporaneously with the grant application, file an application for licensure with the department for the line or lines of insurance for which the non-admitted insurer, including an approved unauthorized insurer, must be authorized and licensed to write for a grant award. If specifically requested in writing by the grant applicant in the application for licensure, such application will be processed contingent upon approval of a grant award.

B. A non-admitted insurer, including an approved unauthorized insurer, must become admitted and licensed to do business in Louisiana before it may actually receive grant funding.

C. If the non-admitted insurer does not apply timely to be admitted or subsequently is not approved as an admitted and licensed insurer, the non-admitted insurer shall not be entitled to receive a grant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

#### **§12321. Matching Capital Requirements**

A. To be eligible for a grant, the insurer shall make a commitment of capital at least equal to the amount of the grant to write property insurance in Louisiana that complies with the requirements of R.S. 22:3309 and §12323 of Regulation 82. Grants from the Incentive Program Fund must be matched by such newly allocated insurer capital at a ratio of at least \$1 of allocated insurer capital funds for each dollar of state capital grant funds.

B. Within 10 days of receipt of any Incentive Program Funds, the insurer shall provide to the commissioner written certification signed by two principal officers of the grantee that the Incentive Program Funds have been deposited in an account held in the name of the insurer applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

#### **§12323. Property Insurance Requirements**

A. The grantee shall write new property insurance in Louisiana of the types described in R.S. 22:3309 and this Section of Regulation 82 with net written premiums of at least a ratio of \$2 of premium for each \$1 of the total of newly allocated insurer capital combined with the grant from the Incentive Program Fund. Thus, if the insurer allocates \$2 million in capital and receives a matching state grant of \$2 million, the insurer must write property insurance in Louisiana with net written premiums of at least \$8 million.

B. To comply with the requirements of the grant, the new property insurance written by the grantee shall be residential, commercial, mono-line, or package property insurance policies in Louisiana and must include coverage for wind and hail with limits equal to the limits provided for other perils insured under such policies.

C. The net written premium requirements of this Section will be satisfied only by new property insurance coverages reported on the annual statement state page filed with the department under lines 1 (Fire), 2.1 (Allied Lines), 3 (Farmowners), 4 (Homeowners), or 5.1 (Commercial Multi-peril Non-liability).

D. Grantees shall also comply with the following.

1. By the end of the second year after receipt of the grant and in each succeeding year, the grantee shall maintain at least 25 percent of the net written premiums for policyholders whose property was formerly insured by the Louisiana Citizens Property Insurance Corporation. At least 50 percent of such policyholders insured by the Louisiana Citizens Property Insurance Corporation shall be located in the parishes included in the federal Gulf Opportunity Zone Act of 2005.

2. By the end of the second year after receipt of the grant and in each succeeding year, the grantee shall write at

least 50 percent of the net written premiums for policyholders whose insured property is located in Louisiana in a parish included in the federal Gulf Opportunity Zone Act of 2005.

3. The grantee must comply with the requirements of both §12323.D.1 and 2 by the end of the second year and must continue to comply with all requirements in each of the succeeding years of the grant unless an extension has been granted by the commissioner under R.S. 22:3310.B or §12331.C of Regulation 82.

4. The requirements of §12323.D.1 and 2 apply separately, but net written premiums from policyholders formerly insured by the Louisiana Citizens Property Insurance Corporation with property in the federal Gulf Opportunity Zone used to comply with Paragraph D.1 may also be used to comply with Paragraph D.2.

5. The net written premium ratios of §12323.D.1 and 2 apply only to the net minimum premium required under §12323.A. Thus the grantee may write additional Louisiana property coverage without regard to ratios required by §12323.D.1 and 2.

E. The requirements of the grant that must be satisfied by the grantee are illustrated by the following example assuming a grant of \$2 million.

1. Example

a. The applicant is awarded a \$2 million grant. Within 10 days of receipt of the grant of Incentive Program Funds, the applicant must match the grant with newly allocated capital funds of at least \$2 million and provide written certification of compliance to the department. By the end of the second year after receipt of the grant, the grantee must write property insurance in Louisiana with net written premiums of at least \$8 million. At least \$2 million of the \$8 million of net written premiums must be written for policyholders whose property was formerly insured by the Louisiana Citizens Property Insurance Corporation and at least \$1 million of that premium must be from policyholders whose insured property is located in Louisiana in a parish included in the federal Gulf Opportunity Zone of 2005. By the end of the second year after receipt of the grant, the grantee must write at least \$4 million of the net written premiums for policyholders whose insured property is located in Louisiana in a parish included in the federal Gulf Opportunity Zone of 2005. By the end of the second year and for each of the succeeding years of the grant, the grantee must maintain net written premiums that comply with all of the requirements set forth above. Compliance with the requirements for the second year and each succeeding year must be demonstrated on the grantee's annual reports.

F. Applicants shall also satisfy the requirements for licensing, form filings, rate filings, and any other applicable provisions contained in Title 22.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

**§12325. Earned Capital**

A. An insurer who has received a grant is entitled to earn the grant at the rate of 20 percent per year for each year in which the insurer is in compliance with the requirements of R.S. 22:3301 et seq., and Regulation 82, so that the insurer

can earn the entire grant after five years of full compliance with the requirements.

B. The grantee may begin to earn the grant from the reporting period in which the grantee first demonstrates that its net written premiums have reached compliance with all requirements of both §12323.D.1 and 2. The grantee will earn 20 percent of the grant in each 12 month period thereafter in which the grantee demonstrates that it has maintained compliance with all requirements for net written premiums. Thus, if in compliance with §12323.D.1 and 2, the grantee may begin to earn the grant at the end of the first year.

C. Upon receipt of satisfactory documentation of full compliance with the net written premium requirements during the preceding 12 months, the commissioner will issue written declaration that the grantee has earned 20 percent of the grant awarded to the grantee. No funds may be earned by the grantee until it receives official notification from the commissioner certifying that the requirements of the program have been met.

D. If the grantee does not meet the grant requirements during any year but shows promise of future compliance based on good cause having been demonstrated, the commissioner may extend the period of time from five years in order for the grantor to earn the entire grant. The extension may be granted for up to one year. Such grantee shall not be entitled to earn the Incentive Program Funds (i.e., 20 percent of the grant award) for that year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

**§12327. Funding Schedule**

A. Unless requested by the grantee and authorized by the commissioner, a grant that has been fully approved shall be funded on the next regular quarterly period thereafter, i.e., January 1, April 1, July 1, or October 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

**§12329. Reporting Requirements**

A. Grantee shall segregate and report any grants received on the line titled "Aggregate Write-In for Special Surplus Funds" in the NAIC Annual and Quarterly Statement Blanks.

B. Grantee shall report annually by March 1 of each year on a form acceptable to the commissioner the following information:

1. the amount of premium written under the program;
2. the amount of premium associated with policies for which the Louisiana Citizens Property Insurance Corporation was the immediate previous insurer;
3. the amount of premium associated with properties located in the Federal Gulf Opportunity Zone Act of 2005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

**§12331. Compliance**

A. The commissioner shall conduct an examination

and/or investigation annually, or more often as the commissioner deems necessary to determine the grantee's compliance with the requirements of the grant, as per R.S. 22:3301 et seq., and Regulation 82. Any examination or investigation shall be performed pursuant to R.S. 22:1301 et seq. In addition to the requirements of R.S. 22:1301 et seq., the department may require such reports and/or conduct such examinations or investigations as the commissioner deems necessary to verify compliance with the property insurance requirements set forth in the Incentive Program and Regulation 82.

B. If the commissioner determines that a grantee has complied with the terms of the grant, the commissioner shall notify the grantee in writing that the grantee has earned the 20 percent portion of the grant pursuant to R.S. 22:3310.

C. If the commissioner determines that the grantee shows promise of future compliance, the commissioner may grant an extension of not more than one year to a grantee insurer who has failed to satisfy all requirements of the grant. Such grantee shall not be entitled to receipt of Incentive Program Funds for that year, until full compliance is achieved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

#### **§12333. Declaration of Default**

A. The commissioner may declare an insurer in default of the requirements for a grant should he find any of the following exists.

1. The insurer fails at any time to meet the specific minimum requirements of §12315.A.1-4.

2. The insurer fails to maintain a certificate of authority for the line or lines of insurance written pursuant to the grant program.

3. The insurer fails to meet the specific requirements of §12323.

4. The insurer fails to comply with any other applicable provisions of R.S. 22:3301 et seq., or Regulation 82.

B. If the commissioner determines that a grantee has failed to satisfy one or more of the requirements of the grant and that an extension will not be granted, the commissioner may declare the grantee in default. The commissioner shall notify the grantee in writing that the grantee is in default. Any grantee declared in default by the commissioner shall have 30 days from the date of the declaration of default to request reconsideration by the commissioner. The written request for reconsideration shall set forth, in detail, each and every reason why the grantee is entitled to the relief requested, including any documents tendered in support thereof. The commissioner shall have 30 days from the mailing of the request for reconsideration to review it and render a decision. The commissioner's decision upon reconsideration is final. Unless modified on reconsideration, the default is effective from the date of the original declaration.

C. The grantee in default is liable for and shall repay all grant funds that have not been earned by the grantee, plus legal interest from date of the commissioner's default declaration. If a request for reconsideration is not timely made, repayment is due upon the expiration of 30 days from

the declaration of default. If a request for reconsideration is timely made and denied, repayment is due within 10 days of the denial of the reconsideration request.

D. The commissioner may institute legal action to recover all sums due by the grantee in default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

#### **§12335. Cooperative Endeavor Agreements**

A. In furtherance of R.S. 22:3301 et seq., and in accordance with R.S. 22:3303.A, the grantee shall execute a cooperative endeavor agreement with and in a form prescribed by the commissioner subject to approval by the Office of Contractual Review of the Division of Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

#### **§12337. Severability**

A. If any provision of Regulation 82 or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of Regulation 82 which can be given effect without the invalid provision or application, and to that end, the provisions of Regulation 82 are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

#### **§12339. Effective Date**

A. Regulation 82 shall become effective on the date of the publication of the final rule in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

James J. Donelon  
Commissioner

0710#012

### **DECLARATION OF EMERGENCY**

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

TANF—Jobs for America's Graduates Louisiana  
(JAGS-LA) Program (LAC 67:III.5591)

The Department of Social Services, Office of Family Support, has exercised the emergency provision in accordance with R.S. 49:953(B), the Administrative Procedure Act to adopt LAC 67:III:5591, Jobs for America's Graduates Louisiana (JAGS-LA) Program as a new TANF initiative. This Emergency Rule effective October 29, 2007, will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective July 1, 2007, since it is effective for a maximum of 120 days and will expire before the final Rule

takes effect. (The final Rule will be published in the November 2007 issue of the *Louisiana Register*.)

Pursuant to House Bill 1 of the 2007 Regular Session of the Louisiana Legislature, the agency is adopting the JAGS-LA Program to keep in school those students at risk of failing in school, to capture out-of-school youth in need of a high school education, to provide an avenue for achieving academically, and to assist students in ultimately earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.

The authorization for emergency action in this matter is contained in House Bill 1 of the 2007 Regular Session of the Louisiana Legislature.

**Title 67**  
**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 15. Temporary Assistance to Needy Families  
(TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5591. Jobs for America's Graduates Louisiana  
(JAGS-LA) Program**

A. Effective July 1, 2007, the Office of Family Support shall enter into a Memorandum of Understanding with the Department of Education for the Jobs for America's Graduates Louisiana (JAGS-LA) Program.

B. These services meet the TANF goal to prevent and reduce the incidence of out of wedlock births by providing intervention and improved life prospects for students who show evidence of failing, dropping out or engaging in negative behaviors that can lead to dependency, out-of-wedlock births, imprisonment, etc.

C. Eligibility for services is not limited to needy families, however eligible participants in the JAG-LA Program shall be 15-21 years of age and must face at least two designated barriers to success that include economic, academic, personal, environmental, or work related barriers.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; House Bill 1, 2007 Reg. Session.

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

Ann Silverberg Williamson  
Secretary

0710#043

**DECLARATION OF EMERGENCY**

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

TANF—Nurse Family Partnership (NFP) Program  
(LAC 67:III.5593)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to adopt LAC 67:III, Subpart 15, Nurse Family Partnership (NFP) Program as a new TANF Initiative. This Emergency Rule, effective October 1, 2007, will remain in effect for a period of 120 days.

Pursuant to Act 18 of the 2007 Regular Session of the Louisiana Legislature, the agency is adopting the Nurse Family Partnership (NFP) Program to serve low-income, first-time mothers by providing nurse home visitation services beginning early in pregnancy and continuing through the first two years of the child's life. First time mothers may enroll as early as possible during their pregnancy, through week 28 of their pregnancy. The goals of the program include but are not limited to improving the child's health and development and increasing the economic self-sufficiency for eligible participants. Examples of the activities used to achieve these goals include, but are not limited to, engaging in activities centered on child development, parenting skills, developing a plan to continue the mother's education, and assisting the mother in finding employment.

The authorization for emergency action in this matter is contained in Act 18 of the 2007 Regular Session of the Louisiana Legislature.

**Title 67**  
**SOCIAL SERVICES**

**Part III. Family Support**

**Subpart 15. Temporary Assistance to Needy Families  
(TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5593. Nurse Family Partnership (NFP) Program**

A. Effective October 1, 2007, the Office of Family Support shall enter into a Memorandum of Understanding with the Louisiana Office of Public Health, Maternal and Child Health Program to serve low-income, first-time mothers by providing nurse home visitation services beginning early in pregnancy and continuing through the first two years of the child's life. First time mothers may enroll as early as possible during their pregnancy, through week 28 of their pregnancy. The goals of the program include, but are not limited to, improving child health and development and increasing the economic self-sufficiency for eligible participants. Examples of the activities used to achieve these goals include, but are not limited to, engaging in activities centered on child development, parenting skills, developing a plan to continue the mother's education, and assisting the mother in finding employment.

B. These services meet TANF goals 1 thru 4:

1. Goal 1—to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

2. Goal 2—to end dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

3. Goal 3—to prevent and reduce the incidence of out-of-wedlock pregnancies; and

4. Goal 4—to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is limited to needy first time mothers. Eligible participants in the NFP Program shall be first-time mothers who are no more than 28 weeks pregnant at the time of enrollment and who are at or below 200 percent of poverty.

D. Services are considered non-assistance by the agency in that they are not considered to meet an on-going basic need.

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 18, 2007 Reg. Session.

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

Ann Silverberg Williamson  
Secretary

0710#015

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Large Coastal Shark Commercial Season Closure**

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department by the commission in its Rule LAC 76:VII.357.M.2 which allows the secretary to declare a closed season when he is informed that the commercial large coastal shark seasonal quota for that species group and fishery has been met in the Gulf of Mexico, and that such closure order shall close the season until the date projected for the re-opening of that fishery in the adjacent federal waters, the Secretary of the Department of Wildlife and Fisheries hereby declares:

Effective 11:30 p.m., September 22, 2007, the commercial fishery for large coastal sharks in Louisiana waters, as described in LAC 76:VII.357.B.2, (great hammerhead, scalloped hammerhead, smooth hammerhead, nurse shark, blacktip shark, bull shark, lemon shark, sandbar shark, silky shark, spinner shark and tiger shark) will close until 12:01 a.m., January 1, 2008. Nothing herein shall preclude the legal harvest of large coastal sharks by legally licensed recreational fishermen during the open season for recreational harvest. Effective with this closure, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell or attempt to purchase, exchange, barter, trade or sell large coastal sharks or fins thereof, whether taken from within or without Louisiana waters. Also effective with the closure, no person shall possess large coastal sharks in excess of a daily bag limit whether taken from within or without Louisiana waters, which may only be in possession during the open recreational season. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure provided that all commercial dealers possessing large coastal sharks taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The secretary has been notified by the National Marine Fisheries Service that the subquota for large coastal sharks has been exceeded, and that the season closure is necessary to ensure that the established quotas are not further exceeded.

Bryant O. Hammett, Jr.  
Secretary

0710#001

# Rules

## RULE

### Department of Economic Development Office of the Secretary Office of Business Development

#### Small and Emerging Business Development Program (LAC 19:II.105-115)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Economic Development, Office of Business Development, has amended its existing rules and regulations relative to its Small and Emerging Business Development Program. This action complies with the statutory law administered by the agency, as authorized by R.S. 51:941 et seq.

The department has amended §§105 through 115 of Chapter 1. The amendments change the definition of a small and emerging business by changing the percentage ownership and net worth requirements; provide that an application must be submitted on-line through the department's website; and increases the duration of certification from 7 to 10 years.

#### Title 19

#### CORPORATIONS AND BUSINESS

#### Part II. Small and Emerging Business Development Program

#### Chapter 1. General Provisions

#### §105. Definitions

A. When used in these regulations, the following terms shall have meanings as set forth below.

\*\*\*

*Full-Time*—working in the firm at least 20 hours per week.

\*\*\*

*Small and Emerging Business (SEB)*—a small business organized for profit and performing a commercially useful function which is at least 51 percent owned and controlled by one or more small and emerging business persons and which has its principal place of business in Louisiana. A nonprofit organization is not a small and emerging business for purposes of this Chapter.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), amended by the Department of Economic Development, Office of Business Development, LR 29:542 (April 2003), LR 30:753 (April 2004), LR 33:2030 (October 2007).

#### §107. Eligibility Requirements for Certification

A. ...

B. - B.2. ...

3. Net Worth. The person's net worth may not exceed \$400,000. The market value of the individual owner's

personal residence, 401K, IRA, and other legal retirement funds will be excluded from the net worth calculation.

C. Small and Emerging Business

1. Ownership and Control. At least 51 percent of the company must be owned and controlled by one or more small and emerging business persons.

2. - 3. ...

4. Business Net Worth. The business' net worth at the time of application may not exceed \$1,500,000.

5. Full Time. Managing owners who claim small and emerging business person status must work a minimum of 20 hours per week in the applicant firm.

6. Job Creation. An applicant firm anticipates creating new full-time jobs.

D. Requirement for Certification. Must have an e-mail address and appropriately complete the on-line application located at [www.ledsmallbiz.com](http://www.ledsmallbiz.com).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), LR 25:1084 (June 1999), LR 26:1572 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:542 (April 2003), LR 30:754 (April 2004), LR 33:2030 (October 2007).

#### §109. Control and Management

A. ...

1. The small and emerging business person(s) upon whom eligibility is based shall control the board of directors of the firm, either in actual numbers of voting directors or through weighted voting. In the case of a two-person board of directors where one individual on the board is a small and emerging business person and one is not, the formers vote must be weighted by share ownership, worth more than one vote to achieve a minimum of 51 percent control, in order for the firm to be eligible for the program. This does not preclude the appointment of nonvoting or honorary directors. All arrangements regarding the structure and voting rights of the board must comply with state law and with the firm's articles of incorporation and/or bylaws.

A.2. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:51 (January 1997), amended by the Department of Economic Development, Office of Business Development, LR 29:543 (April 2003), LR 30:754 (April 2004), LR 33:2030 (October 2007).

#### §111. Responsibility for Applying

A. ...

B. Certification in the SEBD Program is accomplished on-line at [www.ledsmallbiz.com](http://www.ledsmallbiz.com). Applicants must have an e-mail address to become certified in the SEBD Program.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.



HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended by the Department of Economic Development, Office of Business Development, LR 29:543 (April 2003), LR 30:755 (April 2004), LR 33:2030 (October 2007).

**§113. Certification Application Procedure**

A. Applicant completes and submits an on-line application at [www.ledsmallbiz.com](http://www.ledsmallbiz.com) to the SEBD office.

B. ...

C. The director, or designee, notifies the applicant by e-mail of the decision whether or not to grant certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended by the Department of Economic Development, Office of Business Development, LR 29:544 (April 2003), LR 30:755 (April 2004), LR 33:2031 (October 2007).

**§115. Duration of Certification**

A. The maximum amount of time that a firm may be granted certification by the SEBD Program is 10 years or when the owner or firm no longer qualifies, whichever occurs first.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended LR 26:1572 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:544 (April 2003), LR 30:755 (April 2004), amended by the House Concurrent Resolution Number 8 of the 2006 Regular Legislative Session, LR 32:1536 (August 2006), amended by the Department of Economic Development, Office of Business Development, LR 33:2031 (October 2007).

Don Pierson  
Assistant Secretary

0710#014

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 111—The Louisiana School, District,  
and State Accountability System  
(LAC 28:LXXXIII.603, 613, and 4313)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has revised *Bulletin 111—The Louisiana School, District, and State Accountability System* (LAC Part Number LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components. Section 603 is revised to include all students in the state-level cohort regardless of entry or exit dates. Section 613 is revised to clarify that schools cannot be awarded points for students designated as attendees if they

are dropouts; changes the points awarded for School Performance Scores for students receiving TOPS award or completing TOPS programs; changes the points awarded for students receiving an academic endorsement. Section 4313 is revised to omit the District Responsibility Index label as a trigger for districts to enter District Improvement status; mandate timeframes for these districts to submit district improvement plans to the LDE and for the LDE to review require districts to implement these approved plans; describes sanctions for districts entering District Improvement in line with current law, requiring that they either implement a new curriculum, arrange for particular schools to come under public governance per R.S. 17:1990, or authorize students to transfer to a higher-performing public school operated by another local educational agency after reaching an agreement with the other LEA.

**Title 28**

**EDUCATION**

**Part LXXXIII. Bulletin III—The Louisiana School, District, and State Accountability System**

**Chapter 6. Graduation Index**

**§603. Determining a Cohort for a Graduation Index**

A. - H. ...

I. All cohort members, regardless of entry or exit dates, are included in the state-level cohort.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006), amended LR 33:424 (March 2007), LR 33:2031 (October 2007).

**§613. Calculating a Graduation Index**

A. ...

1. Students who do not dropout and do not earn a diploma, a GED, a Skills Certificate, or a Certificate of Achievement after four years of high school are defined as attendees.

Student Result	Points
Academic Endorsement	180
TOPS Opportunity Award OR Career/Technical Endorsement	160
BESE Approved Industry Based Certification OR TOPS Tech and Dual Enrollment OR TOPS Tech and Articulated Credit	140
Regular HS Diploma	120
GED	90
Skills Certificate/Certificate of Achievement	60
Attendee	30
Dropout	0

B. - E. ...

Sample Graduation Index Calculation			
Student Count	Result	Points Per	Points
2	Academic Endorsements	180	360
8	TOPS Opportunity Award OR Career/Technical Endorsement	160	1280
15	BESE Approved Industry Based Certification OR TOPS Tech and Dual Enrollment OR TOPS Tech and Articulated Credit	140	2100
20	Regular Diploma	120	2400
10	GED	90	900
6	Skills Certificate or Certificate of Achievement	60	360

Sample Graduation Index Calculation			
Student Count	Result	Points Per	Points
4	Attendee	30	120
15	Dropout	0	0
80 Total Students			7520
Attendee from prior year earned GED (90-30)			60
Attendee from prior year earned Skills Cert. (60-30)			30
Dropout from prior year earned Reg. Diploma (120-0)			120
Total Incentive Points			210
Total Points			7730
7730 ÷ 80 =		Graduation Index	96.6

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1025 (June 2006), amended LR 33:2031 (October 2007).

**Chapter 43. District Accountability**

**§4313. Corrective Actions**

A. ...

B. Districts shall be evaluated on the subgroup component. Districts that fail all clusters, in the same subject, on the subgroup component shall complete a district self-assessment and submit it to the Louisiana Department of Education.

1. - 2. ...

C. Districts that are identified for improvement by the subgroup component shall write District Improvement Plans based on the prior years' self-assessments and submit those plans to the LDE within 60 days of identification.

1. ...

2. The DOE shall review each District Improvement Plan and within 30 days of receipt of the plan, recommend revisions until the plan is deemed acceptable.

3. ...  
4. The district shall implement the District Improvement Plan immediately upon approval by the DOE.

D. Districts that fail in all grade-clusters, in the same subject, to achieve AYP in the subgroup component for a third consecutive year or in two consecutive years of the next three years shall enter District Improvement Level 2 and have a district level scholastic audit conducted by the LDE.

E. Districts that fail all three grade-clusters for which they entered District Improvement the year following or two of the three years following entry into District Improvement Level 2 shall enter District Improvement Level 3 and address the findings of the district level scholastic audit immediately upon identification by implementing one of the following.

1. Fully implement a new curriculum that is based on state standards, providing appropriate professional development that offers substantial promise of improving educational achievement (funding requirements listed in NCLB).

2. Remove particular schools from the jurisdiction of the local educational agency and establish arrangements for public governance and supervision of such schools as provided in R.S. 17:1990 and Chapter 24: Recovery School District.

3. Authorize students to transfer to a higher-performing public school operated by another local educational agency after reaching an agreement with the other LEA.

F. Districts shall exit District Improvement if they pass Subgroup AYP in the same subject for which they entered District Improvement in the same cluster for two consecutive years. An example is in the following table.

Examples of Districts that Entered District Improvement (DI) in 2004 Due to Math Results							
	2005			2006			Result
	K-5	6-8	9-12	K-5	6-8	9-12	
Cluster Performance	Pass	Fail	Fail	Fail	Pass	Pass	Remain in DI
	Pass	Pass	Pass	Fail	Fail	Fail	Advance to DI Level 2
	Pass	Fail	Fail	Pass	Fail	Fail	Exit DI
	Fail	Pass	Pass	Fail	Fail	Pass	Exit DI

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:1449 (July 2004), LR 31:424 (February 2005), LR 31:635 (March 2005), LR 31:1256 (July 2005), LR 33:2032 (October 2007).

Weegie Peabody  
Executive Director

0710#007

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:CXI. 305, 2012-2029, and 3507)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has revised *Bulletin 118—Statewide Assessment Standards and Practices*. Bulletin 118 contains the Board of

Elementary and Secondary Education (BESE) and the Division of Standards, Assessments, and Accountability (DSAA) test policy rules, guidelines, and procedures for easy access during statewide test administration. The purpose of this project is to provide information regarding the division of Chapter 3, Test Security, §305.A.14, into two separate entries; the addition of Achievement Level Descriptors for LAA 2 in Chapter 20; and revisions to Chapter 35, Assessment of Students in Special Circumstances.

The document will consolidate statewide test information and provide easy access to that information. It is necessary to revise the bulletin at this time to incorporate guidelines for newly developed statewide assessments used in testing and add new language to established assessment guidelines.

## **Title 28**

### **EDUCATION**

#### **Part CXI. Bulletin 118—Statewide Assessment Standards and Practices**

##### **Chapter 3. Test Security**

##### **§305. Test Security Policy**

A. - A.13. ...

14. School districts must ensure that individual student test data are protected from unauthorized access and disclosure.

a. The Louisiana Department of Education's LEAP*data* Query is designed for teachers and contains students' private information, including state test scores and state identification numbers. The system is password protected and requires a user ID and an assigned password for access. The system is not for public use, and any student information from the system must not be disclosed to anyone other than a state, district, or school official as defined by the Family Educational Rights and Privacy Act of 1974 (FERPA). A state, district, or school official is a person employed by the state, district, or school as an administrator, supervisor, district test coordinator, school test coordinator, principal, teacher, or principal's designated office staff. Such a user must have a legitimate educational purpose to review an educational record in order to fulfill his/her professional responsibility. Curiosity does not qualify as a right to know. State, district and school officials who are granted a password to these systems must abide by FERPA law. Disclosure of passwords to anyone other than those authorized is prohibited. Disclosure of a student's data to their parent or guardian must be in accordance with FERPA. For more information on FERPA, see the U.S. Department of Education Web page at <http://www.ed.gov/offices/OM/fpco/ferpa/>.

i. LEAP*data* Query System. Principals should contact their DTC or Backup DTC for assistance in training teachers. After teaching, all school users (e.g., teachers, counselors, test coordinators) must read and sign the security agreement and return it to the principal. A new security agreement should be signed by all users each year after the new password letters for schools are automatically generated in August. If a breach in security occurs, principals should immediately contact the DTC or the backup DTC for a

replacement password. Principals should always contact their DTC or backup DTC for assistance and training.

b. The Louisiana Department of Education's LEAP*web* Reporting System is designed for administrators only and contains students' private information, including state test scores and state identification numbers. The system is password protected and requires a user ID and an assigned password for access. The system is not for public use and any student information from the system must not be disclosed to anyone other than a state, district, or school official as defined by the Family Educational Rights and Privacy Act of 1974 (FERPA). A state, district, or school official is a person employed by the state, district, or school as an administrator, supervisor, district test coordinator, school test coordinator, principal, and the principal's designated office staff. Such a user must have a legitimate educational purpose to review an educational record in order to fulfill his/her professional responsibility. Curiosity does not qualify as a right to know. State, district, and school users who are granted a password to this system must read and abide by Family and Educational Rights Privacy Act (FERPA). Disclosure of passwords to anyone other than those authorized is prohibited. Disclosure of a student's data to their parent or guardian must be in accordance with FERPA. For more information on FERPA, see the U.S. Department of Education Web page at <http://www.ed.gov/offices/OM/fpco/ferpa/>.

i. LEAP*web* Reporting System. At the school level, only principals (not teachers) and their designated school personnel (test coordinators, counselors, or office staff with whom the principal shares his/her PIN) should have access to the system and must sign a security agreement. A new security agreement should be signed by all users each year after the new password letters for schools are automatically generated in August. If a breach in security occurs, principals should immediately contact the DTC or the backup DTC for a replacement password. Principals should always contact their DTC or Backup DTC for assistance and training.

ii. Security agreements must also be signed by DTCs for the LEAP*web* Reporting and LEAP*data* Query Systems and returned to the LDE.

c. All users who have access to these systems and leave their positions at a district or school site must not use or share the password.

15. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.7 (C) (G).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1528 (July 2005), amended LR 32:233 (February 2006), LR 33:255 (February 2007), LR 33:424 (March 2007), LR 33:2033 (October 2007).

#### **Chapter 20. LEAP Alternate Assessment, Level 2 Subchapter D. Achievement Level Descriptors**

##### **§2012. Grade 5 Achievement Level Descriptors**

A. Grade 5 English Language Arts Achievement Level Descriptors

B. Grade 5 Mathematics Achievement Level Descriptors

<b>Basic</b>
A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. demonstrate overall understanding of what they read;</li> <li>2. answer literal questions and make simple inferences about information in texts;</li> <li>3. identify story elements, literary devices, and author's purpose;</li> <li>4. research a topic by locating information in a variety of print and electronic resources;</li> <li>5. express some creative and/or critical thinking in response to a writing task, characterized by a central idea, observable organization, and supporting details; and</li> <li>6. demonstrate audience awareness through use of grade-appropriate vocabulary, sentence variety, and evidence of personal style or voice.</li> </ol>
<b>Approaching Basic</b>
A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. demonstrate partial understanding of what they read;</li> <li>2. identify stated main idea in text, make simple inferences, and draw connections to personal experiences;</li> <li>3. research a topic by locating some information in commonly used print and electronic resources;</li> <li>4. demonstrate inconsistent control in response to a writing task, characterized by a weak central idea, weak organization, and few supporting details; and</li> <li>5. demonstrate limited audience awareness through use of simple but appropriate vocabulary, simple sentence structures, and few elements of personal style.</li> </ol>
<b>Foundational</b>
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. demonstrate minimal understanding of what they read;</li> <li>2. make minimal connections between information in texts and personal experiences;</li> <li>3. research a topic by locating minimal information in a few commonly used resources;</li> <li>4. develop a minimal response to a writing task, characterized by a weak central idea, little observable organization, and few supporting details; and</li> <li>5. demonstrate minimal audience awareness through the use of limited vocabulary, simple sentence structures, and little or no personal style or voice.</li> </ol>
<b>Pre-Foundational</b>
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level need to develop the ability to: <ol style="list-style-type: none"> <li>1. demonstrate at least minimal understanding of what they read;</li> <li>2. make at least minimal connections between information in texts and personal experiences;</li> <li>3. research a topic by locating at least minimal information in a few commonly used resources;</li> <li>4. develop at least a minimal response to a writing task, characterized by a weak central idea, little observable organization, and few supporting details; and</li> <li>5. demonstrate at least minimal audience awareness through the use of limited vocabulary, simple sentence structures, and little or no personal style or voice.</li> </ol>

<b>Basic</b>
A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. solve real-life problems using whole numbers;</li> <li>2. use estimation strategies and mental math to determine reasonable values and solutions;</li> <li>3. use variables and open sentences to express number relationships;</li> <li>4. identify solutions to equations describing real-life situations;</li> <li>5. identify positive solutions to inequalities on a number line;</li> <li>6. use appropriate tools and procedures to measure accurately and to estimate and calculate measurements;</li> <li>7. identify points on a coordinate grid;</li> <li>8. identify basic geometric transformations and symmetries;</li> <li>9. organize and display data using tables and graphs;</li> <li>10. represent probabilities as common fractions between 0 and 1, inclusive; and</li> <li>11. recognize and describe how number patterns and patterns in real-life situations are increasing, decreasing, or repeating.</li> </ol>
<b>Approaching Basic</b>
A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. demonstrate an understanding of relations among fractions, including mixed numbers, and relations among decimals;</li> <li>2. solve simple problems involving whole number properties and relationships;</li> <li>3. demonstrate understanding of the connection between models and mathematical language;</li> <li>4. choose tools necessary to measure accurately;</li> <li>5. recognize and classify common two-dimensional figures by attributes;</li> <li>6. read tables and graphs and use the data to solve simple problems;</li> <li>7. describe the likelihood of events occurring in real-life situations; and</li> <li>8. identify missing elements in a variety of patterns.</li> </ol>
<b>Foundational</b>
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. demonstrate some understanding of relations among fractions, including mixed numbers, and relations among decimals;</li> <li>2. solve a limited number of simple problems involving whole number properties and relationships;</li> <li>3. demonstrate some understanding of the connection between models and mathematical language;</li> <li>4. choose—with limited degree of accuracy or with some consistency—tools necessary to measure accurately;</li> <li>5. recognize and classify a limited number of common two-dimensional figures by attributes;</li> <li>6. show minimal skills in reading tables and graphs and using the data to solve simple problems;</li> <li>7. inconsistently describe the likelihood of events occurring in real-life situations; and</li> <li>8. identify missing elements in a limited number of patterns.</li> </ol>

<b>Pre-Foundational</b>
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level need to develop the ability to:</p> <ol style="list-style-type: none"> <li>1. demonstrate at least some understanding of relations among fractions, including mixed numbers, and relations among decimals;</li> <li>2. solve at least a limited number of simple problems involving whole number properties and relationships;</li> <li>3. demonstrate at least some understanding of the connection between models and mathematical language;</li> <li>4. choose—with at least some degree of accuracy—tools necessary to measure accurately;</li> <li>5. recognize and classify at least a limited number of common two-dimensional figures by attributes;</li> <li>6. show at least some skills in reading tables and graphs and using the data to solve simple problems;</li> <li>7. at least minimally describe the likelihood of events occurring in real-life situations; and</li> <li>8. identify missing elements in at least a limited number of patterns.</li> </ol>

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(A).

**HISTORICAL NOTE:** Promulgated by the Department of Education, State Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:2033 (October 2007).

### **§2013. Grade 6 Achievement Level Descriptors**

#### **A. Grade 6 English Language Arts Achievement Level Descriptors**

<b>Basic</b>
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. demonstrate overall understanding of what they read;</li> <li>2. identify main ideas and supporting details, and answer literal and simple inferential questions;</li> <li>3. research a topic by locating information in a variety of electronic and print resources (e.g., newspapers, magazines, brochures, maps, legends);</li> <li>4. express some creative and/or critical thinking in response to a writing task, characterized by a central idea, observable organization, and supporting details; and</li> <li>5. demonstrate audience awareness through use of grade-appropriate vocabulary, a variety of sentence structures, and evidence of personal style or voice.</li> </ol>
<b>Approaching Basic</b>
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. demonstrate partial understanding of what they read;</li> <li>2. identify some literal and implied information and stated main ideas in text and make connections to personal experience;</li> <li>3. research a topic by locating some information in commonly used electronic and print resources;</li> <li>4. demonstrate inconsistent control in response to a writing task, characterized by a weak central idea, some evidence of organization, few transitions, and few supporting details; and</li> <li>5. demonstrate limited audience awareness through use of simple but appropriate vocabulary, simple sentence structures, and few elements of personal style.</li> </ol>

<b>Foundational</b>
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. demonstrate minimal understanding of what they read;</li> <li>2. identify concrete ideas and make minimal connections between information in texts and personal experiences;</li> <li>3. research a topic by locating minimal information in a few commonly used resources;</li> <li>4. construct a minimal response to a writing task, characterized by a weak central idea, little observable organization, and a few supporting details; and</li> <li>5. demonstrate minimal audience awareness through the use of limited vocabulary, simple sentences, and limited evidence of elements of personal style or voice.</li> </ol>
<b>Pre-Foundational</b>
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level need to develop the ability to:</p> <ol style="list-style-type: none"> <li>1. demonstrate at least minimal understanding of what they read;</li> <li>2. identify concrete ideas and make at least minimal connections between information in texts and personal experiences;</li> <li>3. research a topic by locating at least minimal information in a few commonly used resources;</li> <li>4. construct at least a minimal response to a writing task, characterized by a weak central idea, little observable organization, and a few supporting details; and</li> <li>5. demonstrate at least minimal audience awareness through the use of limited vocabulary, simple sentences, and limited evidence of elements of personal style or voice.</li> </ol>

#### **B. Grade 6 Mathematics Achievement Level Descriptors**

<b>Basic</b>
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. show understanding of the relationships among fractions and decimals;</li> <li>2. solve simple proportions by using models and in real-life situations;</li> <li>3. estimate and solve simple problems involving one or two computations, including addition and subtraction of fractions and decimals;</li> <li>4. evaluate simple expressions involving one variable and formulas involving one or two variables, by substituting whole numbers;</li> <li>5. solve simple equations, using a variety of strategies;</li> <li>6. use algebraic and numeric expressions and equations to describe relationships;</li> <li>7. recognize and use measuring tools appropriate for given tasks;</li> <li>8. demonstrate an understanding of the magnitude and relative size of common units of measure;</li> <li>9. find perimeter and area of simple geometric figures;</li> <li>10. name and describe two- and three-dimensional geometric shapes;</li> <li>11. recognize and use transformations of simple geometric shapes;</li> <li>12. demonstrate an understanding of data represented in a variety of displays;</li> <li>13. recognize basic concepts of probability, and determine probabilities of simple events; and</li> <li>14. extend and describe simple arithmetic and geometric patterns.</li> </ol>

<b>Approaching Basic</b>
A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. recognize and identify ratios, fractions, decimals, and percents from models and in real-life situations;</li> <li>2. locate and compare integers on a number line;</li> <li>3. complete a simple input/output table;</li> <li>4. recognize common units of length and area;</li> <li>5. find horizontal and vertical lengths of simple geometric figures graphed on a grid;</li> <li>6. recognize and name basic geometric shapes;</li> <li>7. interpret data from a graph;</li> <li>8. determine possible results and likelihood of favorable outcomes of simple events; and</li> <li>9. identify missing elements in a variety of number patterns.</li> </ol>
<b>Foundational</b>
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. demonstrate minimal recognition and identification of ratios, fractions, decimals, and percents from models and in real-life situations;</li> <li>2. locate and compare—with some degree of accuracy—integers on a number line;</li> <li>3. demonstrate some evidence of completing a simple input/output table;</li> <li>4. recognize a few common units of length and area;</li> <li>5. show minimal skills in finding horizontal and vertical lengths of simple geometric figures on a grid;</li> <li>6. recognize and name a limited number of basic geometric shapes;</li> <li>7. show limited skills in interpreting data from a graph;</li> <li>8. determine possible results and likelihood of favorable outcomes of some simple events; and</li> <li>9. identify missing elements in a limited number of number patterns.</li> </ol>
<b>Pre-Foundational</b>
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level need to develop the ability to: <ol style="list-style-type: none"> <li>1. demonstrate at least minimal recognition and identification of ratios, fractions, decimals, and percents from models and in real-life situations;</li> <li>2. locate and compare—with at least some degree of accuracy—integers on a number line;</li> <li>3. demonstrate at least some evidence of completing a simple input/output table;</li> <li>4. recognize at least a few common units of length and area;</li> <li>5. show at least minimal skills in finding horizontal and vertical lengths of simple geometric figures graphed on a grid;</li> <li>6. recognize and name at least a limited number of basic geometric shapes;</li> <li>7. show at least limited skills in interpreting data from a graph;</li> <li>8. determine possible results and likelihood of favorable outcomes of at least some simple events; and</li> <li>9. identify missing elements in at least a limited number of number patterns.</li> </ol>

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(A).

**HISTORICAL NOTE:** Promulgated by the Department of Education, State Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:2035 (October 2007).

**§2014. Grade 7 Achievement Level Descriptors**

**A. Grade 7 English Language Arts Achievement Level Descriptors**

<b>Basic</b>
A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. demonstrate overall understanding of what they read;</li> <li>2. identify main ideas and supporting details, story elements (including character motivation and plot sequence), and author's purpose;</li> <li>3. extend ideas in text by making simple inferences and drawing conclusions;</li> <li>4. research a topic by locating and interpreting information in a variety of print and electronic resources;</li> <li>5. express some critical and/or creative thinking in response to a writing task;</li> <li>6. develop an appropriate response to a writing task, characterized by a central idea, observable organization, simple transitions, and supporting details; and</li> <li>7. demonstrate audience awareness through use of grade-appropriate vocabulary, sentence variety, and evidence of personal style or voice.</li> </ol>
<b>Approaching Basic</b>
A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. demonstrate partial understanding of what they read;</li> <li>2. identify some literal and implied information and stated main ideas, basic story elements, some literary devices, and an author's purpose;</li> <li>3. research a topic by locating some information in electronic and print resources;</li> <li>4. demonstrate inconsistent control in response to a writing task, characterized by a weak central idea, weak organization, and few supporting details; and</li> <li>5. demonstrate limited audience awareness through the use of simple vocabulary, simple sentences, and few elements of personal style.</li> </ol>
<b>Foundational</b>
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. demonstrate minimal understanding of what they read;</li> <li>2. construct minimal interpretations and/or extensions of text;</li> <li>3. research a topic by locating minimal information in a commonly used print or electronic resources;</li> <li>4. construct a minimal response to a writing task, characterized by a weak central idea, some observable organization, and some supporting information; and</li> <li>5. demonstrate minimal audience awareness through use of simple vocabulary, simple sentences, and little or no personal style or voice.</li> </ol>
<b>Pre-Foundational</b>
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level need to develop the ability to: <ol style="list-style-type: none"> <li>1. demonstrate at least minimal understanding of what they read;</li> <li>2. construct at least minimal interpretations and/or extensions of text;</li> <li>3. research a topic by locating at least minimal information in commonly used print or electronic resources;</li> <li>4. construct at least a minimal response to a writing task, characterized by a weak central idea, some observable organization, and some supporting information; and</li> <li>5. demonstrate at least minimal audience awareness through the use of simple vocabulary, simple sentences, and little or no personal style or voice.</li> </ol>

## B. Grade 7 Mathematics Achievement Level Descriptors

<b>Basic</b>
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. estimate and compute equivalent fractions, percents, and decimals;</li> <li>2. solve one- and two-step real-life problems involving equations and inequalities;</li> <li>3. evaluate formulas or expressions involving one or two variables, by substituting whole numbers;</li> <li>4. use algebraic expressions, equations, and inequalities to describe numerical relationships;</li> <li>5. convert between common measurements in the same system, and compare and order benchmark measurements between systems;</li> <li>6. calculate circumference and area of circles;</li> <li>7. draw and identify angles and measurements in simple polygons and circles;</li> <li>8. recognize geometric transformations;</li> <li>9. demonstrate understanding of graphs involving continuous data and discrete data;</li> <li>10. compute simple probabilities and use basic mathematical terms associated with probability, such as event and favorable outcomes; and</li> <li>11. recognize, describe, and extend patterns.</li> </ol>
<b>Approaching Basic</b>
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. compare and order rational numbers;</li> <li>2. solve single-step problems involving positive rational numbers;</li> <li>3. match algebraic expressions, equations, and inequalities to verbal statements;</li> <li>4. order measurements within the same system;</li> <li>5. determine area and perimeter of simple geometric shapes;</li> <li>6. identify points in all four quadrants of a coordinate grid;</li> <li>7. interpret discrete data from a variety of graphs;</li> <li>8. represent the probabilities of simple events as common fractions, given sample space and number of favorable outcomes; and</li> <li>9. extend simple number patterns.</li> </ol>
<b>Foundational</b>
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. compare and order—with some consistency—rational numbers;</li> <li>2. solve some single step problems involving positive rational numbers;</li> <li>3. match some algebraic expressions, equations, and inequalities to verbal statements;</li> <li>4. order a limited number of measurements within the same system;</li> <li>5. determine area and perimeter of a limited number of simple geometric shapes;</li> <li>6. identify a few points in all four quadrants of a coordinate grid;</li> <li>7. interpret discrete data from a limited number of graphs;</li> <li>8. represent some probabilities of simple events as common fractions, given sample space and number of favorable outcomes; and</li> <li>9. extend some simple number patterns.</li> </ol>

<b>Pre-Foundational</b>
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level need to develop the ability to:</p> <ol style="list-style-type: none"> <li>1. compare and order—with at least some consistency—rational numbers;</li> <li>2. solve at least some single-step problems involving positive rational numbers;</li> <li>3. match at least some algebraic expressions, equations, and inequalities to verbal statements;</li> <li>4. order at least a limited number of measurements within the same system;</li> <li>5. determine area and perimeter of at least a limited number of simple geometric shapes;</li> <li>6. identify at least a few points in all four quadrants of a coordinate grid;</li> <li>7. interpret discrete data from at least a limited number of graphs;</li> <li>8. represent at least some probabilities of simple events as common fractions, given sample space and number of favorable outcomes; and</li> <li>9. extend at least some simple number patterns.</li> </ol>

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(A).

**HISTORICAL NOTE:** Promulgated by the Department of Education, State Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:2036 (October 2007).

### §2015. Grade 8 Achievement Level Descriptors

Editor's Note: This Section has been moved from §2013.

#### A. Grade 8 English Language Arts Achievement Level Descriptors

<b>Basic</b>
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. demonstrate both literal and overall understanding of what they read;</li> <li>2. identify some elements of text and an author's purpose;</li> <li>3. extend the ideas in text by making simple inferences and drawing conclusions; recognize and relate connections among ideas in texts by drawing conclusions;</li> <li>4. research a topic by selecting and using information in various sources;</li> <li>5. express some critical and/or creative thinking in response to a writing task;</li> <li>6. develop a central idea with a consistent focus, appropriate organization, and elaboration with some supporting details; and</li> <li>7. demonstrate audience awareness through use of appropriate but general language, and some sentence variety, and a sense of personal style.</li> </ol>
<b>Approaching Basic</b>
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. demonstrate partial understanding of what they read;</li> <li>2. make a few interpretations and extensions of ideas in texts;</li> <li>3. make simple and broad connections between text and personal experiences;</li> <li>4. research a topic by locating some information in commonly used sources;</li> <li>5. demonstrate a partial response to a writing task;</li> <li>6. develop a weak central idea with some evidence of organization and elaboration with few or inappropriate supporting details; and</li> <li>7. demonstrate limited awareness of audience through use of simple or inappropriate vocabulary and simple sentences.</li> </ol>

<b>Foundational</b>
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. demonstrate partial understanding of what they read;</li> <li>2. make a few interpretations and extensions of ideas in the texts;</li> <li>3. make simple and broad connections between the text and personal experiences;</li> <li>4. research a topic by locating some information in commonly used sources;</li> <li>5. demonstrate a partial response to a writing task;</li> <li>6. develop a weak central idea with some evidence of organization and elaboration with a few or inappropriate supporting details; and</li> <li>7. demonstrate limited awareness of audience through use of simple or inappropriate vocabulary and simple sentences.</li> </ol>
<b>Pre-Foundational</b>
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level need to develop the ability to: <ol style="list-style-type: none"> <li>1. understand what they read;</li> <li>2. make minimal interpretations and extensions of ideas in the text,</li> <li>3. locate some information within commonly used sources;</li> <li>4. develop a response to a writing task with some evidence of a central idea, attempted organization, and some supporting details; and</li> <li>5. show minimal audience awareness through use of simple vocabulary and simple sentences.</li> </ol>

**B. Grade 8 Mathematics Achievement Level Descriptors**

<b>Basic</b>
A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. complete problems correctly with the help of prompts such as diagrams, charts, and graphs;</li> <li>2. solve routine, real-world problems through the appropriate selection and use of strategies and technological tools—including calculators and geometric shapes;</li> <li>3. use fundamental algebraic and informal geometric concepts in problem solving;</li> <li>4. determine which available data are necessary and sufficient for correct solutions and use them in problem solving; and</li> <li>5. show limited skill in communicating mathematically.</li> </ol>
<b>Approaching Basic</b>
A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. complete problems correctly with the help of prompts such as diagrams, charts, and graphs;</li> <li>2. solve one-step problems involving basic computation (+, -, x, ÷) and follow procedural steps with instructional assistance;</li> <li>3. recognize basic geometric figures;</li> <li>4. recognize simple, obvious patterns;</li> <li>5. use tools of technology;</li> <li>6. apply conceptual knowledge inconsistently; and</li> <li>7. demonstrate difficulty in transferring knowledge and skills to problem-solving situations.</li> </ol>
<b>Foundational</b>
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. complete a limited number of problems correctly with the help of prompts such as diagrams, charts, and graphs;</li> </ol>

<ol style="list-style-type: none"> <li>2. solve few one-step problems involving basic computation (+, -, x, ÷) and follow procedural steps with detailed instructional assistance;</li> <li>3. recognize a limited number of basic geometric figures;</li> <li>4. recognize a limited number of simple, obvious patterns;</li> <li>5. minimally use the tools of technology;</li> <li>6. show minimal or inconsistent application of conceptual knowledge; and</li> <li>7. demonstrate minimal or inappropriate transfer of knowledge and skills to problem-solving situations.</li> </ol>
<b>Pre-Foundational</b>
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level need to develop the ability to: <ol style="list-style-type: none"> <li>1. complete a limited number of problems correctly with the help of prompts such as diagrams, charts, and graphs;</li> <li>2. solve few one-step problems involving basic computations (+, -, x, ÷) and follow procedural steps with detailed instructional assistance;</li> <li>3. recognize a limited number of basic geometric figures;</li> <li>4. recognize a limited number of simple, obvious patterns;</li> <li>5. minimally use the tools of technology;</li> <li>6. show minimal application of conceptual knowledge; and</li> <li>7. demonstrate minimal transfer of knowledge and skills to problem-solving situations.</li> </ol>

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(A).

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:272 (February 2007), amended LR 33:2037 (October 2007).

**§2016. Grade 9 Achievement Level Descriptors**

**A. Grade 9 English Language Arts Achievement Level Descriptors**

<b>Basic</b>
A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. demonstrate overall understanding of what they read;</li> <li>2. identify main points or ideas in text and extend ideas in text by drawing conclusions, making inferences, and identifying explicit cause/effect relationships;</li> <li>3. identify story elements, literary devices, and author's purpose or viewpoint;</li> <li>4. research a topic by locating and interpreting information in a variety of electronic and print resources;</li> <li>5. express some critical and/or creative thinking in response to a writing task;</li> <li>6. construct an appropriate multiparagraph response to a writing task, characterized by a central idea, observable organization, simple transitions, and supporting information; and</li> <li>7. demonstrate audience awareness through intentional use of appropriate vocabulary, sentence variety, and personal style or voice.</li> </ol>
<b>Approaching Basic</b>
A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to: <ol style="list-style-type: none"> <li>1. demonstrate partial understanding of what they read;</li> <li>2. identify literal and implied information and stated main ideas in text, story elements, some literary devices, and author's purpose;</li> <li>3. research a topic by locating information in electronic and print resources;</li> <li>4. demonstrate inconsistent control in response to a writing task, characterized by a weak central idea, some evidence of organization and transitions, and few supporting details; and</li> <li>5. demonstrate limited audience awareness through the use of simple vocabulary, simple sentence structures, and few elements of personal style.</li> </ol>



**Foundational**

A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.

Students scoring at this level generally exhibit the ability to:

1. demonstrate minimal understanding of what they read;
2. construct minimal interpretations and/or extensions of text;
3. research a topic by locating minimal information in commonly used print or electronic resources;
4. develop a minimal response to a writing task, characterized by a weak central idea, limited observable organization, and some supporting information; and
5. demonstrate minimal audience awareness in written responses through the use of simple vocabulary, simple sentences, and little or no personal style or voice.

**Pre-Foundational**

A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.

Students scoring at this level need to develop the ability to:

1. demonstrate at least minimal understanding of what they read;
2. construct at least minimal interpretations and/or extensions of text;
3. research a topic by locating at least minimal information in commonly used print or electronic resources;
4. develop at least a minimal response to a writing task, characterized by a weak central idea, limited observable organization, and some supporting information; and
5. demonstrate at least minimal audience awareness in written responses through the use of simple vocabulary, simple sentences, and little to no personal style or voice.

**B. Grade 9 Mathematics Achievement Level Descriptors****Basic**

A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.

Students scoring at this level generally exhibit the ability to:

1. simplify numerical expressions involving multiple operations, using order of operations;
2. represent numbers as exponential expressions with positive, integral exponents;
3. use proportional reasoning to solve real-life problems;
4. use algebraic expressions, equations, and inequalities to describe tables and verbal statements in real-life situations;
5. solve multi-step equations and inequalities in one variable;
6. choose appropriate common units (U.S. and metric) to make measurements;
7. demonstrate understanding of precision and accuracy;
8. solve simple problems involving indirect measurement in real-life situations;
9. recognize and graph linear equations to interpret and solve real-life problems, and use appropriate terminology to describe slope, intercept, point, intersection, etc.;
10. draw translations and line reflections in a coordinate system;
11. read, organize, construct, and interpret data presented in a variety of formats and make generalizations using these representations; and
12. demonstrate a fundamental understanding of graphical representations of functions.

**Approaching Basic**

A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.

Students scoring at this level generally exhibit the ability to:

1. demonstrate understanding of different number systems, including whole numbers, integers, rational numbers, and real numbers;
2. perform basic operations with positive rational numbers;
3. determine whether problems require exact or approximate solutions;
4. recognize ratios and proportions that describe real-life situations;
5. use calculators to evaluate polynomials for given values of the variables;
6. solve single-step equations and inequalities in one variable;
7. estimate, calculate, and make measurements using common units of measure;
8. locate points on a coordinate grid;
9. recognize geometric transformations on a coordinate grid;
10. match data displays to real-life situations, and vice versa;
11. follow and interpret processes expressed in flow charts; and
12. recognize and describe coordinate graphs of functions.

**Foundational**

A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.

Students scoring at this level generally exhibit the ability to:

1. demonstrate some understanding of different number systems, including whole numbers, integers, rational numbers, and real numbers;
2. perform a few basic operations with positive rational numbers;
3. determine—with some consistency—whether problems require exact or approximate solutions;
4. recognize some ratios and proportions that describe real-life situations;
5. minimally use calculators to evaluate polynomials for given values of the variables;
6. solve some single-step equations and inequalities in one variable;
7. estimate, calculate, and make measurements—with a limited degree of accuracy—using common units of measure;
8. show limited skills in locating points on a coordinate grid;
9. recognize a limited number of geometric transformations on a coordinate grid;
10. match some data displays to real-life situations, and vice versa;
11. follow and interpret some processes expressed in flow charts; and
12. minimally recognize and describe coordinate graphs of functions.

**Pre-Foundational**

A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.

Students scoring at this level need to develop the ability to:

1. demonstrate at least some understanding of different number systems, including whole numbers, integers, rational numbers, and real numbers;
2. perform at least a few basic operations with positive rational numbers;
3. determine—with at least some consistency—whether problems require exact or appropriate solutions;
4. recognize at least some ratios and proportions that describe real-life situations;
5. at least minimally use calculators to evaluate polynomials for given values of the variables;
6. solve at least some single-step equations and inequalities in one variable;
7. estimate, calculate, and make measurements—with at least a limited degree of accuracy—using common units of measure;
8. show at least limited skills in locating points on a coordinate grid;
9. recognize at least a limited number of geometric transformations on a coordinate grid;

10. match at least some data displays to real-life situations, and vice versa;
11. follow and interpret at least some processes expressed in flow charts; and
12. at least minimally recognize and describe coordinate graphs and function.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(A).

**HISTORICAL NOTE:** Promulgated by the Department of Education, State Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:2038 (October 2007).

**§2017. Grade 10 Achievement Level Descriptors**

Editor's Note: This Section has been moved from §2015.

**A. Grade 10 English Language Arts Achievement Level Descriptors**

<b>Basic</b>
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. demonstrate overall understanding of what they read and make some interpretations;</li> <li>2. identify elements of text and an author's style;</li> <li>3. extend ideas in text by making simple inferences and some connections to personal experiences;</li> <li>4. research a topic by selecting and using information in various sources;</li> <li>5. demonstrate some evidence of critical, analytical, and/or creative thinking in response to a writing task;</li> <li>6. develop a response with a central idea, evidence of some observable organization, and elaboration with some supporting details; and</li> <li>7. demonstrate audience awareness through a sense of personal style or voice and some variety in vocabulary and sentence structure.</li> </ol>
<b>Approaching Basic</b>
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. demonstrate partial understanding of what they read;</li> <li>2. identify some elements of text and an author's purpose;</li> <li>3. make simple or broad connections between text and personal experiences;</li> <li>4. research a topic by locating information in commonly used sources;</li> <li>5. demonstrate a partial response to a writing task;</li> <li>6. develop a response with a weak central idea, some evidence of organization, and minimal elaboration or supporting details; and</li> <li>7. demonstrate limited audience awareness through use of weak personal style or voice, simple or inappropriate vocabulary, and simple sentences.</li> </ol>
<b>Foundational</b>
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. demonstrate a minimal understanding of what they read;</li> <li>2. identify few elements of text and an author's purpose;</li> <li>3. make minimal connections between text and personal experiences;</li> <li>4. research a topic by locating minimal information in commonly used sources;</li> <li>5. demonstrate a minimal response to a writing task;</li> <li>6. develop a response with a weak or unfocused idea, attempted organization, and little or irrelevant support; and</li> <li>7. demonstrate minimal audience awareness through use of weak personal style or voice, simple or inappropriate vocabulary, and simple sentences.</li> </ol>

**Pre-Foundational**

A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.

Students scoring at this level need to develop the ability to:

1. understand what they read;
2. identify some elements of text;
3. make minimal connections between text and personal experiences;
4. locate information within commonly used sources;
5. develop a response to a writing task using a general focus, attempted organization, and minimal support; and
6. demonstrate minimal audience awareness through use of simple vocabulary and simple sentences.

**B. Grade 10 Mathematics Achievement Level Descriptors**

<b>Basic</b>
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. use estimation to verify solutions and determine the reasonableness of results as applied to routine real-world problems;</li> <li>2. use algebraic and geometric reasoning strategies to solve problems;</li> <li>3. recognize relationships presented in verbal, algebraic, tabular, and graphical forms;</li> <li>4. demonstrate knowledge of geometric relationships and corresponding measurement skills;</li> <li>5. apply statistical reasoning in the organization and display of data and in reading tables and graphs;</li> <li>6. generalize from patterns and examples in the areas of algebra, geometry, and statistics;</li> <li>7. use correct mathematical language and symbols to communicate mathematical relationships and reasoning processes; and</li> <li>8. use calculators appropriately to solve problems.</li> </ol>
<b>Approaching Basic</b>
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. use estimation and measurement to verify solutions and determine the reasonableness of results as applied to routine real-world problems;</li> <li>2. show limited use of fundamental algebraic, geometric, and statistical reasoning in problem solving;</li> <li>3. interpret data presented in various forms;</li> <li>4. show limited skills in communicating mathematically; and</li> <li>5. demonstrate limited application of conceptual knowledge.</li> </ol>
<b>Foundational</b>
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> <li>1. use some estimation and measurement to verify solutions and determine the reasonableness of results as applied to routine real-world problems;</li> <li>2. show minimal knowledge of fundamental algebraic, geometric, and statistical reasoning in problem-solving;</li> <li>3. interpret data presented in limited forms;</li> <li>4. show minimal skills in communicating mathematically; and</li> <li>5. demonstrate minimal or inappropriate application of conceptual knowledge.</li> </ol>

**Pre-Foundational**

A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.

Students scoring at this level need to develop the ability to:

1. use some estimation and measurement to verify solutions and determine the reasonableness of results as applied to routine real-world problems;
2. show minimal knowledge of fundamental algebraic, geometric, and statistical reasoning in problem-solving;
3. interpret data presented in limited forms;
4. show minimal skills in communicating mathematically; and
5. demonstrate minimal application of conceptual knowledge.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(A).

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:273 (February 2007), LR 33:2040 (October 2007).

**§2019. Grade 11 Achievement Level Descriptors**

Editor's Note: This Section has been moved from §2017.

**A. Grade 11 Science Achievement Level Descriptors**

**Basic**

A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.

Students scoring at this level generally exhibit the ability to:

1. formulate valid hypotheses;
2. design a simple experiment;
3. draw appropriate conclusions;
4. develop inferences from experimentation and apply that information to new situations;
5. distinguish scientific principles from pseudoscience; and
6. apply scientific principles to their everyday life.

With inquiry as the core, students at the Basic level begin to identify unifying concepts and processes among the science disciplines—physical, life, earth/space, and the environmental sciences.

**Approaching Basic**

A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.

Students scoring at this level generally exhibit the ability to:

1. know and understand fundamental science facts and concepts concerning the world; and
2. make observations, form a reasonable hypothesis, identify variables, interpret data, and draw conclusions.

These skills should be demonstrated through the science disciplines—physical, life, earth/space, and the environmental sciences.

**Foundational**

A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.

Students scoring at this level generally exhibit the ability to:

1. demonstrate limited knowledge and understanding of fundamental science facts and concepts concerning the world; and
2. make simple observations, attempt to form a hypothesis, identify a limited number and type of variables, minimally interpret data, and draw conclusions that may be inappropriate or inaccurate.

These skills should be demonstrated through the science disciplines—physical, life, earth/space, and the environmental sciences.

**Pre-Foundational**

A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.

Students scoring at this level need to develop the ability to:

1. demonstrate knowledge and understanding of fundamental science facts and concepts concerning the world with minimal accuracy or consistency; and

2. make simple observations, attempt to form a hypothesis, identify a limited number and type of variables, minimally interpret data, and draw conclusions.

These skills should be demonstrated through the science disciplines—physical, life, earth/space, and the environmental sciences.

**B. Grade 11 Social Studies Achievement Level Descriptors**

**Basic**

A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.

Students scoring at this level generally exhibit the ability to do the following:

1. Geography: interpret geographical data, describe the basic physical structure of the planet, and explain the spatial relationships between humans and their environment.
2. Civics: explain structure and purposes of government, describe the foundations of the American political system, explain international relationships, and describe the roles of citizen.
3. Economics: describe fundamental economic concepts, explain decisions made by consumers, businesses, and government; and explain U.S. fiscal policy.
4. History: describe continuity and change, describe the significance of people, places, events, ideas, and documents, and examine relevant experiences from the past to describe contemporary issues.

**Approaching Basic**

A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.

Students scoring at this level generally exhibit the ability to do the following:

1. Geography: identify geographical data, recognize the physical structure of the planet, and state the spatial relationships between humans and their environment.
2. Civics: identify the structure and purposes of government, recognize the foundations of the American political system, identify international relationships, and identify the roles of citizen.
3. Economics: identify fundamental economic concepts, identify decisions made by consumers, businesses, and government; and identify U.S. fiscal and monetary policies.
4. History: recognize continuity and change, recognize the significance of people, places, events, ideas, and documents, and identify relevant experiences from the past to describe contemporary issues.

**Foundational**

A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.

Students scoring at this level generally exhibit the ability to do the following:

1. Geography: identify limited geographical data, recognize a limited number of physical structures of the planet, and state a limited number of spatial relationships between humans and their environment.
2. Civics: demonstrate limited knowledge about the structure and purposes of government, demonstrate a limited understanding or recognition of the foundations of the American political system, identify a few international relationships, and identify the role of citizens with only some consistency.
3. Economics: demonstrate limited knowledge or understanding of fundamental economic concepts, identify a limited number and type of decisions made by consumers, businesses, and government; and show minimal understanding of U.S. fiscal and monetary policies.
4. History: demonstrate limited recognition of continuity and change, recognize the significance of a limited number of people, places, events, ideas and documents, and identify a limited number of relevant experiences from the past to describe contemporary issues.

### Pre-Foundational

A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.

Students scoring at this level need to develop the ability to do the following:

1. Geography: identify geographical data, recognize physical structures of the planet, and state the spatial relationships between humans and their environment.
2. Civics: demonstrate knowledge about the structure and purposes of government, demonstrate an understanding or recognition of the foundations of the American political system, identify international relationships, and identify the role of citizens.
3. Economics: demonstrate knowledge or understanding of fundamental economic concepts, identify types of decisions made by consumers, businesses, and government, and show understanding of U.S. fiscal and monetary policies.
4. History: demonstrate recognition of continuity and change, recognize the significance of people, places, events, ideas, and documents, and identify relevant experiences from the past to describe contemporary issues.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.4(A).

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:274 (February 2007), amended LR 33:2041 (October 2007).

### Subchapter E. LAA 2 Assessment Structure

#### §2021. Content Standards

Editor's Note: This Section has been moved from §2019.

A. The LAA 2 tests measure knowledge and skills deemed necessary for students to become good scholars and productive citizens. This knowledge and these skills are reflected in the content standards that were approved in August 2005 by the SBESE.

B. The LAA 2 is based on academic content standards. Modifications in the test and item format allow students with persistent academic disabilities who are served under the Individuals with Disabilities Education Improvement Act (IDEA) to participate in academic assessments that are sensitive to measuring progress in their learning.

C. The LAA 2 assessments consist of fewer items than LEAP and GEE.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4 (F)(3) and R.S. 17:183.1-17:183.3.

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:275 (February 2007), amended LR 33:2042 (October 2007).

#### §2023. English Language Arts Tests Structure

Editor's Note: This Section has been moved from §2021.

A. The English Language Arts tests have four sessions or subtests.

1. Writing. The Writing session requires students to produce a composition in response to a prompt. The writing session measures key aspects of English Language Arts Standards 2 and 3.

a. Standard 2. Students write competently for a variety of purposes and audiences.

b. Standard 3. Students communicate using standard English grammar, usage, sentence structure, punctuation, capitalization, spelling, and handwriting.

2. Reading and Responding. The Reading and Responding session includes two short reading passages (fiction, nonfiction, no poetry), four multiple-choice and one short-answer item for each passage. Questions in this session measure key aspects of English Language Arts standards 1, 6, and 7.

a. Standard 1. Students read, comprehend, and respond to a range of materials, using a variety of strategies for different purposes.

b. Standard 6. Students read, analyze, and respond to literature as a record of life experiences.

c. Standard 7. Students apply reasoning and problem-solving skills to their reading, writing, speaking, listening, viewing, and visually representing.

3. Using Information Resources. The Using Information Resources session requires students to complete a specified task designed to measure standard 5.

a. Standard 5. Students locate, select, and synthesize information from a variety of texts, media, references, and technological sources to acquire and communicate knowledge. Test items appear next to the resource needed to locate each answer. This session includes five multiple-choice items and one short answer item.

4. Proofreading. The Proofreading session requires students to identify mistakes in grammar, usage, and mechanics. The session consists of eight multiple-choice items formatted with a sentence as the stem followed by four answer choices. Questions in this session measure key aspects of English Language Arts standard 3.

a. Standard 3. Students communicate using standard English grammar, usage, sentence structure, punctuation, capitalization, spelling, and handwriting.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

**HISTORICAL NOTE:** Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:275 (February 2007), amended LR 33:2042 (October 2007).

#### §2025. Mathematics Test Structure

Editor's Note: This Section has been moved from §2023.

A. The Mathematics test consists of three sessions:

1. two multiple-choice sessions; and
2. one constructed-response session.

B. The Mathematics test assesses the following strands:

1. Strand N: Number and Number Relations

a. Standard. In problem-solving investigations, students demonstrate an understanding of the real number system and communicate the relationships within that system using a variety of techniques and tools.

2. Strand A: Algebra

a. Standard. In problem-solving investigations, students demonstrate an understanding of concepts and processes that allows them to analyze, represent, and describe relationships among variable quantities and to apply algebraic methods to real-world situations.

3. Strand M: Measurement

a. Standard. In problem-solving investigations, students demonstrate an understanding of the concepts, processes, and real-life applications of measurement.

4. Strand G: Geometry

a. Standard. In problem-solving investigations, students demonstrate an understanding of geometric concepts and applications involving one-, two-, and three-dimensional geometry, and justify their findings.

5. Strand D: Data Analysis, Probability, and Discrete Math

a. Standard. In problem-solving investigations, students discover trends, formulate conjectures, regarding cause-and-effect relationships, and demonstrate critical-thinking skills in order to make informed decisions.

6. Strand P: Patterns, Relations, and Functions

a. Standard. In problem-solving investigations, students demonstrate an understanding of patterns, relations, and functions that represent and explain real-world situations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:275 (February 2007), amended LR 33:2042 (October 2007).

**§2027. Science Tests Structure**

Editor's Note: This Section has been moved from §2025.

A. The Science tests consist of two sessions.

1. Session 1 uses a multiple-choice test items for grade 11 to assess concepts and skills in all five strands of science.

2. Session 2 consists of two short-answer questions that assess two of the four science content strands: Physical Science, Life Science, Earth and Space Science, and Science and the Environment. These questions allow students to reflect on an idea, demonstrate their understanding of concepts and processes of science, make meaning of a given set of data, or critique the information. The wording of the questions is direct and specific, and the questions focus on the quality of the students' knowledge.

B. The Science tests assess the following science strands.

1. Strand: Science as Inquiry

a. Standard. Students will do science by engaging in partial and full inquiries that are within their developmental capabilities.

2. Strand: Physical Science

a. Standard. Students will develop an understanding of the characteristics and interrelationships of matter and energy in the physical world.

3. Strand: Life Science

a. Standard. Students will become aware of the characteristics and life cycles of organisms and understand their relationships to each other and to their environment.

4. Strand: Earth and Space Science

a. Standard. Students will develop an understanding of the properties of earth materials, the structure of Earth's system, Earth's history, and Earth's place in the universe.

5. Strand: Science and the Environment

a. Standard. In learning environmental science, students will develop an appreciation of the natural environment, learn the importance of environmental quality, and acquire a sense of stewardship. As consumers and citizens, they will be able to recognize how our personal, professional, and political actions affect the natural world.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:276 (February 2007), amended LR 33:2043 (October 2007).

**§2029. Social Studies Tests Structure**

Editor's Note: This Section has been moved from §2027.

A. The Social Studies tests consist of two sessions.

1. Session 1 consists of 32 multiple-choice test items for grade 11 that assess knowledge, conceptual understanding, and application of skills in all four social

studies strands (i.e., Geography, Civics, Economics, and History). Items in Session 1 are intermingled across strands.

2. Session 2 consists of 2 open-ended questions calling for a constructed response and requiring higher-order thinking in a social studies context (e.g., grasping a concept, analyzing information, evaluating a principle, or applying a skill). Students may be required to construct or interpret a chart, graph, map, timeline, or other graphic representation; to supply a short written answer; or to produce a short writing in response to a social studies issue or problem. Each of the constructed-response items represents one of the four social studies strands. Each task in part B is scored on a 0 to 2 point scale.

B. The four social studies strands assessed are:

1. Strand G—Geography: Physical and Cultural Systems

a. Standard. Students develop a spatial understanding of Earth's surface and the processes that shape it, the connection between people and places, and the relationship between man and his environment.

2. Strand C—Civics: Citizenship and Government

a. Standard. Students develop an understanding of the structure and purposes of government, the foundations of the American democratic system, and the role of the United States in the world while learning about the rights and responsibilities of citizenship.

3. Strand E—Economics: Interdependence and Decision Making

a. Standard. Students develop an understanding of fundamental economic concepts as they apply to the interdependence and decision making of individuals, households, businesses, and governments in the United States and the world.

4. Strand H—History: Time, Continuity, and Change

a. Standard. Students develop a sense of historical time and historical perspective as they study the history of their community, state, nation, and world.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2)

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:276 (February 2007), amended LR 33:2043 (October 2007).

**Chapter 35. Assessment of Students in Special Circumstances**

**§3507. Office of Youth Development**

A ...

B. If a student is 18 years of age by March 1, and:

1. is pursuing a high school diploma, he/she shall test; and

2. is not pursuing a high school diploma, he/she does not need to test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:151.3 and R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1563 (July 2005), amended LR 33:2043 (October 2007).

Weegie Peabody  
Executive Director

0710#006

## RULE

### Board of Elementary and Secondary Education

#### Bulletin 124—Supplemental Educational Services (LAC 28:CXXXV.Chapter 1)

Editor's Note: Policy language regarding Supplemental Educational Services is currently contained in Chapter 27 of *Bulletin 111—The Louisiana School, District, and State Accountability System*. The SES policies contained within Bulletin 111 will be repealed upon BESE's final adoption of *Bulletin 124—Supplemental Educational Services*.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted *Bulletin 124—Supplemental Educational Services*. Bulletin 124 will be printed in codified format as Title 28, Part CXXXV of the *Louisiana Administrative Code*. Bulletin 124 will be the policy manual designed to provide useful guidance and information for the purpose of improving regulatory compliance and to enhance the understanding and operation of the Supplemental Educational Services (SES) provisions of the No Child Left Behind Act. This is an update of federal and state policy. Bulletin 124 was developed as a result of the necessity to consolidate all necessary policies and procedures governing the initiative and make it more useful to the state's local school districts and SES providers operating in Louisiana.

#### Title 28

#### EDUCATION

#### Part CXXXV. Bulletin 124—Supplemental Educational Services

#### Chapter 1. Supplemental Educational Services

#### §101. Definition of Supplemental Educational Services

A. Supplemental educational services (SES) are defined by the United States Department of Education as "tutoring or extra help provided to students in reading, language arts/English, and math. This extra help can be provided before or after school, on weekends, or in the summer." The No Child Left Behind Act states that these services must be of high quality, research-based, and specifically designed to increase the academic achievement of eligible children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2044 (October 2007).

#### §103. Supplemental Educational Services Model

A. Louisiana's recommended model for the provision of effective supplemental educational services has three components:

1. assessment, or an appropriate process, to identify student weaknesses and achievement gaps that will be used to design instruction as well as to measure gains in student achievement for the purposes of provider accountability;
2. targeted remediation/instruction aimed at addressing the individual skill gaps revealed during the assessment and based upon an individual learning plan; and
3. post assessment to see if student gains occurred and a plan for either re-teaching skills or identifying new skill sets for instruction.

B. Student instruction will be in the areas of reading, English/language arts, and/or mathematics in order to help students achieve academic proficiency and should be based

on Louisiana's academic content standards and the local district's instructional plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2044 (October 2007).

#### §105. Supplemental Educational Service Providers

A. Providers that meet the criteria specified by the Louisiana State Department of Education shall be included on the state-approved supplemental educational services provider list. The State Department of Education will post the list, beginning January 1, 2003. The provider list will be updated on a periodic basis, at least annually, as new providers are identified and meet the qualifications.

B. To be included on the approved list of supplemental educational service providers, applicants shall have met the following criteria as determined through the application process outlined in Subsections E and F:

1. be able to define a process for assessment that results in an individual instructional plan tied to content standards;
2. have a demonstrated level of effectiveness in increasing student academic achievement;
3. be capable of providing supplemental educational services that are of high-quality, research-based, and consistent with the instructional program of the local educational agency and the state's academic content standards;
4. provide instruction that is secular, neutral, and non-ideological;
5. be financially sound, use qualified staff, and possess the organizational capacity necessary to deliver the contracted services;
6. meet all applicable federal, state, and local health, safety, and civil rights laws; and
7. have a program accessible to students attending Title I schools in school improvement.

C. Providers may be nonprofit entities, for-profit entities, and local education agencies, including public and private schools, after-school centers, cooperative educational service agencies, institutions of higher education, and faith-based organizations.

D. Entities that are not eligible to serve as providers include public schools identified for school improvement, restructuring or corrective action; and Local Education Agencies identified for school improvement (although schools within such an LEA that are making adequate yearly progress can be providers).

#### E. Provider Application Requirements

1. Each application for approval to provide SES in Louisiana shall consist of the components described below:
  - a. a summary of proposed services that indicates:
    - i. the subject areas proposed (i.e., reading and/or mathematics);
    - ii. the grade levels to be served;
    - iii. the total program hours per student to be provided;
    - iv. the proposed locations of service delivery;
    - v. the minimum number of students required by the eligible applicant in order to offer SES to a district and the maximum number, if any, for each proposed district;
    - vi. whether the eligible applicant can provide services to students of limited English proficiency and, if so,

the languages in which the eligible applicant provides instruction and the maximum number of LEP students the eligible applicant can serve in each district;

vii. whether the eligible applicant can provide services to students with disabilities and, if so, the accommodations or modifications the applicant can offer and the maximum number of students with disabilities the applicant can serve in each district;

viii. the cost of instruction per hour per student, as proposed by the provider;

ix. the ratio of instructors to children, as determined by the provider; and

x. the specific districts and schools the eligible applicant seeks to serve;

b. a rationale for the eligible applicant's SES program, including:

i. evidence of effectiveness under the following two categories:

(a) demonstrated evidence of effectiveness:

(i). evidence that the program proposed in the application has had a positive impact on students' achievement in reading and/or math for three years or more, particularly for low-income, underachieving students, as demonstrated by scores on state, district, and/or another independent, valid and reliable assessment or on a nationally recognized assessment; and

(ii). at least 5 but no more than 10 letters of reference from previous clients (families, districts, or teachers) offering testimonial information on the positive impact of the program proposed in the application and including contact information, starting and ending dates of service provided, and school and district names for each reference;

(b). new and emerging evidence of effectiveness:

(i). evidence that the eligible applicant has a minimum of one year's experience serving youth in the community where the eligible applicant intends to offer SES through activities such as tutoring or targeted academic intervention;

(ii). evidence that the program proposed by the applicant provides a diagnostic/prescriptive process to have a positive impact on students' achievement in reading and/or math, particularly for low-income, underachieving students, including an explanation of data collection strategies to show future evidence of effectiveness; and

(iii) an agreement to serve no more than 200 children statewide during the first two years of SES. This limitation may be waived only through BESE approval;

c. the specific procedures to be used and frequency of reports of student progress to teachers, district staff, and parents/families (including a description of how information will be provided to parents and families in a format and language they can understand);

d. a description of the qualifications of instructional staff, including such resumes and other information on qualifications as the SDE may require;

e. proof of liability insurance in amounts deemed sufficient by the SDE;

f. evidence that the eligible applicant possesses a sound management structure;

g. evidence that the applicant has adequate financial, organizational and technical resources to administer the proposed program;

h. proof of legal authority to conduct business in Louisiana;

i. disclosure of the intended use of incentives or gratuities with the estimated cost of such items;

j. such certifications, assurances, and/or additional information as the SDE may require to fulfill its duties with respect to the administration of SES.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2044 (October 2007).

#### **§107. State Educational Agency Role and Responsibilities**

A. The SDE shall identify providers, maintain a list of providers, and monitor services. Specifically, the SDE shall:

1. consult with parents, teachers, LEAS, and interested members of the public to identify a large number of supplemental educational service providers;

2. provide and disseminate broadly an annual notice to potential providers the process for obtaining approval to be a provider of supplemental educational services:

a. SBESE, annually, shall provide notice of the opportunity for eligible entities to apply for the provision of SES in Louisiana. SBESE may also issue an annual notice to potential applicants of supplemental educational services on behalf of only districts that are deemed to not have an adequate number of available providers of SES;

b. each application will be read and scored by a panel of trained reviewers;

c. if an application is rejected, the applicant shall be eligible to re-apply only once during the following 12-month period;

d. if a provider is removed from the state-approved list, it shall be ineligible to re-apply during the following two-year period, unless it is a public school district that may have its eligibility restored by being removed from "improvement status;"

e. an approved SES provider wishing to alter any portion of its state-approved application, including, but not limited to, proposed contact hours, curriculum changes, or program methodology, must seek and receive approval from the SDE prior to making any change. Failure to do so may result in provider removal from the state-approved list;

3. develop and apply objective criteria for approving potential providers;

4. maintain an updated list of approved providers;

5. develop, implement, and publicly report on techniques for monitoring the quality and effectiveness of services offered by approved supplemental services providers;

6. establish a range of acceptable pricing terms and limitations for SES services. SES providers must request and receive approval of any rate changes from the SDE, so not to exceed a district's per pupil allocation under Part A of Title I of NCLB.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2045 (October 2007).

**§109. Local Educational Agency Role and Responsibilities**

A. Local educational agencies (LEAs) with schools in their second year of school improvement shall:

1. identify eligible students;
2. notify parents about the availability of services and the process for obtaining supplemental educational services for their child(ren) in an understandable and uniform format. This includes:
  - a. the identity of approved providers whose services are in the school district or within a reasonable proximity of the district;
3. help parents choose a provider, if such help is requested;
4. determine which students should receive services when all students cannot be served;
5. enter into an agreement with a provider selected by parents of an eligible student;
6. assist the State Educational Agency (SEA) in identifying potential providers within the LEA;
7. provide quality information to the SEA so that it can monitor the quality and effectiveness of the services offered by providers;
8. offer the opportunity for supplemental services until the school in question is no longer identified for school improvement according to the requirements of the No Child Left Behind Act. Further, the Board of Elementary and Secondary Education, for the purposes of supplemental educational services, defines "school year" as inclusive of the summer months and strongly encourages LEAs to offer services to eligible students during this timeframe;
9. protect the privacy rights of students who receive supplemental educational services.

B. Local educational agencies shall be required to use the SDE's web-based reporting system to manage student enrollment and to monitor student attendance and progress.

C. Districts shall submit quarterly programmatic and fiscal reports to LDE no later than 30 days after the end of each quarter. The report shall include:

1. information on each student served during the quarter by provider; including test, demographic, and attendance data;
2. details of any complaints received from parents or SES providers;
3. summary of any announced or unannounced monitoring visits to SES provider sites conducted during quarter;
4. any updates or revisions to information submitted to the LDE regarding SES implementation (i.e., timelines, additional schools, changes in Title I per pupil allocation, etc.); and
5. information on the quarterly fiscal expenditures of Title I funds for SES, indicating the payments made by the district to each provider for the reporting period. If a student's services are terminated during the SES reporting period, the costs should be reported in accordance with the percentage of the program completed prior to termination of services.

D. Districts failing to submit timely and complete reports shall be cited for non-compliance and requested to submit a corrective action plan. Upon receipt of such notice of non-compliance, districts shall have 30 days to submit a corrective action plan, addressing all cited issues of non-compliance.

E. Each district required to offer supplemental educational services shall maintain documentation relating to the provision of SES for state and federal monitoring and evaluation purposes. Districts should make the following information, at minimum, available for state, federal, or third-party evaluator review:

1. annual notice for SES, including how parents can access services; a listing of approved providers; brief description of provider services, qualifications, and demonstrated effectiveness of the providers;
2. description of LEA procedures for determining eligibility of students;
3. description of LEA process for prioritizing availability of services if demand is greater than available allocation;
4. copies of the district's contracts with SES providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2046 (October 2007).

**§111. Optional LEA Responsibilities**

A. Assist the State Department of Education in identifying potential providers within the school district.

B. Determine which are the lowest-achieving students who can receive services, if the demand for services exceeds available supply.

C. Provide information to the State Department of Education to assist with monitoring the quality and effectiveness of the services offered.

D. Provide Transportation to Eligible Students. Although the Board of Elementary and Secondary Education is aware that LEAs are not required by law to provide such services, it strongly encourages LEAs to provide transportation to eligible students in order to maximize their access and opportunities to improve academic achievement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2046 (October 2007).

**§113. SES Agreement between Provider and LEA**

A. Each local education agency shall enter into an agreement with the SES provider selected by parents of eligible students. The agreements shall contain, at minimum:

1. a description of the research-based program to be utilized;
2. the location and amount of time of instructional service;
3. specific achievement goals;
4. a timetable for improving achievement;
5. methods for measuring and reporting progress;
6. how parents/guardians and teacher will be regularly informed of progress;
7. procedures the LEA will use to pay the provider;
8. confidentiality of student identities;



9. conditions for the termination of the agreement, including attendance regulations and requirements, and appeal procedures.

B. SES providers may be contacted by districts to provide the approved services at the initial pricing terms approved at the state level.

C. Before providing supplemental educational services in a district, a provider must have a signed contract with the LEA.

D. The LEA may impose reasonable administrative and operational requirements through its agreements with providers that are consistent with requirements set by the SDE and that do not limit educational options for parents/guardians.

E. The LEA may terminate the services a provider is providing to an individual student if the provider fails to meet specific achievement goals within the established timetable set in the agreement between the provider and the LEA.

F. The LEA shall provide the SDE with written notification indicating its intent to terminate the services of a provider. If applicable, the provider may invoke the appeals process as outlined in §2717.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2046 (October 2007).

**§115. SES Provider Responsibilities**

A. All approved SES providers shall abide by a code of ethics consisting of the following requirements.

1. Providers shall describe services as approved in state application to consumers in terms that are easy to understand and jargon-free.

2. Providers shall submit a sample of SES program promotional materials and advertisements, (such as brochures, flyers, and posters) to the school district(s) in which they wish to serve and/or the SDE, upon request.

3. Providers shall not misrepresent to anyone the location of a provider's program or its approval status.

4. Providers shall not compensate district employees in exchange for access to facilities or to obtain student lists. School personnel may be hired for instructional purposes only.

5. Providers shall fully disclose the intended provision of economic incentives or gratuities of any kind during the state application process.

6. Providers shall not encourage or induce students or parents to switch providers once students have been enrolled into another program.

7. Providers shall not enroll students in an SES program without prior authorization from the district.

8. For students under 13, providers proposing to utilize web-based instruction must obtain parental permission before communicating with students via e-mail or the Internet as per Title XIII—Children's Online Privacy Protection Act of 1998.

B. Providers shall be required to utilize the SDE's web-based information system for student enrollment and invoicing the districts for payment.

C. An approved provider shall report annually to the SDE and each district served. The report shall include the following information: number of students served, pre- and post-test data, attendance, percentage of students meeting the

academic goals set forth in Individual Learning Plans, details of any complaints received from teachers or parents; and an updated assurance that all information within the provider's approved application remains true and correct.

D. Providers shall maintain records, including data stored in information system, for a period of five years. Documentation shall be made available, upon request by the SDE, for monitoring reviews or audit purposes.

E. Providers shall cooperate with any assessments or evaluations conducted by the SDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2047 (October 2007).

**§117. State Approval and Sanctions of SES Providers**

A. This list of available SES providers shall be approved by SBESE annually.

B. The SDE shall make annual recommendations to SBESE on a provider's performance category, based on a combination of a provider's overall program compliance and student achievement gains.

C. One of the following performance categories shall be recommended for each SES provider.

Performance Category	Description
Approved	The provider has met compliance requirements and has demonstrated positive achievement effects. The provider is approved without reservation to continue services in the following year.
Satisfactory	The provider has met compliance requirements. There may be insufficient data available regarding achievement effects. It may also have only New and Emerging evidence of effectiveness, requiring a limit on total number of students served, but still meets compliance requirements.
Probation I	The provider has minor compliance violations and/or has not demonstrated positive achievement effects. The provider may also have weak or negative implementation outcomes.
Probation II	The provider has compliance violations and/or has not demonstrated positive achievement effects. The provider also may have been in Probation I status the prior year and failed to improve implementation outcomes.
Removal	The provider has serious compliance violations or the provider may have been in Probation II status last year and failed to improve implementation outcomes. The provider also may have been in Probation II status and failed to produce positive achievement effects.

D. If necessary, the provider shall, within 30 days after category designation, submit to the SDE for approval a corrective action plan detailing how the provider intends to improve the deficiencies in its program. If the provider does not undertake all actions set forth in an approved corrective action plan during the following SES reporting period, the provider may be removed from the list of state-approved providers.

E. The SDE may also require corrective action of a provider if compliance issues are raised through the monitoring of a provider's program. Providers placed in corrective action shall, within 30 days after receiving notice, submit to the SDE a corrective action plan detailing how the provider intends to improve the deficiencies in its program. A provider may be removed from the state-approved list if it

fails to meet the requirements of its corrective action plan by the end of the SES reporting period.

F. SBESE may immediately suspend a provider's services if it commits a felony or misdemeanor; has substantial non-compliance; or if an LEA or the SDE determines that a threat exists to the health or safety of students.

G. The SBESE may remove a provider from the state-approved list upon 30 days' written notice if the provider has engaged in illegal or deceptive practice, violated any assurance or aspect of its application to SDE, falsified any information on its application or other reports to SDE, or otherwise violated state or federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2047 (October 2007).

#### **§119. SES Appeal Process—LEA**

A. The rules and regulations contained in this Subpart are in accordance with the Louisiana Administrative Procedures Act, Revised Statutes 49:950 et seq., 7 CFR Part 226.6(k), and shall govern the implementation of appeals procedures for SES providers by local educational agencies and the SDE.

B. A provider may appeal the termination of services at the LEA level by submitting an appeal to the LEA specifying the basis upon which it believes its removal is not in accordance with applicable law.

C. The LEA shall notify the provider, in event of service termination at the district level, of the action being taken through a "Notice of Proposed Action." This notice shall contain the following information:

1. a list of specific violations of program rules and regulations alleged to have been committed by the provider;
2. the specific amount of fiscal sanction assessed against the provider, if any;
3. a statement specifying what action the provider must take to correct the violation(s), if applicable;
4. a statement of the time lines related to the proposed action;
5. a statement as the consequences for failing to timely take corrective actions or make a request for appeal;
6. a statement of the provider's right to appeal the proposed action;
7. the name, address and telephone number of the hearing officer. A third-party official must be designated by the LEA to review appeals. This information must be submitted to SDE annually for review.

D. A notice of proposed action terminating a provider's SES participation shall be sent by the LEA to the provider's executive director, the chair of the board of directors, identified responsible principals and responsible individuals. A copy of the notice shall also be sent to the SDE.

E. If the proposed termination of services is due to the provider's submission of a false or fraudulent documentation, the notice of proposed action shall also state:

1. that the effective termination or removal date shall be 10 days after the provider's receipt of the notice;
2. the provider's written request for an appeal must be received by the hearing officer within 10 days of the provider's receipt of the notice of proposed action along with written documentation opposing the proposed removal.

F. The service of a Notice of Proposed Action, Request for Appeal and Decision shall be made by official U.S. postal certified mail, return receipt requested:

1. service upon a provider's authorized representative, officer, or agent constitutes service upon that entity;
2. service by certified mail is complete upon the date of receipt. An official U.S. postal receipt from the certified mailing constitutes prima facie evidence of service. If the last day of any deadline established by these rules falls on a weekend or a state holiday, service is considered timely made if received on or before the close of business of the next business day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2048 (October 2007).

#### **§121. SES Provider Request for Appeal**

A. Providers wishing to appeal proposed actions shall serve a written request for appeal upon the LEA not later than 15 calendar days after the receipt of the notice of proposed action.

B. The request for appeal shall contain the following information:

1. a listing of what specific violations set forth in the notice of proposed action are being appealed together with a short and plain statement of each contested issue of fact or law concerning each violation;
2. a statement specifying which of the following two forms of appeal a provider seeks:
  - a. a review of the records with the right to submit additional written information to dispute the proposed action; or
  - b. a hearing. Appeals shall be conducted by a fair and impartial hearing officer. The provider may be represented by legal counsel or another designated individual;
  - c. a statement as to the relief or remedy the provider seeks from the appeal.

C. The LEA must acknowledge receipt of the request for appeal within 10 calendar days of its receipt of the request.

D. Providers wishing to have a review of the LEA's proposed termination from SES participation must submit a written request for a review directly to the SDE at the same time.

E. In the case of a review, the LEA must render a decision to the provider within 60 days from the date of the receipt of the request for appeal by the provider. In the case of a hearing, due process procedures as developed and utilized by the LEA should ensue. Final determinations, in either case, shall be sent to the SDE within 30 days of rendering.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2048 (October 2007).

#### **§123. SES Appeal Process—State**

A. The rules and regulations contained in this Subpart are in accordance with the Louisiana Administrative Procedures Act, Revised Statutes 49:950 et seq., 7 CFR Part 226.6(k), and shall govern the implementation of appeals procedures for SES providers by local educational agencies and the SDE.

B. A provider may appeal its removal from the state-approved list by SBESE by submitting an appeal to the SDE specifying the basis upon which it believes its removal is not in accordance with applicable law.

C. The SDE shall notify the provider, in event of removal from the state-approved list, of the action being taken through a "Notice of Proposed Action." This notice shall contain the following information:

1. a list of specific violations of program rules and regulations alleged to have been committed by the provider;
2. the specific amount of fiscal sanction assessed against the provider, if any;
3. a statement specifying what action the provider must take to correct the violation(s), if applicable;
4. a statement of the time lines related to the proposed action;
5. a statement as to the consequences for failing to timely take corrective actions or make a request for appeal;
6. a statement of the provider's right to appeal the proposed action;
7. the name, address and telephone number of the hearing officer.

D. A notice of proposed action terminating a provider's SES participation shall be sent by the SDE to the provider's executive director, the chair of the board of directors, identified responsible principals and responsible individuals.

E. If the proposed termination of services is due to the provider's submission of a false or fraudulent documentation, the notice of proposed action shall also state:

1. that the effective termination or removal date shall be 10 days after the provider's receipt of the notice;
2. the provider's written request for an appeal must be received by the hearing officer within 10 days of the provider's receipt of the notice of proposed action along with written documentation opposing the proposed removal.

F. The service of a Notice of Proposed Action, Request for Appeal and Decision shall be made by official U.S. postal certified mail, return receipt requested:

1. service upon a provider's authorized representative, officer, or agent constitutes service upon that entity;
2. service by certified mail is complete upon the date of receipt. An official U.S. postal receipt from the certified mailing constitutes prima facie evidence of service. If the last day of any deadline established by these rules falls on a weekend or a state holiday, service is considered timely made if received on or before the close of business of the next business day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2048 (October 2007).

#### **§125. SES Provider Request for Appeal**

A. Providers wishing to appeal proposed actions shall serve a written request for appeal upon the SDE not later than 15 calendar days after the receipt of the notice of proposed action.

B. The request for appeal shall contain the following information:

1. a listing of what specific violations set forth in the notice of proposed action are being appealed together with a short and plain statement of each contested issue of fact or law concerning each violation;

2. a statement specifying which of the following two forms of appeal a provider seeks:

- a. a review of the records with the right to submit additional written information to dispute the proposed action; or
- b. a hearing. Appeals shall be conducted by a fair and impartial hearing officer. The provider may be represented by legal counsel or another designated individual;
- c. a statement as to the relief or remedy the provider seeks from the appeal.

C. The SDE must acknowledge receipt of the request for appeal within 10 calendar days of its receipt of the request.

D. Providers wishing to have a review of the SDE's proposed termination from SES participation must submit a written request for a review directly to the hearing officer at the same time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2049 (October 2007).

#### **§127. SES Provider Appeals on the Record; Submissions**

A. Providers and responsible principals and responsible individuals opting to appeal proposed actions by a review of the record shall submit all documents and information, in written form, that they wish to have considered in the appeal to the hearing officer not later than 30 calendar days after the receipt of the notice of proposed action.

B. The SDE shall submit all documents and written information it wishes to have considered to the hearing officer not later than 30 calendar days after the institution's receipt of the notice of proposed action.

C. Any information on which SDE action was based must be available to the provider and the responsible principals and individuals for inspection from the date of the state agency's receipt of the request for appeal.

D. The hearing officer must conduct a hearing in addition to, or in lieu of, a review of the record only if the provider or the responsible principals and responsible individuals request a hearing in the written request for appeal.

E. The hearing officer must immediately notify the SDE that a provider has contested the proposed removal.

1. The SDE must immediately submit to the hearing officer a copy of the notice of proposed action terminating the provider's participation and all supporting documents.

F. If a hearing is requested in writing, the hearing officer shall schedule the hearing date to allow rendering of the decision within 60 days from the date of the receipt of the request for appeal by the state agency. The hearing officer shall notify the provider and SDE in writing of the time, date, and place of the hearing, at least 10 calendar days in advance of the date of the hearing.

1. An SDE representative must be allowed to attend the hearing to respond to the testimony of the provider and to answer questions posed by the hearing officer.

2. The notice of proposed action issued to the provider shall remain in effect until the decision is rendered in the appeal.

3. The hearing officer shall render a decision which shall include findings of fact, conclusions, and a statement as to the reasons for the decision. The decision shall be rendered within 60 days of the receipt of the request for appeal by the SDE. The decision shall be served to the provider and the SDE by the hearing officer and shall constitute the final SDE action for purposes of judicial or other review. The decision of the hearing officer can be appealed as provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2049 (October 2007).

Weegie Peabody  
Executive Director

0710#005

### RULE

#### Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Career and Technical Course Offerings (LAC 28:CXV.2319, 2373, 2377, and 2381)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2319, High School Graduation Requirements, §2373, Agricultural Education; §2377, General Career and Technical Education, and §2381, Health Occupations. This action will update career and technical course offerings. In updating these course offerings the career and technical program of studies will be more aligned with national standards.

#### Title 28 EDUCATION

#### Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

#### Chapter 23. Curriculum and Instruction

#### §2319. High School Graduation Requirements

A. - E. ...

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F. High School Area of Concentration

1. - 1.a. ...

b. To complete a career area of concentration, students shall meet the minimum requirements for graduation including four elective primary credits in the area of concentration and two related elective credits, including one computer/technology course. Areas of Concentration are identified in the Career Options Reporting System with each LEA designating the Career and Technical Education Areas of Concentration offered in their school system each year. The following computer/technology courses can be used to meet this requirement.

Course	Credit
Computer/Technology Literacy	1
Computer Applications or Business Computer Applications	1
Computer Architecture	1
Computer Science I, II	1 each
Computer Systems and Networking I, II	1 each

Course	Credit
Desktop Publishing	1
Digital Graphics & Animation	1/2
Multimedia Presentations	1/2 or 1
Web Mastering or Web Design	1/2, 1
Independent Study in Technology Applications	1
Word Processing	1
Telecommunications	1/2
Introduction to Business Computer Applications	1
Technology Education Computer Applications	1
Advanced Technical Drafting	1
Computer Electronics I, II	1-3 each
Database Programming with PL/SQL	1
Java Programming	1
Database Design and Programming	1
Digital Media I, II	1-3
Computer Service Technology I & II	2-3
Networking Basics	2-3
Routers and Routing Basics	2-3
Switching Basics & Intermediate Routing	2-3
WAN Technologies	2-3
Web Design II	1

G. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R. S. 17:183.2; R.S. 17: 395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007).

#### §2373. Agricultural Education

A. ...

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B. Agriscience III and IV Laboratory, and Cooperative Agriscience Education I and II are offered only to students who are also enrolled in Agriscience III or Agriscience IV for two consecutive semester courses during the year.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1298 (June 2005), amended LR 33:277 (February 2007), LR 33:2050 (October 2007).

#### §2377. General Career and Technical Education

A. General Career and Technical Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
CTE Internship I	11-12	1
CTE Internship II	12	1
CTE Internship I	11-12	2
CTE Internship II	12	2
General Cooperative Education I	11-12	3
General Cooperative Education II	12	3
Education for Careers	9-12	1/2 -1
Teacher Cadet I	11-12	1
Teacher Cadet II	12	1
Advanced Television Broadcasting I	10-12	1-3
Advanced Television Broadcasting II	11-12	1-3
Digital Media I	10-12	1-3
Digital Media II	11-12	1-3
Oracle Internet Academy		

Course Title(s)	Recommended Grade Level	Units
Database Design and Programming	11-12	1
Java Programming	11-12	1
Database Programming with PL/SQL	11-12	1
Finance Academy		
Economics and the World of Finance	11-12	1/2
Banking and Credit	11-12	1/2
Financial Planning	11-12	1/2
Securities	11-12	1/2
Insurance	11-12	1/2
International Finance	11-12	1/2
Introduction to Financial Services	11-12	1/2 - 1
Hospitality and Tourism Academy		
Introduction to Travel and Tourism	11-12	1/2
Travel and Tourism II	11-12	1/2
Travel Geography	11-12	1/2
Systems Applications	11-12	1/2
Economics for Travel and Tourism	11-12	1/2
Information Technology Academy		
Introduction to Information Technology	11-12	1/2
Digital Networks	11-12	1/2
Advanced Web Tools	11-12	1/2
Databases	11-12	1/2
Introduction to the Internet	11-12	1/2
Logic for Programming	11-12	1/2

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1299 (June 2005), amended LR 32:546 (April 2006), LR 32:1415 (August 2006) LR 33:278 (February 2007), LR 33:2050 (October 2007).

**§2381. Health Occupations**

A. Health Occupations course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
AHEC of a Summer Career Exploration	9-12	1/2
Allied Health Services I	10-12	1-2
Allied Health Services II	10-12	1-2
Cooperative Health Occupations	11-12	3
Dental Assistant I	10-12	1-2
Dental Assistant II	11-12	2-3
Emergency Medical Technician—Basic	10-12	2
First Responder	9-12	1/2-2
Health Occupations Elective I, II	9-12	1/2-3
Health Science I	11-12	1-2
Health Science II	12	1-2
Introduction to Emergency Medical Technology	10-12	2
Introduction to Health Occupations	9-12	1
Introduction to Pharmacy Assistant	10-12	1
Medical Assistant I	10-12	1-2
Medical Assistant II	11-12	1-2
Medical Assistant III	12	1-2
Medical Terminology	9-12	1
Nurse Assistant	10-12	2-3
Pharmacy Technician	12	1-2
Sports Medicine I	10-12	1/2
Sports Medicine II	11-12	1/2
Sports Medicine III	11-12	1

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1300 (June 2005), amended LR 33:279 (February 2007), LR 33:2051 (October 2007).

Weegie Peabody  
Executive Director

0710#004

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School Administration—Distance Education (LAC 28:CV.2395)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2395.Distance Education. Distance education provides instruction to individual learners who are separated from their teachers by space and/or time and multiple appropriate learning pathways for diverse learners. Web-based instruction, compressed and IP videoconferencing instruction, satellite-delivered, and web-supported instruction have expanded the walls of the traditional school. Emerging technologies continue to provide new distance learning opportunities that include interactive and authentic learning experiences and enhance collaboration between teacher and learner—in effect, creating virtual classrooms. Therefore, it was necessary to correlate and make recommended changes to the current set of distance learning standards.

**Title 28**

**EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for School Administrators**

**Chapter 23. Curriculum and Instruction**

**§2395. Distance Education**

A. An LEA choosing to implement a distance education program shall establish policy and procedures for reviewing and approving programs that meet the following standards for distance education as established by BESE.

1. Local distance education programs shall support the *State Content Standards Initiatives*.

a. Distance education programs shall support the mission of the standards-based initiatives, i.e., "to develop rigorous and challenging standards that will enable all Louisiana students to become lifelong learners and productive citizens for the 21st century."

b. Distance education courses shall incorporate the foundation skills of the *State Content Standards* (Communication, Problem Solving, Resource Access and Utilization, Linking and Generating Knowledge, and Citizenship).

2. Distance education shall comply with all policies set forth by BESE as stated in current *Bulletin 741—Louisiana Handbook for School Administrators* with the exception of §907, Secondary—Class Times and Carnegie Credit.

a. Students can earn Carnegie credit by successfully completing all course requirements for distance education

courses authorized by the LEA according to the policies in this Section.

3. The receiving LEA or school and the provider shall meet the following requirements related to the development of a standards-based distance education program. A receiving LEA or school is defined as any LEA or school that has students enrolled in courses via distance education. A provider could be an LEA, school, agency or educational organization.

a. The receiving LEA shall authorize each distance education course and ensure that the rigor and breadth meets state curriculum content standards.

b. The receiving LEA shall ensure that instruction is provided by teachers certified in the course/subject in which they are teaching with training in the delivery method, including appropriate media and pedagogy.

c. The receiving LEA shall verify that college and university advanced placement and/or college dual enrollment course instructional staff not holding Louisiana state teacher credentials are validated as subject matter experts by the providing institution.

d. The receiving LEA or school shall ensure that all students enrolled in a distance learning course are provided with the necessary course materials and technical support.

e. The receiving LEA shall evaluate the effectiveness of each authorized distance education course based on course completion rates and student achievement.

f. The provider shall define minimum prerequisite technology competencies for student participation in distance education courses if such competencies are required for course access.

g. The provider shall also make available to the student an orientation to the course delivery method prior to or at the start of the course.

h. The provider shall ensure that teachers delivering instruction in distance education courses use a variety of methods to assess the mastery of the content as reflected in the *Louisiana Content Standards*.

i. The provider shall provide to the receiving LEA a complete syllabus and a list of required materials prior to course implementation.

j. The provider shall ensure that all course content complies with copyright fair use laws, including The Technology, Education, and Copyright Harmonization Act (TEACH Act).

k. Online Course providers shall ensure access to the courses' web content by using non-proprietary technologies (HTML).

l. LEAs and course providers shall make courses available to all students by complying with web accessibility guidelines and standards (W3C, Section 508, and Louisiana and institutional guidelines) to the maximum extent reasonably possible.

m. The provider shall supply course content that is designed to meet the following criteria:

i. based on current perspectives of learning theories and curriculum standards;

ii. systematic in design, clearly written and revised based on student performance and feedback;

iii. uses appropriate presentation methods, media and pedagogy;

iv. engages students in a variety of learning activities based on various learning styles;

v. accommodates individual differences, including student disabilities; and

vi. encourages student-to-teacher and student-to-student interaction.

4. The receiving LEA or school and the provider shall meet the following requirements for management and administration.

a. The receiving LEA shall award credit and grades for distanced education courses assigned by the distance education provider and instructor with no deviations.

b. The receiving LEA or school shall ensure that a facilitator who is a Louisiana licensed teacher is assigned to and is actively engaged with each student participating in distance education courses.

c. The receiving LEA or school shall ensure that the facilitator adheres to guidelines determined by the provider and the policies in this Section.

d. The receiving LEA or school shall provide adequate, timely, and appropriate technical support to students, teachers, and facilitators.

e. The receiving LEA shall ensure that the facilitators are provided ongoing staff development appropriate to the delivery method used, supporting distance education courses technically and instructionally.

f. The receiving LEA shall ensure that students have appropriate, equitable, and adequate access for course participation.

g. In the event of short- and long-term interruptions, the LEA shall establish an alternative method of instruction in cooperation with the provider.

h. The provider shall judiciously address issues relative to course load and student-teacher ratio as appropriate for the particular method of delivery, course content, and teacher competency to ensure effective student interaction and course management.

i. Students will be enrolled, added, and dropped as outlined in the LEA's Pupil Progression Plan.

j. The provider shall ensure that the teacher providing instruction is provided adequate technical support to ensure ease of use for faculty and students.

k. The provider shall furnish training and/or support in designing course content to fit the delivery methods proposed for distance education courses.

l. The teacher delivering instruction and the facilitator, through ongoing communication, shall be responsible for verifying student participation and performance.

m. The teacher delivering instruction shall provide alternate course procedures and activities for use in case of technical and other course delivery problems arise that prevent normal course delivery.

n. The teacher delivering instruction shall an atmosphere conducive to optimal learning including but not limited to monitoring online discussions and other instructional activities.

o. The teacher delivering instruction shall practice ethical and legal use of equipment and instructional resources.

p. The facilitator shall practice ethical and legal use of equipment and instructional resources.

q. The teacher delivering instruction and the facilitator through ongoing communication shall be responsible for verifying student participation and performance.

r. The facilitator shall implement alternate course procedures when technical and other course delivery problems prevent normal course delivery.

s. The facilitator shall maintain an atmosphere conducive to optimal learning, including but not limited to monitoring online discussions and other instructional activities as they occur in the classroom as directed by the teacher delivering instruction.

5. The following technical specifications are required.

a. The receiving LEA shall provide students enrolled in distance education courses technical access which meets specifications furnished by the course provider.

b. The receiving LEA shall provide instructional and communication hardware which meets specifications furnished by the course provider.

c. The receiving LEA shall fund and provide timely and appropriate technical support.

d. The provider will furnish course technical requirements sufficiently in advance so districts may make informed decisions about participation.

e. Course providers will ensure they have the appropriate technical infrastructure to support their course offerings for effective course delivery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1302 (June 2005), amended LR 33:2051 (October 2007).

Weegie Peabody  
Executive Director

0710#003

## RULE

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—General Provisions  
(LAC 28:CXXXI.Chapters 11, 12, 13, and 14)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has revised *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, Chapters 11 through 14. This change in Bulletin 746 will incorporate Appendices B-D and the Glossary into the codified document as Chapters 11-14, as follows: Chapter 11, State and Federal Guidelines Related to No Child Left Behind Federal Legislation: Qualifications for Teacher and Paraprofessional; Chapter 12, Approved Courses to Reinstate a Lapsed Certificate; Chapter 13, Ancillary Certification; and Chapter 14, Glossary.

## Title 28

### EDUCATION

#### Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

#### Chapter 11. State and Federal Guidelines Related to No Child Left Behind Federal Legislation: Qualifications for Teachers and Paraprofessionals

##### §1101. General Provisions

A. The No Child Left Behind (NCLB) Act of 2001 requires that those involved with delivering instruction of core content areas in K-12 schools be highly qualified. This Chapter is divided into four sections: Board of Elementary and Secondary Education (BESE) policy regarding:

1. highly qualified status for teachers;
2. highly qualified status for paraprofessionals; and
3. continuing learning units (CLUs); and
4. federal legislation related to qualifications of teachers and paraprofessionals.

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, LR 33:2053 (October 2007).

##### §1103. Highly Qualified Policy for Teachers

A. The requirement that teachers be highly qualified applies to any public elementary, middle, or secondary school teacher. The Louisiana Department of Education (LDE) is the state agency/entity responsible for prescribing qualifications and providing for the certification of teachers under authority of R.S. 17:7.1.

B. The Louisiana Department of Education collaborated with the Board of Elementary and Secondary Education and the Board of Regents on state activities under the No Child Left Behind (NCLB) Act of 2001 related to "highly qualified teachers." All teachers hired on or after the first day of the 2002-2003 school year to work in programs supported by Title I funds and who teach core academic subjects must be highly qualified. Under NCLB, all teachers of core academic subjects must have met highly qualified status by the end of the 2005-2006 school year.

C. Statutory Requirements for Certification. To obtain initial Louisiana certification, an individual must hold at least a baccalaureate degree, have earned a minimum grade point average of a cumulative 2.50, and have demonstrated subject knowledge and teaching skills in the certification area by passing rigorous exams required in Louisiana.

D. Academic Major. In Louisiana, for the purpose of NCLB, teachers who completed an academic content major are highly qualified in that content area.

E. Advanced Certification. For the purpose of NCLB, Advanced Certification is defined as having a master's degree or higher degree in the content area. Teachers who have highly qualified status under this option must meet all applicable state laws.

F. Advanced Credentialing. Advanced Credentialing is defined as successful completion of a rigorous credentialing process that is based on a high objective uniform standard. The National Board of Professional Teaching Standards uses

a process for certifying its candidates that meets this standard.

G. **Applicability.** The requirement that teachers be highly qualified applies to all public elementary and secondary school teachers assigned to core academic subjects. Special education teachers providing instruction in core academic areas, including those who teach students identified as academically gifted, must also meet highly qualified requirements.

H. **Core Academic Subjects.** As defined in the mandate, core academic subjects are English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. Louisiana defined "arts as a core academic subject" to include all secondary visual and performing arts courses for which Carnegie units (high school credits) are awarded.

I. **Standard Teaching Certificates**

1. Louisiana issues standard teaching certificates to persons who have completed a state-approved teacher education program (traditional or alternate approach) and who earned a degree from a regionally accredited institution of higher education or an approved private provider. See Chapter 3 of this bulletin for a description of the following teaching authorizations:

- a. Level 1 Professional Certificate;
- b. Level 2 Professional Certificate;
- c. Level 3 Professional Certificate;
- d. Type C Certificate;
- e. Type B Certificate;
- f. Type A Certificate; and
- g. Out-of-State Certificate.

2. For a complete description of the Practitioner Licenses (PL1, PL2, PL3, and PL4) issued by the state to persons enrolled in a state-approved alternate teacher education program, see Chapter 3 of this bulletin. Because alternate routes meet requirements established in the federal mandate, teachers who meet admission criteria for alternate program enrollment are identified as highly qualified.

J. **Nonstandard Teaching Certificates**

1. See Chapter 3 of this bulletin for a description of nonstandard teaching authorizations, as follows:

- a. Temporary Authority to Teach;
- b. Out-of-Field Authorization to Teach; and
- c. Temporary Employment Permit.

2. Teachers holding a temporary certificate do not meet the NCLB "highly qualified teacher" definition because they have not demonstrated subject matter competency under NCLB legislation.

K. **Technical Assistance and Support.** The Louisiana Department of Education provides technical assistance and support to local education agencies to ensure faithful implementation of the NCLB mandate. Technical assistance and support includes but is not limited to the following activities:

1. providing each candidate on a temporary license with a "feedback sheet." A certification specialist or certification counselor who receives the request for certification evaluates the transcripts (if available) and prepares a feedback sheet, based on the information submitted to the state by the district representative;

2. monitoring of certification folders per the NCLB consolidated monitoring process;

3. collaborating with the Board of Regents (BOR) and college/university personnel to determine ways college/university programs might assist the state by addressing areas of need (e.g., if special education programs are needed in certain geographic areas, SDE staff will collaborate with university personnel and BOR to facilitate provision of such programs);

4. prescribing the shortest route to certification, handled at the state level by certification specialists and at the local level by certification counselors;

5. using a two pronged approach to recruit candidates to pursue teaching as a career:

a. a human resources component, through the regional certification counselors;

b. a technological component, through the Teach Louisiana website at [www.teachlouisiana.net](http://www.teachlouisiana.net).

L. **Louisiana Definition: Highly Qualified Teacher.** For purposes of NCLB Highly Qualified requirements, a "new" teacher is defined as an individual who is who is new to the teaching profession. A "not new" teacher is defined as an individual with one or more years of teaching experience earned while holding a standard teaching certificate. Teaching experience earned while holding a temporary, provisional, or emergency authorization (e.g., a Temporary Authority to Teach [TAT]) does not qualify.

1. **New elementary teacher:**

a. holds a standard elementary school education certificate, a special education certificate that includes elementary school grades, or a special foreign language certificate to teach a specific foreign language in grades K-8;

b. has passed the Louisiana content-specific elementary education licensing exam;

c. does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis.

2. **Not new elementary teacher:**

a. holds a standard elementary school education certificate, a special education certificate that includes elementary school grades, or a special foreign language certificate to teach a specific foreign language in grades K-8;

b. does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis;

c. has demonstrated content mastery by one of the following means:

i. passed the Louisiana content-specific elementary education licensing exam;

ii. holds a current National Board for Professional Teaching Standards (NBPTS) certification in early childhood, middle childhood, or in a content area basic to the elementary school (e.g., Early Language Arts, Early Mathematics) and is teaching in the NBPTS area of certification;

iii. has at least 12 semester hours of credit in each of the four core disciplines (English/language arts, including reading and writing; math; science; and social studies);

iv. by the end of the 2005-2006 school year, qualifies under the High Objective Uniform State Standard of Evaluation (HOUSSE) Plan for Not New Elementary Teachers, as follows:

(a). a "not new" teacher who does not meet the requirements of Subparagraphs a-c above is considered



highly qualified if he/she is state certified and teaching in the area of certification and if he/she completes 90 Continuing Learning Units (CLUs) by the end of the 2005-2006 school year, with the beginning of the 2001-2002 school year as the beginning date for earning CLUs;

(b). a "not new" teacher's previous work experience as a fully certified teacher may be credited as CLUs at the rate of three CLUs for each year of successful experience in the content area, with a maximum of 45 CLUs earned through work experience;

(c). the Local Education Agency (LEA) is responsible for maintaining documentation for educators seeking "highly qualified" status, as defined by NCLB, through the HOUSSE option (90 CLUs), as follows:

(i). identifying teachers in their employment using the HOUSSE option;

(ii). providing an annual update on each identified teacher's status (progress) toward earning the required 90 CLUs;

(d). see the Section at the end of this Chapter entitled "Continuing Learning Units (CLUs)."

### 3. New middle school teacher:

a. holds a standard certificate for middle school education; middle school English/language arts, mathematics, science, or social studies; a special education area that includes middle school grades; a secondary academic content area; or a special foreign language certificate to teach a specific foreign language in grades K-8;

b. has demonstrated content mastery by one of the following means:

i. has the equivalent of an academic major in a content area appropriate to the middle school level, for every core academic subject the individual teaches;

ii. has passed the Louisiana content-specific licensing exam required for a middle school academic content area or for a secondary (grades 6-12) academic content area that is appropriate to the middle school level, for every core academic subject the individual teaches;

iii. has earned a master's degree in a pure content area (not in education) for every core academic subject the individual teaches;

c. does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis.

### 4. Not new middle school teacher:

a. holds a standard teaching certificate appropriate for grades 6-8 (e.g., Elementary Education 1-8, Upper Elementary Education 5-8, Middle School Education); a special education area that includes middle school grades; a secondary academic content area; or a special foreign language certificate to teach a specific language in grades K-8;

b. does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis;

c. has demonstrated content mastery by one of the following means:

i. passed the Louisiana content-specific licensing exam required for a middle school academic content area or for a secondary (grades 6-12) academic content area that is appropriate to the middle school level, for every core academic subject the individual teaches;

ii. has the equivalent of an academic major in a content area appropriate to the middle school level, for every core academic subject the individual teaches;

iii. earned a master's degree in a pure content area (not in education) for every core academic subject the individual teaches;

iv. holds a current National Board for Professional Teaching Standards (NBPTS) certification in a core content area and is teaching in the NBPTS area of certification;

v. by the end of the 2005-2006 school year, qualifies under the High Objective Uniform State Standard of Evaluation (HOUSSE) Plan for Not New Middle School Teachers:

(a). a "not new" teacher who does not meet the requirements of Subparagraphs a-c above is considered highly qualified if he/she is state certified and teaching in the area of certification and if he/she completes 90 Continuing Learning Units (CLUs) by the end of the 2005-2006 school year, with the beginning of the 2001-2002 school year as the beginning date for earning CLUs;

(b). a "not new" teacher's previous work experience as a fully certified teacher may be credited as CLUs at the rate of three CLUs for each year of successful experience in the content area, with a maximum of 45 CLUs earned through work experience;

(c). the Local Education Agency (LEA) is responsible for maintaining documentation for educators seeking "highly qualified" status, as defined by NCLB, through the HOUSSE option (90 CLUs):

(i). identifying teachers in their employment using the HOUSSE option; and

(ii). providing an annual update on each identified teacher's status (progress) toward earning the required 90 CLUs;

(d). see the Section at the end of this Chapter entitled "Continuing Learning Units (CLUs)."

### 5. New secondary teacher:

a. holds a standard certificate for every core academic subject the individual teaches;

b. has demonstrated content mastery by one of the following means:

i. has the equivalent of an academic major for every core academic subject the individual teaches;

ii. has passed the Louisiana content-specific licensing exam for every core academic subject the individual teaches;

iii. has earned a master's degree in a pure content area (not in education) for every core academic subject the individual teaches;

c. does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis.

### 6. Not new secondary teacher:

a. holds a standard certificate for every core academic subject the individual teaches;

b. does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis;

c. has demonstrated content mastery by one of the following means:

i. passed the Louisiana content-specific licensing exam for every core academic subject the individual teaches;

ii. has the equivalent of an academic major for every core academic subject the individual teaches;

iii. earned a master's degree in a pure content area (not in education) for every core academic subject the individual teaches;

iv. holds a current National Board for Professional Teaching Standards (NBPTS) certification in a core content area and is teaching in the NBPTS area of certification;

v. by the end of the 2005-2006 school year, qualifies under the High Objective Uniform State Standard of Evaluation (HOUSSE) Plan for Not New Secondary Teachers:

(a). a "not new" teacher who does not meet the requirements of Subparagraphs a-c above is considered highly qualified if he/she is state certified and teaching in the area of certification and if he/she completes 90 Continuing Learning Units (CLUs) by the end of the 2005-2006 school year, with the beginning of the 2001-2002 school year as the beginning date for earning CLUs;

(b). a "not new" teacher's previous work experience as a fully certified teacher may be credited as CLUs at the rate of three CLUs for each year of successful experience in the content area, with a maximum of 45 CLUs earned through work experience;

(c). the Local Education Agency (LEA) is responsible for maintaining documentation for educators seeking "highly qualified" status, as defined by NCLB, through the HOUSSE option (90 CLUs):

(i). identifying teachers in their employment using the HOUSSE option; and

(ii). providing an annual update on each identified teacher's status (progress) toward earning the required 90 CLUs;

(d). see the Section at the end of this Chapter entitled "Continuing Learning Units (CLUs)."

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, LR 33:2053 (October 2007).

### **§1105. Highly Qualified Policy for Paraprofessionals**

A. The NCLB legislation signed into law by President Bush on January 8, 2002, was established to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and, at minimum, reach proficiency on challenging state academic achievement standards and assessments. Title I, as amended by NCLB, has new requirements for paraprofessionals.

#### **B. Definition of Paraprofessional**

1. For the purposes of Title I, Part A, a paraprofessional is an employee who provides instructional support in a program supported with Title I, Part A funds. This includes paraprofessionals working in any of the following capacities:

a. providing one-on-one tutoring if such tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher;

b. assisting with classroom management, such as organizing instructional and other materials;

c. providing instructional assistance in a computer laboratory;

d. conducting parental involvement activities;

e. providing support in a library or media enter;

f. acting as a translator;

g. providing instructional support services under the direct supervision of a teacher [Title I, Section 1119(g)(2)].

2. Individuals functioning as interpreters/translators, who are providing communication assistance only (not instructional support), are not considered paraprofessionals under Title I if they possess one of the following Educational Interpreter certificates:

a. Ancillary Provisional Certificate;

b. Ancillary Grandfather Certificate; or

c. Qualified Ancillary Certificate.

3. Individuals who work in food services, cafeteria or playground supervision, personal care services, non-instructional computer assistance, and similar positions are not considered paraprofessionals under Title I.

C. Requirements for Title I Paraprofessionals. All Title I paraprofessionals hired on or before January 8, 2002, and working in a program supported with Title I funds must have met the following requirements by January 8, 2006. All Title I paraprofessionals hired after January 8, 2002, must meet the following requirements to be hired:

1. possess a secondary school diploma or its recognized equivalent (e.g., Graduate Equivalency Examination—GED). This includes paraprofessionals who serve as translators or who conduct parental involvement activities;

2. satisfy one of the following:

a. pass a state approved assessment for paraprofessionals;

b. obtain an Associate (or higher) Degree at a higher education institution;

c. complete two years of full-time study at an institution of higher education.

D. Louisiana Pathways for Paraprofessionals to Meet Federal Requirements. The U.S. Department of Education specifies that paraprofessionals should be able to demonstrate knowledge of and the ability to assist in instruction in the areas of reading, writing, and math, or in "school readiness." Paraprofessionals are expected to have a working knowledge of these academic areas. Louisiana offers all paraprofessionals three ways to meet federal requirements.

1. State Test. A paraprofessional who passes the Educational Testing Service (ETS) Para-Pro Assessment will meet state and federal requirements to be classified as a "highly qualified paraprofessional." A paraprofessional who is "not new to the profession" who passes the ACT Work Keys assessment and who has successful observations will meet state and federal requirements to be classified as a "highly qualified paraprofessional."

2. Two Years of Full-Time Study (48 Semester Credit Hours). State, district, and post-secondary education personnel collaborated in identifying course requirements for paraprofessionals (within a state approved institution of higher education) that would assist paraprofessionals when instructing students in the areas of reading, writing, math, and school readiness.

3. Associate Degree. State, district, and post-secondary education personnel collaborated in identifying

course requirements for paraprofessionals (within a state-approved institution of higher education) that would assist paraprofessionals when instructing students in the areas of reading, writing, math, and school readiness.

E. State-Approved Institutions of Higher Education. State-approved higher education institutions may offer coursework to paraprofessionals. To be approved by the state, institutions must be accredited by a nationally recognized accrediting entity or granted pre-accreditation status. Newly developed public institutions that are formally seeking accreditation through the Southern Association for Colleges and Schools may obtain pre-accreditation status from the state. A list of approved institutions is available from the Department of Education upon request.

F. Louisiana Definition: Highly Qualified Paraprofessional

1. New to the Profession—a paraprofessional must satisfy one of the following:

- a. passed the ETS Para-Pro Assessment;
- b. has two years of full-time study (48 semester credit hours) from the recommended list of state-approved institutions of higher education or from a regionally accredited institution(s) of higher education. A total of 15 hours of general education course requirements include English Composition (3), English/Reading (6), and Mathematics (6). For the remaining 33 hours of coursework, acceptance of credit for a course shown on a transcript from an approved higher education institution is left to school district discretion in addressing the needs of the specific job;

c. has Associate of Arts or Associate of Applied Science degree from a state-approved or regionally accredited institution of higher education.

2. Not New to the Profession—a paraprofessional must satisfy one of the following:

- a. passed the ETS Para-Pro Assessment;
- b. has two years of full-time study (48 semester credit hours) from the recommended list of state-approved institutions of higher education or from a regionally accredited institution of higher education. A total of 15 hours of general education course requirements include English Composition (3), English/Reading (6), and Mathematics (6). For the remaining 33 hours of coursework, acceptance of credit for a course shown on a transcript from an approved higher education institution is left to school district discretion in addressing the needs of the specific job;

c. has Associate of Arts or Associate of Applied Science degree from a state-approved or regionally accredited institution of higher education;

d. has successfully completed the ACT, Inc., Work Keys skills assessments and on-the-job observation

G. Curriculum-based Pathways for Paraprofessionals. General Education and Teacher Preparation coursework must address the K-12 state content standards, Louisiana Components of Effective Teaching, National Council for the Accreditation of Teacher Education (NCATE) standards, and Praxis expectations. In addition to the ETS ParaPro Assessment, the State specified three curriculum-based pathways for paraprofessionals to meet federal requirements, as follows.

1. Total of 48 Credit Hours

- a. General Education Courses—15 semester hours:

- i. English Composition (3 hours);

- ii. English/reading (6 hours);

- iii. Mathematics (6 hours).

b. Paraprofessional Courses—for the remaining 33 semester hours, acceptance of credit for a course shown on a transcript from an approved institution of higher education is left to school district discretion in addressing needs of a specific job.

- i. Guidelines for prescriptive plan requiring additional coursework—school districts should consider at least three hours of reading and at least 12 hours from a list of available paraprofessional courses, as follows:

- (a). Strategies for Teaching and Learning;

- (b). Assessment of Learning;

- (c). Classroom and Behavior Management;

- (d). Addressing the Needs of Exceptional Children.

- ii. Discipline-specific electives may include as many as 12 hours of developmental (remedial) courses.

2. Associate of Applied Science Degree (60+ credit hours)

- a. General Education Courses—15 semester hours:

- i. English Composition (3 hours);

- ii. Humanities (3 hours);

- iii. Math—Algebra (3 hours);

- iv. Natural Sciences (3 hours);

- v. Social and Behavioral Science (3 hours).

- b. Teacher Preparation Courses—Child/Adolescent Development (3 hours)

- c. Paraprofessional Courses—30 semester hours:

- i. Introduction to Paraprofessional Education (3);

- ii. Applied Literacy Development (3);

- iii. Strategies for Teaching and Learning (3);

- iv. Applied Assessment of Learning (3);

- v. Applied Classroom Behavior Management (3);

- vi. Addressing the Needs of Exceptional Children

(3);

- vii. Application of Computer Technology (3);

- viii. Family, School, and Community Relations (3);

- ix. Health and Safety in Schools (3);

- x. Paraprofessional Practicum—Teaching, Learning, and Record Keeping (3).

3. Associate of Arts Degree (60+ credit hours)

- a. General Education Courses—54 semester hours:

- i. English Composition (6 hours);

- ii. Humanities: English Literature (6 hours);

- iii. Math—Algebra, etc. (12 hours);

- iv. Natural Sciences (15 hours);

- v. Social and Behavioral Science (12 hours);

- vi. Fine Arts (3 hours).

- b. Teacher Preparation Courses—9 hours. Select three of the following:

- i. Child/Adolescent Development (3 hours);

- ii. Educational Psychology (3 hours);

- iii. Multicultural/Exceptional Education (3 hours):

- (a). Educational Technology (3 hours);

- (b). Children's Literature (3 hours).

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, LR 33:2056 (October 2007).

### **§1107. Continuing Learning Units (CLUs)**

A. A Continuing Learning Unit (CLU) is a professional development activity that builds capacity for effective, research-based, content-focused teaching and learning that positively impacts student achievement. As a unit of measure, it is used to quantify an educator's participation in a district or system-approved, content-focused professional development activity aligned with the educator's individual professional growth plan.

B. Educators may earn one CLU for each clock hour of active engagement in a district or system-approved high quality professional development activity. Each educator is responsible for maintaining required documentation and for reporting earned CLUs in a manner prescribed by the district or system. Earned CLUs will transfer across Local Education Agencies (LEAs).

C. Under the No Child Left Behind (NCLB) Act of 2001, Louisiana developed a High Objective Uniform State Standard of Evaluation (HOUSSE) option for teachers to gain highly qualified status. The HOUSSE option provides that a teacher "not new" to the state's school systems can be considered highly qualified if he/she completes 90 CLUs by the end of School Year 2005-2006.

D. The Louisiana Components of Effective Professional Development (see Appendix E) is used to define the 90 CLUs. The beginning date for earning CLUs is the onset of the 2001-2002 school year. The "not new" teacher's previous work experience as a fully certified teacher may be credited as CLUs at the rate of three CLUs for each year of successful experience in the content area, with a maximum of 45 CLUs earned through work experience.

E. For educators seeking "highly qualified" status through HOUSSE (90 CLUs), the LEA maintains documentation by:

1. identifying those teachers in their employment using the HOUSSE option; and
2. providing an annual update on each identified teacher's status (progress) toward earning the required 90 CLUs.

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, LR 33:2058 (October 2007).

### **§1109. Federal Legislation Related to Qualifications of Teachers and Paraprofessionals**

A. Title 17 of the Louisiana Statutes also contains a portion of Title 20: Education, known as the federal "No Child Left Behind" Act. Specifically, see Paragraph 6319 of Chapter 70 pertains to qualifications for teachers and paraprofessionals.

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, LR 33:2058 (October 2007).

### **Chapter 12. Approved Courses to Reinstate Lapsed Certificates**

#### **§1201. Period of Validity**

A. The period of validity for a Louisiana teaching certificate is subject to the provision that the certificate holder does not allow a period of five or more consecutive calendar years of disuse to accrue, and/or the certificate is

not revoked by the State Board of Elementary and Secondary Education acting in accordance with law. When used relative to certificate validity, the term "disuse" is defined as a period of five consecutive calendar years in which a certificated individual is not a teacher of record for at least one semester, or 90 consecutive days. If such a period of disuse occurs, the certificate has lapsed.

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, LR 33:2058 (October 2007).

#### **§1203. Reinstatement of a Lapsed Certificate**

A. Reinstatement of a lapsed certificate is made only on evidence that the holder has earned six semester hours of credit from a regionally accredited institution of higher education in approved courses. The credit must be earned within the five year period immediately preceding reinstatement of the certificate.

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, LR 33:2058 (October 2007)

#### **§1205. Certificate Reinstatement Coursework**

A. Chapter 11 contains a listing of types of coursework that have been approved for reinstating a lapsed certificate. The following notes pertain to certificate reinstatement coursework across all areas of certification.

1. Teachers with multiple certification areas may complete coursework specific to any of their certification areas.
2. Coursework must be reflected on a transcript from a regionally accredited institution of higher education.
3. Course credit must be earned within the five year period immediately preceding reinstatement of the certificate.
4. Coursework cannot be a repeat of prior coursework shown on a transcript, unless the student failed or earned a "D" in the course.

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, LR 33:2058 (October 2007).

#### **§1207. Responsibility of the Employing Authority**

A. When a city or parish employing authority desires to hire a teacher whose certificate has lapsed or expired, it is the responsibility of the employing authority to notify the Louisiana Department of Education, Division of Teacher Certification and Higher Education.

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, LR 33:2058 (October 2007).

#### **§1209. Early Childhood (PK, K, PK-3)**

A. Types of Approved Coursework to Reinstate an Early Childhood (PK, K, PK-3) or an Elementary Grades (1-4, 1-6, 1-8) certificate:

1. diagnostic and prescriptive reading;
2. reading in the content area;
3. other content in reading;
4. early numeracy concepts of mathematics;

5. other content in mathematics;
6. content in english/language arts;
7. content in science;
8. content in social studies;
9. classroom and/or behavior management;
10. technology in the classroom;
11. teaching in an inclusive setting.

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, LR 33:2058 (October 2007).

#### **§1211. Middle Grades (4-8, 5-8)**

A. Types of Approved Coursework to Reinstate a Middle Grades (4-8, 5-8) certificate:

1. diagnostic and prescriptive reading;
2. reading in the content area;
3. other content in reading;
4. early numeracy concepts of mathematics;
5. other content in mathematics;
6. content in english/language arts;
7. content in science;
8. content in social studies;
9. content specific to subject area of certification;
10. classroom and/or behavior management;
11. technology in the classroom;
12. teaching in an inclusive setting.

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, LR 33:2059 (October 2007).

#### **§1213. Secondary (6-12, 7-12)**

A. Types of Approved Coursework to Reinstate a Secondary (6-12, 7-12) certificate:

1. diagnostic and prescriptive reading;
2. reading in the content area;
3. other content in reading;
4. content specific to subject area of certification;
5. classroom and/or behavior management;
6. technology in the classroom;
7. teaching in an inclusive setting.

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, LR 33:2059 (October 2007).

#### **§1215. Special Education**

A. Types of Approved Coursework to Reinstate a Special Education certificate:

1. diagnostic and prescriptive reading;
2. reading in the content area;
3. other content in reading;
4. early numeracy concepts of mathematics;
5. other content in mathematics;
6. content in english/language arts;
7. content in science;
8. content in social studies;
9. content specific to subject area of certification;
10. classroom and/or behavior management;
11. technology in the classroom;
12. teaching in an inclusive setting;

13. vocational and transition services for students.

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, LR 33:2059 (October 2007).

#### **§1217. All Level (K-12)**

A. Types of approved coursework to reinstate an all-level (K-12) certificate (art, dance, foreign language, health and physical education, or music):

1. content in reading;
2. content specific to subject area of certification;
3. classroom and/or behavior management;
4. technology in the classroom;
5. teaching in an inclusive setting.

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, LR 33:2059 (October 2007).

#### **§1219. Ancillary Certificate**

A. Types of approved coursework to reinstate an ancillary certificate:

1. content specific to subject area of certification;
2. coursework included in a prescriptive degree program in which certificate holder is enrolled;
3. classroom and/or behavior management.

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, LR 33:2059 (October 2007).

### **Chapter 13. Ancillary Certification**

#### **§1301. General Provisions**

A. Ancillary certificates are issued to individuals who provide teaching, support, administrative, or supervisory services to children in Louisiana K-12 schools. Recipients of these certificates are qualified persons who are not certified teachers in the particular area of ancillary certification. The holder of an ancillary certificate is authorized to perform only those services stated specifically on the certificate.

B. Chapter 3 of this bulletin sets forth the teaching areas for which ancillary certificates are issued. Chapter 4 of this bulletin concerns ancillary certificates issued for those who provide support services in K-12 schools. Chapter 7 of this bulletin specifies ancillary certificates issued for those who provide administrative and supervisory services in K-12 schools. This appendix provides a brief outline of all ancillary areas for which certificates are issued in Louisiana.

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, LR 33:2059 (October 2007).

#### **§1303. Ancillary Teaching Certificates**

A. There are three types of ancillary teaching certificates.

1. Artist or Talented Certificate—issued to an applicant with an advanced degree in an artistic or talented field, or who has produced evidence of creative accomplishments over an extended period of time. The certificate allows the holder to provide artistic and/or creative services in a regular classroom to children at any age level.

2. Nonpublic Montessori Teacher Certificate—issued to a qualified person who teaches in a nonpublic school setting using the Montessori method.

3. Family and Consumer Sciences (Occupational Programs)—issued to a qualified person authorizing him/her to teach in the family and consumer sciences areas of child care, clothing service, food service, housing and interior design, and institutional home management.

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, LR 33:2059 (October 2007).

### §1305. Ancillary School Service Certificates

A. An ancillary certificate can be issued in the following school service areas.

1. Child Nutrition Program Supervisor—issued to an individual with a master's degree from a regionally accredited institution of higher education in home economics, institutional management, nutrition, dietetics, business administration, food technology, or public health nutrition.

2. Educational Interpreter and/or Transliterater—issued to an individual who facilitates communication within an instructional environment, via an enhanced visual and/or tactile mode, between and among deaf/hard of hearing individuals and hearing individuals in situations in which those individuals are unable to communicate with one another using a speech and hearing mode.

3. School Librarian—issued to individuals with a master's degree in library science from a regionally accredited institution.

4. School Nurse—issued to individuals who have current Louisiana licensure as a registered professional nurse.

5. Social Worker—issued to individuals with master's degrees in social work or social welfare science from a regionally accredited institution.

6. Special Education Examiners—state statute requires that each school district have assessment teams for the purpose of identifying and evaluating the individual needs of each child with exceptionalities. In addition to an Educational Diagnostician (which is not an ancillary certification area), the teams may include any number of the specialists outlined below:

- a. audiologist;
- b. school psychologist;
- c. supervisor of school psychological services;
- d. speech pathology assistant;
- e. speech pathologist;
- f. speech therapist/American Speech and Hearing

Association (ASHA).

7. School therapists:

- a. school art therapist;
- b. dance therapist;
- c. music therapist;
- d. occupational therapist;
- e. physical therapist;
- f. recreational therapist.

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, LR 33:2060 (October 2007).

## Chapter 14. Glossary

### §1401. Definitions

#### A. Terms

*Alternate Teacher Preparation Program*—a pathway designed for candidates with a minimum of a baccalaureate degree earned at a regionally accredited institution. An alternate program combines professional knowledge with field experiences, including a one year supervised internship in a school setting. For admission to an alternate program, applicants must demonstrate content mastery.

*Ancillary Certificate*—a type of Louisiana certificate that allows a qualified person who is not a certified teacher to provide services in a school setting.

*Baccalaureate*—a term used to denote an undergraduate degree or program (e.g., Bachelor of Arts, Bachelor of Science).

*Certification*—a licensing process whereby qualified professionals become legally authorized to teach or to perform designated duties in the schools under the jurisdiction of the State Board of Elementary and Secondary Education (BESE).

*Continuing Learning Unit (CLU)*—a professional development activity that builds capacity for effective, research-based, content-focused teaching and learning that positively impacts student achievement. As a unit of measure, the CLU is used to quantify an educator's participation in a system-approved content-focused professional development activity aligned with the educator's individual professional growth plan.

*Core Subject Areas* (per No Child Left Behind federal legislation)—English, reading, language arts; mathematics; science; foreign languages; civics and government; economics; arts; history; and geography.

*Endorsement*—a permanent certification authorization added to an existing teaching certificate.

*Graduate*—a term used to denote a degree, coursework, or program beyond the baccalaureate degree level (e.g., Masters of Education, Masters of Arts in Teaching).

*Industry Based Certification*—a certificate that provides evidence that an individual has successfully demonstrated skill competencies in a specific set of work related tasks, single occupational area, or a cluster of related occupational areas (e.g., Certified Landscape Technician, ASE Certification, Licensed Cosmetologist).

*Non-Standard Certificate*—a one year temporary authorization that can be issued three times to an applicant who is pursuing full credentialing as a teacher. To have this certificate re-issued for Year 2 and for Year 3, an applicant must meet specified renewal requirements.

*Paraprofessional*—an employee who provides instructional support in a program supported with Title I, Part A funds.

*Post-Baccalaureate* (or old) *Alternate Certification Program*—a program offered prior to July 1, 2002, that provided opportunities for individuals with a minimum of a baccalaureate degree to become certified public school teachers. Applicants seeking certification under this program submitted an official transcript for evaluation to a Louisiana college or university that had an approved teacher education program.

*Regionally Accredited*—a term used to denote the status of public recognition that a regionally recognized accrediting agency grants to an educational institution or program that meets the agency's standards and requirements.

*Regularly Employed*—a term used to denote an individual who is a full-time or part-time employee of a school system, and who is not hired on a day-to-day basis.

*Standard Certificate*—a credential issued by the state to an individual who has met all requirements for full certification as a teacher.

*Teacher*—an employee of a city or parish school board or of a BESE special school who holds a teaching certificate and whose legal employment requires certification under the regulations of BESE.

*Teacher Education Program Completer*—an individual who satisfies all requirements of a traditional teacher preparation undergraduate degree program or of an approved alternate teacher preparation program.

*Teaching Certificate*—a license, permit, or certificate issued by the Louisiana Department of Education to an individual who has met all state requirements for certification as a teacher.

*Temporary License*—a teaching authorization held for a short period that is not a standard certificate (see "non-standard certificate" above).

*Traditional Teacher Preparation Program*—a Bachelor of Arts or Bachelor of Science degree program that includes general education courses, certification focus area(s), professional education courses, field experiences, and student teaching in a school setting.

*Undergraduate*—a term used to denote a degree, coursework, or program at the baccalaureate degree level (e.g., Bachelor of Arts, Bachelor of Sciences).

#### B. Acronyms

*BESE*—Board of Elementary and Secondary Education

*CLU*—Continuing Learning Unit (professional development)

*CTTIE*—Career and Technical Trade and Industrial Education

*HOUSSE* (per the federal No Child Left Behind Act of 2001)—High Objective Uniform State Standard of Evaluation (for highly qualified status of teachers)

*INTASC*—Interstate New Teacher Assessment and Support Consortium

*LCET*—Louisiana Components of Effective Teaching

*LaTAAP*—Louisiana Teacher Assistance and Assessment Program

*NASDTEC*—National Association of State Directors of Teacher Education and Certification

*NCATE*—National Council for Accreditation of Teacher Education

*NCLB*—No Child Left Behind Act of 2001 (federal law)

*OFAT*—Out-of-Field Authority to Teach, a non-standard license

*TAT*—Temporary Authorization to Teach, a non-standard license

*TEP*—Temporary Employment Permit, a non-standard license

**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, LR 33:2060 (October 2007).

Weegie Peabody  
Executive Director

0710#002

## RULE

### Board of Elementary and Secondary Education

Bulletin 1566—Pupil Progression Policies and Procedures  
(LAC 28:XXXIX.101, 103, 501-505, 707,  
901, 905-911, 1101, 1301, and 1501)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the State Board of Elementary and Secondary Education has revised *Bulletin 1566—Pupil Progression Policies and Procedures* (LAC Part Number XXXIX). The revisions include changing the title of Bulletin 1566 from *Guidelines for Pupil Progression* to *Pupil Progression Policies and Procedures*, deleting the number "21" from references to LEAP and GEE, and making some technical edits required by the department's proofreader.

#### Title 28

#### EDUCATION

#### Part XXXIX. Bulletin 1566—Pupil Progression Policies and Procedures

#### Chapter 1. Purpose

#### §101. Foreword

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

B. ...

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

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 25:2169 (November 1999), amended LR 33:2061 (October 2007).

#### §103. Preface

A. - D. ...

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

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

G. - H.2. ...

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

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 25:2169 (November 1999), amended LR 33:2061 (October 2007).

## Chapter 5. Placement Policies; State Requirements

### §501. State Requirements

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

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

C. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 1999), amended LR 33:2062 (October 2007).

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

A. - A.1.b. ...

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

ii.(a). No fourth or eighth grade student shall be promoted until he or she has scored at or above the "Basic" achievement level on the English Language Arts or Mathematics components of the LEAP and at the "Approaching Basic" achievement level on the other (hereafter referred to as the "Basic/Approaching Basic" combination).

(b). Exceptional students participating in LEAP must be provided with accommodations as noted in the students' IEPs.

c. - c.i. ...

ii. Retention Policies (Fourth Grade). The decision to retain a student in the fourth grade more than once as a result of failure to score at or above the "Basic/Approaching Basis" combination on the English Language Arts and Mathematics components of LEAP shall be made by the LEA in accordance with the local Pupil Progression Plan which shall include the following.

(a). - (b). ...

(c). Students retained in the fourth grade shall retake all four components of the LEAP.

(d). For promotional purposes, a student must score at or above the "Basic/Approaching Basic" combination on the English Language Arts and Mathematics components of the LEAP only one time.

iii. ...

(a). The student's highest score in English Language Arts and/or Mathematics on either the spring or summer LEAP must fall within 20 scaled score points of the cutoff score for "Basic."

(b). ...

(c). The student must have attended the LEAP summer remediation program.

(d). The student must have taken the LEAP retest given after the LEAP summer remediation program has been concluded.

(e). - (f). ...

iv. Retention Policies (Eighth Grade). After the summer retest, a school system, through its superintendent, may consider a waiver for an eighth grade student who has scored at the "Approaching Basic" level on both the English Language Arts and Mathematics components of LEAP. The LEA may grant the waiver in accordance with the local Pupil Progression Plan provided the following criteria are met.

(a). The student may be promoted to the ninth grade, provided that he or she has scored at the "Approaching Basic" level on both the English Language Arts and Mathematics components of LEAP, has attended the LEAP summer remediation program offered by the district, and has taken the summer retest administered at the conclusion of the summer program.

iv.(b). - v.(a). ...

(b). promoted to the ninth grade, provided that the student has scored at the "Approaching Basic" level on either the English Language Arts or Mathematics component of LEAP, has attended the LEAP summer remediation program offered by the District in, at a minimum, the "Unsatisfactory" subject, and has taken the summer retest administered at the conclusion of the summer program. If promoted with an "Unsatisfactory" on the English Language Arts or Mathematics component of LEAP, the student must enroll in and pass a high school remedial course in the "Unsatisfactory" subject (English language arts or mathematics) before enrolling in or earning Carnegie credit for English or mathematics; or

(c). ...

vi. LEAP Testing

(a). Students repeating the eighth grade will retake all four components of LEAP.

(b). ...

vii. Students with disabilities eligible under the Individuals with Disabilities Education Act (IDEA) participating in LEAP Alternate Assessment. Students with disabilities who participate in the LEAP Alternate Assessment, Level 1 (LAA1), shall have promotion decisions determined by the SBLC.

vii.(a) - viii. ...

ix. Waiver for Extenuating Circumstances. A school system through its superintendent may grant a waiver on behalf of individual students who are unable to participate in LEAP testing or unable to attend LEAP summer remediation because of one or more of the following extenuating circumstances as verified through appropriate documentation: a physical illness or injury that is acute or catastrophic in nature, a chronic physical condition that is in an acute phase or court ordered custody issues (refer to Appendix B, Chapter 13).

x. State Granted Exceptions. A local school superintendent, a parent or guardian, or the State Department of Education may initiate a request for a state-granted waiver from the State Superintendent of Education on behalf of individual students who are not eligible for promotion because of LEA error or other unique situations not covered under extenuating circumstances. The Department of Education will provide information to the State Board of



Elementary and Secondary Education detailing state-granted waivers (refer to Appendix B, Chapter 13).

xi. In order to move students toward grade level performance, LEAs shall design and implement additional instructional strategies for those fourth and eighth grade students being retained. The purpose of the additional instructional strategies is to move the students to grade-level proficiency by providing the following: focused instruction in the subject area(s) on which they scored at the "Approaching Basic" and/or "Unsatisfactory" level on LEAP, and ongoing instruction in the core subject areas using curricula based on state-level content standards and the grade level expectations. LEAs are also encouraged to design and implement additional instructional strategies for students in grades 3, 4, 7, and 8 who have been determined to be at risk of failing to achieve the "Basic/Approaching Basic" combination on LEAP.

xii. Summer remediation programs and end-of-summer retests must be offered by school systems at no cost to students who did not take the Spring LEAP tests or who failed to achieve the required level on LEAP.

(a). Students with disabilities who participate in LEAP Alternate Assessment, Level 1 (LAA1), are not eligible to attend LEAP summer remediation programs.

xii.(b). - xiv.(b). ...

#### B. Retention—Grades K-12

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

C. - D.1. ...

a. Effective with the 2000-2001 school year, students in grades 5 and 9 transferring to the public school system from any in-state nonpublic school (state approved and unapproved), any home schooling program or Louisiana resident transferring from any out-of-state school shall be required to pass the English language arts and Mathematics portions of the state-developed LEAP placement test.

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 2000), amended LR 26:1433 (July 2000), LR 26:1576 (August 2000), LR 27:188 (February 2001), LR 27:1006 (July 2001), LR 27:1682 (October 2001), LR 29:123 (February 2003), LR 30:407 (March 2004), LR 31:1974 (August 2005), LR 31:3103 (December 2005), LR 33:2062 (October 2007).

#### §505. Progression—Students Participating in LEAP Alternate Assessment Level 1 (LAA1) or LEAP Alternate Assessment Level 2 (LAA2)

A. Students with disabilities who participate in the LEAP Alternate Assessments (LAA1 or LAA2) shall have promotion decisions determined by the School Building Level Committee.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 2000), amended LR 26:1433 (July 2000), LR 27:189 (February 2001), LR 27:1683 (October 2001), LR 29:123 (February 2003), LR 30:409 (March 2004), LR 33:2063 (October 2007).

#### Chapter 7. Placement Policies; Local Options §707. Other Local Option Factors

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 33:2063 (October 2007).

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

##### §901. Preface

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

B. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 33:2063 (October 2007).

##### §905. Definition and Purpose

A. - B. ...

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

2. ...

3. Beginning in the summer of 2006, remediation in the form of summer school shall be provided to both fourth and eighth grade students who score at the "Approaching Basic" or "Unsatisfactory" level on the LEAP English Language Arts and/or Mathematics tests. Summer remediation shall consist of a minimum of 50 hours of instruction per subject.

4. Remediation shall be provided to students who score at the "Unsatisfactory" level on the LEAP Science and Social Studies tests.

5. Remediation is recommended for fourth and eighth grade students who score at the "Approaching Basic" level on the LEAP Science or Social Studies tests.

6. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 28:1189 (June 2002), LR 30:409 (March 2004), LR 31:1975 (August 2005), LR 33:2063 (October 2007).

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

A ...

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

2. - 5. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2174 (November 1999), amended LR 33:2064 (October 2007).

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

A. - D. ...

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

F. - I. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2174 (November 1999), amended LR 33:2064 (October 2007).

**§911. Criteria for State Approval**

A. Student Eligibility

1. Any public elementary or secondary student, including a student with a disability participating in LEAP who does not meet the performance standards established by the department and approved by the state board, as measured by the state criterion-referenced tests, shall be provided remedial education (R.S. 17:397).

A.2. - C.1. ...

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

2. - 2.a. ...

3. Instruction

a. For the Graduation Exit Examination (GEE), remediation shall be provided in English Language Arts, Mathematics, Science, and Social Studies. Students shall be offered 50 hours of remediation in each content area they do not pass.

b. Beginning in the summer of 2006, remediation in the form of summer school shall be provided to both fourth and eighth grade students who score at the "Approaching Basic" or "Unsatisfactory" level on the LEAP English Language Arts and/or Mathematics tests. Summer Remediation shall consist of a minimum of 50 hours of instruction per subject.

c. Remediation shall be provided to students who score at the "Unsatisfactory" level on the LEAP Science and Social Studies tests.

d. Remediation is recommended for fourth and eighth grade students who score at the "Approaching Basic" level on the LEAP Science or Social Studies tests.

e. - g. ...

D. Student Assessment

1. The parish and city school boards shall develop, as part of their Pupil Progression Plans, mastery criteria based on the State Content Standards, Grade-Level Expectations (GLEs), and local curricula based on these standards and GLEs [R.S. 17:395(D) and board policy].

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

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

4. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2175 (November 1999), amended LR 27:189 (February 2001), LR 30:409 (March 2004), LR 31:1976 (August 2005), LR 33:2064 (October 2007).

**Chapter 11. Appendix A**

**§1101. Definition of Terms**

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

1. State Terms

\*\*\*

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

\*\*\*

2. - 2.a. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2176 (November 1999), amended LR 27:190 (February 2001), LR 31:1976 (August 2005), LR 33:2064 (October 2007).

**Chapter 13. Appendix B**

**§1301. LEAP High Stakes Testing Policy**

A. LEAP High Stakes Testing Policy (Grades 4 and 8)

1. A student may not be promoted to the fifth or ninth grade until he or she has scored at or above the "Basic" achievement level on either the English Language Arts or Mathematics component on the fourth or eighth grade LEAP and at the "Approaching Basic" achievement level on the other (hereafter referred to as the "Basic/Approaching Basic" combination). For promotional purposes; however, a student shall score at or above the "Basic/Approaching Basic" combination on the English Language Arts and Mathematics components of LEAP only one time.

2. A parent/student/school compact that outlines the responsibilities of each party will be required for students in grades 3, 4, 7, and 8 who have been determined to be at risk of failing to achieve the "Basic/Approaching Basic"

combination on the English Language Arts and Mathematics components of the fourth or eighth grade LEAP, as well as for students who were retained in grades 4 or 8.

3. LEAs shall offer a minimum of 50 hours per subject of summer remediation and retest opportunities in English language arts and mathematics at no cost to students who did not take the spring LEAP tests or who scored "Approaching Basic" and/or "Unsatisfactory" on the English Language Arts and/or Mathematics component(s) on the spring tests.

a. A student who failed to achieve the "Basic/Approaching Basic" combination is not required to attend the LEA-offered LEAP summer remediation program in order to be eligible for the summer retest.

b. All students with disabilities who participate in LEAP should receive services along with regular education students in summer remediation programs, with special supports provided as needed.

c. Students with disabilities who participate in LEAP Alternate Assessment, Level 1 (LAA1), are not eligible to attend the LEAP summer remediation programs.

3.d. - 4.a. ...

i. focused instruction in the subject area(s) on which they scored at the "Approaching Basic" and/or "Unsatisfactory" level on LEAP; and

ii. ...

b. LEAs are also encouraged to design and implement additional instructional strategies for students in grades 3, 4, 7, and 8 who have been determined to be at risk of failing to achieve the "Basic/Approaching Basic" combination on LEAP.

#### 5. Promotion/Retention Policies

##### a. Grade 4

i. A student may not be promoted to the fifth grade until he or she has scored at or above the "Basic" achievement level on either the English Language Arts or Mathematics component on the fourth grade LEAP and at the "Approaching Basic" achievement level on the other.

ii. The decision to retain a student in the fourth grade more than once as a result of his/her failure to achieve the "Basic/Approaching Basic" combination on the English Language Arts and Mathematics components of LEAP shall be made by the LEA in accordance with the local Pupil Progression Plan which shall include the following.

ii.(a). - iii. ...

(a). The student's highest score in English Language Arts and/or Mathematics on either the spring or summer LEAP must fall within 20 scaled score points of the cutoff score for "Basic."

(b). ...

(c). The student must have attended the LEAP summer remediation program.

(d). The student must have taken the LEAP retest given after the LEAP summer remediation program has been concluded.

(e). - (f). ...

##### iv. LEAP Testing

(a). Students retained in the fourth grade shall retake all four components of LEAP.

##### b. Grade 8

i. A student may not be promoted to the ninth grade until he or she has scored at or above the "Basic"

achievement level on either the English Language Arts or Mathematics component on the eighth grade LEAP and at the "Approaching Basic" achievement level on the other.

ii. After the summer retest, a school system, through its superintendent, may consider a waiver for an eighth grade student who has scored at the "Approaching Basic" level on both the English Language Arts and Mathematics components of LEAP. The LEA may grant the waiver in accordance with the local Pupil Progression Plan provided the following criteria are met.

(a). The student may be promoted to the ninth grade, provided that he or she has scored at the "Approaching Basic" level on both the English Language Arts and Mathematics components of LEAP, has attended the LEAP summer remediation program offered by the district, and has taken the summer retest administered at the conclusion of the summer program.

ii.(b). - iii.(a). ...

(b). promoted to the ninth grade, provided that the student has scored at the "Approaching Basic" level on either the English Language Arts or Mathematics component of LEAP, has attended the LEAP summer remediation program offered by the district in, at a minimum, the "Unsatisfactory" subject, and has taken the summer retest administered at the conclusion of the summer program. If promoted with an "Unsatisfactory" on the English Language Arts or Mathematics component of LEAP, the student must enroll in and pass a high school remedial course in the "Unsatisfactory" subject (English language arts or mathematics) before enrolling in or earning Carnegie credit for English or mathematics; or

(c). ...

##### iv. LEAP Testing

(a). Students repeating the eighth grade will retake all four components of LEAP.

5.b.iv.(b). - 6.a.i.(a). ...

(b). the student has participated in both the spring and summer administrations of LEAP and has attended the summer remediation program offered by the LEA (the student shall participate in the summer retest only on the subject that he/she scored at the "Unsatisfactory" achievement level during the spring test administration); and

a.i.(c). - d. ...

i. A school system, through its superintendent, may grant a waiver on behalf of individual students who are unable to participate in LEAP testing or unable to attend LEAP summer remediation because of one or more of the following extenuating circumstances as verified through appropriate documentation:

i.(a). - iii. ...

(a). Students who meet the criteria for extenuating circumstances under the *physical illness*, *chronic physical condition*, or *court-ordered custody category* related to LEAP; and

(b). who are unable to participate in both the spring and the summer administration of LEAP; or

(c). who failed to achieve the "Basic/Approaching Basic" combination on the spring administration of LEAP English Language Arts and Mathematics tests and are unable to participate in LEAP summer retest:

(i). - (iii).NOTE. ...

(d). students who meet the criteria for extenuating circumstances under the *physical illness, chronic physical condition, or court-ordered custody category* related to LEAP; and

(e). who are unable to participate in the spring testing and/or summer remediation, including the provision of remediation through hospital/home bound instruction, are required to take the LEAP summer retest. These students may be eligible for the policy override or appeals process in accordance with the local Pupil Progression Plan.

NOTE: The appeals process is available only to fourth grade students.

6.e. - 7. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:1008 (July 2001), amended LR 27:1683 (October 2001), LR 28:1189 (June 2002), LR 29:123 (February 2003), LR 30:409 (March 2004), LR 31:1976 (August 2005), LR 31:3104 (December 2005), LR 33:2064 (October 2007).

## Chapter 15. Appendix C

### §1501. Waiver Request

A. - A.2.a. ...

i. the student must score at the "approaching basic" or above achievement level on either the English language arts or mathematics component of LEAP;

2.a.ii. - 3.a. ...

i. the student must meet the required combination achievement level ("Basic/Approaching Basic") on the English Language Arts and Mathematics components of LEAP;

ii. ...

iii. the student must obtain a composite score of 1200 on all four components of the fourth grade LEAP;

iv. in order to move students toward the required combination achievement level ("Basic/Approaching Basic") on the English Language Arts and Mathematics components of LEAP, the student must be provided remediation in the subject area(s) on which the student scored below "basic" on LEAP; and

v. in order for students to attain the required composite score (1200) on LEAP, focused instruction should be provided in the subject area(s) (Science and/or Social Studies) on which the student scored "unsatisfactory."

4. Section IV

a. Required Documentation

i. A school system requesting a waiver must submit data to the State Superintendent of Education that supports the effectiveness of their previously operated fourth grade transitional program. This data must include an analysis of sixth grade iLEAP scores that compare fourth grade students who repeated the entire grade, fourth grade students who repeated the grade in a transitional program (4.5 program), and fourth grade students who did not repeat any grades.

5. Section V

a. Assurances

i. I assure that the fourth grade transitional program described in the current, local Pupil Progression Plan meets all of the requirements as outlined in Sections I, II, III, and IV of this document.

ii. ...

iii. School systems applying for this waiver must submit their request by the 2nd Friday in July, and receive approval from the State Superintendent of Education prior to the implementation of a transitional (4.5) program that provides the option of promotion to the sixth grade. School systems must submit all required documentation as listed in Section IV, and if approved, Sections I, II, and III must be included in the school system's current Pupil Progression Plan.

iv. - v. ...

6. Section VI

a. Approved/Denied: (circle one)

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Paul G. Pastorek  
State Superintendent of Education

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:413 (March 2004), amended LR 31:1978 (August 2005), LR 33:2066 (October 2007).

Weegie Peabody  
Executive Director

0710#008

## RULE

### Board of Elementary and Secondary Education

Bulletin 1794—State Textbook Adoption Policy and Procedure Manual (LAC 28:XXXIII.507 and 701)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted amendments to *Bulletin 1794—State Textbook Adoption Policy and Procedure Manual* (LAC Part XXXIII).

Section 507.F.1 replaces the term "examination copies" with "samples" as a clarification between materials that are received by a school system for review and adoption, and textbooks that are given for review by those persons outside the adoption process.

Section 507.F.2 clarifies and replaces the term "sufficient quantities" with a description of the number of samples per grade/subject that can be requested by a school system to one per school, one per school district, and up to two additional teacher editions when requested by a supervisor.

Section 507.F.4 deletes this section which prohibited "examination copies," because §701.I now permits examination copies to be given in some cases.

Section 701.I prohibits certain promotional activities by vendors with materials under state and/or local bid process.

Section 701.I.1 clarifies that the limitations upon promotional activities do not apply to the display of materials under review nor to the dissemination of examination copies to school personnel, if the materials will be used to benefit Louisiana students.

Section 701.M adds a section to the publisher requirements that imposes limits upon the number of samples per grade/subject that can be provided to schools, districts, and/or to the Supervisor. The language parallels similar language under district requirements in §507.F.

Section 701.N adds a section to publisher requirements that outlines and imposes consequence for policy violations. The language specifies that complaints must be in writing and allows an opportunity for response to a reported violation. Consequences include a formal letter of warning to the company, recommendations from the department to the state Board of Elementary and Secondary Education for removal from the current or future adoption process, and/or the delay/negation of contract negotiations.

**Title 28  
EDUCATION**

**Part XXXIII. Bulletin 1794—State Textbook Adoption  
Policy and Procedure Manual**

**Chapter 5. Local School System Responsibilities**

**§507. Local Adoption Procedures**

A. - E.4. ...

F. Sampling of Textbooks by Publishers; Violation Will Disqualify Publisher.

1. Publishers are to furnish samples only at the written request of the local school system textbook adoption coordinator after the state committee review.

2. Samples are to be limited to one sample pack per grade/subject per school, plus one additional set per district. Supervisors may request up to two additional teacher editions per grade/subject.

3. ...

4. Publishers must notify local school systems, in writing, of the need to have samples returned. If notified by publishers, all samples received by local school systems must be picked up by the publisher within 30 days after the local adoption.

5. Publishers must make all necessary arrangements for sample returns at publisher's expense.

6. The "piloting" of new materials in any school or school system prior to official review by the State Textbook Adoption Committee and final approval by the SBESE is prohibited. Publishers are not to offer school-wide copies or classroom sets of any item or material on a trial or pilot basis.

G. - I.2. ...

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1443 (August 1999), repromulgated LR 26:998 (May 2000), amended LR 29:124 (February 2003), LR 32:1031 (June 2006), LR 33:2067 (October 2007).

**Chapter 7. Publishers' Responsibilities**

**§701. Requirements for Publishers' Participation in  
State Textbook Adoption**

A. - H. ...

I. Awareness sessions or any similar activities are strictly prohibited. Publishers shall not contact teachers, principals, or other school system employees, provide meals, materials, trips, or any other free items in conjunction with a preview or overview of materials being considered for adoption. This does not prohibit publishers from displaying at conferences materials being considered for adoption.

1. Upon request by school personnel at conferences, publishers may provide examination copies if the materials are to be used for the benefit of Louisiana students.

J. - L.1. ...

M. Publishers are to furnish sample materials only at the written request of the local school system textbook adoption coordinator after the state committee review.

1. Samples are to be limited to one sample pack per grade/subject per school, plus one additional set per district. Supervisors may request up to two additional teacher editions per grade/subject.

N. Consequences for policy violations will be imposed.

1. Complaints of possible policy violations shall be in writing. The party against whom the complaint is made will be afforded an opportunity to respond in writing. After consideration, the agency shall take appropriate action which may include a formal written letter of warning to the publishing company home office, its local representative, the Louisiana Association of Publishers.

2. Repeated violations will be reported to the state Board of Elementary and Secondary Education with department recommendation to dismiss the publisher from current and/or future adoption.

3. Reported violations may also result in delay of or negate contract negotiations.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1446 (August 1999), repromulgated LR 26:1002 (May 2000), amended LR 29:125 (February 2003), LR 32:1031 (June 2006), LR 33:2067 (October 2007).

Weegie Peabody  
Executive Director

0710#009

**RULE**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

Calcasieu Parish Control of Emissions  
(LAC 33:III.510, 603, 605, 607, 613, and 615)(AQ287P)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.510, 603, 605, 607, 613, and 615 (Log #AQ287P).

This rule repeals and deletes references to LAC 33:III.510, which provides for control technology requirements and emission offsets only in Calcasieu Parish. This Section was promulgated in 2001 following violation of the 1-hour ozone standard in Calcasieu Parish and prior to EPA's designations for the 8-hour ozone standard in 2004. The Lake Area Industry Alliance (LAIA) submitted a petition for rulemaking to the department requesting the repeal of LAC 33:III.510. The membership of LAIA consists of 23 major industrial facilities located in the Lake Charles/Calcasieu Parish area. A public notice and comment period was held prior to this rulemaking seeking comment regarding the requested repeal. A public hearing was held in Lake Charles prior to reaching a decision on this action. Overwhelming support for the repeal was expressed during

the comment period. This "state-only" rule provision was never submitted to EPA for incorporation into Louisiana's State Implementation Plan for air quality. Based on a review of the relevant air quality information for Calcasieu Parish, the department has determined to proceed with the repeal of LAC 33:III.510. The basis and rationale for this rule are to allow air emission sources in Calcasieu Parish to be subject to the same permitting rules as other parishes in Louisiana that are currently in attainment with the National Ambient Air Quality Standard for the air pollutant ozone.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part III. Air**

**Chapter 5. Permit Procedures**

**§510. New Emissions Sources and Major Modifications in Specified Parishes**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), repealed LR 33:2068 (October 2007).

**Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking**

**§603. Applicability**

A. Major stationary sources are subject to the provisions of this Chapter for the purpose of utilizing emission reductions as offsets in accordance with LAC 33:III.504. Minor stationary sources located in ozone nonattainment areas may submit ERC applications for purposes of banking. Sources located in EPA-designated ozone attainment areas may not participate in the emissions banking program. Any stationary point source at an affected facility is eligible to participate.

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 20:874 (August 1994), amended LR 24:2239 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007).

**§605. Definitions**

A. ...

\* \* \*

*Offset*—a legally enforceable reduction, approved by the department, in the rate of actual emissions from an existing stationary point source, which is used to compensate for a significant net increase in emissions of NO<sub>x</sub> or VOC from a new or modified stationary source in accordance with the requirements of LAC 33:III.504. To be valid, an *offset* must meet the definition of ERC.

\* \* \*

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 20:874 (August 1994), LR 25:1622 (September 1999), LR 26:2448 (November 2000), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007).

**§607. Determination of Creditable Emission Reductions**

A. – C.4.a.ii. ...

b. Reserved.

C.5. – 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 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1601 (September 2006), LR 33:2068 (October 2007).

**§613. ERC Bank Recordkeeping and Reporting Requirements**

A. – B.2. ...

3. Repealed.

C. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 26:486 (March 2000), LR 26:2449 (November 2000), LR 28:303 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 33:2068, 2068 (October 2007).

**§615. Schedule for Submitting Applications**

A. – B. ...

C. Applications for banking emission reductions that are to be made as part of a project that includes an increase in emissions for which the reduction will serve to offset the increase may be submitted as part of the permit application for the proposed increase. Such reductions will be reviewed for applicability as ERCs concurrently with the review of the permit application.

D. The applicant shall speciate VOC according to individual compounds when applying to bank VOC reductions. Speciation of toxic air pollutants regulated in LAC 33:III.Chapter 51 is required.

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), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1623 (September 1999), LR 26:486 (March 2000), LR 28:304 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007).

Herman Robinson, CPM  
Executive Counsel

0710#025

**RULE**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

**Cooling Water Intake Structures and  
Application of Pesticides**

(LAC 33:IX.2315, 2501, 2707, 3113,  
4730, 4735, and 4761-4779)(WQ071ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX.2315, 2501, 2707, 3113, 4730, 4735, and 4761-4779 (Log #WQ071ft).

This rule is identical to federal regulations found in 71 FR 35006, June 16, 2006; 71 FR 68492, November 27, 2006; and 72 FR 37107-37109, July 9, 2007, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rule adds language promulgated by the Environmental Protection Agency (EPA) on June 16, 2006, in 71 FR 35006, and on November 27, 2006, in 71 FR 68492. This rule establishes categorical Section 316(b) requirements for intake structures at new offshore oil and gas extraction facilities that have a design intake flow threshold of greater than 2 million gallons per day and that withdraw at least 25 percent of the water exclusively for cooling purposes. For existing Phase III facilities, EPA determined that uniform national standards are not the most effective way at this time to address cooling water intake structures at these facilities. Instead, EPA believes that it is better to continue to rely upon the existing National Pollutant Discharge Elimination System (NPDES) program, which implements Section 316(b) for existing facilities not covered under the Phase II rule on a case-by-case, best professional judgment basis. A federal action in 72 FR 37107-37109, July 9, 2007, suspends the requirements in 40 CFR 122.21(r)(1)(ii) and (r)(5), 125.90(a), (c), and (d), and 125.91-99, for cooling water intake structures at Phase II existing facilities, pending further rulemaking. The Phase II regulation addresses existing power utilities that use a cooling water intake structure to withdraw cooling water from waters of the state at a rate of 50 million gallons per day or greater. This rule suspends the equivalent state regulations in LAC 33:IX.2501.R.1.b and R.5 and Chapter 47.Subchapter B, with the exception of LAC 33:IX.4731.B. This rule also adds the exclusion for the application of pesticides from the NPDES permitting system under specific circumstances. This rule is required for the state to maintain NPDES delegation. The basis and rationale for this rule are to mirror the federal regulations to maintain equivalency.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part IX. Water Quality**

**Subpart 2. The Louisiana Pollutant Discharge  
Elimination System (LPDES) Program**

**Chapter 23. Definitions and General LPDES Program  
Requirements**

**§2315. Exclusions**

A. The following activities do not require LPDES permits:

1. - 6. ...

7. discharges into a privately owned treatment works, except as the state administrative authority may otherwise require under LAC 33:IX.2707.M;

8. the application of pesticides consistent with all relevant requirements in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (i.e., those relevant to protecting water quality), in the following two circumstances:

a. the application of pesticides directly to waters of the state in order to control pests. Examples of such applications include applications to control mosquito larvae, aquatic weeds, or other pests that are present in waters of the state;

b. the application of pesticides to control pests that are present over waters of the state, including near such waters, where a portion of the pesticides will unavoidably be deposited to waters of the state in order to target the pests effectively, for example, when insecticides are aerially applied to a forest canopy where waters of the state may be present below the canopy or when pesticides are applied over or near water for control of adult mosquitoes or other pests.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), repromulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2069 (October 2007).

**Chapter 25. Permit Application and Special LPDES  
Program Requirements**

**§2501. Application for a Permit**

A. - Q.15. ...

R. Applications for Facilities with Cooling Water Intake Structures

1. Application requirements for facilities with cooling water intake structures are as follows.

a. New Facilities with New or Modified Cooling Water Intake Structures. New facilities (other than offshore oil and gas extraction facilities) with cooling water intake structures, as described in LAC 33:IX.Chapter 47.Subchapter A, shall submit to the state administrative authority for review the information required in Paragraphs R.2 (except Subparagraph R.2.d), 3, and 4 of this Section and LAC 33:IX.4713. New offshore oil and gas extraction facilities with cooling water intake structures, as described in LAC 33:IX.Chapter 47.Subchapter C, that are fixed facilities must submit to the Office of Environmental Services for review the information required in Paragraphs R.2 (except Subparagraph R.2.d), 3, and 4 of this Section and LAC

33:IX.4773 as part of their application. New offshore oil and gas extraction facilities that are not fixed facilities must submit to the Office of Environmental Services for review only the information required in Subparagraph R.2.d and Paragraph R.3 (except Subparagraph R.3.b) of this Section and LAC 33:IX.4773 as part of their application. Requests for alternative requirements in accordance with LAC 33:IX.4711 or 4771 shall be submitted with the permit application.

b. ...

2. Source Water Physical Data. These include:

a. ...

b. identification and characterization of the source water body's hydrological and geomorphological features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies;

c. locational maps; and

d. for new offshore oil and gas facilities that are not fixed facilities, a narrative description and/or locational maps providing information on predicted locations within the water body during the permit term in sufficient detail for the administrative authority to determine the appropriateness of additional impingement requirements in LAC 33:IX.4769.B.5.

3. - 3.e. ...

4. Source Water Baseline Biological Characterization Data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The state administrative authority may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan, as required in LAC 33:IX.4713.B.4 or 4773.B.3, should be revised. This supporting information must include existing data (if available). However, the data may be supplemented using newly conducted field studies, if the owner or operator chooses to do so. The information to be submitted must include:

4.a. - 5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2552 (November 2000), LR 26:2756 (December 2000), LR 27:45 (January 2001), LR 28:465 (March 2002), LR 28:1766 (August 2002), LR 29:1462 (August 2003), repromulgated LR 30:229 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), LR 31:425 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2509 (October 2005), LR 32:819 (May 2006), LR 33:2069, 2165 (October 2007).

#### **Chapter 27. LPDES Permit Conditions**

##### **§2707. Establishing Limitations, Standards, and Other Permit Conditions**

A.1. - B.2. ...

3. Requirements applicable to cooling water intake structures in Section 316(b) of the CWA, in accordance with LAC 33:IX.Chapter 47.Subchapters A, B, and C.

C. - S. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:724 (June 1997), LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2282 (October 2000), LR 26:2764 (December 2000), LR 28:469 (March 2002), LR 28:1767 (August 2002), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 31:426 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2070 (October 2007).

#### **Chapter 31. General LPDES Program Requirements**

##### **§3113. Public Notice of Permit Actions and Public Comment Period**

A. - D.1.g. ...

h. requirements applicable to cooling water intake structures in Section 316(b) of the CWA, in accordance with LAC 33:IX.Chapter 47.Subchapters A, B, and C; and

D.1.i. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:725 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 28:473 (March 2002), LR 28:1767 (August 2002), repromulgated LR 30:231 (February 2004), amended by the Office of Environmental Assessment, LR 31:426 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2070 (October 2007).

#### **Chapter 47. Criteria Applicable to Cooling Water Intake Structures under Section 316(b) of the Clean Water Act**

NOTE: This Chapter 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 Chapter, *I* and *you* refer to the owner/operator.

##### **Subchapter B. Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities under Section 316(b) of the Clean Water Act**

##### **§4730. Suspension of Portions of LAC 33:Part IX**

A. LAC 33:IX.2501.R.1.b and R.5 are hereby suspended.

B. LAC 33:IX.Chapter 47.Subchapter B, with the exception of LAC 33:IX.4731.B, is hereby suspended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2070 (October 2007).

##### **§4735. What special definitions apply to this Subchapter?**

A. In addition to the definitions provided in LAC 33:IX.2313, the following special definitions apply to this Subchapter.

\* \* \*

*Existing Facility*—any facility that commenced construction as described in 40 CFR 122.29(b)(4) on or before January 17, 2002 (or July 17, 2006, for an offshore oil and gas extraction facility), and any modification of, or any addition of, a unit at such a facility that does not meet the definition of a *new facility* in LAC 33:IX.4707.

\* \* \*



AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:428 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2070 (October 2007).

**Subchapter C. Requirements Applicable to Cooling  
Water Intake Structures for New  
Offshore Oil and Gas Extraction  
Facilities Under Section 316(b) of the  
Clean Water Act**

**§4761. What are the purpose and scope of this  
Subchapter?**

A. This Subchapter establishes requirements that apply to the location, design, construction, and capacity of cooling water intake structures at new offshore oil and gas extraction facilities. The purpose of these requirements is to establish the best technology available for minimizing adverse environmental impact associated with the use of cooling water intake structures at these facilities. These requirements are implemented through the Louisiana Pollutant Discharge Elimination System (LPDES) permits issued under Section 402 of the Clean Water Act (CWA).

B. This Subchapter implements Section 316(b) of the CWA for new offshore oil and gas extraction facilities. Section 316(b) of the CWA provides that any standard established pursuant to Section 301 or 306 of the CWA and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

C. New offshore oil and gas extraction facilities that do not meet the threshold requirements regarding amount of water withdrawn or percentage of water withdrawn for cooling water purposes in LAC 33:IX.4763.A must meet requirements determined by the administrative authority on a case-by-case, best professional judgement (BPJ) basis.

D. Nothing in this Subchapter shall be construed to preclude or deny the right of any state or political subdivision of a state or any interstate agency under Section 510 of the CWA to adopt or enforce any requirement with respect to control or abatement of pollution that is more stringent than those required by federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2071 (October 2007).

**§4763. Who is subject to this Subchapter?**

A. This Subchapter applies to a new offshore oil and gas extraction facility if it meets all of the following criteria.

1. It is a point source that uses or proposes to use a cooling water intake structure.
2. It has at least one cooling water intake structure that uses at least 25 percent of the water it withdraws for cooling purposes as specified in Subsection C of this Section.
3. It has a design intake flow greater than 2 million gallons per day (MGD).

B. Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with an independent supplier (or multiple suppliers) of cooling water if the supplier or suppliers withdraw water from waters of the United States. Use of

cooling water does not include obtaining cooling water from a public water system or the use of treated effluent that otherwise would be discharged to a water of the U.S.

C. The threshold requirement that at least 25 percent of water withdrawn be used for cooling purposes must be measured on an average monthly basis. A new offshore oil and gas extraction facility meets the 25 percent cooling water threshold if, based on the new facility's design, any monthly average over a year for the percentage of cooling water withdrawn is expected to equal or exceed 25 percent of the total water withdrawn.

D. Neither this Subchapter nor Subchapter A of this Chapter applies to seafood processing vessels or offshore liquefied natural gas import terminals that are *new facilities* as defined in LAC 33:IX.4707. Seafood processing vessels and offshore liquefied natural gas import terminals must meet requirements established by the administrative authority on a case-by-case, best professional judgement (BPJ) basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2071 (October 2007).

**§4765. When must I comply with this Subchapter?**

A. You must comply with this Subchapter when an LPDES permit containing requirements consistent with this Subchapter is issued to you.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2071 (October 2007).

**§4767. What special definitions apply to this  
Subchapter?**

A. In addition to the definitions set forth in LAC 33:IX.4707, the following special definitions apply to this Subchapter.

*Cooling Water*—water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the *cooling water* is to absorb waste heat rejected from the process or processes used or from auxiliary operations on the facility's premises. *Cooling water* that is used in another industrial process either before or after it is used for cooling is considered process water rather than *cooling water* for the purposes of calculating the percentage of a new offshore oil and gas extraction facility's intake flow that is used for cooling purposes in accordance with LAC 33:IX.4763.C.

*Existing Facility*—any facility that commenced construction as described in 40 CFR 122.29(b)(4) on or before January 17, 2002 (or July 17, 2006, for an offshore oil and gas extraction facility), and any modification of, or any addition of, a unit at such a facility that does not meet the definition of a *new facility* in LAC 33:IX.4707.

*Fixed Facility*—a bottom-founded offshore oil and gas extraction facility permanently attached to the seabed or subsoil of the outer continental shelf (e.g., platforms, guyed towers, articulated gravity platforms) or a buoyant facility securely and substantially moored so that it cannot be moved without a special effort (e.g., tension leg platforms, permanently moored semi-submersibles) and which is not

intended to be moved during the production life of the well. This definition does not include mobile offshore drilling units (MODUs) (e.g., drill ships, temporarily moored semi-submersibles, jack-ups, submersibles, tender-assisted rigs, and drill barges).

*Minimum Ambient Source Water Surface Elevation*—the mean low tidal water level for estuaries or oceans. The mean low tidal water level is the average height of the low water over at least 19 years.

*New Offshore Oil and Gas Extraction Facility*—any building, structure, facility, or installation that meets the definition of a *new facility* in LAC 33:IX.4707 and is regulated by the Offshore or Coastal Subcategories of the Oil and Gas Extraction Point Source Category Effluent Guidelines incorporated by reference in LAC 33:IX.4903, but only if it commences construction after July 17, 2006.

*Offshore Liquefied Natural Gas (LNG) Import Terminal*—any facility located in waters defined in the federal regulations incorporated by reference in LAC 33:IX.4903 that liquefies, re-gasifies, transfers, or stores liquefied natural gas.

*Sea Chest*—the underwater compartment or cavity within the facility or vessel hull or pontoon through which sea water is drawn in (for cooling and other purposes) or discharged.

*Seafood Processing Vessel*—any offshore or nearshore, floating, mobile facility engaged in the processing of fresh, frozen, canned, smoked, salted, or pickled seafood or seafood paste, mince, or meal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2071 (October 2007).

**§4769. As an owner or operator of a new offshore oil and gas extraction facility, what must I do to comply with this Subchapter?**

**A. Applicability**

1. The owner or operator of a new offshore oil and gas extraction facility must comply with:

a. the Track I requirements in Subsection B or the Track II requirements in Subsection C of this Section, if it is a fixed facility; or

b. the Track I requirements in Subsection B of this Section, if it is not a fixed facility.

2. In addition to meeting the requirements in Subsection B or C of this Section, the owner or operator of a new offshore oil and gas extraction facility may be required to comply with Subsection D of this Section.

**B. Track I Requirements for New Offshore Oil and Gas Extraction Facilities**

1. New offshore oil and gas extraction facilities that are fixed facilities shall:

a. comply with all of the requirements in Paragraphs B.3-9 of this Section if they do not employ sea chests as cooling water intake structures; or

b. comply with the requirements in Paragraphs B.3, 4, 5, 7, 8, and 9 of this Section if they employ sea chests.

2. New offshore oil and gas extraction facilities that are not fixed facilities must comply with the requirements in Paragraphs B.3, 5, 7, 8, and 9 of this Section.

3. You must design and construct each cooling water intake structure at your facility to a maximum through-screen design intake velocity of 0.5 ft/s.

4. For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1 percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level.

5. You must select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if the administrative authority determines that:

a. there are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

b. based on information submitted by any fishery management agency or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the administrative authority that pass through the hydraulic zone of influence of the cooling water intake structure; or

c. based on information submitted by any fishery management agency or other relevant information, the proposed facility, after meeting the technology-based performance requirements in Paragraphs B.3 and 6 of this Section, would still contribute unacceptable stress to the protected species, or critical habitat of those species, or species of concern.

6. You must select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish.

7. You must submit the applicable application information required in LAC 33:IX.2501.R and 4773.B. If you are a fixed facility, you must submit the information required in LAC 33:IX.2501.R.2 (except 2.d), 3, and 4 and 4773.B as part of your application. If you are a not a fixed facility, you must only submit the information required in LAC 33:IX.2501.R.2.d and 3 (except 3.b) and 4773.B as part of your application.

8. You must implement the monitoring requirements specified in LAC 33:IX.4775.

9. You must implement the recordkeeping requirements specified in LAC 33:IX.4777.

**C. Track II Requirements for New Offshore Oil and Gas Extraction Facilities.** The owner or operator of a new offshore oil and gas extraction facility that is a fixed facility and chooses to comply under Track II must comply with the following requirements.

1. You must demonstrate to the administrative authority that the technologies employed will reduce the level of adverse environmental impact from your cooling water intake structures to a comparable level to that which you would achieve were you to implement the applicable requirements of Paragraph B.3 of this Section and, if your facility is a fixed facility without a sea chest, also Paragraph B.6 of this Section. This demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, will be comparable to

those which would result if you were to implement the requirements of Paragraph B.3 of this Section and, if your facility is a fixed facility without a sea chest, also Paragraph B.6 of this Section. In identifying such species, the administrative authority may consider information provided by any fishery management agency along with data and information from other sources.

2. For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1 percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level.

3. You must submit the applicable information required in LAC 33:IX.2501.R.2 (except 2.d), 3, and 4 and 4773.C.

4. You must implement the monitoring requirements specified in LAC 33:IX.4775.

5. You must implement the recordkeeping requirements specified in LAC 33:IX.4777.

D. You must comply with any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure or monitoring requirements at a new offshore oil and gas extraction facility that the administrative authority deems are reasonably necessary to comply with any provision of federal or state law, including compliance with applicable state water quality standards (including designated uses, criteria, and antidegradation requirements).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2072 (October 2007).

#### **§4771. May alternative requirements be authorized?**

A. Any interested person may request that alternative requirements less stringent than those specified in LAC 33:IX.4769 be imposed in the permit. The administrative authority may establish alternative requirements less stringent than the requirements in LAC 33:IX.4769 only if:

1. there is an applicable requirement in LAC 33:IX.4769;

2. the administrative authority determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local water resources other than impingement or entrainment or significant adverse impacts on energy markets;

3. the alternative requirement requested is no less stringent than justified by the wholly-out-of-proportion cost or the significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on energy markets; and

4. the alternative requirement will ensure compliance with other applicable provisions of the Clean Water Act and any applicable requirement of federal or state law.

B. The burden is on the person requesting the alternative requirement to demonstrate that the alternative requirement should be authorized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2073 (October 2007).

#### **§4773. As an owner or operator of a new offshore oil and gas extraction facility, what must I collect and submit when I apply for my new or reissued LPDES permit?**

##### **A. General Application Requirements**

1. As an owner or operator of a new offshore oil and gas extraction facility, you must submit to the administrative authority a statement that you intend to comply with either:

a. the Track I requirements for new offshore oil and gas extraction facilities in LAC 33:IX.4769.B; or

b. if you are a fixed facility, the Track II requirements in LAC 33:IX.4769.C.

2. You must also submit the application information required by LAC 33:IX.2501.R and the information required in either Subsection B of this Section for Track I or, if you are a fixed facility that chooses to comply under Track II, Subsection C of this Section when you apply for a new or reissued LPDES permit in accordance with LAC 33:IX.2501.

B. Track I Application Requirements. To demonstrate compliance with Track I requirements in LAC 33:IX.4769.B, you must collect and submit to the administrative authority the information in Paragraphs B.1-3 of this Section.

1. Velocity Information. You must submit the following information to the administrative authority to demonstrate that you are complying with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 ft/s at each cooling water intake structure as required in LAC 33:IX.4769.B.3:

a. a narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

b. design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevations (based on best professional judgment using available hydrological data) and maximum head loss across the screens or other device.

2. Source Water Body Flow Information. If you are a fixed facility and your cooling water intake structure is located in an estuary or tidal river, you must provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that your cooling water intake structure facility meets the flow requirements in LAC 33:IX.4769.B.4.

3. Design and Construction Technology Plan. To comply with LAC 33:IX.4769.B.5 and/or 6, if applicable, you must submit to the administrative authority the following information in a design and construction technology plan:

a. if the administrative authority determines that additional impingement requirements should be included in your permit:

i. information to demonstrate whether you meet the criteria in LAC 33:IX.4769.B.5;

ii. delineation of the hydraulic zone of influence for your cooling water intake structure; and

b. if required to install design and construction technologies and/or operational measures in accordance with LAC 33:IX.4769.B.5 or 6, a plan explaining the technologies and measures you have selected. (Examples of appropriate technologies include, but are not limited to, increased opening to cooling water intake structure to decrease design intake velocity, wedgewire screens, fixed screens, velocity caps, location of cooling water intake opening in water body, etc. Examples of appropriate operational measures include, but are not limited to, seasonal shutdowns or reductions in flow, continuous operations of screens, etc.) The plan must contain the following information, if applicable:

i. a narrative description of the design and operation of the design and construction technologies, including fish-handling and return systems, that you will use to maximize the survival of those species expected to be most susceptible to impingement. Provide species-specific information that demonstrates the efficacy of the technology;

ii. to demonstrate compliance with LAC 33:IX.4769.B.6, if applicable, a narrative description of the design and operation of the design and construction technologies that you will use to minimize entrainment of those species expected to be the most susceptible to entrainment. Provide species-specific information that demonstrates the efficacy of the technology; and

iii. design calculations, drawings, and estimates to support the descriptions provided in Clauses B.3.b.i and ii of this Section.

C. Track II Application Requirements. If you are a fixed facility and have chosen to comply with the requirements of Track II in LAC 33:IX.4769.C, you must collect and submit to the administrative authority the following information.

1. Source Water Body Flow Information. If your cooling water intake structure is located in an estuary or tidal river, you must provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that your cooling water intake structure facility meets the flow requirements in LAC 33:IX.4769.C.2.

2. Track II Comprehensive Demonstration Study. You must perform and submit the results of a comprehensive demonstration study (study). This information is required to characterize the source water baseline in the vicinity of the cooling water intake structure(s), characterize operation of the cooling water intake(s), and confirm that the technology(ies) proposed and/or implemented at your cooling water intake structure reduces the impacts to fish and shellfish to levels comparable to those you would achieve were you to implement the applicable requirements in LAC 33:IX.4769.B.

a. To meet the comparable-level requirement, you must demonstrate that:

i. you have reduced impingement mortality of all life stages of fish and shellfish to 90 percent or greater of the reduction that would be achieved through the applicable requirements in LAC 33:IX.4769.B.3; and

ii. if you are a facility without sea chests, you have minimized entrainment of entrainable life stages of fish and shellfish to 90 percent or greater of the reduction that

would have been achieved through the applicable requirements in LAC 33:IX.4769.B.6.

b. You must develop and submit a plan to the administrative authority containing a proposal for how information will be collected to support the study. The plan must include:

i. a description of the proposed and/or implemented technology(ies) to be evaluated in the study;

ii. a list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed study. If you propose to rely on existing source water body data, the data must be no more than 5 years old, you must demonstrate that the existing data are sufficient to develop a scientifically valid estimate of potential impingement mortality and (if applicable) entrainment impacts, and you must provide documentation showing that the data were collected using appropriate quality assurance/quality control procedures;

iii. any public participation or consultation with federal or state agencies undertaken in developing the plan; and

iv. a sampling plan for data that will be collected using actual field studies in the source water body. The sampling plan must document all methods and quality assurance procedures for sampling and data analysis. The sampling and data analysis methods you propose must be appropriate for a quantitative survey and based on consideration of methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure and at least 100 meters beyond), taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish), and sampling and data analysis methods.

c. You must submit documentation of the results of the study to the administrative authority. Documentation of the results of the study must include the following information.

i. Source Water Biological Study. The source water biological study must include:

(a) a taxonomic identification and characterization of aquatic biological resources including a summary of historical and contemporary aquatic biological resources, a determination and description of the target populations of concern (those species of fish and shellfish and all life stages that are most susceptible to impingement and entrainment), and a description of the abundance and temporal/spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily activities (e.g., spawning, feeding, and water column migration) of all life stages of fish and shellfish found in the vicinity of the cooling water intake structure;

(b) an identification of all threatened or endangered species that might be susceptible to impingement and entrainment by the proposed cooling water intake structure(s); and

(c) a description of additional chemical, water quality, and other anthropogenic stresses on the source water body.

ii. Evaluation of Potential Cooling Water Intake Structure Effects. This evaluation must include:

(a). calculations of the reduction in impingement mortality and (if applicable) entrainment of all life stages of fish and shellfish that would need to be achieved by the technologies you have selected to implement to meet requirements under Track II. To do this, you must determine the reduction in impingement mortality and entrainment that would be achieved by implementing the requirements in LAC 33:IX.4769.B.3 and, for facilities without sea chests, LAC 33:IX.4769.B.6 of Track I at your site;

(b). an engineering estimate of efficacy for the proposed and/or implemented technologies used to minimize impingement mortality and (if applicable) entrainment of all life stages of fish and shellfish and maximize survival of impinged life stages of fish and shellfish. You must demonstrate that the technologies reduce impingement mortality and (if applicable) entrainment of all life stages of fish and shellfish to a comparable level to that which you would achieve were you to implement the requirements in LAC 33:IX.4769.B.3 and, for facilities without sea chests, LAC 33:IX.4769.B.6 of Track I. The efficacy projection must include a site-specific evaluation of technology(ies) suitability for reducing impingement mortality and (if applicable) entrainment based on the results of the source water biological study conducted in accordance with Clause C.2.c.i of this Section. Efficacy estimates may be determined based on case studies that have been conducted in the vicinity of the cooling water intake structure and/or site-specific technology prototype studies.

iii. Verification Monitoring Plan. You must include in the study a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or implemented technologies and/or operational measures. The verification study must begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the facility is reducing the level of impingement mortality and (if applicable) entrainment to the level documented in Clause C.2.c.i of this Section. The plan must describe the frequency of monitoring and the parameters to be monitored. The administrative authority will use the verification monitoring to confirm that you are meeting the level of impingement mortality and entrainment reduction required in LAC 33:IX.4769.C and that the operation of the technology has been optimized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2073 (October 2007).

**§4775. As an owner or operator of a new offshore oil and gas extraction facility, must I perform monitoring?**

A. As an owner or operator of a new offshore oil and gas extraction facility, you will be required to perform monitoring to demonstrate your compliance with the requirements specified in LAC 33:IX.4769 or alternative requirements in LAC 33:IX.4771.

**B. Biological Monitoring**

**1. Facility Requirements**

a. Fixed facilities without sea chests that choose to comply with the Track I requirements in LAC

33:IX.4769.B.1 must monitor for entrainment. These facilities are not required to monitor for impingement, unless the administrative authority determines that the information would be necessary to evaluate the need for, or compliance with, additional requirements in accordance with LAC 33:IX.4769.B.5 or more stringent requirements in accordance with LAC 33:IX.4769.D.

b. Fixed facilities with sea chests that choose to comply with the Track I requirements in LAC 33:IX.4769.B.1 are not required to perform biological monitoring unless the administrative authority determines that the information would be necessary to evaluate the need for, or compliance with, additional requirements in accordance with LAC 33:IX.4769.B.5 or more stringent requirements in accordance with LAC 33:IX.4769.D.

c. Facilities that are not fixed facilities are not required to perform biological monitoring unless the administrative authority determines that the information would be necessary to evaluate the need for, or compliance with, additional requirements in accordance with LAC 33:IX.4769.B.5 or more stringent requirements in accordance with LAC 33:IX.4769.D.

d. Fixed facilities with sea chests that choose to comply with the Track II requirements in LAC 33:IX.4769.C must monitor for impingement only. Fixed facilities without sea chests that choose to comply with Track II requirements must monitor for both impingement and entrainment.

2. Monitoring must characterize the impingement rates and (if applicable) entrainment rates of commercial, recreational, and forage base fish and shellfish species identified in the source water baseline biological characterization data required by LAC 33:IX.2501.R.4, identified in the comprehensive demonstration study required by LAC 33:IX.4773.C.2, or as specified by the administrative authority.

3. The monitoring methods used must be consistent with those used for the source water baseline biological characterization data required in LAC 33:IX.2501.R.4, those used by the comprehensive demonstration study required by LAC 33:IX.4773.C.2, or as specified by the administrative authority. You must follow the monitoring frequencies in Paragraphs B.4 and 5 of this Section for at least two years after the initial permit issuance. After that time, the administrative authority may approve a request for less frequent sampling in the remaining years of the permit term and when the permit is reissued, if supporting data show that less frequent monitoring would still allow for the detection of any seasonal variations in the species and numbers of individuals of those species that are impinged or entrained.

4. Impingement Sampling. You must collect samples to monitor impingement rates (simple enumeration) for each species over a 24-hour period and no less than once per month when the cooling water intake structure is in operation.

5. Entrainment Sampling. If your facility is subject to the requirements of LAC 33:IX.4769.B.1.a, or if your facility is subject to LAC 33:IX.4769.C and is a fixed facility without a sea chest, you must collect samples to monitor entrainment rates (simple enumeration) for each species over a 24-hour period and no less than biweekly during the primary period of reproduction, larval recruitment, and peak abundance identified during the

source water baseline biological characterization required by LAC 33:IX.2501.R.4 or the comprehensive demonstration study required in LAC 33:IX.4773.C.2. You must collect samples only when the cooling water intake structure is in operation.

C. Velocity Monitoring. If your facility uses a surface intake screen system, you must monitor head loss across the screens and correlate the measured value with the design intake velocity. The head loss across the intake screen must be measured at the minimum ambient source water surface elevation (best professional judgment based on available hydrological data). The maximum head loss across the screen for each cooling water intake structure must be used to determine compliance with the velocity requirement in LAC 33:IX.4769.B.3. If your facility uses devices other than surface intake screens, you must monitor velocity at the point of entry through the device. You must monitor head loss or velocity during initial facility startup and, thereafter, at the frequency specified in your LPDES permit, but no less than once per quarter.

D. Visual or Remote Inspections. You must either conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. You must conduct visual inspections at least weekly to ensure that any design and construction technologies required in LAC 33:IX.4769.B.5, B.6, C, and/or D are maintained and operated to ensure that they will continue to function as designed. Alternatively, you must inspect via remote monitoring devices to ensure that the impingement and entrainment technologies are functioning as designed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2075 (October 2007).

**§4777. As an owner or operator of a new offshore oil and gas extraction facility, must I keep records and report?**

A. As an owner or operator of a new offshore oil and gas extraction facility you are required to keep records and report information and data to the administrative authority as follows.

1. You must keep records of all the data used to complete the permit application and show compliance with the requirements, any supplemental information developed under LAC 33:IX.4773, and any compliance monitoring data submitted under LAC 33:IX.4775, for a period of at least three years from the date of permit issuance. The administrative authority may require that these records be kept for a longer period.

2. You must provide the following to the administrative authority in a yearly status report:

a. for fixed facilities, biological monitoring records for each cooling water intake structure as required by LAC 33:IX.4775.B;

b. velocity and head loss monitoring records for each cooling water intake structure as required by LAC 33:IX.4775.C; and

c. records of visual or remote inspections as required in LAC 33:IX.4775.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2076 (October 2007).

**§4779. What must the administrative authority do to comply with the requirements of this Subchapter?**

A. Permit Application. The administrative authority must review materials submitted by the applicant in accordance with LAC 33:IX.2501.R, 4771, and 4773 at the time of the initial permit application and before each permit renewal or reissuance.

1. After receiving the initial permit application from the owner or operator of a new offshore oil and gas extraction facility, the administrative authority must determine applicable standards in LAC 33:IX.4769 or 4771 to apply to the new offshore oil and gas extraction facility. In addition, the administrative authority must review materials to determine compliance with the applicable standards.

2. For each subsequent permit renewal, the administrative authority must review the application materials and monitoring data to determine whether requirements, or additional requirements, for design and construction technologies or operational measures should be included in the permit.

3. For Track II facilities, the administrative authority must review the information collection proposal plan required by LAC 33:IX.4773.C.2.b. The facility may initiate sampling and data collection activities prior to receiving comment from the administrative authority.

B. Permitting Requirements. Section 316(b) requirements of the CWA are implemented for a facility through an LPDES permit. The administrative authority must determine, based on the information submitted by the new offshore oil and gas extraction facility in its permit application, the appropriate requirements and conditions to include in the permit based on the track (Track I or Track II), or alternative requirements in accordance with LAC 33:IX.4771, the new offshore oil and gas extraction facility has chosen to comply with. The following requirements must be included in each permit.

1. Cooling Water Intake Structure Requirements. At a minimum, the permit conditions must include the performance standards that implement the applicable requirements of LAC 33:IX.4769.B.3-6 and C.1 and 2 or LAC 33:IX.4771.

a. For a facility that chooses Track I, the administrative authority must review the design and construction technology plan required in LAC 33:IX.4773.B.3 to evaluate the suitability and feasibility of the technology proposed to minimize impingement mortality and (if applicable) entrainment of all life stages of fish and shellfish. In the first permit issued, the administrative authority must include a condition requiring the facility to reduce impingement mortality and/or entrainment commensurate with the implementation of the technologies in the permit. Under subsequent permits, the administrative authority must review the performance of the technologies implemented and require additional or different design and construction technologies, if needed, to minimize impingement mortality and/or entrainment of all life stages of fish and shellfish. In addition, the administrative authority must consider whether more stringent conditions are

reasonably necessary in accordance with LAC 33:IX.4769.D.

b. For a fixed facility that chooses Track II, the administrative authority must review the information submitted with the comprehensive demonstration study required in LAC 33:IX.4773.C.2 and evaluate the suitability of the proposed design and construction technology and/or operational measures to determine whether they will reduce both impingement mortality and entrainment of all life stages of fish and shellfish to 90 percent or greater of the reduction that could be achieved through Track I. In addition, the administrative authority must review the verification monitoring plan required in LAC 33:IX.4773.C.2.c.iii and require that the proposed monitoring begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the technologies and operational measures meet the requirements in LAC 33:IX.4769.C.1. Under subsequent permits, the administrative authority must review the performance of the additional and/or different technologies or measures used and determine that they reduce the level of adverse environmental impact from the cooling water intake structures to a comparable level that the facility would achieve were it to implement the requirements of LAC 33:IX.4769.B.3 and, if applicable, LAC 33:IX.4769.B.6.

c. If a facility requests alternative requirements in accordance with LAC 33:IX.4771, the administrative authority must determine if data specific to the facility meet the requirements in LAC 33:IX.4771.A and include requirements in the permit that are no less stringent than justified by the wholly-out-of-proportion cost or the significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on energy markets.

2. **Monitoring Conditions.** At a minimum, the permit must require the permittee to perform the monitoring required in LAC 33:IX.4775. The administrative authority may modify the monitoring program when the permit is reissued and during the term of the permit based on changes in physical or biological conditions in the vicinity of the cooling water intake structure. The administrative authority may require continued monitoring based on the results of monitoring done pursuant to the verification monitoring plan required in LAC 33:IX.4773.C.2.c.iii.

3. **Recordkeeping and Reporting.** At a minimum, the permit must require the permittee to report and keep records as required by LAC 33:IX.4777.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2076 (October 2007).

Herman Robinson, CPM  
Executive Counsel

0710#021

## RULE

### Department of Environmental Quality Office of the Secretary Legal Affairs Division

Departmental Designations  
(LAC 33:I, III, V, VI, VII, IX, XI, and XV) (MM002)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Environmental Quality regulations, LAC 33:I, III, V, VI, VII, IX, XI, and XV (Log #MM002). The Sections amended in this Rule are as follows:

LAC 33:I.501, 907, 1109, 1111, 1113, 1117, 1203, 1307, 1505, 1701, 1803, 2005, 2307, 3905, 3917, 3919, 3923, 3925, 4701, 4703, 4705, 4711, 5707, 6905, and 6921;

LAC 33:III.111, 211, 501, 504, 505, 506, 507, 613, 918, 919, 1105, 1107, 1410, 1434, 1507, 2103, 2108, 2113, 2116, 2121, 2122, 2123, 2132, 2153, 2159, 2201, 2301, 2303, 2307, 2511, 2521, 2531, 2701, 2719, 2723, 2735, 2799, 2805, 2807, 2809, 2811, 3003, 5107, 5111, 5113, 5116, 5122, 5151, 5307, 5311, and 5911;

LAC 33:V.105, 106, 109, 303, 309, 321, 323, 501, 520, 537, 565, 590, 708, 1105, 1107, 1109, 1111, 1113, 1123, 1125, 1127, 1199, 1504, 1505, 1513, 1516, 1527, 1529, 1531, 1715, 1737, 1739, 1745, 1747, 1755, 1767, 1802, 1905, 1907, 1913, 2227, 2237, 2239, 2241, 2245, 2246, 2247, 2253, 2271, 2273, 2303, 2306, 2307, 2508, 2521, 2707, 2711, 2719, 2803, 2805, 2903, 2906, 3005, 3007, 3009, 3103, 3115, 3317, 3319, 3321, 3503, 3505, 3513, 3517, 3523, 3525, 3527, 3707, 3711, 3715, 3717, 3719, 3831, 3841, 3853, 3875, 4029, 4043, 4045, 4065, 4083, 4201, 4241, 4301, 4320, 4367, 4373, 4375, 4381, 4383, 4387, 4391, 4393, 4395, 4403, 4407, 4411, 4413, 4437, 4449, 4451, 4462, 4472, 4474, 4489, 4512, 4522, 4534, 4703, and 5309;

LAC 33:VI.103, 117, 201, 303, 403, 501, 502, 505, 507, 509, 515, 521, 607, 705, 709, 711, 801, 803, 911, and 913;

LAC 33:VII.113, 301, 303, 305, 307, 311, 401, 403, 407, 501, 508, 509, 513, 515, 517, 519, 711, 713, 715, 717, 719, 721, 723, 725, 803, 805, 909, 1103, 1301, 1303, 1305, 1403, 1405, 3001, 10307, 10513, 10515, 10517, 10519, 10521, 10523, 10525, 10531, 10533, 10535, and 10536;

LAC 33:IX.301, 303, 307, 309, 311, 315, 708, 905, 1117, 1121, 1507, 2109, 2111, 2115, 2119, 2123, 2125, 2501, 2511, 2515, 2521, 2523, 2525, 2529, 2701, 2703, 2709, 3115, 3117, 4505, 5709, 6113, 6117, 6121, 6123, 6125, 6135, and 6507;

LAC 33:XI.301, 303, 507, 701, 703, 715, 903, 905, 907, 1111, 1113, 1123, 1129, 1131, 1139, 1205, 1209, 1305, and 1309; and

LAC 33:XV.102, 204, 205, 209, 211, 212, 213, 320, 321, 322, 324, 325, 326, 328, 331, 332, 361, 390, 399, 430, 436, 438, 442, 461, 488, 490, 496, 499, 575, 577, 578, 579, 603,

608, 704, 710, 719, 737, 761, 803, 907, 911, 1016, 1017, 1103, 1104, 1303, 1309, 1314, 1325, 1331, 1332, 1333, 1407, 1408, 1410, 1417, 1418, 1420, 1515, 1516, 1707, 1711, 1755, 2014, 2017, 2022, 2506, 2507, and 2508.

Technical amendments have been made to the rule, including additional changes to office and division references that were inadvertently not included in the original proposed rule. This Rule will change references to various DEQ divisions in the regulations to references to the statutory office designations, update some office designations to reflect the current organizational structure of the department, and make miscellaneous format and typographical corrections in the related text. Each division will internally prepare documentation identifying the various reports and other submittals the division may require. This information will be available through the department's website. The names and organizational placement of divisions are sometimes changed during reorganizations within the department, which initiates a need to update the division names in the department's regulations. Changing the departmental regulations through formal rulemaking each time there is a division name change or a change in the organizational placement of a division is an inefficient use of resources. The basis and rationale for this Rule are to decrease the effect that departmental reorganizations have on the regulations.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

### **Title 33**

## **ENVIRONMENTAL QUALITY**

### **Part I. Office of the Secretary**

#### **Subpart 1. Departmental Administrative Procedures**

#### **Chapter 5. Confidential Information Regulations**

##### **§501. Scope**

A. Department of Environmental Quality information and records obtained under the Louisiana Environmental Quality Act, or by any rule, regulation, order, license, registration, or permit term or condition adopted or issued thereunder, or by any investigation authorized thereby, shall be available to the public, unless confidentiality is requested in writing to the Office of the Secretary and the information or records are determined by the department to require confidentiality.

B. – B.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:342 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2439 (November 2000), LR 30:742 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2432 (October 2005), LR 33:2078 (October 2007).

#### **Chapter 9. Petition for Rulemaking**

##### **§907. Content of a Rulemaking Petition**

A. ...

B. The petition shall be addressed to the Office of the Secretary.

C. - E.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:297 (March 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2439 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2432 (October 2005), LR 33:2078 (October 2007).

#### **Chapter 11. Declaratory Rulings**

##### **§1109. Declaratory Rulings Officer**

A. – B. ...

C. The declaratory rulings officer shall have the authority to regulate all matters concerning a request for declaratory ruling and to issue the declaratory ruling after concurrence as to legal sufficiency by the Office of the Secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1141 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2440 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2432 (October 2005), LR 33:2078 (October 2007).

##### **§1111. Duty to Maintain List**

A. The secretary shall maintain, in a place accessible to the public in the Office of the Secretary, a list of all petitions for declaratory rulings and declaratory rulings and an index to the list. The list shall identify the petitioner, the matter to be decided, and when applicable, the location of the activity or facility that is the subject of the petition. The list shall also include the date on which the petition is received, the date the secretary decides whether a declaratory ruling will be issued, the date the secretary sets for issuance of the ruling, the date the ruling issues, and the date of any request for modification or appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1141 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2440 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2432 (October 2005), LR 33:2078 (October 2007).

##### **§1113. Declaratory Rulings Clerk**

A. The administrative authority shall designate a person in the Office of the Secretary to serve as the declaratory rulings clerk, who shall be the official custodian of declaratory rulings records. The clerk shall maintain these records separately from other records of the department.

B. – B.5....

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1142 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2440 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2433 (October 2005), LR 33:2078 (October 2007).

##### **§1117. Petition Contents and Form**

A. – A.9. ...

B. A petition for declaratory ruling shall be filed with the Office of the Secretary by either of the following methods:



1. personal delivery to the general counsel or the declaratory rulings clerk at department headquarters; or

2. United States Mail as certified mail, return receipt requested to Declaratory Rulings Clerk, Office of the Secretary.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1142 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2440 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2433 (October 2005), LR 33:2078 (October 2007).

## **Chapter 12. Requests for Review of Environmental Conditions**

### **§1203. Procedure for Submittal of Request**

A. - B.10. ...

C. An applicant shall submit the request for review, in accordance with the requirements of Subsection B of this Section, in triplicate, with the initial minimum fee in Subsection A of this Section, to the administrator of the Office of Environmental Assessment.

D. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 20:2001, et seq., and specifically 2011(D)(25).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:447 (March 2007), amended LR 33:2079 (October 2007).

## **Chapter 13. Risk Evaluation/Corrective Action Program**

### **§1307. Adoption by Reference**

A. The document entitled, "Louisiana Department of Environmental Quality Risk Evaluation/Corrective Action Program (RECAP)," dated October 20, 2003, 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 Office of the Secretary. For RECAP document availability at other locations, contact the department's Regulation Development Section. The RECAP document may also be reviewed on the Internet through the department's website.

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 26:1264 (June 2000), LR 26:2441 (November 2000), LR 29:2057 (October 2003), amended by the Office of Environmental Assessment, LR 30:2020 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2433 (October 2005), LR 33:2079 (October 2007).

## **Chapter 15. Permit Review**

### **§1505. Review of Permit Applications for New Facilities and Substantial Permit Modifications**

A. - A.4. ...

5. Within 30 days after receipt of a letter of administrative completeness, the applicant shall publish a notice, provided by the department, of the administrative completeness determination in a major local newspaper of general circulation and submit proof of publication to the Office of Environmental Services.

A.6. - E. ...

## **F. Withdrawal of Permit Application**

1. An applicant may voluntarily withdraw an application during the review process, without prejudice, provided notice of withdrawal is submitted to the Office of Environmental Services in writing with the appropriate signatory authority, and:

1.a. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2022(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Legal Affairs and Enforcement, Enforcement and Regulatory Compliance Division, LR 19:487 (April 1993), repromulgated LR 19:742 (June 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2441 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2433 (October 2005), LR 33:1342 (July 2007), LR 33:2079 (October 2007).

## **Chapter 17. Permit Qualifications and Requirements §1701. Requirements for Obtaining a Permit**

A. - B.2. ...

C. The applicant shall provide to the Office of Environmental Services a list of the state(s) where he or she has federal or state environmental permits identical to, or of a similar nature to, the permit for which application is being made. This information shall be provided for all individuals, partnerships, corporations, or other entities who own a controlling interest (50 percent or more) in the company or who participate in the environmental management of the facility for an entity applying for a permit or an ownership interest.

D. In addition to providing the information required in Subsection C of this Section, the applicant shall submit a written statement to the Office of Environmental Services as part of the permit application, to certify that:

D.1. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2441 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2433 (October 2005), LR 33:2079 (October 2007).

## **Chapter 18. Expedited Permit Processing Program §1803. Procedures**

A. Requests for expedited permit processing shall be submitted using the approved form. The approved form is available on the official website for the department. Hard copies may be obtained from the Office of Environmental Services.

B. - D.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.5.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1014 (June 2007), amended LR 33:2079 (October 2007).

## **Chapter 20. Records of Decision for Judicial Review §2005. Responsibility for Assembly of Record of Decision**

A. When the department is served with notice of an appeal or other request for judicial review, such notice shall be immediately forwarded to the Office of the Secretary, which shall be responsible for assembling a complete and

legible copy of the record of decision and transmitting it to the court.

B. ...

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:858 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2441 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2433 (October 2005), LR 33:2079 (October 2007).

## **Chapter 23. Procedures for Public Record Requests**

### **§2307. Exceptions to Standard Operating Procedures**

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

b. If payment is not received within 10 working days, the requester's name will appear on an accounts receivable past due report maintained by the Office of Management and Finance.

1.c. - 2.c. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:429 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), LR 29:702 (May 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2080 (October 2007).

### **Subpart 2. Notification**

## **Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges**

### **Subchapter A. General**

#### **§3905. Definitions**

A. ...

\* \* \*

*SPOC*—the Office of Environmental Compliance, Emergency and Radiological Services Division, Single Point of Contact (SPOC).

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2204(A), and 2373(B).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2080 (October 2007).

### **Subchapter C. Requirements for Prompt Notification**

#### **§3917. Notification Requirements for Unauthorized Discharges That Do Not Cause an Emergency Condition**

A. In the event of an unauthorized discharge that exceeds a reportable quantity specified in Subchapter E of this Chapter but that does not cause an emergency condition, the discharger shall promptly notify the department within 24 hours after learning of the discharge. Notification should be made to SPOC in accordance with LAC 33:I.3923.

B. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), repromulgated LR

20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), repromulgated LR 27:38 (January 2001), amended LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007).

#### **§3919. Notification Requirements for Unauthorized Discharges with Groundwater Contamination Impact**

A. In the event that any unauthorized discharge results in the contamination of the groundwaters of the state or otherwise moves in, into, within, or on any saturated subsurface strata, the discharger shall promptly notify SPOC in accordance with LAC 33:I.3923.

B. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), 2076(D), 2183(I), and 2204(A).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), repealed LR 19:1022 (August 1993), repromulgated and amended LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007).

### **Subchapter D. Notification Procedures**

#### **§3923. Prompt Notification Procedures**

A. Prompt notification shall be provided within a time frame not to exceed 24 hours and shall be given to SPOC, as follows:

A.1. - C.7.d. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007).

#### **§3925. Written Notification Procedures**

A. Written reports for any unauthorized discharge that requires notification under LAC 33:I.3915.A, 3917, or 3919 shall be submitted by the discharger to SPOC in accordance with this Section within seven calendar days after the notification required by LAC 33:I.3915.A, 3917, or 3919, unless otherwise provided for in a valid permit or other department regulation.

A.1. - B.16. ...

C. Written notification reports shall be submitted to SPOC by mail or fax. The transmittal envelope and report or fax cover page and report should be clearly marked "UNAUTHORIZED DISCHARGE NOTIFICATION REPORT."

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:1669 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007).

### Subpart 3. Laboratory Accreditation

#### Chapter 47. Program Requirements

##### §4701. Accreditation Process

A. The department accreditation process comprises four basic steps:

1. the submittal to the Office of Environmental Assessment of a written request from the laboratory in the form of an application provided by the department, along with payment of all applicable fees;

A.2. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:919 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1435 (July 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2081 (October 2007).

##### §4703. Application for Accreditation

A. ...

B. An application for environmental laboratory accreditation shall be made in writing to the Office of Environmental Assessment. This application shall provide all requested information and be accompanied by the appropriate application fee. Information will include at least one satisfactory round of the most recent department-specified proficiency evaluation test results or an analytical data package for test categories where no accessible proficiency tests exist. Supplemental information may be required.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:919 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1435 (July 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2081 (October 2007).

##### §4705. Categories of Accreditation

A. At the time of application each applicant must clearly identify both the fields of testing and the test categories for which accreditation is sought. A copy of the relevant test method documentation and the requisite equipment for the method must be available at the laboratory. A current list of approved methodologies for each parameter/analyte will be maintained by the Office of Environmental Assessment, and a copy of the list will become a part of the application package. In cases where the methodology used by the laboratory is not listed, the laboratory shall submit documentation that will verify that the results obtained from the method in use are equal to or better than those results obtained from the approved methodology. The department will review the data submitted by the laboratory and will notify the laboratory in writing within 60 calendar days if the method is acceptable or unacceptable as an alternate method of analysis.

B. - B.11. ...

C. An accredited laboratory may request the addition of field(s) of testing and test category(ies) to its scope of accreditation at any time. Such a request must be submitted in writing to the Office of Environmental Assessment. Unless the previous on-site inspection can verify the

competence of the laboratory to perform the additional tests, another on-site inspection may be required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:919 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1435 (July 2000), LR 26:2443 (November 2000), repromulgated LR 27:38 (January 2001), amended by the Office of Environmental Assessment, LR 31:1570 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2081 (October 2007).

##### §4711. Proficiency Testing Participation

A. - E. ...

F. Each participating laboratory shall authorize the proficiency test provider to release the results of the proficiency evaluation (PE) test to the Office of Environmental Assessment at the same time that they are submitted to the laboratory. Every laboratory that receives test results that are "unacceptable" for a specific analyte must investigate and identify likely causes for these results, resolve any problems, and report such activity to the Office of Environmental Assessment, along with the submittal of corrective action proficiency sample test results. The laboratory shall report only the analytes for which corrective action was required.

G. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:921 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1436 (July 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2081 (October 2007).

#### Chapter 57. Maintenance of Accreditation

##### §5707. Changes in Laboratory Operation

A. Changes in laboratory name, ownership, location, personnel, facilities, methodology, or any factors significantly affecting the performance of analyses for which the laboratory was originally accredited shall be reported to the Office of Environmental Assessment within 30 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:933 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2081 (October 2007).

#### Subpart 4. Emergency Response Regulations

#### Chapter 69. Emergency Response Regulations

##### §6905. Definitions

A. ...

\*\*\*

*SPOC*—the Office of Environmental Compliance, Emergency and Radiological Services Division, Single Point of Contact (SPOC).

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), and (15).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:977 (October 1996), amended by the Office of Environmental

Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2081 (October 2007).

### **§6921. Reporting Requirements**

A. No later than 30 days after material from the cleanup and/or abatement of an off-site emergency condition is removed from an emergency response storage facility, the owner or operator of the facility shall submit a written report detailing the ultimate disposition of the material, by mail or fax to SPOC. The report shall be clearly marked "WASTE DISPOSITION REPORT." The report shall reference the department-issued incident number. Other information in the report may include location and date of the emergency incident, name and address of the company transporting the pollutant that resulted from the emergency incident, name and location of the facility where the pollutant is/was stored, and name and location of the facility accepting the pollutant for disposal, recycling, or reuse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), and (15).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:979 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2082 (October 2007).

## **Part III. Air**

### **Chapter 1. General Provisions**

#### **§111. Definitions**

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below.

\* \* \*

*SPOC*—the Office of Environmental Compliance, Emergency and Radiological Services Division, Single Point of Contact (SPOC).

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 15:1061 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:777 (August 1991), LR 21:1081 (October 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006), LR 32:1599 (September 2006), LR 33:2082 (October 2007).

### **Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs**

#### **§211. Methodology**

A. - B.9. ...

10. When a permanent shutdown occurs and a company properly notifies the Office of Environmental Services by official change in the Emission Inventory Questionnaire (EIQ) and permit, then the maintenance fee would be dropped for that shutdown portion of the process/plant. This fee reduction or cancellation shall apply only in the fiscal years in which the shutdown portion of the plant or process did not operate at all. The EIQ and permit shall also need to be changed to delete the emissions from the shutdown

portion of the plant or process before the start of the fiscal year in which the fee would have been charged.

11. - 15.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 Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:611 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), LR 18:706 (July 1992), LR 19:1419 (November 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:17 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:264 (February 2000), LR 26:2444 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2082 (October 2007).

### **Chapter 5. Permit Procedures**

#### **§501. Scope and Applicability**

A. - B.7. ...

C. Scope

1. For each source to which this Chapter applies, the owner or operator shall submit a timely and complete permit application to the Office of Environmental Services as required in accordance with the procedures delineated herein. Permit applications shall be submitted prior to construction, reconstruction, or modification unless otherwise provided in this Chapter.

2. - 13. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:2082 (October 2007).

#### **§504. Nonattainment New Source Review Procedures**

A. - B.5. ...

C. Source Information. The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to the Office of Environmental Services in order to perform any analysis or make any determination required under this regulation. Information shall include, but is not limited to:

C.1. - F.6. ...

7. The owner or operator desiring to utilize emission reductions as an offset shall submit to the Office of Environmental Services the following information:

C.7.a. - M.3. ...

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 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197

(February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007).

#### **§505. Acid Rain Program Permitting Requirements**

A. ...

B. Copies of documents incorporated by reference in this Section may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html); from the Department of Environmental Quality, Office of Environmental Services; or from a public library.

C. Modifications or Exceptions. A copy of each report or notice or of any other documentation required by the referenced regulations (i.e., 40 CFR Part 72) to be provided to "the Administrator" shall be provided to the Office of Environmental Services by the person required to make the submission to "the Administrator."

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 21:678 (July 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2446 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2429, 2436 (October 2005), LR 32:1598 (September 2006), LR 33:2083 (October 2007).

#### **§506. Clean Air Interstate Rule Requirements**

A. - C. ...

D. Copies of documents incorporated by reference in this Section may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html); from the Department of Environmental Quality, Office of Environmental Services; or from a public library.

E. Modifications or Exceptions. A copy of each report or notice or of any other documentation required by the referenced regulations (i.e., 40 CFR Part 96) to be provided to "the Administrator" shall be provided to the Office of Environmental Services by the person required to make the submission to "the Administrator."

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:1597 (September 2006), amended LR 33:1622 (August 2007), LR 33:2083 (October 2007).

#### **§507. Part 70 Operating Permits Program**

A. - C.2. ...

3. Newly Regulated Sources. The owner or operator of any source that becomes subject to the requirements of this Section after the effective date of the Louisiana Part 70 program due to regulations promulgated by the administrator or by the Department of Environmental Quality shall submit an application to the Office of Environmental Services in accordance with the requirements established by the

applicable regulation. In no case shall the required application be submitted later than one year from the date on which the source first becomes subject to this Section.

D. - H.3. ...

4. a requirement for progress reports to be submitted to the Office of Environmental Compliance at least semiannually, or at a more frequent period if specified in the applicable requirement. Such progress reports shall contain the following:

4.a. - 5.c.v. ...

d. a requirement that all compliance certifications be submitted to the administrator as well as to the Office of Environmental Compliance; and

H.5.e. - J.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:1008 (May 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 32:808 (May 2006), LR 33:1619 (August 2007), LR 33:2083 (October 2007).

#### **Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking**

##### **§613. ERC Bank Recordkeeping and Reporting Requirements**

A. - B.1. ...

2. An annual report summarizing all records required by Subsection A of this Section shall be submitted to the department by March 31 of each year. This submittal shall be certified as specified in Subsection C of this Section and submitted to the Office of Environmental Services in a format specified by the department.

B.3. - C. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 26:486 (March 2000), LR 26:2449 (November 2000), LR 28:303 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 33:2083 (October 2007).

##### **Chapter 9. General Regulations on Control of Emissions and Emission Standards**

##### **§918. Recordkeeping and Annual Reporting**

A. Data for emissions reports shall be collected annually. These reports are to be submitted to the Office of Environmental Assessment by March 31 of each year (for the period January 1 to December 31 of the previous year) unless otherwise directed by the department. The report shall include all data applicable to the emissions source or sources as required under LAC 33:III.919.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:339 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2450 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2438 (October 2005), LR 33:2083 (October 2007).

#### **§919. Emissions Inventory**

Emissions inventory data shall be submitted to the department on magnetic media in the format specified by the Office of Environmental Assessment. *Facilities* are defined as all emissions points under common control on contiguous property. *Emissions point* is defined as the source of emissions that should have a Source Classification Code (SCC). Detailed instructions are provided, on an annual basis, for completing and submitting emissions inventories. The state point source emissions inventory will be compiled from the emissions inventories submitted in accordance with this Section from the facilities that meet the criteria for applicability in Subsection A of this Section. The state area source, non-road and on-road mobile source, and biogenic emissions inventories are compiled by the department from data that may be requested from other federal, state, or local agencies or other private entities.

A. Applicability. The owner or operator of the following facilities shall submit annual emissions inventories to the Office of Environmental Assessment. The inventory shall include all air pollutants for which a National Ambient Air Quality Standard (NAAQS) has been issued and all NAAQS precursor pollutants.

A.1. - 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 Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:184 (February 1993), repromulgated LR 19:485 (April 1993), amended LR 19:1418 (November 1993), LR 20:1101 (October 1994), LR 22:339 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2450 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2438 (October 2005), LR 32:241 (February 2006), LR 33:2084 (October 2007).

#### **Chapter 11. Control of Emissions of Smoke**

##### **§1105. Smoke from Flaring Shall Not Exceed 20 Percent Opacity**

A. The emission of smoke from a flare or other similar device used for burning in connection with pressure valve releases for control over process upsets shall be controlled so that the shade or appearance of the emission does not exceed 20 percent opacity (LAC 33:III.1503.D.2, Table 4) for a combined total of six hours in any 10 consecutive days. If it appears the emergency cannot be controlled in six hours, SPOC shall be notified by the emitter in accordance with LAC 33:I.3923 as soon as possible after the start of the upset period. Such notification does not imply the administrative authority will automatically grant an exemption to the source(s) of excessive emissions.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 25:656 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2450 (November 2000), LR 30:1671 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2438 (October 2005), LR 33:2084 (October 2007).

#### **§1107. Exemptions**

A. Exemptions from the provisions of LAC 33:III.1105 may be granted by the administrative authority during start-up and shutdown periods if the flaring was not the result of failure to maintain or repair equipment. A report in writing, explaining the conditions and duration of the start-up or shutdown and listing the steps necessary to remedy, prevent, and limit the excess emission, shall be submitted to SPOC within seven calendar days of the occurrence. In addition, the flaring must be minimized and no ambient air quality standard may be jeopardized.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2451 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2438 (October 2005), LR 33:2084 (October 2007).

#### **Chapter 14. Conformity**

##### **Subchapter A. Determining Conformity of General Federal Actions to State or Federal Implementation Plans**

##### **§1410. Criteria for Determining Conformity of General Federal Actions**

A. - A.5.a. ...

i. the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the department to result in a level of emissions that, together with all other emissions in the nonattainment or maintenance area, would not exceed the emissions budgets specified in the applicable SIP. As a matter of policy, should the department make such determination or commitment, the federal agency must provide to the Office of Environmental Assessment information on all known projects or other actions that may affect air quality or emissions in any area to which this rule is applicable, regardless of whether such project or action is determined to be subject to this rule under LAC 33:III.1405. The department may charge the federal agency requesting such determination a reasonable fee based on the number of manhours required to perform and document the determination; or

A.5.a.ii. - 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 20:1274 (November 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2451 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2438 (October 2005), LR 33:2084 (October 2007).

**Subchapter B. Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved under Title 23 U.S.C. or the Federal Transit Act**

**§1434. Consultation**

- A. - B.6.a. ...  
b. *DEQ*—secretary of the Department of Environmental Quality, or designee;  
c. *DOTD*—assistant secretary of the Office of Planning and Programming, or designee;

B.6.d. - E. ...  
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 20:1278 (November 1994), repromulgated LR 24:1280 (July 1998), amended LR 24:1684 (September 1998), repromulgated LR 24:1925 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2451 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2085 (October 2007).

**Chapter 15. Emission Standards for Sulfur Dioxide**

**§1507. Exceptions**

- A. - A.1. ...  
a. A written report explaining the conditions and duration of the start-up and listing the steps necessary to remedy, prevent, and limit the excess emissions shall be submitted to SPOC within seven calendar days of the occurrence.

- A.1.b. - B.1. ...  
a. A written report explaining the conditions and duration of the upset and listing the steps necessary to remedy, prevent, and limit the excess emissions shall be submitted to SPOC within seven calendar days of the occurrence.

B.1.b. - C. ...  
AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:375 (April 1992), LR 23:1678 (December 1997), LR 24:1284 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2451 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2439 (October 2005), LR 33:1011 (June 2007), LR 33:2085 (October 2007).

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

**Subchapter A. General**

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

- A. - D.4. ...  
a. Controls for nonslotted guide poles and stilling wells shall include pole wiper and gasketing between the well and sliding cover. Controls for slotted guide poles shall include a float with wiper, pole wiper, and gasketing between the well and sliding cover. The description of the method of control and supporting calculations based upon the Addendum to American Petroleum Institute Publication Number 2517, *Evaporative Loss from External Floating Roof Tanks*, (dated May 1994) shall be submitted to the

Office of Environmental Assessment for approval prior to installation.

D.4.b. - J. ...  
AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 15:1065 (December 1989), repromulgated LR 16:27 (January 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:360 (April 1991), LR 18:1121 (October 1992), LR 20:1376 (December 1994), LR 21:1223 (November 1995), repromulgated LR 21:1333 (December 1995), amended LR 22:453 (June 1996), LR 22:1212 (December 1996), LR 24:20 (January 1998), LR 24:2242 (December 1998), LR 25:657 (April 1999), LR 25:852 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2452 (November 2000), LR 28:1763 (August 2002), LR 30:1671 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2439 (October 2005), LR 33:447 (March 2007), LR 33:2085 (October 2007).

**§2108. Marine Vapor Recovery**

- A. - E.5. ...  
F. Reporting and Recordkeeping  
1. The results of any testing done in accordance with LAC 33:III.2108.E shall be reported to the Office of Environmental Assessment within 45 days of the test.

F.2. - H.2. ...  
AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 14:704 (October 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:959 (November 1990), LR 22:1212 (December 1996), LR 23:1678 (December 1997), LR 24:20 (January 1998), LR 24:1285 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2452 (November 2000), LR 30:745 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2439 (October 2005), LR 33:2085 (October 2007).

**§2113. Housekeeping**

- A. - A.3. ...  
4. Each facility shall develop a written plan for housekeeping and maintenance that places emphasis on the prevention or reduction of volatile organic compound emissions from the facility. This plan shall be submitted to the Office of Environmental Services upon request. A copy shall be kept at the facility, if practical, or at an alternate site approved by the department.

5. ...  
AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:118 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:361 (April 1991), LR 25:852 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2452 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2439 (October 2005), LR 33:2085 (October 2007).

**§2116. Glycol Dehydrators**

- A. - F.4.b. ...  
G. Reporting Requirements

1. The owner or operator of a facility shall submit to the Office of Environmental Services a permit application after installation of controls unless exempt from permitting pursuant to LAC 33:III.Chapter 5.

2. If no permit is required pursuant to LAC 33:III.Chapter 5, the owner or operator of a facility shall submit to the Office of Environmental Services a new or updated emission inventory questionnaire after installation of controls.

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 20:1107 (October 1994), repromulgated, LR 20:1279 (November 1994), amended LR 21:941 (September 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2452 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2440 (October 2005), LR 33:2085 (October 2007).

### **§2121. Fugitive Emission Control**

A. - E.3. ...

F. Reporting Requirements. The operator of the affected facility shall submit to the Office of Environmental Assessment a report semiannually containing the information below for each calendar quarter during the reporting period. The reports are due by the last day of the month (January and July) following the monitoring period or by a date approved by the department. The reports shall include the following information for each quarter of the reporting period:

F.1. - G.Liquid Service. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:959 (November 1990), LR 17:654 (July 1991), LR 21:1330 (December 1995), LR 22:1128 (November 1996), LR 22:1212 (December 1996), LR 24:22 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1433 (July 2000), LR 26:2452 (November 2000), LR 30:1659 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2440 (October 2005), LR 33:2086 (October 2007).

### **§2122. Fugitive Emission Control for Ozone Nonattainment Areas and Specified Parishes**

A. - F.3. ...

G. Reporting Requirements. The operator of the affected facility shall submit a report semiannually to the Office of Environmental Assessment containing the information below for each calendar quarter during the reporting period. The reports are due by the last day of the month (January and July) following the monitoring period or by a date approved by the department. The reports shall include the following information for each quarter of the reporting period:

1. - 6. ...

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 20:1102 (October 1994), repromulgated LR 20:1279 (November 1994), amended LR 22:1129 (November 1996), LR 22:1212 (December 1996),

repromulgated LR 23:197 (February 1997), amended LR 23:1678 (December 1997), LR 24:22 (January 1998), LR 24:1285 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 28:1764 (August 2002), LR 30:1660 (August 2004), repromulgated by the Office of Environmental Assessment, LR 30:2030 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2440 (October 2005), LR 33:2086 (October 2007).

### **Subchapter B. Organic Solvents**

#### **§2123. Organic Solvents**

A. - C.Table. ...

D. Control Techniques

1. If add-on controls such as incinerators or vapor recovery systems are used to comply with the emission limitation requirements, in terms of pounds per gallon of solids as applied (determined in accordance with Paragraph D.8 of this Section), the volatile organic compound capture and abatement system shall be at least 80 percent efficient overall. All surface coating facilities shall submit to the Office of Environmental Services, for approval, design data for each capture system and emission control device that is proposed for use. The effectiveness of the capture system (i.e., capture efficiency) shall be determined using the procedure specified in Paragraph E.6 of this Section.

D.2. - H....

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:119 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 22:340 (May 1996), LR 22:1212 (December 1996), LR 23:1678 (December 1997), LR 24:23 (January 1998), LR 24:1285 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1240 (July 1999), LR 26:2453 (November 2000), LR 28:1765 (August 2002), LR 30:746 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2440 (October 2005), LR 33:2086 (October 2007).

### **Subchapter F. Gasoline Handling**

#### **§2132. Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities**

A. - B.5....

6. The regulated facility shall submit the following application information to the Office of Environmental Compliance prior to installation of the Stage II Vapor Recovery System:

6.a. - 7....

8. Upon request by the Department of Environmental Quality, the owner or operator of a facility that claims to be exempt from the requirements of this Section shall submit supporting records to the Office of Environmental Compliance within 30 calendar days from the date of the request. The Department of Environmental Quality shall make a final determination regarding the exemption status of a facility.

C. - C.2. ...

D. Testing

1. The owner/operator of the facility shall have the installed vapor recovery equipment tested prior to the start-up of the facility. The owner or operator shall notify the



Office of Environmental Compliance at least five calendar days in advance of the scheduled date of testing. Testing must be performed by a contractor that is certified with the Department of Environmental Quality. Compliance with the emission specification for Stage II equipment shall be demonstrated by passing the following required tests or equivalent for each type of system:

1.a. – 2. ...

3. The department reserves the right to confirm the results of the aforementioned testing at its discretion and at any time. Within 30 days after installation or major system modification of a vapor recovery system, the owner or operator of the facility shall submit to the Office of Environmental Compliance the date of completion of the installation or major system modification of a vapor recovery system and the results of all functional testing requirements.

E. – I. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:1254 (November 1992), repromulgated LR 19:46 (January 1993), amended LR 23:1682 (December 1997), LR 24:25 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 29:558 (April 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2440 (October 2005), LR 33:2086 (October 2007).

#### **Subchapter M. Limiting Volatile Organic Compound (VOC) Emissions From Industrial Wastewater**

##### **§2153. Limiting VOC Emissions from Industrial Wastewater**

A. – G.4.a. ...

b. in order to maintain exemption status under this Subsection, the owner or operator shall submit an annual report no later than March 31 of each year, starting in 1997, to the Office of Environmental Assessment that demonstrates that the overall control of VOC emissions at the affected source category from which wastewater is generated during the preceding calendar year is at least 90 percent less than the 1990 baseline emissions inventory. At a minimum, the report shall include the EPN; the PIN; the throughput of wastewater from affected source categories; a plot plan showing the location, EPN, and PIN associated with a wastewater storage, handling, transfer, or treatment facility; and the VOC emission rates for the preceding calendar year. The emission rates for the preceding calendar year shall be calculated in a manner consistent with the 1990 baseline emissions inventory; and

c. all representations in initial control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions, unless the owner or operator of the wastewater component submits a revised control plan to the Office of Environmental Assessment within 30 days of the change. All control plans and reports shall include documentation that the overall reduction of VOC emissions from wastewater at the affected source categories continues to be at least 90 percent less than the 1990 baseline

emissions inventory. The emission rates shall be calculated in a manner consistent with the 1990 baseline emissions inventory.

5. ...

a. each request for an exemption determination shall be submitted to the Office of Environmental Assessment. Each request shall demonstrate that the overall control of VOC emissions from wastewater at the affected source categories will be at least 80 percent less than the 1990 baseline emissions inventory. The request shall include the applicable EPN; the PIN; the calendar year throughput of wastewater from affected source categories; the VOC emission rates; and a plot plan showing the location, EPN, and PIN associated with a wastewater storage, handling, transfer, or treatment facility. The emission rates shall be calculated in a manner consistent with the 1990 baseline emissions inventory;

b. ...

c. all representations in initial control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the wastewater component submits a revised control plan to the Office of Environmental Assessment within 30 days of the change. All control plans and reports shall include documentation that the overall reduction of VOC emissions at the plant from wastewater affected source categories continues to be at least 80 percent less than the 1990 baseline emissions inventory.

G.6. – I. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:936 (September 1995), amended LR 22:1212 (December 1996), LR 24:26 (January 1998), LR 25:850 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 28:1765 (August 2002), LR 30:747 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2441 (October 2005), LR 33:2087 (October 2007).

#### **Subchapter N. Method 43—Capture Efficiency Test Procedures**

NOTE: This Subchapter was moved and renumbered from Chapter 61 (December 1996).

##### **§2159. Recordkeeping and Reporting**

A. All affected facilities must maintain a copy of the capture efficiency protocol on file. All results of appropriate test methods and CE protocols must be reported to the Office of Environmental Assessment within 60 days of the test date. A copy of the results must be kept on file with the source.

B. If any changes are made to capture or control equipment, the source is required to notify the Office of Environmental Assessment of these changes and a new test may be required.

C. The source must notify the Office of Environmental Assessment 30 days prior to performing any capture efficiency and/or control efficiency tests.

D. – E. ...

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 17:653 (July 1991), amended LR 22:1212 (December 1996), LR 23:1680 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2454 (November 2000), LR 27:1224 (August 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2087 (October 2007).

## **Chapter 22. Control of Emissions of Nitrogen Oxides (NO<sub>x</sub>)**

### **§2201. Affected Facilities in the Baton Rouge Nonattainment Area and the Region of Influence**

A. – F.7. ...

a. the facility designation, as indicated by the identification number, submitted to the Office of Environmental Services;

F.7.b. – J.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:290 (February 2002), repromulgated LR 28:451 (March 2002), amended LR 28:1578 (July 2002), LR 30:748 (April 2004), LR 30:1170 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2441 (October 2005), LR 33:2088 (October 2007).

## **Chapter 23. Control of Emissions for Specific Industries<sup>1</sup>**

<sup>1</sup> Regulation of emissions of volatile organic compounds for certain industries are presented in Chapter 21.

### **Subchapter A. Chemical Woodpulp Industry**

#### **§2301. Control of Emissions from the Chemical Woodpulp Industry**

A. – D.4. ...

a. Compliance. Owner or operators shall conduct source tests of recovery furnaces pursuant to the provisions in LAC 33:III.1503.D.2, Table 4, to confirm particulate emissions are less than that specified in Paragraph D.1 of this Section. The results shall be submitted to the Office of Environmental Assessment as specified in LAC 33:III.919 and 918. The testing should be conducted as follows:

D.4.a.i. – E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1564 (December 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2454 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2442 (October 2005), LR 32:1841 (October 2006), LR 33:2088 (October 2007).

### **Subchapter B. Aluminum Plants**

#### **§2303. Standards for Horizontal Stud Soderberg Primary Aluminum Plants and Prebake Primary Aluminum Plants**

A. – D.4. ...

E. Monitoring. Each horizontal stud Soderberg process primary aluminum plant and prebake process primary aluminum plant shall submit a detailed monitoring program subject to revision and approval by the Office of Environmental Assessment. The program shall include regularly scheduled monitoring for emissions of total

particulates as well as ambient air sampling for suspended particulates.

NOTE: Measurement of Concentrations. The methods listed in LAC 33:III.711.C, Table 2 and LAC 33:III.1503.D.2, Table 4, or such equivalent methods as may be approved by the department, shall be utilized to determine these particulate concentrations.

F. – F.1.d. ...

2. Every horizontal stud Soderberg process primary aluminum plant and prebake process primary aluminum plant shall furnish, upon request, to the department such other data as the administrative authority may require to evaluate the plant's emission control program. Such plants shall immediately report any unauthorized emissions of any air contaminants to SPOC in accordance with LAC 33:I.3923.

G. – G.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2455 (November 2000), LR 30:1672 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2442 (October 2005), LR 33:2088 (October 2007).

### **Subchapter D. Nitric Acid Industry**

#### **§2307. Emission Standards for the Nitric Acid Industry**

A. – B. ...

C. Exceptions

1. Start-Up Provisions

a. A four-hour start-up exemption from emission regulations may be authorized by the administrative authority for plants not subject to 40 CFR Part 60, Subpart G, as incorporated by reference in LAC 33:III.Chapter 30, which have been shut down. It is recognized that existing nitrogen oxide abatement equipment is effective only at normal operating temperatures. This provision allows the necessary time to bring up a facility from a cold start to near steady state condition. A report, in writing, explaining the conditions and duration of the start-up and listing the steps necessary to remedy, prevent, and limit the excess emissions, shall be submitted to SPOC within seven calendar days of the occurrence using the procedures provided in LAC 33:I.3925.

b. ...

2. On-Line Operating Adjustments

a. A four-hour exemption from emission regulations may be extended by the administrative authority to plants not subject to 40 CFR Part 60, Subpart G, as incorporated by reference in LAC 33:III.Chapter 30, where upsets have caused excessive emissions and on-line operating changes will eliminate a temporary condition. A report, in writing, explaining the conditions and duration of the upset and listing the steps necessary to remedy, prevent, and limit the excess emissions, shall be submitted to SPOC within seven calendar days of the occurrence using the procedures provided in LAC 33:I.3925.

C.2.b. – H.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the

Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2455 (November 2000), LR 30:1672 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2442 (October 2005), LR 33:2088 (October 2007).

## **Chapter 25. Miscellaneous Incineration Rules**

### **Subchapter B. Biomedical Waste Incinerators**

#### **§2511. Standards of Performance for Biomedical Waste Incinerators**

A. – B. Type IV Waste. ...

C. Registration

1. Within 90 days after adoption of these regulations, all facilities operating incinerators designed or operated for the purpose of burning potentially infectious medical waste, shall submit a supplemental incinerator data form (SID-1) to SPOC.

C.2. – E.6.e. ...

7. A copy of all monitoring and tests results shall be submitted to the Office of Environmental Assessment for review and approval within 45 days of completion of testing.

F. – K. ...

L. Recordkeeping/Reporting. The owner or operator of any BWI shall keep a daily record of the hours the unit was in operation and the amount of waste incinerated. A separate record shall be kept of all chemotherapeutic waste incinerated that is not listed under the Resource Conservation and Recovery Act, 40 CFR 261.33(f). This record shall show the name of the material, date and time incinerated, and amount burned. Records shall be submitted to the Office of Environmental Compliance by March 31 for the previous calendar year.

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 20:1098 (October 1994), amended LR 21:1081 (October 1995), LR 22:1212 (December 1996), LR 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2455 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2442 (October 2005), LR 33:2089 (October 2007).

### **Subchapter C. Refuse Incinerators**

#### **§2521. Refuse Incinerators**

A. – F.9.e. ...

10. A copy of all monitoring and tests results shall be submitted to the Office of Environmental Assessment for review and approval within 45 days of completion of testing.

G. – H. ...

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 20:1100 (October 1994), amended LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2456 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2443 (October 2005), LR 33:2089 (October 2007).

### **Subchapter D. Crematories**

#### **§2531. Standards of Performance for Crematories**

A. – I.1.f. ...

2. A copy of all test results shall be submitted to the Office of Environmental Assessment for review and approval within 45 days of completion of testing.

J. – J.1.d. ...

2. The owner/operator shall provide the Office of Environmental Assessment at least 30 days prior notice of any emission test to afford the department the opportunity to conduct a pretest conference and to have an observer present. The department has the authority to invalidate any testing where such notice is not provided.

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 20:1107 (October 1994), amended LR 22:1127 (November 1996), LR 22:1212 (December 1996), LR 23:1509 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2456 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2443 (October 2005), LR 33:2089 (October 2007).

## **Chapter 27. Asbestos-Containing Materials in Schools and State Buildings Regulation**

### **§2701. Asbestos-Containing Materials in Schools and State Buildings**

A. – B.3.b. ...

i. a copy of the inspection report must be submitted to the Office of Environmental Services within 90 days of the inspection; and

b.ii. – c. ...

C. Scope

1. This regulation requires local education agencies and the state government to identify friable and nonfriable asbestos-containing material (ACM) in schools and state buildings by visually inspecting schools and state buildings for such materials, sampling such materials if they are not assumed to be ACM, and having samples analyzed by appropriate techniques referred to in this rule. The regulation requires local education agencies and the state government to submit management plans to the Office of Environmental Services on or before 90 days after promulgation of this regulation, to begin to implement the plans 180 days after promulgation of this regulation, and to complete implementation of the plans in a timely fashion. If an exemption is requested for a state building that contains no asbestos, an inspection report supporting that exemption should be submitted in accordance with Clause B.3.b.i of this Section. Management plans submitted to and approved by the Department of Environmental Quality prior to the promulgation of this regulation shall meet the inspection and assessment requirements of this Chapter. In addition, local education agencies and the state government are required to employ persons who have been accredited to conduct inspections, reinspections, develop management plans, or perform response actions. The regulation also includes recordkeeping requirements. Local education agencies and the state government may contractually delegate their duties under this rule, but they remain responsible for the proper performance of those duties. Local education agencies and the state government are encouraged to consult with the Office of Environmental Compliance of the Department of Environmental Quality for assistance in complying with this Rule.

C.2. – D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended LR 16:1056 (December 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:698 (August 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2456 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2443 (October 2005), LR 33:2089 (October 2007).

### §2719. Operations and Maintenance

A. – F.2.b. ...

c. Provide a prompt notification to SPOC of the major fiber release episode in accordance with LAC 33:I.3923 within 24 hours of the discovery of such an episode, and in writing as specified in LAC 33:I.3925 within seven calendar days after the initial notification.

d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:699 (August 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2456 (November 2000), LR 30:1672 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2444 (October 2005), LR 33:2090 (October 2007).

### §2723. Management Plans

A. ...

1. Each local education agency or the state government shall develop an asbestos management plan for each school, including all buildings that are leased, owned, or otherwise used as school or state buildings, and submit the plan to the Office of Environmental Services. After June 20, 1994, each plan must include Form AAC-8, Required Elements for Management Plans (latest revised form can be obtained from the Office of Environmental Services or through the department's website). The plan may be submitted in stages that cover portions of the school or state building under the authority of the local education agency or the state government before the deadline specified in LAC 33:III.2701.C.

2. If a building to be used as part of a school or state building is leased or otherwise acquired more than 90 days after promulgation of this regulation, the local education agency or the state government shall include the new building in the management plan for the school or state building prior to its use as a school or state building. The revised portions of the management plan shall be submitted to the Office of Environmental Services.

3. If a local education agency or the state government begins to use a building as a school or state building more than 90 days after promulgation of this regulation, the local education agency or the state government shall submit a management plan for the school or state building to the Office of Environmental Services prior to its use as a school or state building. Each plan developed or modified after June 20, 1994 must include Form AAC-8, Required Elements for Management Plans.

B. – H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:700 (August 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2457 (November 2000), amended by the Office of Environmental Assessment, LR 30:2021 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2444 (October 2005), LR 33:2090 (October 2007).

### §2735. Exclusions

A. – A.3.a. ...

b. Within 30 days after the inspector's determination, the local education agency or the state government shall submit a copy of the inspector's statement to the Office of Environmental Services and shall include the statement in the management plan for that school or state building.

4. – 5. ...

6. Based on inspection records and contractor and clearance records, an accredited inspector has determined that no ACBM is present in the homogeneous or sampling area where asbestos removal operations have been conducted before December 14, 1987, and shall sign and date a statement to that effect and include his or her accreditation number. The local education agency or the state government shall submit a copy of the statement to the Office of Environmental Services and shall include the statement in the management plan for that school or state building.

7. An architect or project engineer responsible for the construction of a new school building built after October 12, 1988, or an accredited inspector signs a statement that no ACBM was specified as a building material in any construction document for the building or, to the best of his or her knowledge, no ACBM was used as a building material in the building. The local education agency or the state government shall submit a copy of the signed statement of the architect, project engineer, or accredited inspector to the Office of Environmental Services and shall include the statement in the management plan for that school or state building.

B. – C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:700 (August 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2457 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2444 (October 2005), LR 33:2090 (October 2007).

### §2799. Appendix A—Agent Accreditation Plan

#### Appendix A—Agent Accreditation Plan

The duration of initial and refresher training courses is specified in numbers of days. A day of training equals eight consecutive hours, including breaks and lunch.

In several instances, initial training courses for a specific discipline (e.g., workers, inspectors) require hands-on

training. For asbestos abatement supervisors and workers, hands-on training should include working with asbestos-substitute materials, fitting and using respirators, use of glove-bags, donning protective clothing, constructing a decontamination unit, as well as other abatement work activities. Hands-on training must permit all supervisors and workers to have actual experience performing tasks associated with asbestos abatement. For inspectors, hands-on training should include conducting a simulated building walk-through inspection and respirator fit testing.

Training requirements for each of the five accredited disciplines are outlined below. Persons in each discipline perform a different job function and distinct role. Inspectors identify and assess the condition of ACBM, or suspect ACBM. Management planners use data gathered by inspectors to assess the degree of hazard posed by ACBM in schools to determine the scope and timing of appropriate response actions needed for schools. Project designers determine how asbestos abatement work should be conducted. Lastly, workers and contractor/supervisors carry out and oversee abatement work. Each accredited discipline and training curriculum is separate and distinct from the others. A person seeking accreditation in any of the five accredited MAP disciplines cannot attend two or more courses concurrently, but may attend such courses sequentially. All courses, both initial and refresher, shall be completed within 14 days of the commencement of the course.

A. – E.2. ...

a. A completed Asbestos Accreditation Affidavit, Form AAC-1 (which may be obtained from the Office of Environmental Services or through the department's website) that contains:

a.i. – e. ...

3. The completed application with applicable fees (LAC 33:III.223) is to be sent to the Office of Environmental Services.

4. – 8.a. ...

b. for failure to notify the Office of Environmental Services of changes in status;

E.8.c. – F. ...

1. Submit the latest revision of the Asbestos Training Organization Recognition Application, Form AAC-3, (which may be obtained from the Office of Environmental Services or through the department's website) requesting approval to train asbestos agents.

2. – 2.g. ...

3. The completed application with applicable fees for organization and trainer recognition (LAC 33:III.223) are to be sent to the Office of Environmental Services.

4. – 5.a. ...

b. The recognized training organization must keep the Office of Environmental Services informed of any change in status of the training organization, such as pending fines, notices of violation, changes in instructor status, etc.

c. A notification of which courses will be taught, including where, when, and who will conduct the class, must be submitted to the Office of Environmental Services.

i. The notification must be received in writing by the Office of Environmental Services at least five days prior to class commencement. (Notification must be made at least

three days prior to a course when only the state regulations are to be taught.)

ii. Cancellation of classes must be received by the Office of Environmental Services before the class should have commenced.

d. Within 10 days of the completion of a class a complete roster of trainees, their driver's license or state identification numbers and the issuing states, and their examination grades, with a 1" x 1 1/4" photograph of the face of each trainee, must be submitted to the Office of Environmental Services on a form approved by the department.

e. The Office of Environmental Services must be notified by phone or in writing of changes in class schedules prior to the date when the course was to have commenced.

f. – k.v. ...

6. Applications for trainer recognition shall be completed using the latest revision of the Asbestos Trainer Recognition Form, AAC-4 (latest revision of the form may be obtained from the Office of Environmental Services or through the department's website). A resume indicating proof of experience as described in Clause F.2.d.ii of this Appendix must be attached. The completed application with applicable fees (LAC 33:III.223) is to be sent to the Office of Environmental Services.

7. – 9.e.ii. ...

iii. If a training provider ceases to conduct training, the training provider shall notify the Office of Environmental Services and give it the opportunity to take possession of that providers asbestos training records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended LR 16:397 (May 1990), LR 16:1057 (December 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:700 (August 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2458 (November 2000), amended by the Office of Environmental Assessment, LR 30:2022 (September 2004), LR 30:2803 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2444 (October 2005), LR 33:2090 (October 2007).

## **Chapter 28. Lead-Based Paint**

### **Activities—Recognition, Accreditation, Licensure, and Standards for Conducting Lead-Based Paint Activities**

#### **§2805. Recognition and Standards for Training Providers**

A. – A.1. ...

2. A training provider seeking recognition shall submit to the Office of Environmental Services the appropriate fees, as required in LAC 33:III.223, a completed LPF-4 form, and a completed LPF-5 form for each trainer to be recognized, containing the following information:

A.2.a. – B.8.g. ...

9. the training provider shall submit rosters, including photographs of participants, to the Office of Environmental Services within 10 working days of course completion. For each course, the training provider shall provide three photographs of each student:

B.9.a. – C.5.h. ...

#### D. Renewal of Training Provider's Recognition

1. A training provider seeking renewal of its recognition shall submit, along with the appropriate fees as required in LAC 33:III.223, a completed LPF-4 Form and a completed LPF-5 Form for each trainer to be recognized to the Office of Environmental Services 60 days prior to its expiration date. If a training provider does not submit its renewal application by that date, the department cannot guarantee the application will be reviewed and acted upon before the end of the one-year period.

2. – 3. ...

E. Notification Requirements. A training provider scheduling lead-based paint activities courses shall notify the Office of Environmental Services in writing as follows:

E.1. – G.3. ...

4. The training provider shall notify the Office of Environmental Services 30 days prior to relocating its business or transferring its records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:1666 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2459 (November 2000), LR 28:2337 (November 2002), amended by the Office of Environmental Assessment, LR 30:2804 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2445 (October 2005), LR 33:642 (April 2007), LR 33:2091 (October 2007).

#### §2807. Accreditation of Individuals

A. – C.1. ...

a. submit a completed and signed application form to the Office of Environmental Services;

1.b. – 2. ...

D. Reaccreditation

1. To maintain accreditation individuals must be annually recertified by the Office of Environmental Services.

2. – 2.a. ...

b. submit a copy of the refresher course completion certificate to the Office of Environmental Services;

D.2.c. – E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:1669 (December 1997), amended LR 24:2240 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2459 (November 2000), LR 28:2337 (November 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 33:643 (April 2007), LR 33:2092 (October 2007).

#### §2809. Licensure of Lead Contractors

A. Licensure Requirements

1. In order to bid and/or perform abatement activities, lead contractors must obtain a lead-based paint abatement and removal license from the State of Louisiana Licensing Board for Contractors. Prior to obtaining an initial or renewal license, the lead contractor must submit an application for approval, along with the appropriate fees as required in LAC 33:III.223, to the Office of Environmental Services and certify to the department that the following criteria have been, or will be, met.

A.1.a. – B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:1671 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2459 (November 2000), LR 28:2338 (November 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 33:643 (April 2007), LR 33:2092 (October 2007).

#### §2811. Work Practice Standards for Conducting Lead-Based Paint Activities for Target Housing and Child-Occupied Facilities

A. – E.3. ...

4. The lead contractor shall notify the Office of Environmental Services in writing of abatement activities.

a. ...

b. The project shall not start before the start date noted on the Lead Project Notification (LPN). The Office of Environmental Services shall be notified if the operation will stop for a day or more during the project time noted on the LPN or if the project has been canceled or postponed. The firm shall also give notice 24 hours before the completion of a project. Notice shall be submitted to the department with written follow-up and fax notification to the appropriate regional office.

4.c. – 13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:1672 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2459 (November 2000), repromulgated LR 27:39 (January 2001), amended LR 28:2338 (November 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 33:644 (April 2007), LR 33:2092 (October 2007).

#### Chapter 30. Standards of Performance for New Stationary Sources (NSPS)

##### Subchapter A. Incorporation by Reference

#### §3003. Incorporation by Reference of 40 Code of Federal Regulations (CFR) Part 60

A. – B. ...

1. Whenever the referenced regulations (i.e., 40 CFR Part 60) provide authority to "the Administrator," such authority, in accordance with these regulations, shall be exercised by the administrative authority or his designee, notwithstanding any authority exercised by the U.S. Environmental Protection Agency (EPA). Reports, notices, or other documentation required by the referenced regulations (i.e., 40 CFR Part 60) to be provided to "the Administrator" shall be provided to the Office of Environmental Assessment, where the state is designated authority by EPA as "the Administrator," or shall be provided to the Office of Environmental Assessment and EPA, where EPA retains authority as "the Administrator."

2. 40 CFR Part 60, Subpart A, Section 60.4 (b)(T) shall be modified to read as follows: State of Louisiana: Office of Environmental Assessment, Department of Environmental Quality.

3. – 9, Table. ...

C. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent

of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html), from the Department of Environmental Quality, Office of Environmental Services, or from a public library.

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 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:809 (May 2006), LR 32:1596 (September 2006), LR 33:1620 (August 2007), LR 33:2092 (October 2007).

## **Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program**

### **Subchapter A. Applicability, Definitions, and General Provisions**

#### **§5107. Reporting Requirements, Availability of Information, and Public Notice Provisions**

A. Annual Emissions Reporting. The owner or operator of any stationary source that emits any toxic air pollutant listed in LAC 33:III.5112, Table 51.1 or 51.3, shall submit a completed annual emissions report to the Office of Environmental Assessment in a format specified by the department. The owner or operator shall identify on the emissions report the quantity of emissions in the previous calendar year for any such toxic air pollutant emitted.

1. ...

2. Subsequent Annual Emissions Reports. After the initial annual emissions report, the owner or operator of any stationary source subject to the requirements in Subsection A of this Section shall submit a completed annual emissions report to the Office of Environmental Assessment on or before July 1 of each year. Each subsequent report shall identify the quantity of emissions of all toxic air pollutants listed in LAC 33:III.5112, Table 51.1 or 51.3.

A.3. – B.1. ...

2. Emission Control Bypasses. Except as provided in Paragraph B.6 of this Section, for any unauthorized discharge into the atmosphere of a toxic air pollutant as a result of bypassing an emission control device, when the emission control bypass was not the result of an upset, and the quantity of the unauthorized bypass is greater than or equal to the lower of the Minimum Emission Rate (MER) in LAC 33:III.5112, Table 51.1, or a reportable quantity (RQ) in LAC 33:I.3931, or the quantity of the unauthorized bypass is greater than one pound and there is no MER or RQ for the substance in question, the owner or operator of the source shall provide prompt notification to SPOC of the bypass no later than 24 hours after the beginning of the bypass in the manner provided in LAC 33:I.3923. Where the emission control bypass was the result of an upset, the owner or operator shall comply with Paragraph B.3 of this Section.

3. Nonemergency Conditions. Except as provided in Paragraph B.6 of this Section, for any unauthorized discharge of a toxic air pollutant into the atmosphere that does not cause an emergency condition, the rate or quantity of which is in excess of that allowed by permit, compliance schedule, or variance, or for upset events that exceed the reportable quantity in LAC 33:I.3931, the owner or operator of the source shall immediately, but in no case later than 24 hours, provide prompt notification to SPOC in the manner provided in LAC 33:I.3923.

4. Written Reports. For every such discharge or equipment bypass as referred to in Paragraphs B.1, 2, and 3 of this Section, the owner or operator shall submit to SPOC a written report by certified mail within seven calendar days of learning of the discharge.

B.4.a. – D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and 2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:890 (July 1993), amended by the Office of the Secretary, LR 19:1022 (August 1993), repromulgated LR 19:1142 (September 1993), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:58 (January 1997), LR 24:1276 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2004 (September 2000), LR 26:2460 (November 2000), LR 29:2778 (December 2003), LR 30:1673 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2447 (October 2005), LR 33:2093 (October 2007).

#### **§5111. Permit Requirements, Application, and Review**

A. – A.2.a. ...

b. if the modification will not result in an increase in emissions of any toxic air pollutant and will not create a new point source, submit a letter requesting a permit modification to the Office of Environmental Services. The letter shall include those elements specified in Subparagraphs B.2.a, b, and c of this Section. The administrative authority shall notify the owner or operator of the determination to authorize or deny such modification within 30 days of receiving the request.

3. ...

a. submit a letter to the Office of Environmental Services indicating that the necessary permit modification (or new permit if no existing permit is in place) will be applied for by a date specified in the compliance schedule and requesting written authorization to construct; or

b. submit a permit application to the Office of Environmental Services in accordance with Subsection B of this Section.

4. – 6. ...

#### **B. Contents of Application for a Louisiana Air Permit**

1. An owner or operator may submit to the Office of Environmental Services, by certified mail, a written request for a determination of whether actions intended to be taken by the owner or operator constitute construction or modification, or the commencement thereof, of a stationary source. The administrative authority will notify the owner or operator of the determination within 30 days after receiving sufficient information to evaluate the request.

B.2. – C.5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:891 (July 1993), repromulgated LR 19:1314 (October 1993), amended LR 23:59 (January 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2461 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2447 (October 2005), LR 33:2093 (October 2007).

**§5113. Notification of Start-Up, Testing, and Monitoring**

A. Notification of Start-Up. Any owner or operator that has an initial start-up of a stationary source subject to MACT or Ambient Air Standard Requirements under this Subchapter shall furnish SPOC written notification as follows:

1. a notification to SPOC of the anticipated date of the initial start-up of the source not more than 60 days nor less than 30 days before that date; and
2. a notification to SPOC of the actual date of initial start-up of the source postmarked within 10 working days after such date.

B. Emission Tests and Waiver of Emission Tests

1. The department may require any owner or operator to conduct tests to determine the emission of toxic air pollutants from any source whenever the department has reason to believe that an emission in excess of those allowed by this Subchapter is occurring. The department may specify testing methods to be used in accordance with good professional practice. The department may observe the testing. All tests shall be conducted by qualified personnel. The Office of Environmental Assessment shall be given a copy of the test results in writing signed by the person responsible for the tests within 45 days after completion of the test.

2. – 4.e. ...

5. Unless otherwise specified, samples shall be analyzed and emissions determined within 30 days after each emission test has been completed. The owner or operator shall report the determinations of the emission test to the Office of Environmental Assessment by a certified letter sent before the close of business on the 45th day following the completion of the emission test.

6. ...

7. The owner or operator shall notify the Office of Environmental Assessment of any emission test required to demonstrate compliance with this Subchapter at least 30 days before the emission test to allow the administrative authority the opportunity to have an observer present during the test.

C. – C.1. ...

2. When required at any other time requested by the administrative authority, the owner or operator of a source being monitored shall conduct a performance evaluation of the monitoring system and furnish the Office of Environmental Assessment with a copy of a written report of the results within 60 days of the evaluation. The owner or operator of the source shall furnish the Office of Environmental Assessment with written notification of the

date of the performance evaluation at least 30 days before the evaluation is to begin.

3. – 4. ...

5. The administrative authority may require a continuous monitoring system where such systems are deemed feasible and necessary to demonstrate compliance with applicable standards. The owner or operator of a facility that the administrative authority has required to install a continuous monitoring system shall submit to the Office of Environmental Assessment for approval a plan describing the affected sources and the methods for ensuring compliance with the continuous monitoring system. The plan for the continuous monitoring system must be submitted to the department within 90 days after the administrative authority requests either the initial plan or an updated plan.

5.a. – 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1364 (December 1992), LR 23:59 (January 1997), LR 23:1658 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2461 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2448 (October 2005), LR 33:2094 (October 2007).

**Subchapter B. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)**

**§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)**

A. – B. ...

1. 40 CFR Part 61, Subpart A, Section 61.04(b)(T) is modified to read as follows: Louisiana Department of Environmental Quality, Office of Environmental Services.

2. Whenever the referenced regulations (i.e., 40 CFR Part 61) provide authority to "the Administrator," such authority, in accordance with these regulations, shall be exercised by the administrative authority or his designee, notwithstanding any authority exercised by the U.S. Environmental Protection Agency (EPA). Reports, notices, or other documentation required by the referenced regulations (i.e., 40 CFR Part 61) to be provided to "the Administrator" shall be provided to the Office of Environmental Compliance, where the state is designated authority by EPA as "the Administrator," or shall be provided to the Office of Environmental Compliance and EPA, where EPA retains authority as "the Administrator."

C. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html), from the Department of Environmental Quality, Office of Environmental Services, or from a public library.

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 23:1658 (December 1997), LR 24:1278 (July 1998), amended by the Office of Environmental Assessment,



Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1797 (October 1999), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2179 (October 2002), LR 29:699 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2448 (October 2005), LR 32:809 (May 2006), LR 33:1620 (August 2007), LR 33:2094 (October 2007).

**Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources**

**§5122. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources**

A. ...

B. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html), from the Department of Environmental Quality, Office of Environmental Services, or from a public library.

C. ...

1. Whenever the referenced regulations (i.e., 40 CFR Part 63) provide authority to "the Administrator," such authority, in accordance with these regulations, shall be exercised by the administrative authority or his designee, notwithstanding any authority exercised by the U.S. Environmental Protection Agency (EPA). Reports, notices, or other documentation required by the referenced regulations (i.e., 40 CFR Part 63) to be provided to "the Administrator" shall be provided to the Office of Environmental Compliance, where the state is designated authority by EPA as "the Administrator," or shall be provided to the Office of Environmental Compliance and EPA, where EPA retains authority as "the Administrator."

2. – 3. ...

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 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 29:1474 (August 2003), LR 30:1010 (May 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2449 (October 2005), LR 31:3115 (December 2005), LR 32:810 (May 2006), LR 33:1620 (August 2007), LR 33:2095 (October 2007).

**Subchapter M. Asbestos**

**§5151. Emission Standard for Asbestos**

A. – F.2. ...

a. provide the Office of Environmental Services with typed notice of intention to demolish or renovate using the latest version of Form AAC-2, Notification of Demolition and Renovation. This form is available from the Office of Environmental Services or through the

department's website. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable. The use of a prior version of the AAC-2 Form is acceptable unless the department has previously provided the owner or operator with a copy of the current version, or the owner or operator is aware of the latest version;

b. – c.iv.(a).(i). ...

(ii). provide the Office of Environmental Services with a written notice of the new start date as soon as possible before, and no later than, the original start date. Delivery of the updated notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable;

c.iv.(b). – f.i.(c). ...

ii. within five working days after the notification is made by phone, a typed notification as specified in Subparagraphs F.2.d and e shall be submitted to the Office of Environmental Services in order to obtain an ADVF;

g. – g.iii. ...

iv. the completed ADVF from the transporter shall be verified and signed by the disposal site owner or operator and mailed to the Office of Environmental Services within 30 working days. A copy is to be returned to the waste generator;

F.2.g.v. – G.2. ...

a. Notify the Office of Environmental Services at least 20 days before beginning the spraying operation. Include the following information in the notice:

G.2.a.i. – I. ...

1. deposit all asbestos-containing waste material at a waste disposal site recognized by the department. A completed AAC-7 Form shall have been submitted to the Office of Environmental Services by the disposal facility for prior recognition. Updated information will be required upon request. The latest AAC-7 Form may be obtained from the Office of Environmental Services or through the department's website. The Office of Environmental Services will maintain a current list of recognized asbestos waste disposal sites;

2. – 3.a.iii. ...

b. use an alternative emission control and waste treatment method that has received prior written approval by the administrative authority. To obtain approval for an alternative method, a written application must be submitted to the Office of Environmental Services demonstrating that the following criteria are met:

3.b.i. – 5.b. ...

c. report in writing to the Office of Environmental Services if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report the following information:

I.5.c.i. – J.4.c. ...

d. report in writing to the Office of Environmental Services if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report the following information:

J.4.d.i. – K.2.b. ...

c. when requesting a determination on whether a natural barrier adequately deters public access, supply

information enabling the Office of Environmental Services to determine whether a fence or a natural barrier adequately deters access by the general public;

3. ...

4. notify the Office of Environmental Services in writing at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site under this Section, and follow the procedures specified in the notification. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Office of Environmental Services at least 10 working days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

K.4.a. – L.6.g. ...

7. submit the following reports to the Office of Environmental Services:

7.a. – 8. ...

M. Reporting and Recordkeeping. Any new source to which this Subchapter applies (with the exception of sources subject to Subsections D, F, G, and H of this Section), which has an initial start-up date preceding the effective date of this Subchapter, shall provide the following information to the administrative authority, postmarked or delivered, within 90 days of the effective date. In the case of a new source that does not have an initial start-up date preceding the effective date, the information shall be provided to the administrative authority, postmarked or delivered, within 90 days of the initial start-up date. Any owner or operator of an existing source shall provide the following information to the administrative authority within 90 days of the effective date of this Subchapter, unless the owner or operator of the existing source has previously provided this information to the administrative authority. Any changes in the information provided by any existing source shall be provided to the administrative authority, postmarked or delivered, within 30 days after the change. The owner or operator of any existing source to which this Section is applicable shall, within 90 days after the effective date, provide the following information to the Office of Environmental Services:

M.1. – N.5.a.v. ...

b. as soon as possible and no longer than 30 days after receipt of the waste, send a copy of the signed ADVF to the waste generator and to the Office of Environmental Services;

c. upon discovering a discrepancy between the quantity of waste designated on the ADVF and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within 15 days after receiving the waste, immediately report in writing to the Office of Environmental Services. Describe the discrepancy and attempts to reconcile it, and submit a copy of the ADVF with the report;

5.d. – 7. ...

8. Submit to the Office of Environmental Services, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.

9. ...

10. Notify the Office of Environmental Services, in writing at least 45 days prior to excavating or otherwise

disturbing any asbestos-containing waste material that has been deposited at a waste disposal site and is covered. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date shall be provided to the administrative authority at least 10 working days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

N.10.a. – P.2.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 17:1204 (December 1991), repealed and repromulgated LR 18:1121 (October 1992), amended LR 20:1277 (November 1994), LR 24:27 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2462 (November 2000), LR 30:1673 (August 2004), amended by the Office of Environmental Assessment, LR 30:2022 (September 2004), LR 31:1570 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2449 (October 2005), LR 33:2095 (October 2007).

## **Chapter 53. Area Sources of Toxic Air Pollutants**

### **Subchapter A. Toxic Emissions Reporting Requirements**

#### **§5307. Reporting Requirements**

A. – A.7. ...

B. Subsequent reports will be due on or before July 1 of each year. The report shall be submitted to the Office of Environmental Assessment and include the information requested in Subsection A of this Section for the preceding calendar year.

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 20:431 (April 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2464 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2450 (October 2005), LR 33:2096 (October 2007).

### **Subchapter B. Incorporation by Reference of 40 CFR**

#### **Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Area Sources**

#### **§5311. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Area Sources**

A. – A, Table. ...

B. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html), from the Department of Environmental Quality, Office of Environmental Assessment, or from a public library.

C. Modifications or Exceptions. Whenever the referenced regulations (i.e., 40 CFR Part 63) provide authority to "the Administrator," such authority, in accordance with these regulations, shall be exercised by the administrative authority or his designee, notwithstanding any authority exercised by the U.S. Environmental Protection Agency (EPA). Reports, notices, or other documentation

required by the referenced regulations (i.e., 40 CFR Part 63) to be provided to "the Administrator" shall be provided to the Office of Environmental Assessment, where the state is designated authority by EPA as "the Administrator," or shall be provided to the Office of Environmental Assessment and EPA, where EPA retains authority as "the Administrator."

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 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:810 (May 2006), LR 33:1620 (August 2007), LR 33:2096 (October 2007).

**Chapter 59. Chemical Accident Prevention and Minimization of Consequences**  
**Subchapter B. Risk Management Program Requirements**

**§5911. Registration for Stationary Sources**

A. The owner or operator of each stationary source that has a covered process as defined by 40 CFR 68.3 shall register with the Office of Environmental Compliance by the latest of the following dates:

A1. – B.4, Certification. ...

C. If at any time after the submission of the registration, information in the registration is no longer accurate, the owner or operator shall submit an amended registration within 60 days to the Office of Environmental Compliance.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:426 (April 1994), amended LR 22:1125 (November 1996), LR 23:1496 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2464 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 33:2097 (October 2007).

**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 the 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. Wastes that are excluded from regulation are found in this Section.

**A. Notification of Hazardous Waste Activity**

1. Within 90 days after the promulgation of these regulations anyone subject to these regulations who has not previously notified the department on the Notification of Hazardous Waste Activity Form HW-1, or whose notification on Form HW-1 is not approved, must notify the

Office of Environmental Services, using Form HW-1. Within 90 days after changes in waste characteristics or changes in these regulations that result in changes in the notification, interim status facilities must revise their notification form by resubmitting a corrected copy of Form HW-1.

A.2. – C.1.b. ...

2. The Office of Environmental Services is responsible for nonhazardous solid wastes treated, stored, and/or disposed of in public and private solid waste facilities.

A.3. – D.1.i.iii.(d). ...

(e). prior to operating pursuant to this exclusion, the plant owner or operator submits to the Office of Environmental Services a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language:

"I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation."

The plant must maintain a copy of that document in its on-site records for a period of no less than three years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the administrative authority for reinstatement. The administrative authority may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur;

j. – p.iv.(c). ...

v. the owner or operator provides notice to the Office of Environmental Services, providing 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 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

p.vi. – t.ii. ...

(a). submit a one-time notice to the Office of Environmental Services that contains the name, address, and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this Subparagraph;

ii.(b). – iii.(a). ...

(b). submit a one-time notification to the Office of Environmental Services that, at a minimum, specifies the name, address, and EPA ID number of the manufacturing facility and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this Subparagraph;

(c). ...

(d). submit to the Office of Environmental Services an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of

each generating facility, and the industrial processes from which they were generated;

1.t.iv. – 5.c.ii. ...

iii. the additional quantities and time frames allowed in Clauses D.5.c.i and ii of this Section are subject to all the provisions in Subparagraph D.5.a and Clauses D.5.b.iii-vi of this Section. The generator or sample collector must apply to the Office of Environmental Services and provide in writing the following information:

5.c.iii.(a). – 6. ...

a. no less than 45 days before conducting treatability studies, the facility notifies the Office of Environmental Services in writing that it intends to conduct treatability studies under this Subsection;

b. – h. ...

i. the facility prepares and submits a report to the Office of Environmental Services, by March 15 of each year, that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

i.i. – j. ...

k. the facility notifies the Office of Environmental Services by letter when the facility is no longer planning to conduct any treatability studies at the site.

D.7. – J.1. ...

2. Non-Emergency Conditions. For any unauthorized discharge of a hazardous waste that does not cause an emergency condition, the discharger shall notify SPOC within 24 hours of learning of the discharge and in accordance with other provisions of LAC 33:I.Chapter 39.

K. – P. ...

1. Any person who proposes to manage contaminated media within an AOC must submit the definition of the project's AOC to the Office of Environmental Services. Approval from the administrative authority concerning the extent of the AOC must occur prior to movement of contaminated media. In general the AOC should be consistent with the area impacted by the release.

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 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, LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362, 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, 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, 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, 1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental

Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:291 (March 2001), LR 27:706 (May 2001), LR 29:317 (March 2003), LR 30:1680 (August 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:605 (April 2006), LR 32:821 (May 2006), LR 33:450 (March 2007), LR 33:2097 (October 2007).

#### **§106. Hazardous Waste Determination for Contaminated Media**

A. – B.1. ...

2. When a NHEM determination would be useful to expedite site remediation, a written request and payment of the fee in accordance with LAC 33:V.5147 may be submitted to the Office of Environmental Services. The request must demonstrate application of the process described in Paragraphs B.3-4 of this Section and that land disposal treatment standards are met when applicable.

3. A NHEM determination does not authorize the placement of contaminated media in, or establish remedial standards for, a particular area. Approval for placement of the contaminated medium in a specific area must be obtained from the Office of Environmental Services, unless it is otherwise allowed by regulation. Remedial standards for areas of contamination shall be established in accordance with the Risk Evaluation/Corrective Action Program (RECAP) as incorporated by reference in LAC 33:I.1307.

B.4. – Table 1, Soil and Groundwater Standards. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq. and, in particular, 2186(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs Division, LR 33:450 (March 2007), amended LR 33:2098 (October 2007).

#### **§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.

\* \* \*

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

1. – 4.b.ii.(c).(i), Table B. ...

(ii). a one-time notification and certification must be placed in the facility's files and sent to the Office of Environmental Services for K061, K062, or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to Subtitle D units. The notification and certification that is placed in the generators' or treaters' files must be updated if the process or operation generating the waste changes and/or if the Subtitle D unit receiving the waste changes. However, the generator or treater needs only to notify the administrative authority on an annual basis if such changes occur. Such notification and certification should be sent to the EPA region or authorized state by the end of the calendar year, but no later than December 31. The notification must include the following information:

4.b.ii.(c).(ii).[a]. – 6.b. ...

\* \* \*

*SPOC*—the Office of Environmental Compliance, Emergency and Radiological Services Division, Single Point of Contact (SPOC).

\* \* \*

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, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended 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 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:1625 (August 2007), LR 33:2098 (October 2007).

### **Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits**

#### **§303. Overview of the Permit Program**

##### **A. General Application Requirements**

1. Permit Application. Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the Office of Environmental Services, as described in this Section and LAC 33:V.4301, 4303, and 4305. Persons currently authorized with interim status shall apply for permits when required by the administrative authority. Persons covered by permits by rule (LAC 33:V.305.D) need not apply. Procedures for applications, issuance, and administration of emergency permits are found exclusively in LAC 33:V.701 and 703. Procedures for application, issuance, and administration of research, development, and demonstration permits are found exclusively in LAC 33:V.329.

2. No later than 90 days after the promulgation or revision of these regulations, all generators and transporters of hazardous waste, and all owners or operators of hazardous waste treatment, storage, or disposal facilities must file or have on file a notification of that activity using Notification Form HW-1, available from the Office of Environmental Services or through the department's website. For generators of hazardous waste, the Notification Form HW-1 shall be deemed a registration upon acceptance and approval by the administrative authority.

##### **A.3. – H.1. ...**

2. An application for a permit for a new TSD facility (including both Parts I and II) may be filed any time after promulgation of these standards, applicable to such facility. The application shall be filed with the Office of Environmental Services.

3. ...

4. A new facility must obtain an EPA identification number. EPA identification numbers will be issued only by

the EPA. However, application for an EPA Identification Number shall be made by completing the Hazardous Waste Notification form provided by the Office of Environmental Services.

I. – Q. ...

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 14:790 (November 1988), LR 16:220 (March 1990), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 20:1000 (September 1994), LR 21:564 (June 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2466 (November 2000), LR 27:708 (May 2001), amended by the Office of Environmental Assessment, LR 30:2023 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2453 (October 2005), LR 33:2099 (October 2007).

#### **§309. Conditions Applicable to All Permits**

Each permit shall include permit conditions necessary to achieve compliance with the Act and these regulations, including each of the applicable requirements specified in LAC 33:V.Subpart 1. In satisfying this provision, the administrative authority may incorporate applicable requirements of LAC 33:V.Subpart 1 directly into the permit or establish other permit conditions that are based on LAC 33:V.Subpart 1. The following conditions apply to all hazardous waste permits. All conditions applicable to permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

A. – K. ...

##### **L. Reporting Requirements**

1. Planned Changes. The permittee shall give notice to the Office of Environmental Services, as soon as possible, of any planned physical alterations or additions to the permitted facility.

2. Anticipated Noncompliance. The permittee shall give advance notice to the Office of Environmental Services of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

3. – 7.d. ...

8. Manifest Discrepancy Report. If a significant discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within five days, the permittee must submit a report including a copy of the manifest to the Office of Environmental Services.

9. Unmanifested Waste Report. An unmanifested waste report must be submitted to the Office of Environmental Services within five days of receipt of unmanifested waste.

10. Annual Report. An annual report must be submitted to the Office of Environmental Services covering facility activities during the previous calendar year.

11. ...

12. Other Information. If the permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, or in any report to the administrative authority, he shall promptly submit such facts or information to the Office of Environmental Services.

M. ...

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 16:220 (March 1990), LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:944 (September 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2466 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2453 (October 2005), LR 33:2099 (October 2007).

### **§321. Modification of Permits**

A. Any proposed major modification of a facility or a site, any change in wastes handled in either volume or composition, and any other change in the site, facility, or operations that materially deviates from a permit or materially increases danger to the public health or the environment must be reported in writing to the Office of Environmental Services prior to such an occurrence and a permit modification must be obtained in accordance with the application, public notice, and permit requirements of this Chapter. Any operator or ownership change shall be made in accordance with LAC 33:I.Chapter 19.

B. – C.1.a. ...

i. The permittee must notify the Office of Environmental Services concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notice must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notice, the permittee must provide the applicable information required by LAC 33:V.515-533, 2707, and 3115.

a.ii. – c. ...

#### **2. Class 2 Modifications**

a. For Class 2 modifications, listed in LAC 33:V.322, the permittee must submit a modification request to the Office of Environmental Services that:

2.a.i. – 10.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 13:433 (August 1987), LR 15:378 (May 1989), LR 16:614 (July 1990), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1691 (September 1998), LR 25:435 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2466 (November 2000), LR 28:1000 (May 2002), LR 29:319 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2430, 2454 (October 2005), LR 33:2100 (October 2007).

### **§323. Suspension, Modification or Revocation and Reissuance, and Termination of Permits**

A. ...

B. If the administrative authority decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or

hearings. Denials by the administrative authority may be appealed to the Office of the Secretary, in accordance with R.S. 30:2050.21.

1. – 4.e. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 14:790 (November 1988), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 20:1109 (October 1994), LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2467 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2454 (October 2005), LR 33:1625 (August 2007), LR 33:2100 (October 2007).

## **Chapter 5. Permit Application Contents**

### **Subchapter A. General Requirements for Permit Applications**

#### **§501. Permit Application**

A. Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit a permit application to the Office of Environmental Services, as described in this Section and LAC 33:V.4301, 4303, and 4305. Persons currently authorized with interim status shall apply for permits when required by the administrative authority. Persons covered by RCRA permits by rule (LAC 33:V.305.D) need not apply. Procedures for applications, issuance, and administration of emergency permits are found exclusively in LAC 33:V.701 and 703. Procedures for application, issuance, and administration of research, development, and demonstration permits are found exclusively in LAC 33:V.329.

B. – C.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 20:1000 (September 1994), LR 20:1109 (October 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:300 (February 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2467 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2454 (October 2005), LR 33:2100 (October 2007).

### **Subchapter E. Specific Information Requirements**

#### **§520. Specific Part II Information Requirements for Groundwater Protection**

The following additional information regarding protection of groundwater is required from owners or operators of hazardous waste facilities containing a regulated unit except as provided in LAC 33:V.3301.B and C:

A. – F.4. ...

G. if the presence of hazardous constituents has been detected in the groundwater at the point of compliance at the time of the permit application, the owner or operator must submit to the Office of Environmental Services sufficient information, supporting data, and analyses to establish a compliance monitoring program that meets the requirements of LAC 33:V.3319. Except as provided in LAC 33:V.3317.H, the owner or operator must also submit to the Office of Environmental Services an engineering feasibility plan for a corrective action program necessary to meet the

requirements of LAC 33:V.3321, unless the owner or operator obtains written authorization in advance from the administrative authority to submit a proposed permit schedule for submittal of such a plan. To demonstrate compliance with LAC 33:V.3319, the owner or operator must address the following items:

G.1. – H.5. ...

**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 LR 18:1256 (November 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2467 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2454 (October 2005), LR 33:2100 (October 2007).

#### **Subchapter F. Special Forms of Permits**

##### **§537. Permits for Boilers and Industrial Furnaces**

###### **Burning Hazardous Waste for Recycling**

###### **Purposes Only (Boilers and industrial furnaces**

###### **burning hazardous waste for destruction are**

###### **subject to permit requirements for incinerators.)**

A. – B.2.h.x. ...

i. The applicant must submit to the Office of Environmental Services a certification that the trial burn has been conducted in accordance with the approved trial burn plan and must submit the results of all the analyses and determinations required in Subparagraph B.2.h of this Section. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the administrative authority.

B.2.j. – D. ...

**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 15:737 (September 1989), amended LR 18:1375 (December 1992), LR 21:266 (March 1995), LR 22:818, 832 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2468 (November 2000), LR 27:292 (March 2001), LR 29:320 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2455 (October 2005), LR 33:2101 (October 2007).

#### **Subchapter G. Remedial Action Plans (RAPs) - General Information**

##### **§565. How do I apply for a RAP?**

A. To apply for a RAP, you must complete an application, sign it, and submit it to the Office of Environmental Services 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 26:272 (February 2000), amended LR 26:2468 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2455 (October 2005), LR 33:2101 (October 2007).

##### **§590. To whom must I submit my RAP application?**

A. You must submit your application for a RAP to the Office of Environmental Services 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 26:273 (February 2000), amended LR 26:2468 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2455 (October 2005), LR 33:2101 (October 2007).

#### **Chapter 7. Administrative Procedures for Treatment, Storage, and Disposal Facility Permits**

##### **Subchapter B. Hearings**

##### **§708. Preapplication Public Meeting and Notice, Public Notice Requirements at the Application Stage, and Information Repository**

A. – A.4.a.iii. ...

iv. a notice to the department. The applicant shall send a copy of the newspaper notice to the Office of Environmental Services and to the appropriate units of state and local government, in accordance with LAC 33:V.717.A.1.b.

A.4.b. – C.6. ...

**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 24:659 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2468 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2455 (October 2005), LR 33:2101 (October 2007).

#### **Chapter 11. Generators**

##### **Subchapter A. General**

##### **§1105. EPA Identification Numbers**

A generator must not treat, store, dispose of, transport or offer for transportation hazardous waste without having received an active EPA identification number.

A. ...

B. A generator must notify the Office of Environmental Services within seven days if any of the information submitted in the application for the identification number changes. Because EPA identification numbers are site-specific, if a facility moves to another location, the owner/operator must obtain a new EPA identification number for the facility.

C. ...

**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 17:362 (April 1991), LR 18:1256 (November 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2455 (October 2005), LR 33:2101 (October 2007).

##### **§1107. The Manifest System**

A. General Requirements. The revised manifest form and procedures in 40 CFR Part 262 and the Appendix to Part 262 shall be effective as of September 5, 2006. As of September 5, 2006, Uniform Hazardous Waste Manifest forms must be obtained only from EPA-registered and approved sources as identified by the Manifest Registry. Contact the Office of Environmental Services, or access the U.S. Environmental

Protection Agency's website to obtain information on EPA-registered and approved sources.

A.1. – B.1.c. ...

d. the description of the waste(s) (e.g., proper shipping name, EPA hazardous waste number, etc.) required by Hazardous Materials regulations of the Louisiana Department of Public Safety in LAC 33:V.Subpart 2.Chapter 101; and

B.1.e. – D.6. ...

E. Special Manifest Provisions

1. Scope. These provisions will apply to material in containers meeting the provisions of lab packs except that the outer container, excluding overpacking, shall not exceed 5 gallons (20 liters) in total liquid capacity prior to addition of the absorbent. The container and overpacking shall comply with applicable requirements of the Louisiana Department of Public Safety or its successor agency. Except as otherwise provided herein, the requirements of LAC 33:V.2519 shall be met.

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 10:496 (July 1984), LR 12:319 (May 1986), LR 16:220 (March 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:1256 (November 1992), LR 20:1109 (October 1994), LR 21:266, 267 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), LR 27:42 (January 2001), LR 27:709 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:823 (May 2006), LR 33:89 (January 2007), repromulgated LR 33:281 (February 2007), amended LR 33:2101 (October 2007).

### **§1109. Pre-Transport Requirements**

A. – A.3. ...

B. Labeling. Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable transportation regulations on hazardous materials of the Louisiana Department of Public Safety or its successor agency under LAC 33:V.Subpart 2.Chapter 105.

C. – 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 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 26:277 (February 2000), LR 26:2470 (November 2000), LR 27:293 (March 2001), LR 27:709, 716 (May 2001), LR 27:1014 (July 2001), LR 30:1673 (August 2004), amended by the Office of Environmental Assessment, LR 31:1571 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:823 (May 2006), LR 33:2102 (October 2007).

### **§1111. Recordkeeping and Reporting**

A. – A.4. ...

B. Annual Report

1. A generator who ships any hazardous waste off-site to a treatment, storage, or disposal facility within the United States must prepare and submit a single copy of an annual report to the Office of Environmental Services by March 1 of each year. The annual report must be submitted on the form provided by the administrative authority and it must cover generator activities during the previous calendar year. The reports must also include the following information:

a. – h. ...

2. Generators who also dispose, treat, or store hazardous waste on-site shall also submit annual reports to the Office of Environmental Services, reporting total quantity, by type, of waste handled, and how that waste was disposed, treated, or stored. Generators must maintain on site a copy of each report submitted to the department for a period of at least three years from the date of the report. Reporting for exports of hazardous waste is not required on the annual report form. A separate annual report requirement is set forth in LAC 33:V.1113.G.

C. – C.1. ...

2. A generator of greater than 1000 kg of hazardous waste in a calendar month must submit an Exception Report to the Office of Environmental Services if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

a. – b. ...

3. A generator of greater than 100 kg, but less than 1000 kg, of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the Office of Environmental Services.

NOTE: The submission to the administrative authority need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

D. – 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 10:496 (July 1984), LR 16:220 (March 1990), LR 17:365 (April 1991), LR 20:1000 (September 1994), LR 20:1109 (October 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), LR 27:42 (January 2001), LR 27:710 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2102 (October 2007).

### **§1113. Exports of Hazardous Waste**

A. – D.1.b.viii. ...

2. Notification shall be sent to the Office of Environmental Services, with "Attention: Notification to Export" prominently displayed on the front of the envelope.



NOTE: This does not relieve the regulated community from the requirement of submitting notification to the Office of Waste Programs Enforcement, RCRA Enforcement Division (OS-520), EPA, as required by 40 CFR 262.53(b).

D.3. – I.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 18:1256 (November 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 22:20 (January 1996), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:661 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), LR 27:710 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006), LR 33:2102 (October 2007).

### **§1123. Imports of Foreign Hazardous Waste**

A. – D.4. ...

E. Notification shall be sent to the Office of Environmental Services, with "Attention: Notification to Import Foreign Hazardous Waste" prominently displayed on the front of the envelope. Such notices shall be sent by certified mail.

F. ...

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 22:20 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006), LR 33:2103 (October 2007).

### **§1125. Unmanifested Foreign Hazardous Waste**

A. Any person who imports foreign generated material that has not been classified as hazardous waste prior to entry into the state of Louisiana, but subsequently is determined to be hazardous waste, must immediately notify the Office of Environmental Services by telephone.

B. ...

1. file, in writing, an unmanifested waste report with the Office of Environmental Services, which shall include:

1.a. – 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 22:21 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2103 (October 2007).

### **Subchapter B. Transfrontier Shipments of Hazardous Waste**

#### **§1127. Transfrontier Shipments of Hazardous Waste for Recovery within the OECD**

A. – G.1.f.Certification. ...

2. Exception Reports. Any person who meets the definition of *primary exporter* in LAC 33:V.109 must file an exception report, in lieu of the requirements of LAC 33:V.1111.C, with the Office of Environmental Services if any of the following occurs:

G.2.a. – I.4. ...

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 24:661 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), LR 27:293 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2103 (October 2007).

### **§1199. Appendix A—Uniform Hazardous Waste Manifest and Instructions (DEQ Form HW-3 and Its Instructions)**

Read all instructions before completing DEQ Form HW-3. This form is available from the Office of Environmental Services and has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used, press down hard. State regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to use this form (HW-3) and, if necessary, the continuation sheet for both interstate and intrastate transportation. Federal and state regulations also require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete the following information.

I. – II.D. ...

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 27:42 (January 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2103 (October 2007).

### **Chapter 15. Treatment, Storage, and Disposal Facilities**

#### **§1504. Construction Quality Assurance Program**

A. – C.2. ...

D. Certification. Waste shall not be received in a unit subject to this Section until the owner or operator has submitted to the Office of Environmental Services, by certified mail or hand delivery, a certification signed by the CQA officer that the approved CQA plan has been successfully carried out, that the unit meets the requirements of LAC 33:V.2903.J or K, 2303.C or D, or 2503.L or M, and the procedure in LAC 33:V.309.L.3.b has been completed. Documentation supporting the CQA officer's certification must be furnished to the administrative authority 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 Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2472 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2455 (October 2005), LR 33:2103 (October 2007).

#### **§1505. Discharges from the Site**

A. – A.1. ...

2. air emissions, if any, must be in conformity with air limitations of the Clean Air Act administered by the Office of Environmental Services, operating under an Air Quality Permit as required, and reported as required by that permit.

The air permit must be applied for prior to the issuance of a hazardous waste permit.

B. – C.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 18:1256 (November 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2472 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2456 (October 2005), LR 33:2103 (October 2007).

### **§1513. Contingency Plan and Emergency Procedures**

A. – A.1. ...

2. A contingency plan to be implemented in the event of an emergency shall be filed with the Office of Environmental Services and, after approval, with the local fire and police departments (if any operate in the area), hospitals and emergency response teams operating in the area that are subject to call by the operator or the department.

A.3. – B.6. ...

C. Copies of Contingency Plan

1. The contingency plan must be submitted to the Office of Environmental Services with the permit application and, after modification or approval, will become a condition of any permit issued.

C.2. – F.8.b. ...

9. The owner or operator must notify SPOC and the appropriate state and local authorities that the facility is in compliance with Paragraph F.8 of this Section before operations are resumed in the affected area(s) of the facility.

10. The owner or operator must note in the operating record the time, date, and details of any incident that requires implementation of the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to SPOC that includes:

a. – 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 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2472 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2456 (October 2005), LR 33:2104 (October 2007).

### **§1516. Manifest System for Treatment, Storage, and Disposal (TSD) Facilities**

A – A.1. ...

2. The revised manifest form and procedures in 40 CFR Part 262 and the Appendix to Part 262 shall be effective as of September 5, 2006. As of September 5, 2006, Uniform Hazardous Waste Manifest forms must be obtained only from EPA-registered and approved sources as identified by the Manifest Registry. Contact the Office of Environmental Services, or access the U.S. Environmental Protection Agency's website to obtain information on EPA-registered and approved sources.

B. – C.2. ...

3. Upon discovering a significant discrepancy, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator shall immediately submit to the Office of Environmental Services a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

4. – 7. ...

D. Unmanifested Waste Report. If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in LAC 33:V.1307.E.2, and if the waste is not excluded from the manifest requirements by LAC 33:V.108, then the owner or operator must prepare and submit a single copy of a report to the administrative authority within 15 days after receiving the waste. The unmanifested waste report must be submitted to the Office of Environmental Services. The report must be designated "Unmanifested Waste Report" and include the following information:

1. – 7. Comment. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:825 (May 2006), amended LR 33:2104 (October 2007).

### **§1527. Receiving and Monitoring Incoming Waste**

A. – E. ...

F. Unmanifested Waste Reports. Any wastes presented for disposal that are not accompanied by a properly completed manifest shall be rejected. The TSD operator shall note the name of the driver, hauler, and the vehicle identification numbers. He shall notify SPOC by phone immediately and in writing within seven days of the refusal to accept the waste and provide the administrative authority with the required information.

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2472 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2456 (October 2005), LR 33:2104 (October 2007).

### **§1529. Operating Record and Reporting Requirements**

A. – C.3. ...

D. Annual Report. The owner or operator shall prepare and submit a single copy of an annual report to the Office of Environmental Services by March 1 of each year. The report form shall be used for this report. The annual report must cover facility activities during the previous calendar year. Information submitted on a more frequent basis may be included by reference or in synopsis form where it is not pertinent to reporting under LAC 33:V.1516 or monitoring reporting under LAC 33:V.3317. It shall include the following information:

D.1. – 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 26:278 (February 2000), LR 26:2473 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:827 (May 2006), LR 33:2104 (October 2007).

#### **§1531. Required Notices**

A. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Office of Environmental Services in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

B. – E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2473 (November 2000), LR 27:294 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2105 (October 2007).

### **Chapter 17. Air Emission Standards**

#### **Subchapter A. Process Vents**

##### **§1715. Reporting Requirements**

A. A semiannual report shall be submitted by owners and operators subject to the requirements of this Subchapter to the Office of Environmental Services by dates specified by the administrative authority. The report shall include the following information:

A.1. – 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 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2473 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2456 (October 2005), LR 33:2105 (October 2007).

#### **Subchapter B. Equipment Leaks**

##### **§1737. Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Percentage of Valves Allowed to Leak**

A. – B. ...

1. An owner or operator must notify the Office of Environmental Services that the owner or operator has elected to comply with the requirements of this Section.

B.2. – C.3. ...

D. If an owner or operator decides to comply with this Section no longer, the owner or operator must notify the Office of Environmental Services in writing that the work practice standard described in LAC 33:V.1729.A-E will be followed.

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 Environmental Assessment, Environmental Planning Division, LR 26:2473 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2456 (October 2005), LR 33:2105 (October 2007).

##### **§1739. Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Skip Period Leak Detection and Repair**

A. – A.1. ...

2. An owner or operator must notify the Office of Environmental Services before implementing one of the alternative work practices.

B. – B.4. ...

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 25:439 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2473 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2457 (October 2005), LR 33:2105 (October 2007).

##### **§1745. Reporting Requirements**

A. A semiannual report shall be submitted by owners and operators subject to the requirements of this Subchapter to the Office of Environmental Services by dates specified by the administrative authority. The report shall include the following information:

A.1. – 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 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2474 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2457 (October 2005), LR 33:2105 (October 2007).

#### **Subchapter C. Air Emission Standards for Tanks, Surface Impoundments, and Containers**

##### **§1747. Applicability**

A. – D.2. ...

3. the owner or operator notifies the Office of Environmental Services, in writing, that hazardous waste generated by an organic peroxide manufacturing process or processes meeting the conditions of Paragraph D.1 of this Section are managed at the facility in tanks or containers meeting the conditions of Paragraph D.2 of this Section. The notification shall state the name and address of the facility and be signed and dated by an authorized representative of the facility owner or operator.

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 26:279 (February 2000), LR 26:2474 (November 2000), amended by the Office of the Secretary,

Legal Affairs Division, LR 31:2457 (October 2005), LR 33:2105 (October 2007).

### **§1755. Standards: Tanks**

A. – E.3.c. ...

d. prior to each inspection required by Subparagraph E.3.b or c of this Section, the owner or operator shall notify the Office of Environmental Services in advance of each inspection to provide the administrative authority with the opportunity to have an observer present during the inspection. The owner or operator shall notify the administrative authority of the date and location of the inspection as follows:

i. ...

ii. when a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Office of Environmental Services as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the administrative authority at least seven calendar days before refilling the tank;

E.3.e. – F.3.b.iv. ...

c. Prior to each inspection required by Subparagraph F.3.a or F.3.b of this Section, the owner or operator shall notify the Office of Environmental Services in advance of each inspection to provide the administrative authority with the opportunity to have an observer present during the inspection. The owner or operator shall notify the administrative authority of the date and location of the inspection as follows:

F.3.c.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), amended LR 25:440 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:279 (February 2000), LR 26:2474 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2106 (October 2007).

### **§1767. Reporting Requirements**

A. Each owner or operator managing hazardous waste in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of LAC 33:V.1751.C shall report to the Office of Environmental Compliance each occurrence when hazardous waste is placed in the waste management unit in noncompliance with the conditions specified in LAC 33:V.1751.C.1 or 2, as applicable. Examples of such occurrences include placing in the waste management unit a hazardous waste having an average VO concentration equal to or greater than 500 ppmw at the point of waste origination or placing in the waste management unit a treated hazardous waste of which the organic content has been reduced by an organic destruction or removal process that fails to achieve the applicable conditions specified in LAC 33:V.1751.C.2.a-f. The owner or operator shall submit a written report within 15 calendar days of the time that the owner or operator

becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

B. Each owner or operator using air emission controls on a tank in accordance with the requirements LAC 33:V.1755.C shall report to the Office of Environmental Compliance each occurrence when hazardous waste is managed in the tank in noncompliance with the conditions specified in LAC 33:V.1755.B. The owner or operator shall submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

C. Each owner or operator using a control device in accordance with the requirements of LAC 33:V.1761 shall submit a semiannual written report to the Office of Environmental Compliance, except as provided for in Subsection D of this Section. The report shall describe each occurrence during the previous six-month period when either:

C.1. – D.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 24:1720 (September 1998), amended LR 25:442 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2474 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2106 (October 2007).

## **Chapter 18. Containment Buildings**

### **§1802. Design and Operating Standards**

A. – C.3.a.iii. ...

iv. within seven days after the discovery of the condition, notify the Office of Environmental Services of the condition and, within 14 working days, provide a written notice to the administrative authority with a description of the steps taken to repair the containment building and the schedule for accomplishing the work;

b. ...

c. upon completing all repairs and cleanup, the owner or operator must notify the Office of Environmental Services in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with LAC 33:V.1802.C.3.a.iv; and

C.4. – E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning

Division, LR 26:2475 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2106 (October 2007).

## **Chapter 19. Tanks**

### **§1905. Design and Installation of New Tank Systems or Components**

A. Owners or operators of new tank systems or components must obtain and submit to the Office of Environmental Services, at the time of submittal of Part II information, a written assessment, reviewed and certified by an independent, qualified registered professional engineer, in accordance with LAC 33:V.513, attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated and corrosion protection to ensure that it will not collapse, rupture or fail. This assessment, which will be used by the administrative authority to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

A.1. – G. ...

H. Owners or operators of new tanks systems or components subject to the accumulation time exclusion of LAC 33:V.1109.E.1 must obtain and submit to the Office of Environmental Services, prior to placing the tank system in service, a written assessment, reviewed and certified by an independent registered professional engineer, in accordance with LAC 33:V.513, attesting that the tank system has sufficient structural integrity and is acceptable for storing or treating hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed, and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. The assessment, which will be used by the administrative authority to review the acceptability of the tank system design, must include at a minimum the requirements specified in LAC 33:V.1905.A.1-5.

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 13:651 (November 1987), LR 16:614 (July 1990), LR 16:683 (August 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2475 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2107 (October 2007).

### **§1907. Containment and Detection of Releases**

A. – H. ...

1. the Office of Environmental Assessment must be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in LAC 33:V.1907.G according to the following schedule:

H.1.a. – I.5. ...

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 13:651 (November 1987), LR 14:790 (November 1988), LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2475 (November 2000), amended by the Office of Environmental Assessment, LR 31:1572 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2107 (October 2007).

### **§1913. Response to Leaks or Spills and Disposition of Leaking or Unfit-for-Use Tank Systems**

A tank system or secondary containment system from which there has been a leak or spill, or that is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements.

A. – D.2.b. ...

3. Within 30 days of detection of a release to the environment, a report containing the following information must be submitted to SPOC:

D.3.a. – E.4. ...

F. Certification of Major Repairs. If the owner/operator has repaired a tank system in accordance with LAC 33:V.1913.E and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer in accordance with LAC 33:V.513 that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be submitted to the Office of Environmental Compliance within seven days after returning the tank system to use.

NOTE: The administrative authority may, on the basis of any information received that there is or has been a release of hazardous waste or hazardous constituents into the environment, issue an order requiring corrective action or such other response as is deemed necessary to protect human health or 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 Solid and Hazardous Waste, Hazardous Waste Division, LR 13:651 (November 1987), LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2475 (November 2000), LR 30:1673 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2457 (October 2005), LR 33:2107 (October 2007).

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

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

#### **§2227. Treatment Standards Expressed as Specified Technologies**

A. ...

B. Any person may submit an application to the Office of Environmental Services demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achieved by methods specified in Subsections A, C, and D of this Section or specified in LAC 33:V.2299.Appendix, Table 8. The applicant must submit information demonstrating that his or her treatment method is in compliance with federal, state, and local requirements and is protective of human health and the environment. On the basis of such information and any other available information, the administrative authority may approve the use of the alternative treatment method if he or she finds that the alternative treatment method provides a measure of

performance equivalent to those achieved by methods specified in Subsections A, C, and D of this Section or specified in LAC 33:V.2299.Appendix, Table 8. Any approval must be stated in writing and may contain such provisions and conditions as the administrative authority deems appropriate. The person to whom such approval is issued must comply with all limitations contained in such a determination.

C. – D. ...

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), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:300 (February 1998), LR 25:445 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2476 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2457 (October 2005), LR 33:2107 (October 2007).

### **§2231. Variance from a Treatment Standard**

A. – A.2.b. ...

B. Each petition must be submitted to the Office of Environmental Services for consideration in accordance with the procedures in LAC 33:V.105.H.

C. – C.2. ...

D. The EPA administrator and/or the Office of Environmental Services will give public notice of the intent to approve or deny a petition and will provide the person requesting the variance and the public, through a newspaper notice in the official state journal and the local newspaper in the affected area, the cost of which will be charged to the person requesting the variance, the opportunity to submit written comments on the request and the conditions of the variance, allowing a 30-day comment period. The notices referred to in this Section will be provided in the local newspaper in three separate issues; however, the 30-day comment or notice period shall begin with the notice in the official state journal. The administrative authority will also, in response to a request or at his or her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the variance request. The administrative authority will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments.) The final decision on a variance from a treatment standard will also be published.

E. – M. ...

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 21:1334 (December 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:445 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2476 (November 2000), LR 27:1015 (July 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2458 (October 2005), LR 33:2108 (October 2007).

### **§2237. Exemption for Surface Impoundments Treating Hazardous Waste**

A. – A.3.c. ...

4. the owner or operator must submit to the Office of Environmental Services a written certification that the requirements of Paragraph A.3 of this Section have been met and a copy of the waste analysis plan required under Paragraph A.2 of this Section. The following certification is required.

"I certify under penalty of law that the requirements of LAC 33:V.2237.A.3 have been met for all surface impoundments being used to treat prohibited wastes. I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

B. – C.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 15:378 (May 1989), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1727 (September 1998), LR 25:447 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2476 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2458 (October 2005), LR 33:2108 (October 2007).

### **§2239. Procedures for Case-by-Case Extensions of an Effective Date**

A. Any person who generates, treats, stores, or disposes of a hazardous waste may submit an application to the Office of Environmental Services for an extension of the effective date of any applicable prohibition established under this Chapter. The applicant must provide the following, and in each case the burden of proof will be on the applicant:

A.1. – F. ...

G. Any person granted an extension under this Section must immediately notify the Office of Environmental Services as soon as he or she has knowledge of any change in the conditions certified in the application.

H. Any person granted an extension under this Section shall submit written progress reports at intervals designated by the Office of Environmental Services, which may not exceed six months. Such reports must describe the overall progress made toward constructing or otherwise providing alternative treatment, recovery, or disposal capacity; must identify any event that may cause or has caused a delay in the development of the capacity, and must summarize the steps taken to mitigate the delay. The administrative authority can revoke the extension at any time if the applicant does not make a good-faith effort to meet the schedule for completion, if the department denies or revokes any required permit, if conditions certified in the application change, or for any violation of the Louisiana Environmental Quality Act or regulations promulgated thereto.

I. – 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 22:22

(January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1727 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2477 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2458 (October 2005), LR 33:2108 (October 2007).

**§2241. Exemptions to Allow Land Disposal of a Prohibited Waste Except by Deep Well Injection**

A. Any person seeking an exemption to allow land disposal except by deep well injection of a prohibited hazardous waste in a particular unit or units must submit a petition to the Office of Environmental Services that meets the following requirements.

A.1. – F.5.c. ...

G. Each petition must be submitted to the Office of Environmental Services.

H. ...

1. If the owner or operator plans to make changes to the unit design, construction, or operation, such changes must be proposed in writing, and the owner or operator shall submit a demonstration to the Office of Environmental Services at least 30 days before making the changes. The administrative authority will determine whether the proposed changes invalidate the terms of the petition and will determine the appropriate response. Any changes must be approved by the administrative authority prior to being made.

2. If the owner or operator discovers that a condition at the site that was modeled or predicted in the petition does not occur as predicted, this change must be reported, in writing, to the Office of Environmental Services within 10 days of discovery of the change. The administrative authority will determine whether the reported change from the terms of the petition requires further action, which may include termination of waste acceptance and revocation of the petition or petition modifications, or other responses.

I. ...

J. Each petition must include the following statement signed by the petitioner or a duly authorized representative and must be submitted to the Office of Environmental Services.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

K. – Q. ...

R. As a condition of the exemption, the petitioner must submit a report to the Office of Environmental Services by March 1 of each calendar year during the term of the exemption that describes in detail the efforts undertaken during the preceding calendar year to reduce the volume and toxicity of the waste generated. The report shall provide data indicating the change in volume and toxicity of waste actually achieved during the year in comparison to previous years.

S. – T.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 15:378 (May 1989), amended LR 16:220 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1727 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2477 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2458 (October 2005), LR 33:2109 (October 2007).

**§2245. Generators' Waste Analysis, Recordkeeping, and Notice Requirements**

A. – E.1. ...

2. Such plan must be filed with the Office of Environmental Services, a minimum of 30 days prior to the treatment activity, with delivery verified.

E.3. – 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, 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 26:281 (February 2000), LR 26:2478 (November 2000), LR 27:295 (March 2001), LR 27:711 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2459 (October 2005), LR 33:2109 (October 2007).

**§2246. Special Rules Regarding Wastes That Exhibit a Characteristic**

A. – C. ...

D. Wastes that exhibit a characteristic are also subject to the requirements of LAC 33:V.2245, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator or treaters files and sent to the Office of Environmental Services. The notification and certification must be updated if the process or operation generating the waste changes and/or if the solid waste disposal facility receiving the waste changes. However, the generator or treater need only notify the administrative authority on an annual basis if such changes occur. In such circumstances, a notification and certification must be sent to the administrative authority by the end of the calendar year, but no later than December 31.

D.1. – E. ...

1. A one-time notification, including the following information, must be submitted to the Office of Environmental Services:

E.1.a. – 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 26:281 (February 2000), LR 26:2478 (November

2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2459 (October 2005), LR 33:2109 (October 2007).

**§2247. Owners or Operators of Treatment or Disposal Facilities: Testing, Waste Minimization, Recordkeeping and Notice Requirements**

A. – D. ...

E. Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions in LAC 33:V.4139.B-D regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) is not required to notify the receiving facility, in accordance with Subsection B of this Section. With each shipment of such wastes the owner or operator of the recycling facility shall submit a certification described in Subsection C of this Section and a notice that includes the information listed in Subsection B of this Section (except the manifest number) to the Office of Environmental Services. The recycling facility shall also keep records of the name and location of each entity receiving the hazardous waste-derived product.

F. – 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 LR16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266, 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 26:282 (February 2000), LR 26:2478 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2459 (October 2005), LR 32:607 (April 2006), LR 33:2110 (October 2007).

**Subchapter B. Hazardous Waste Injection Restrictions**

**§2253. Procedures for Case-by-Case Extensions to an Effective Date**

A. The owner or operator of a Class I hazardous waste injection well may submit an application to the Office of Environmental Services for an extension of the effective date of any applicable prohibition established under LAC 33:V.Chapter 22.Subchapter A according to the procedures of LAC 33:V.2239.

**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 22:22 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2479 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2460 (October 2005), LR 33:2110 (October 2007).

**§2271. Exemptions to Allow Land Disposal of a Prohibited Waste by Deep Well Injections**

A. Any person seeking an exemption to allow land disposal by deep well injection of a prohibited hazardous waste in a particular injection well or wells must submit a petition to the Office of Environmental Services that does the following.

A.1. – G.2. ...

H. Any person who has been granted an exemption pursuant to this Section may submit a petition to the Office

of Environmental Services for reissuance of the exemption to include an additional prohibited waste or wastes or to modify any conditions placed on the exemption by the administrative authority. The administrative authority may reissue the exemption if the petitioner complies with the requirements of Subsections A-F of this Section.

I. Any person who has been granted an exemption pursuant to this Section may submit a petition to the Office of Environmental Services to modify an exemption to include an additional nonprohibited hazardous waste or wastes. The administrative authority may grant the modification if he or she determines, to a reasonable degree of certainty, that the additional waste or wastes will behave hydraulically and chemically in a manner similar to previously included wastes and that it will not interfere with the containment capability of the injection zone.

J. – U.4.c. ...

5. The permittee shall submit a request to the Office of Environmental Services for reissuance of the exemption at least 180 days prior to the end of the term. If the applicant submits a timely and technically complete application, and the administrative authority, through no fault of the applicant, fails to act on the application for reissuance on or before the expiration date of the existing exemption, the permittee may, with the written approval of the administrative authority, continue to operate under the terms and conditions of the existing exemption which shall remain in effect until final action on the application is taken by the administrative authority.

V. Corrective Action for Wells in the Area of Review

1. The petitioner shall submit a plan to the Office of Environmental Assessment outlining the protocol used to:

V.1.a. – Y. ...

Z. As a condition of the exemption, the petitioner must submit a report to the Office of Environmental Services by March 1 of each calendar year during the term of the exemption, describing in detail the efforts undertaken during the preceding calendar year to reduce the volume and toxicity of the waste generated. The report shall provide data indicating the change in volume and toxicity of waste actually achieved during the year in comparison to previous years.

**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 22:22 (January 1996), amended LR 23:299 (March 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2479 (November 2000), LR 30:1674 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2460 (October 2005), LR 33:2110 (October 2007).

**§2273. Petition for Determinations Concerning No Alternatives to Land Disposal of a Prohibited Waste by Deep Well Injection**

A. – B. ...

C. Any person seeking a determination of no alternatives must submit a petition to the Office of Environmental Services that does the following:

C.1. – D. ...

E. Except as otherwise provided in this Section, if a hazardous waste not subject to an existing determination is to be injected, a petition that addresses such hazardous waste



must be submitted to the Office of Environmental Assessment and a determination of no alternatives be made prior to this waste being injected. The provisions contained in Subsection J of this Section, shall apply with respect to such hazardous waste.

1. – 2. ...

F. If a new injection well(s) is to be used to inject a hazardous waste subject to an existing approved determination under this Section, a new petition is not necessary, provided the owner or operator submits a notice to the Office of Environmental Assessment. The notice shall include a copy of the EPA exemption approval for the new well(s) and a copy of the permit issued by the Louisiana Department of Natural Resources, Office of Conservation for the new well(s).

G. – L.1. ...

2. The petitioner shall submit a petition to the Office of Environmental Services for reissuance of a determination at least 180 days prior to the end of the term. If the petitioner submits a timely and technically complete petition and the administrative authority, through no fault of the petitioner, fails to act on the petition for reissuance on or before the expiration date of the existing determination, the petitioner may, with the written approval of the administrative authority, continue to operate under the terms and conditions of the existing determination, which shall remain in effect until final action on the petition is taken by the administrative authority and all subsequent administrative and/or judicial appeal processes have been completed.

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 25:1801 (October 1999), amended LR 26:2479 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2460 (October 2005), LR 33:2110 (October 2007).

## **Chapter 23. Waste Piles**

### **§2303. Design and Operating Requirements**

A. – K.4. ...

a. notify the Office of Environmental Services of the leak in writing within seven days after detecting the leak; and

K.4.b. – L. ...

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 20:1000 (September 1994), LR 21:266, 267 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2480 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2111 (October 2007).

### **§2306. Response Actions**

A. – B. ...

1. notify the Office of Environmental Services in writing of the exceedence within seven days of the determination;

2. submit a preliminary written assessment to the Office of Environmental Services within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

3. – 5. ...

6. within 30 days after the notification that the action leakage rate has been exceeded, submit to the Office of Environmental Services the results of the analyses specified in LAC 33:V.2306.B.3-5, of actions taken, and of remedial actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the administrative authority a report summarizing the results of any remedial actions taken and actions planned.

C. – C.4. ...

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 26:2480 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2111 (October 2007).

### **§2307. Inspection of Synthetic Liners**

A. The facility must provide the Office of Environmental Services with 30 days advance notice of the initial liner installation to allow the administrative authority the opportunity to inspect the liner and its installation.

B. The liner must be inspected on a regular basis by removing the waste pile. The facility must notify the Office of Environmental Services at least 30 days prior to the inspection to allow the administrative authority the opportunity to inspect the liner. If deterioration, a crack, or other condition is identified that is causing or could cause a leak, the owner or operator must:

1. – 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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2480 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2111 (October 2007).

## **Chapter 25. Landfills**

### **§2508. Response Actions**

A. – B. ...

1. notify the Office of Environmental Services in writing of the exceedence within seven days of the determination;

2. submit a preliminary written assessment to the Office of Environmental Services, within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

3. – 5. ...

6. within 30 days after the notification that the action leakage rate has been exceeded, submit to the Office of Environmental Services the results of the analyses specified in LAC 33:V.2508.B.3-5, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the administrative authority a report summarizing the results of any remedial actions taken and remedial actions planned.

C. – C.4. ...

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 26:2481 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2461 (October 2005), LR 33:2111 (October 2007).

#### **§2521. Closure and Post-Closure Care**

A. – B.6. ...

C. During the post-closure care period, if liquid leaks into a leak detection system installed under LAC 33:V.3305, the owner or operator must notify the Office of Environmental Services of the leak in writing within seven days after detecting the leak.

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 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2481 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2112 (October 2007).

### **Chapter 27. Land Treatment**

#### **§2707. Treatment Demonstration**

A. – D.2.b. ...

3. When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, he must submit to the Office of Environmental Services a certification, signed by a person authorized to sign a permit application or report under LAC 33:V.507 and 509, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator must also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the administrative authority approves a later date.

4. – 4.c. ...

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), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2481 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2461 (October 2005), LR 33:2112 (October 2007).

#### **§2711. Unsaturated Zone Monitoring**

An owner or operator subject to this Chapter must establish an unsaturated zone monitoring program to discharge the following responsibilities.

A. – G. ...

1. notify the Office of Environmental Services of this finding in writing within seven days. The notification must indicate what constituents have shown statistically significant increases;

2. within 90 days, submit to the Office of Environmental Services an application for a permit modification to modify the operating practices at the facility in order to maximize the success of degradation, transformation, or immobilization processes in the treatment zone.

H. ...

1. notify the Office of Environmental Services in writing within seven days of determining a statistically significant increase below the treatment zone that he intends to make a determination under this Subsection;

2. within 90 days, submit a report to the Office of Environmental Services demonstrating that a source other than the regulated units caused the increase or that the increase resulted from error in sampling, analysis, or evaluation;

3. within 90 days, submit to the Office of Environmental Services an application for a permit modification to make any appropriate changes to the unsaturated zone monitoring program at the facility; and

4. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2481 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2461 (October 2005), LR 33:2112 (October 2007).

#### **§2719. Closure and Post-Closure Care**

A. – A.8. ...

B. For the purpose of complying with LAC 33:V.3517, when closure is completed, the owner or operator may submit to the Office of Environmental Services certification by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

C. – C.7. ...

D. The owner or operator is not subject to regulation under Paragraph A.8 and Subsection C of this Section if the administrative authority finds that the level of hazardous constituents in the treatment zone soil does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in Paragraph D.3 of this Section. The owner or operator may submit such a demonstration to the Office of Environmental Services at any time during the closure or post-closure care periods. For the purposes of this Subsection:

1. – 4. ...

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 14:790 (November 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2482 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2461 (October 2005), LR 33:2112 (October 2007).

### **Chapter 28. Drip Pads**

#### **§2803. Assessment of Existing Drip Pad Integrity**

A. ...

B. The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of LAC 33:V.2805.C and submit the plan to the Office of Environmental Services no later than two years before the date that all repairs, upgrades, and modifications will be complete. This written plan must describe all changes

to be made to the drip pad in sufficient detail to document compliance with all the requirements of LAC 33:V.2805 and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent qualified, registered professional engineer.

C. Upon completion of all upgrades, repairs, and modifications, the owner or operator must submit to the Office of Environmental Services the as-built drawings for the drip pad together with a certification by an independent qualified, registered professional engineer attesting that the drip pad conforms to the drawings.

D. ...

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 18:1375 (December 1992), amended LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2482 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2462 (October 2005), LR 33:2112 (October 2007).

### **§2805. Design and Operating Requirements**

Owners and operators of drip pads must ensure that the pads are designed, installed, and operated in accordance with Subsection A or C of this Section.

A. – N.2. ...

3. Upon completing all repairs and cleanup, the owner or operator must notify SPOC in writing and provide a certification, signed by an independent qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with Subparagraph N.1.d of this Section.

O. – P. ...

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 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2482 (November 2000), LR 30:1674 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2462 (October 2005), LR 33:2113 (October 2007).

## **Chapter 29. Surface Impoundments**

### **§2903. Design and Operating Requirements**

COMMENT: The permit applicant must submit detailed plans and specifications accompanied by an engineering report that must collectively include the information itemized and address the following in addition to the design and operating requirements:

- (1) a description of the proposed maintenance and repair procedures;
- (2) a description of the operating procedures that will ensure compliance with this Section; and
- (3) a certification by a qualified engineer that states that the facilities comply with the applicable design requirements in this Section. The owner or operator of a new facility must submit a statement by a qualified engineer that he will provide such a certification upon completion of construction in accordance with the plans and specifications.

A. – I.4. ...

a. notify the Office of Environmental Services of the leak in writing within seven days after detecting the leak; and

I.4.b. – L.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 Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:220 (March 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266, 267 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2482 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2462 (October 2005), LR 33:2113 (October 2007).

### **§2906. Response Actions**

A. – B. ...

1. notify the Office of Environmental Services in writing of the exceedence within seven days of the determination;

2. submit a preliminary written assessment to the Office of Environmental Services within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

3. – 5. ...

6. within 30 days after the notification that the action leakage rate has been exceeded, submit to the Office of Environmental Services the results of the analyses specified in Paragraphs B.3-5 of this Section, the results of actions taken, and remedial actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Office of Environmental Services a report summarizing the results of any remedial actions taken and actions planned.

C. – C.4. ...

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 26:2483 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2462 (October 2005), LR 33:2113 (October 2007).

## **Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces**

### **§3005. Permit Standards for Burners**

A. – D.4.b. ...

c. For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow the owner or operator to analyze samples, compute data, and submit to the Office of Environmental Services the trial burn results, and for the administrative authority to modify the facility permit to reflect the trial burn results, the administrative authority will specify the operating requirements most likely to ensure compliance with the emission standards of LAC 33:V.3009-3015, based on engineering judgment.

D.4.d. – I. ...

NOTE: Parts of this Section were previously promulgated in LAC 33:V.4142 which has been repealed.

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 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 21:944 (September 1995),

LR 22:822 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2483 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2463 (October 2005), LR 33:2113 (October 2007).

### **§3007. Interim Status Standards for Burners**

A. – B.5.c. ...

6. Public Notice Requirements at Precompliance. On or before August 21, 1991, the owner or operator must submit a notice with the following information for publication in a major local newspaper of general circulation and send a copy of the notice to the appropriate units of state and local government. The owner or operator must provide to the Office of Environmental Services with the certification of precompliance evidence of submitting the notice for publication. The notice, which shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of LAC 33:V.3007.B," must include:

B.6.a. – C.1.m. ...

2. Prior Notice of Compliance Testing. At least 30 days prior to the compliance testing required by Paragraph C.3 of this Section, the owner or operator shall notify the Office of Environmental Services and submit the following information:

2.a. – 7.b.iii. ...

8. Revised Certification of Compliance. The owner or operator may submit at any time a revised certification of compliance (recertification of compliance) to the Office of Environmental Services under the following procedures:

a. ...

b. at least 30 days prior to first burning hazardous waste under operating conditions that exceed those established under a current certification of compliance, the owner or operator shall notify the Office of Environmental Services and submit the following information:

i. – iii. ...

iv. complete emissions testing protocol for any pretesting and for a new compliance test to determine compliance with the applicable emissions standards of LAC 33:V.3009-3015 when operating under revised operating conditions. The protocol shall include a schedule of pre-testing and compliance testing. If the owner and operator revises the scheduled date for the compliance test, he/she shall notify the Office of Environmental Services in writing at least 30 days prior to the revised date of the compliance test;

c. ...

d. submit to the Office of Environmental Services a revised certification of compliance under Paragraph C.4 of this Section.

D. Periodic Recertifications. The owner or operator must conduct compliance testing and submit to the Office of Environmental Services a recertification of compliance under provisions of Subsection C of this Section within three years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of Paragraph C.8 of this Section.

E. – L. ...

NOTE: Parts of this Section were previously promulgated in LAC 33:V.4142 which has been repealed.

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 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 22:822 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1740 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2483 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2463 (October 2005), LR 33:2114 (October 2007).

### **§3009. Standards to Control Organic Emissions**

A boiler or industrial furnace burning hazardous waste must be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under LAC 33:V.3005.E, it will meet the following standards.

A. – A.2. ...

3. Dioxin-Listed Waste. A boiler or industrial furnace burning hazardous waste containing (or derived from) EPA Hazardous Waste Numbers F020, F021, F022, F023, F026, or F027 must achieve a DRE of 99.9999 percent for each POHC designated (under Subparagraph A.1.b of this Section) in its permit. This performance must be demonstrated on POHCs that are more difficult to burn than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. The DRE is determined for each POHC from the equation in Paragraph A.1 of this Section. In addition, the owner or operator of the boiler or industrial furnace must notify the Office of Environmental Services of his intent to burn EPA Hazardous Waste Numbers F020, F021, F022, F023, F026, or F027.

A.4. – I. ...

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 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 22:823 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1741 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2484 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2463 (October 2005), LR 33:2114 (October 2007).

## **Chapter 31. Incinerators**

### **§3103. General Requirements**

A. The operator of a hazardous waste incinerator shall secure a permit from the Office of Environmental Services.

COMMENT: The permit application must also include the information required in LAC 33:V.3115.

B. – D. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2484 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2464 (October 2005), LR 33:2114 (October 2007).

**§3115. Incinerator Permits for New or Modified Facilities**

A. – B.13.j. ...

14. the applicant must submit to the Office of Environmental Services a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and must submit the results of all the determinations required in Paragraph B.13 of this Section. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the administrative authority;

15. all data collected during any trial burn must be submitted to the Office of Environmental Services following the completion of the trial burn;

B.16. – C.2. ...

D. For the purposes of determining feasibility of compliance with the performance standards of LAC 33:V.3111 and of determining adequate operating conditions under LAC 33:V.3117, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit to the Office of Environmental Services a trial burn plan and perform a trial burn in accordance with LAC 33:V.529.B and Paragraphs B.1-11 and 13-16 of this Section or, instead, submit other information as specified in LAC 33:V.529.C. The administrative authority must announce his or her intention to approve the trial burn plan in accordance with the timing and distribution requirements of Paragraph B.12 of this Section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under LAC 33:V.529.A are exempt from compliance with LAC 33:V.3111 and 3117 and, therefore, are exempt from the requirements to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results, specified in Paragraph B.13 of this Section, with Part II of the permit application. If completion of this process conflicts with the date set for submission of the Part II application, the applicant must contact the administrative authority to establish a later date for submission of the Part II application or the trial burn results. Trial burn results must be submitted prior to issuance of a permit. When the applicant submits a trial burn plan with Part II of the permit application, the administrative authority will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 22:828, 835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:683 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2484

(November 2000), LR 27:302 (March 2001), LR 29:324 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2464 (October 2005), LR 33:2115 (October 2007).

**Chapter 33. Ground Water Protection**

**§3317. Detection Monitoring Program**

An owner or operator required to establish a detection monitoring program under this Subpart must, at a minimum, discharge the following responsibilities.

A. – G.3. ...

4. Within 90 days, submit to the Office of Environmental Services an application for a permit modification to establish a compliance monitoring program meeting the requirements of LAC 33:V.3319. The application must include the following information:

a. – d. ...

5. Within 180 days, submit to the Office of Environmental Services:

5.a. – 6. ...

a. notify the Office of Environmental Services in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he or she intends to make a demonstration under this Paragraph;

b. within 90 days, submit a report to the Office of Environmental Services that demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

G.6.c. – 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 10:200 (March 1984), amended LR 10:280 (April 1984), LR 10:496 (July 1984), LR 16:399 (May 1990), LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2485 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2464 (October 2005), LR 33:2115 (October 2007).

**§3319. Compliance Monitoring Program**

An owner or operator required to establish a compliance monitoring program under this Chapter must, at a minimum, discharge the following responsibilities.

A. – H. ...

1. notify the Office of Environmental Services of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded; and

2. submit to the Office of Environmental Services an application for a permit modification to establish a corrective action program meeting the requirements of LAC 33:V.3321 within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the administrative authority under LAC 33:V.3317.H.5. The application must at a minimum include the following information:

H.2.a. – I. ...

1. notify the Office of Environmental Services in writing within seven days that he intends to make a demonstration under this Paragraph;

2. within 90 days, submit a report to the Office of Environmental Services that demonstrates that a source other than a regulated unit caused the standard to be exceeded or

that the apparent noncompliance with the standards resulted from error in sampling, analysis or evaluation;

3. within 90 days, submit to the Office of Environmental Services an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

4. ...

J. If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this Section, he must, within 90 days, submit to the Office of Environmental Services an application for a permit modification to make any appropriate changes to the program.

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 16:399 (May 1990), LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2485 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2464 (October 2005), LR 33:2115 (October 2007).

### §3321. Corrective Action Program

An owner or operator required to establish a corrective action program under this Subpart must, at a minimum, discharge the following responsibilities:

A. – F. ...

G. the owner or operator must report in writing to the Office of Environmental Services on the effectiveness of the corrective action program. The owner or operator must submit these reports semiannually; and

H. if the owner or operator determines that the corrective action program no longer satisfies the requirements of this Section, he must, within 90 days, submit to the Office of Environmental Services an application for a permit modification to make any appropriate changes to the program.

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 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2485 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2465 (October 2005), LR 33:2116 (October 2007).

## Chapter 35. Closure and Post-Closure

### §3503. Notification of Intention to Close a Facility

A. At least 180 days prior to closure, the operator must notify the Office of Environmental Services of intention to close and supply the following information:

1. – 4. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2486 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2465 (October 2005), LR 33:2116 (October 2007).

## Subchapter A. Closure Requirements

### §3505. Closure Procedures

A. ...

B. If the request is made to change the closure plan, the operator will submit revisions to the plan to the Office of Environmental Services, supported by necessary scientific and engineering data to permit evaluation by the department, and the procedures established in permit process will be followed in evaluating and approving the requested changes.

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2486 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2465 (October 2005), LR 33:2116 (October 2007).

### §3511. Closure Plan; Amendment of Plan

A. – B.8. ...

C. Amendment of Plan. The owner or operator must submit to the Office of Environmental Services a written notification of or request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the applicable procedures in LAC 33:V.Chapters 3 and 7. The written notification or request must include a copy of the amended closure plan for review or approval by the administrative authority.

1. The owner or operator may submit a written notification or request to the Office of Environmental Services for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

2. – 2.c. ...

3. The owner or operator must submit to the Office of Environmental Services a written request for a permit modification including a copy of the amended closure plan for approval at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred that has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification no later than 30 days after the unexpected event. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan under LAC 33:V.2911.D or 2315.D must submit an amended closure plan to the Office of Environmental Services no later than 60 days from the date that the owner or operator or administrative authority determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of LAC 33:V.2521, or no later than 30 days from that date if the determination is made during partial closure or final closure. The administrative authority will approve, disapprove, or modify this amended plan in accordance with the procedures in LAC 33:V.Chapters 3 and 7. In accordance with LAC 33:V.311, the approved closure plan will become a condition of any hazardous waste permit issued.

4. – 5. ...

D. Notification of Partial Closure and Final Closure

1. The owner or operator must notify the Office of Environmental Services in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator must notify the Office of Environmental Services in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed. The owner or operator must notify the Office of Environmental Services in writing at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace, whichever is earlier.

D.2. – E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 14:791 (November 1988), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 17:478 (May 1991), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:480 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2486 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2465 (October 2005), LR 33:2116 (October 2007).

### **§3513. Closure; Time Allowed for Closure**

A. – E. ...

1. Submit to the Office of Environmental Services, with the request to modify the permit:

1.a. – 7.e. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 17:478 (May 1991), LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2486 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2466 (October 2005), LR 33:2117 (October 2007).

### **§3517. Certification of Closure**

A. Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Office of Environmental Services, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the administrative authority upon request until he releases the owner or operator from the financial assurance requirements for closure under LAC 33:V.3707.

B. Survey Plat. No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Office of Environmental Services a survey

plat indicating the location and dimensions of landfills cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, that states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable Chapter 35 regulations.

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), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2487 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2466 (October 2005), LR 33:2117 (October 2007).

## **Subchapter B. Post-Closure Requirements**

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

A. Written Plan. The owner or operator of a hazardous waste disposal unit must have a written post-closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by LAC 33:V.2911.D and 2315.C to have contingent post-closure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent post-closure plans under LAC 33:V.2315.C and 2911.D must submit a post-closure plan to the Office of Environmental Services within 90 days from the date that the owner or operator or administrative authority determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of LAC 33:V.3519-3527. The plan must be submitted with the permit application, in accordance with LAC 33:V.517.P, and approved by the administrative authority as part of the permit issuance procedures under these regulations. In accordance with LAC 33:V.311 the approved post-closure plan will become a condition of any hazardous waste permit issued.

B. – C. ...

D. Amendment of Plan. The owner or operator must submit to the Office of Environmental Services a written notification of or request for a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable requirements of LAC 33:V.Chapters 3 and 7. The written notification or request must include a copy of the amended post-closure plan for review or approval by the administrative authority.

1. The owner or operator may submit a written notification or request to the Office of Environmental Services for a permit modification to amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.

2. – 2.d. ...

3. The owner or operator must submit a written request for a permit modification at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred that has affected the post-closure plan. An owner or operator of a

surface impoundment or waste pile that intends to remove all hazardous waste at a closure and is not otherwise required to submit a contingent post-closure plan under LAC 33:V.2911.D and 2315.C must submit a post-closure plan to the Office of Environmental Services no later than 90 days after the date that the owner or operator or administrative authority determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of LAC 33:V.2521. The administrative authority will approve, disapprove, or modify this plan in accordance with the procedures in LAC 33:V.Chapters 3 and 7. In accordance with LAC 33:V.311, the approved post-closure plan will become a permit condition.

4. ...

E. Certification of Completion of Post-Closure Care. No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Office of Environmental Services, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the administrative authority upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under LAC 33:V.3711.I.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 14:791 (November 1988), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:480 (March 1999), repromulgated LR 25:856 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2487 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2466 (October 2005), LR 33:2117 (October 2007).

#### **§3525. Post-Closure Notices**

A. No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Office of Environmental Services a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

B. – C.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 13:433 (August 1987), LR 18:1256 (November 1992), LR 23:568 (May 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2488 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2467 (October 2005), LR 33:2118 (October 2007).

#### **§3527. Certification of Completion of Post-Closure Care**

A. No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Office of Environmental Services, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the administrative authority upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under LAC 33:V.3711.I.

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), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2488 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2467 (October 2005), LR 33:2118 (October 2007).

### **Chapter 37. Financial Requirements**

#### **Subchapter A. Closure Requirements**

##### **§3707. Financial Assurance for Closure**

An owner or operator of each facility must establish financial assurance for closure of the facility. Under this Part, the owner or operator must choose from the options as specified in Subsections A-F of this Section, which choice the administrative authority must find acceptable based on the application and the circumstances.

##### **A. Closure Trust Fund**

1. An owner or operator may satisfy the requirements of this Part by establishing a closure trust fund that conforms to the requirements of this Subpart, and submitting an originally signed duplicate of the trust agreement to the Office of Environmental Services. An owner or operator of a new facility must submit the originally signed duplicate of the trust agreement to the administrative authority at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

2. – 6. ...

7. If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Office of Environmental Services for release of the amount in excess of the current closure cost estimate.

8. If an owner or operator substitutes other financial assurance as specified in this Part for all or part of the trust fund, he may submit a written request to the Office of Environmental Services for release of the amount in excess of the current closure cost estimate covered by the trust fund.

9. – 11.b. ...

**B. Surety Bond Guaranteeing Payment into a Closure Trust Fund**



1. An owner or operator may satisfy the requirements of this Part by obtaining a surety bond that conforms to the requirements of this Paragraph and submitting the bond to the Office of Environmental Services. An owner or operator of a new facility must submit the bond to the administrative authority at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and approved by the administrative authority.

2. – 6. ...

7. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Part to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.

8. – 9. ...

#### C. Surety Bond Guaranteeing Performance of Closure

1. An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this Subsection and submitting the bond to the Office of Environmental Services. An owner or operator of a new facility must submit the bond to the administrative authority at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and approved by the administrative authority.

2. – 6. ...

7. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Part. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.

8. – 10. ...

#### D. Closure Letter of Credit

1. An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Subsection and submitting the letter to the Office of Environmental Services. An owner or operator of a new facility must submit the letter of credit to the administrative authority at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before the initial receipt of

hazardous waste. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

2. – 6. ...

7. Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Part to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.

8. – 10.b. ...

#### E. Closure Insurance

1. An owner or operator may satisfy the requirements of this Part by obtaining closure insurance that conforms to the requirements of this Paragraph and submitting a certificate of such insurance to the Office of Environmental Services. An owner or operator of a new facility must submit the certificate of insurance to the administrative authority at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and authorized to transact business in Louisiana.

2. – 8.e. ...

9. Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Part to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.

E.10. – F.2. ...

3. To demonstrate that he meets this test, the owner or operator must submit the following items to the Office of Environmental Services:

a. – c.ii. ...

4. An owner or operator of a new facility must submit the items specified in Paragraph F.3 of this Section to the Office of Environmental Services at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

5. After the initial submission of items specified in Paragraph F.3 of this Section, the owner or operator must send updated information to the Office of Environmental Services within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in Paragraph F.3 of this Section.

6. If the owner or operator no longer meets the requirements of Paragraph F.1 of this Section, he must send notice to the Office of Environmental Services of intent to establish alternate financial assurance as specified in this Part. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

F.7. – I. ...

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 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1511 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2488 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2467 (October 2005), LR 33:2118 (October 2007).

### **Subchapter B. Post-Closure Requirements**

#### **§3711. Financial Assurance for Post-Closure Care**

The owner or operator of a hazardous waste management unit subject to the requirements of LAC 33:V.3709 must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. Under this Section, the owner or operator must choose from the options as specified in Subsections A-F of this Section, which choice the administrative authority must find acceptable based on the application and the circumstances.

##### **A. Post-Closure Trust Fund**

1. An owner or operator may satisfy the requirements of this Part by establishing a post-closure trust fund that conforms to the requirements of this Paragraph and submitting an originally signed duplicate of the trust agreement to the Office of Environmental Services. An owner or operator of a new facility must submit the originally signed duplicate of the trust agreement to the administrative authority at least 60 days before the date on which hazardous waste is first received for disposal. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

2. – 6. ...

7. During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Office of Environmental Services for release of the amount in excess of the current post-closure cost estimate.

8. If an owner or operator substitutes other financial assurance as specified in this Part for all or part of the trust fund, he may submit a written request to the Office of Environmental Services for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

9. – 12.b. ...

##### **B. Surety Bond Guaranteeing Payment into a Post-Closure Trust Fund**

1. An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this Subsection and submitting the bond to the Office of Environmental Services. An owner or operator of a new facility must submit the bond to the administrative authority at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and approved by the administrative authority.

2. – 6. ...

7. Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Part to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the administrative authority.

8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator, and to the Office of Environmental Services. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts.

9. ...

##### **C. Surety Bond Guaranteeing Performance of Post-Closure Care**

1. An owner or operator of a facility that has been issued a standard permit may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this Subsection and by submitting the bond to the Office of Environmental Services. An owner or operator of a new facility must submit the bond to the administrative authority at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and approved by the administrative authority.

2. – 6. ...

7. Whenever the current post-closure cost estimate increases to an amount greater than the penal sum during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Part. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced

to the amount of the current post-closure cost estimate following written approval by the administrative authority.

8. ...

9. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Office of Environmental Services. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts.

10. – 11. ...

#### D. Post-Closure Letter of Credit

1. An owner or operator may satisfy the requirements of this Part by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Paragraph and by submitting the letter to the Office of Environmental Services. An owner or operator of a new facility must submit the letter of credit to the administrative authority at least 60 days before the date on which hazardous waste is first received for disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

2. – 6. ...

7. Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Part to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the administrative authority.

8. – 9. ...

10. If the owner or operator does not establish alternate financial assurance as specified in this Part and obtain written approval of such alternate assurance from the administrative authority within 90 days after receipt by both the owner or operator and the Office of Environmental Services of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the administrative authority will draw on the letter of credit. The administrative authority may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the administrative authority will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this Part and obtain written approval of such assurance from the administrative authority.

11. – 11.b. ...

#### E. Post-Closure Insurance

1. An owner or operator may satisfy the requirements of this Part by obtaining post-closure insurance that conforms to the requirements of this Paragraph and submitting a certificate of such insurance to the Office of Environmental Services. An owner or operator of a new

facility must submit the certificate of insurance to the administrative authority at least 60 days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer in one or more states, and authorized to transact business in Louisiana.

2. – 7. ...

8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Office of Environmental Services. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the administrative authority and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

a. – e. ...

9. Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Part to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the administrative authority.

E.10. – F.2. ...

3. To demonstrate that he meets this test, the owner or operator must submit the following items to the Office of Environmental Services:

a. – c.ii. ...

4. An owner or operator of a new facility must submit the items specified in Paragraph F.3 of this Section to the Office of Environmental Services at least 60 days before the date on which hazardous waste is first received for disposal.

5. After the initial submission of items specified in Paragraph F.3 of this Section, the owner or operator must send updated information to the Office of Environmental Services within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in Paragraph F.3 of this Section.

6. If the owner or operator no longer meets the requirements of Paragraph F.1 of this Section, he must send notice to the Office of Environmental Services of intent to establish alternate financial assurance as specified in this Part. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer

meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

F.7. – I. ...

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 14:791 (November 1988), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1512 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2490 (November 2000), amended by the Office of Environmental Assessment, LR 31:1572 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2469 (October 2005), LR 33:2120 (October 2007).

#### **Subchapter D. Insurance Requirements**

##### **§3715. Liability Requirements**

A. – A.1. ...

a. Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in LAC 33:V.3719.I. The wording of the certificate of insurance must be identical to the wording specified in LAC 33:V.3719.J. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Office of Environmental Services. If requested by the administrative authority, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the certificate of liability insurance to the administrative authority at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

1.b. – 6. ...

7. An owner or operator shall notify the Office of Environmental Services in writing within 30 days whenever:

A.7.a. – B.1. ...

a. Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in LAC 33:V.3719.I. The wording of the certificate of insurance must be identical to the wording specified in LAC 33:V.3719.J. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Office of Environmental Services. If requested by the administrative authority, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the certificate of liability insurance to the administrative authority at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

1.b. – 6. ...

7. An owner or operator shall notify the Office of Environmental Services in writing within 30 days whenever:

B.7.a. – C. ...

D. Adjustments by the Administrative Authority. If the administrative authority determines that the levels of financial responsibility required by Subsection A or B of this Section are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the administrative authority may adjust the level of financial responsibility required by Subsections A and B of this Section as may be necessary to protect human health and the environment. This adjusted level will be based on the administrative authority's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the administrative authority determines that there is a significant risk to human health and the environment from non-sudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, he may require that an owner or operator of the facility comply with Subsection B of this Section. An owner or operator must furnish to the Office of Environmental Services, within a reasonable time, any information that the administrative authority requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification under LAC 33:V.321.

E. – F.2. ...

3. To demonstrate that he meets this test, the owner or operator must submit the following three items to the Office of Environmental Services:

a. – c.ii. ...

4. An owner or operator of a new facility must submit the items specified in Paragraph F.3 of this Section to the Office of Environmental Services at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

5. ...

6. If the owner or operator no longer meets the requirements of Paragraph F.1 of this Section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this Section. Evidence of liability coverage must be submitted to the Office of Environmental Services within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

F.7. – G.3. ...

H. Letter of Credit for Liability Coverage

1. An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Subsection and submitting a copy of the letter of credit to the Office of Environmental Services.

2. – 5. ...

I. Surety Bond for Liability Coverage

1. An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this Subsection and submitting a copy of the bond to the Office of Environmental Services.

2. – 4. ...

J. Trust Fund for Liability Coverage

1. An owner or operator may satisfy the requirements of this Section by establishing a trust fund that conforms to the requirements of this Paragraph and submitting an originally signed duplicate of the trust agreement to the Office of Environmental Services.

J.2. – 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 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:686 (July 1985), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 16:399 (May 1990), LR 18:723 (July 1992), repromulgated LR 19:486 (April 1993), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1513 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2492 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2471 (October 2005), LR 33:2122 (October 2007).

**Subchapter E. Incapacity Regulations**

**§3717. Incapacity of Owners or Operators, Guarantors, or Financial Institutions**

A. An owner or operator must notify the Office of Environmental Services by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in LAC 33:V.3707.F and 3711.F must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (see LAC 33:V.3719.H).

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2493 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2472 (October 2005), LR 33:2123 (October 2007).

**Subchapter F. Financial and Insurance Instruments**

**§3719. Wording of the Instruments**

A. – C. ...

**PERFORMANCE BOND**

\*\*\*

[See Prior Text in Performance Bond]

D. Letter of Credit. A letter of credit, as specified in LAC 33:V.3707.D or 3711.D or 4403.C or 4407.C must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**IRREVOCABLE STANDBY LETTER OF CREDIT**

Secretary

Louisiana Department of Environmental Quality

Post Office Box 4313

Baton Rouge, Louisiana 70821-4313

Attention: Office of Environmental Services,

Waste Permits Division

Dear [Sir or Madam]:

\*\*\*

[See Prior Text in Letter]

E. ...

**CERTIFICATE OF INSURANCE FOR CLOSURE OR POST-CLOSURE CARE**

\*\*\*

[See Prior Text in Certificate]

F. Closure Guarantee. A letter from the chief financial officer, as specified in LAC 33:V.3707.F.3 or 3711.F.3 or 4403.E.3 or 4407.E.3, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**LETTER FROM CHIEF FINANCIAL OFFICER  
(Closure and/or Post-Closure Care)**

Secretary

Louisiana Department of Environmental Quality

Post Office Box 4313

Baton Rouge, Louisiana 70821-4313

Attention: Office of Environmental Services,

Waste Permits Division

Dear [Sir or Madam]:

\*\*\*

[See Prior Text in Letter]

G. Liability Coverage Guarantee. A letter from the chief financial officer, as specified in LAC 33:V.3715.F or 4411, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**LETTER FROM CHIEF FINANCIAL OFFICER  
(Liability Coverage)**

Secretary

Louisiana Department of Environmental Quality

Post Office Box 4313

Baton Rouge, Louisiana 70821-4313

Attention: Office of Environmental Services,

Waste Permits Division

Dear [Sir or Madam]:

\*\*\*

[See Prior Text in Letter]

H. – J. ...

**HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE**

\*\*\*

[See Prior Text in Certificate]

K. Letter of Credit. A letter of credit, as specified in LAC 33:V.3715 or 4411, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**IRREVOCABLE STANDBY LETTER OF CREDIT**

Secretary

Louisiana Department of Environmental Quality

Post Office Box 4313

Baton Rouge, Louisiana 70821-4313

Attention: Office of Environmental Services,

Waste Permits Division

Dear [Sir or Madam]:

\*\*\*

[See Prior Text in Letter]

L. – N.2. Certification. ...

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

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 11:686 (July 1985), LR 13:433 (August

1987), LR 13:651 (November 1987), LR 16:47 (January 1990), LR 18:723 (July 1992), LR 21:266 (March 1995), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1514 (November 1997), repromulgated LR 23:1684 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2493 (November 2000), amended by the Office of Environmental Assessment, LR 30:2023 (September 2004), amended by the Office of Environmental Assessment, LR 31:1573 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2472 (October 2005), LR 33:1626 (August 2007), LR 33:2123 (October 2007).

## **Chapter 38. Universal Wastes**

### **Subchapter B. Standards for Small Quantity Handlers of Universal Waste**

#### **§3831. Off-Site Shipments**

A. – F.2. ...

G. If a small quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the Office of Environmental Compliance of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The administrative authority will provide instructions for managing the hazardous waste.

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 23:573 (May 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2495 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2124 (October 2007).

### **Subchapter C. Standards for Large Quantity Handlers of Universal Waste**

#### **§3841. Notification**

A. Except as provided in Paragraphs A.1 and 2 of this Section, a large quantity handler of universal waste must have sent written notification of universal waste management to the Office of Environmental Services and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit.

A.1. – B.5. ...

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 23:574 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1761 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2496 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2473 (October 2005), LR 31:3120 (December 2005), LR 33:2124 (October 2007).

#### **§3853. Off-Site Shipments**

A. – F.2. ...

G. If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the Office of Environmental Compliance of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The administrative authority will provide instructions for managing the hazardous waste.

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 23:576 (May 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2496 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2124 (October 2007).

### **Subchapter E. Standards for Destination Facilities**

#### **§3875. Off-Site Shipments**

A. – B.2. ...

C. If the owner or operator of a destination facility receives a shipment containing hazardous waste that was shipped as a universal waste, the owner or operator of the destination facility must immediately notify the Office of Environmental Compliance of the illegal shipment, and provide the name, address, and phone number of the shipper. The administrative authority will provide instructions for managing the hazardous waste.

D. ...

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 23:578 (May 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2496 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2124 (October 2007).

## **Chapter 40. Used Oil**

### **Subchapter D. Standards for Used Oil Transporter and Transfer Facilities**

#### **§4029. Notification**

A. ...

B. Mechanics of Notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the Office of Environmental Services of their used oil activity by submitting a completed Louisiana Notification of Hazardous Waste Activity Form (HW-1).

C. Upon promulgation of this Chapter, used oil transporters and transfer facilities who have previously notified must renotify the Office of Environmental Services of used oil activity.

D. Used oil transporters and transfer facilities must notify the Office of Environmental Services within seven business days if any of the information submitted in the application for the identification number changes.

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, 267 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2497 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2473 (October 2005), LR 33:2124 (October 2007).

### **Subchapter E. Standards for Used Oil Processors and Re-Refiners**

#### **§4043. Notification**

A. ...

B. Mechanics of Notification. A used oil processor or re-refiner who has not received an EPA identification number may obtain one by notifying the Office of Environmental Services of their used oil activity by submitting a completed

Louisiana Notification of Hazardous Waste Activity Form (HW-1).

C. Upon promulgation of this Chapter, used oil processors and re-refiners who have previously notified must renotify the Office of Environmental Services of used oil activity.

D. Used oil processors and re-refiners must notify the Office of Environmental Services within seven business days if any of the information submitted in the application for the identification number changes.

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, 267 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2497 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2473 (October 2005), LR 33:2124 (October 2007).

#### **§4045. General Facility Standards**

A. – B.6.h.ii. ...

iii. the owner or operator must notify SPOC and the appropriate local authorities that the facility is in compliance with Subparagraphs B.h.i and ii of this Section before operations are resumed in the affected area(s) of the facility.

i. The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report about the incident to SPOC. The report must include:

i. – vii. ...

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 26:2497 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2473 (October 2005), LR 33:2125 (October 2007).

#### **Subchapter F. Standards for Used Oil Burners Which Burn Off-Specification Used Oil for Energy Recovery**

##### **§4065. Notification**

A. ...

B. Mechanics of Notification. A used oil burner who has not received an EPA identification number may obtain one by notifying the Office of Environmental Services of their used oil activity by submitting a completed Louisiana Notification of Hazardous Waste Activity Form (HW-1).

C. Upon promulgation of this Chapter, used oil burners that burn off-specification used oil for energy recovery and have previously notified must renotify the Office of Environmental Services of this used oil activity.

D. A used oil burner must notify the Office of Environmental Services within seven business days if any of the information submitted in the application for the identification number changes.

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, 267 (March 1995), amended by the Office of Environmental Assessment,

Environmental Planning Division, LR 26:2497 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2474 (October 2005), LR 33:2125 (October 2007).

#### **Subchapter G. Standards for Used Oil Fuel Marketers** **§4083. Notification**

A. ...

B. A marketer who has not received an EPA identification number may obtain one by notifying the Office of Environmental Services of their used oil activity by submitting a completed Louisiana Notification of Hazardous Waste Activity Form (HW-1) EPA Form 8700-12.

C. Upon promulgation of this Chapter, used oil fuel marketers who have previously notified must renotify the Office of Environmental Services of used oil activity.

D. A generator must notify the Office of Environmental Services within seven days if any of the information submitted in the application for the identification number changes.

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 26:2497 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2474 (October 2005), LR 33:2125 (October 2007).

#### **Chapter 42. Conditional Exemption for Low-Level Mixed Waste Storage and Disposal**

##### **§4201. What definitions apply to this Chapter?**

A. This Chapter uses the following special definitions.

\* \* \*

*We or Us—administrative authority*, as defined in LAC 33:V.109. Within this Chapter, the administrative authority is the Office of Environmental Services, unless otherwise indicated.

\* \* \*

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 28:1004 (May 2002), amended LR 28:2181 (October 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2474 (October 2005), LR 33:2125 (October 2007).

##### **§4241. How could you lose the transportation and disposal conditional exemption for your waste and what actions must you take?**

A. ...

1. When you fail to meet any of the conditions specified in LAC 33:V.4225 for any of your wastes, you must report to the Office of Environmental Compliance, in writing by certified delivery, within 30 days of learning of the failure. Your report must be signed by your authorized representative certifying that the information provided is true, accurate, and complete. This report must include:

A.1.a. – B. ...

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 28:1008 (May 2002), amended LR 28:2181 (October 2002), LR 30:1675 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2125 (October 2007).

## Chapter 43. Interim Status

### §4301. Purpose and Applicability

A. The purpose of interim status is to allow existing facilities to operate in an appropriate and responsible manner during the period of time required to process and review permit application or until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled. Interim status facilities must, when required by the administrative authority, submit to the Office of Environmental Services a permit application in compliance with the requirements of these regulations. Failure to submit an application is a violation of interim status and will result in revocation of a facility's interim status designation. Once revoked the facility will be treated as an unpermitted facility and appropriate legal action will be taken.

B. – I. ...

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 13:84 (February 1987), LR 16:220 (March 1990), LR 17:362 (April 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1743 (September 1998), LR 25:482 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:2498 (November 2000), LR 27:713 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2474 (October 2005), LR 31:3121 (December 2005), LR 32:612 (April 2006), LR 33:2126 (October 2007).

### Subchapter A. General Facility Standards

#### §4320. Construction Quality Assurance Program

A. – C.2. ...

D. Certification. The owner or operator of units subject to this Section must submit to the Office of Environmental Services, by certified mail or hand delivery, at least 30 days prior to receiving waste, a certification signed by the CQA officer that the CQA plan has been successfully carried out and that the unit meets the requirements of LAC 33:V.4462.A, 4476, or 4512.A. The owner or operator may receive waste in the unit after 30 days from the administrative authority's receipt of the CQA certification unless the administrative authority determines in writing that the construction is not acceptable, or extends the review period for a maximum of 30 more days, or seeks additional information from the owner or operator during this period. Documentation supporting the CQA officer's certification must be furnished to the administrative authority 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 Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2499 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2475 (October 2005), LR 33:2126 (October 2007).

### Subchapter E. Groundwater Monitoring

#### §4367. Applicability

Facilities that have interim status must comply with this Subchapter in lieu of LAC 33:V.Chapter 33.

A. – C. ...

1. submit to the Office of Environmental Services a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of LAC 33:V.4373.G, for an alternate groundwater monitoring system;

C.2. – E.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 by the Office of Waste Services, Hazardous Waste Division, LR 25:484 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2499 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2126 (October 2007).

#### §4373. Preparation, Evaluation, and Response

A. – E. ...

F. Within 15 days after the notification under LAC 33:V.4373.E, the owner or operator must develop and submit to the Office of Environmental Services a specific plan, based on the outline required under LAC 33:V.4373.A and certified by a qualified geologist or geotechnical engineer, for a groundwater quality assessment program at the facility.

G. – H.2. ...

I. The owner or operator must make his first determination under LAC 33:V.4373.H as soon as technically feasible and, within 15 days after that determination, submit to the Office of Environmental Services a written report containing an assessment of the groundwater quality.

J. If the owner or operator determines, based on the results of the first determination under LAC 33:V.4373.H, that no hazardous waste or hazardous waste constituents from the facility have entered the groundwater, then he may reinstate the indicator evaluation program described in LAC 33:V.4371 and 4373.B. If the owner or operator reinstates the indicator evaluation program, he must notify the Office of Environmental Services, in the report submitted under LAC 33:V.4373.I.

K. – K.1. ...

2. within 30 days or other schedule required by the administrative authority, after the establishment of the groundwater protection standard, the owner or operator shall submit to the Office of Environmental Services a corrective action and monitoring plan;

K.3. – M. ...

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 14:791 (November 1988), LR 18:723 (July 1992), amended by the Office of the Secretary, LR 24:2248 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2499 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2126 (October 2007).

#### §4375. Recordkeeping and Reporting

A. – A.1. ...

2. report the following groundwater monitoring information to the Office of Environmental Services:

A.2.a. – B.1. ...



2. annually, until final closure of the facility, submit to the Office of Environmental Services a report containing the results of his or her groundwater quality assessment program, which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the groundwater during the reporting period. This information must be submitted no later than March 1 following each calendar year.

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 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1520 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2499 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2126 (October 2007).

## **Subchapter F. Closure and Post-Closure**

### **§4381. Closure Plan; Amendment of Plan**

A. – B.8. ...

C. Amendment of Plan. The owner or operator may amend the closure plan at any time prior to the notification of partial or final closure of the facility. An owner or operator with an approved closure plan must submit a written request to the Office of Environmental Services to authorize a change to the approved closure plan. The written request must include a copy of the amended closure plan for approval by the administrative authority.

1. – 2. ...

3. An owner or operator with an approved closure plan must submit the modified plan to the Office of Environmental Services at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred that has affected the closure plan. If an unexpected event has occurred during the partial or final closure period, the owner or operator must submit the modified plan no more than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure but are required to close as landfills in accordance with LAC 33:V.4501. If the amendment to the plan is a Class 2 or 3 modification according to the criteria in LAC 33:V.321.C and 322, the modification to the plan will be approved according to the procedures in Paragraph D.4 of this Section.

4. The administrative authority may request modifications to the plan under the conditions described in Paragraph C.1 of this Section. An owner or operator with an approved closure plan must submit the modified plan within 60 days of the request from the Office of Environmental Services, or within 30 days if the unexpected event occurs during partial or final closure. If the amendment is considered a Class 2 or 3 modification according to the criteria in LAC 33:V.321.C and 322, the modification to the plan will be approved in accordance with the procedures in Paragraph D.4 of this Section.

D. Notification of Partial Closure and Final Closure

1. The owner or operator must submit the closure plan to the Office of Environmental Services at least 180 days prior to the date on which he expects to begin closure of the first surface impoundment, waste pile, land treatment, or

landfill unit, or final closure if it involves such a unit, whichever is earlier. The owner or operator must submit the closure plan to the administrative authority at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace. The owner or operator must submit the closure plan to the administrative authority at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units. Owners or operators with approved closure plans must notify the administrative authority in writing at least 60 days prior to the date on which they expect to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit. Owners or operators with approved closure plans must notify the administrative authority in writing at least 45 days prior to the date on which they expect to begin partial or final closure of a boiler or industrial furnace. Owners or operators with approved closure plans must notify the administrative authority in writing at least 45 days prior to the date on which they expect to begin final closure of a facility with only tanks, container storage, or incinerator units.

2. – 2.b. ...

3. The owner or operator must submit his closure plan to the Office of Environmental Services no later than 15 days after:

D.3.a. – E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:485 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2500 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2475 (October 2005), LR 33:2127 (October 2007).

### **§4383. Closure; Time Allowed for Closure**

A. – E.4.c. ...

5. During the period of corrective action, the owner or operator shall provide semiannual reports to the Office of Environmental Services that describe the progress of the corrective action program, compile all groundwater monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

6. – 7.e. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 14:791 (November 1988), LR 17:478 (May 1991), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2500 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2127 (October 2007).

### §4387. Certification of Closure

A. Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator must submit to the Office of Environmental Services, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the administrative authority upon request until he releases the owner or operator from the financial assurance requirements for closure under LAC 33:V.4403.H.

B. Survey Plat. No later than the submission of the certification of closure of each hazardous waste disposal unit, an owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Office of Environmental Services a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use must contain a note, prominently displayed, that states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable LAC 33:V.Chapter 35 or 43 regulations.

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), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2501 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2475 (October 2005), LR 33:2128 (October 2007).

### §4391. Post-Closure Plan; Amendment of Plan

A. Written Plan. By May 19, 1988, the owner or operator of a hazardous waste disposal unit must have a written post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous wastes at closure must prepare a post-closure plan and submit it to the Office of Environmental Services within 90 days of the date that the owner or operator or administrative authority determines that the hazardous waste management unit or facility must be closed as a landfill, subject to the requirements of LAC 33:V.4389-4395.

B. – C.5. ...

D. Amendment of Plan. The owner or operator may amend the post-closure plan any time during the active life of the facility or during the post-closure care period. An owner or operator with an approved post-closure plan must submit a written request to the Office of Environmental Services to authorize a change to the approved plan. The written request must include a copy of the amended post-closure plan for approval by the administrative authority.

1. – 2. ...

3. An owner or operator with an approved post-closure plan must submit the modified plan to the Office of Environmental Services at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred that has affected the post-closure plan. If an owner or operator of a surface impoundment or a waste pile who intended to remove all hazardous wastes at closure in accordance with LAC 33:V.4457.B or 4475.A, is required to close as a landfill in accordance with LAC 33:V.4501, the owner or operator must submit a post-closure plan within 90 days of the determination by the owner or operator or administrative authority that the unit must be closed as a landfill. If the amendment to the post-closure plan is a Class 2 or 3 modification according to the criteria in LAC 33:V.321.C and 322, the modification to the plan will be approved according to the procedures in Subsection F of this Section.

4. The administrative authority may request modifications to the plan under the conditions described in Paragraph D.1 of this Section. An owner or operator with an approved post-closure plan must submit the modified plan no later than 60 days after the request from the administrative authority. If the amendment to the plan is considered a Class 2 or 3 modification according to the criteria in LAC 33:V.321.C and 322, the modifications to the post-closure plan will be approved in accordance with the procedures in Subsection F of this Section. If the administrative authority determines that an owner or operator of a surface impoundment or waste pile who intended to remove all hazardous wastes at closure must close the facility as a landfill, the owner or operator must submit a post-closure plan for approval to the Office of Environmental Services within 90 days of the determination.

E. The owner or operator of a facility with hazardous waste management units subject to these requirements must submit his post-closure plan to the administrative authority at least 180 days before the date he expects to begin partial or final closure of the first hazardous waste disposal unit. The date he "expects to begin closure" of the first hazardous waste disposal unit must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste, or if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator must submit the post-closure plan to the Office of Environmental Services no later than 15 days after:

E.1. – G.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 Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 14:791 (November 1988), LR 16:614 (July 1990), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:485 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2501 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2476 (October 2005), LR 33:2128 (October 2007).

### **§4393. Post-Closure Notices**

A. No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Office of Environmental Services a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

B. – B.1.b. ...

c. the survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by LAC 33:V.4387 and 4393.A have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Office of Environmental Services; and

2. ...

C. If the owner or operator or any subsequent owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, he must request a modification to the approved post-closure plan in accordance with the requirements of LAC 33:V.4391.G. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of LAC 33:V.4389.C. By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of this Chapter. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the administrative authority approve either:

1. the removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

2. the addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

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 18:723 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2502 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2476 (October 2005), LR 33:2129 (October 2007).

### **§4395. Certification of Completion of Post-Closure Care**

A. No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Office of Environmental Services, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer.

Documentation supporting the independent registered professional engineer's certification must be furnished to the administrative authority upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under LAC 33:V.4407.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 10:200 (March 1984), amended LR 13:433 (August 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2502 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2477 (October 2005), LR 33:2129 (October 2007).

## **Subchapter G. Financial Requirements**

### **§4403. Financial Assurance for Closure**

By the effective date of these regulations an owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from the options as specified in Subsections A-E of this Section.

#### **A. Closure Trust Fund**

1. An owner or operator may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the requirements of this Paragraph, and submitting an originally signed duplicate of the trust agreement to the Office of Environmental Services. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

2. – 6. ...

7. If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Office of Environmental Services for release of the amount in excess of the current closure cost estimate.

8. If an owner or operator substitutes other financial assurance as specified in this Section for all or part of the trust fund, he may submit a written request to the Office of Environmental Services for release of the amount in excess of the current closure cost estimate covered by the trust fund.

9. ...

10. After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Office of Environmental Services. The owner or operator may request reimbursement for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the administrative authority will instruct the trustees to make reimbursements in those amounts as the administrative authority specifies in writing, if the administrative authority determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the administrative authority has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with LAC 33:V.4407.H that the owner or

operator is no longer required to maintain financial assurance for final closure of the facility. If the administrative authority does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

11. – 11.b. ...

#### B. Surety Bond Guaranteeing Payment into a Closure Trust Fund

1. An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this Paragraph and submitting the bond to the Office of Environmental Services. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. – 6. ...

7. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.

8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Office of Environmental Services. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts.

9. ...

#### C. Closure Letter of Credit

1. An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Paragraph and submitting the letter to the Office of Environmental Services. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

2. – 6. ...

7. Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.

8. ...

9. If the owner or operator does not establish alternate financial assurance as specified in this Section and obtain written approval of such alternate assurance from the administrative authority within 90 days after receipt by both

the owner or operator and the Office of Environmental Services of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the administrative authority may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the administrative authority will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this Section and obtain written approval of such assurance from the administrative authority.

10. – 10.b. ...

#### D. Closure Insurance

1. An owner or operator may satisfy the requirements of this Section by obtaining closure insurance that conforms to the requirements of this Paragraph and submitting a certificate of such insurance to the administrative authority. By the effective date of these regulations the owner or operator must submit to the Office of Environmental Services a letter from an insurer stating that the insurer is considering issuance of closure insurance conforming to the requirements of this Paragraph to the owner or operator. Within 90 days after the effective date of these regulations, the owner or operator must submit the certificate of insurance to the Office of Environmental Services or establish other financial assurance as specified in this Section. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and authorized to transact business in Louisiana.

2. – 5. ...

6. The owner or operator must maintain the policy in full force and effect until the administrative authority consents to termination of the policy by the owner or operator as specified in Paragraph D.10 of this Section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this Section, will constitute a significant violation of these regulations, warranting such remedy as the administrative authority deems necessary. Such violation will be deemed to begin upon receipt by the Office of Environmental Services of a notice of future cancellation, termination, or failure to renew, due to nonpayment of the premium, rather than upon the date of expiration.

7. ...

8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Office of Environmental Services. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the administrative authority and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

a. – e. ...

9. Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.

D.10. – E.2. ...

3. To demonstrate that he meets this test, the owner or operator must submit the following items to the Office of Environmental Services:

3.a. – 4.f. ...

5. After the initial submission of items specified in Paragraph E.3 of this Section, the owner or operator must send updated information to the Office of Environmental Services within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in Paragraph E.3 of this Section.

6. If the owner or operator no longer meets the requirements of Paragraph E.1 of this Section, he must send notice to the Office of Environmental Services of intent to establish alternate financial assurance as specified in this Section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

E.7. – F. ...

G. Use of a Financial Mechanism for Multiple Facilities. An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility. Evidence of financial assurance submitted to the Office of Environmental Services must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing the funds available through the mechanism for closure of any of the facilities covered by the mechanism, the administrative authority may direct only the amount of funds designated for that particular facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

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 10:200 (March 1984), amended LR 13:433 (August 1987), LR 14:791 (November 1988), LR 16:219 (March 1990), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1520 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2502 (November 2000), amended by the Office of the Secretary, Legal

Affairs Division, LR 31:2477 (October 2005), LR 33:2129 (October 2007).

#### **§4407. Financial Assurance for Post-Closure Care**

An owner or operator of each hazardous waste disposal unit must establish financial assurance for post-closure care of the facility. He must choose from the options as specified in Subsections A-E of this Section.

##### **A. Post-Closure Trust Fund**

1. An owner or operator may satisfy the requirements of this Subsection by establishing a post-closure trust fund that conforms to the requirements of this Paragraph and submitting an originally signed duplicate of the trust agreement to the Office of Environmental Services. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

2. – 6. ...

7. During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Office of Environmental Services for release of the amount in excess of the current post-closure cost estimate.

8. If an owner or operator substitutes other financial assurance as specified in this Section for all or part of the trust fund, he may submit a written request to the Office of Environmental Services for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

9. – 10. ...

11. An owner or operator, or any other person authorized to perform post-closure care, may request reimbursement for the post-closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving bills for post-closure activities, the administrative authority will instruct the trustee to make reimbursements in those amounts as the administrative authority specifies in writing, if the administrative authority determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the administrative authority does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed statement of reasons.

12. ...

##### **B. Surety Bond Guaranteeing Payment into a Post-Closure Trust Fund**

1. An owner or operator may satisfy the requirements of this Subsection by obtaining a surety bond that conforms to the requirements of this Paragraph and submitting the bond to the Office of Environmental Services. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. – 6. ...

7. Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in

this Subsection to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the administrative authority.

8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Office of Environmental Services. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts.

9. ...

#### C. Post-Closure Letter of Credit

1. An owner or operator may satisfy the requirements of this Subsection by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Paragraph and by submitting the letter to the Office of Environmental Services. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

2. - 4. ...

5. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Office of Environmental Services, by certified mail, of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator, and the administrative authority have received the notice, as evidenced by the return receipts.

6. ...

7. Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the administrative authority.

8. - 9. ...

10. If the owner or operator does not establish alternate financial assurance as specified in this Section and obtain written approval of such alternate assurance from the administrative authority within 90 days after receipt by both the owner or operator and the Office of Environmental Services of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the administrative authority will draw on the letter of credit. The administrative authority may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the administrative authority will draw on the letter of credit if the owner or operator has failed to provide

alternate financial assurance as specified in this Section and obtain written approval of such assurance from the administrative authority.

11. - 11.b. ...

#### D. Post-Closure Insurance

1. An owner or operator may satisfy the requirements of this Subsection by obtaining post-closure insurance that conforms to the requirements of this Paragraph and submitting a certificate of such insurance to the Office of Environmental Services. The owner or operator must submit to the administrative authority a letter from an insurer stating that the insurer is considering issuance of post-closure insurance conforming to the requirements of this Paragraph to the owner or operator. Within 90 days after the effective date of these regulations, the owner or operator must submit the certificate of insurance to the administrative authority or establish other financial assurance as specified in this Section. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer in one or more states, and authorized to transact insurance business in Louisiana.

2. - 4. ...

5. An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving bills for post-closure activities, the administrative authority will instruct the insurer to make reimbursements in those amounts as the administrative authority specifies in writing, if the administrative authority determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the administrative authority does not instruct the insurer to make such reimbursements, he will provide a detailed written statement of reasons.

6. - 7. ...

8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Office of Environmental Services. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the administrative authority and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

a. - e. ...

9. Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Office of Environmental Services or

obtain other financial assurance as specified in this Section to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the administrative authority.

D.10. – E.2. ...

3. To demonstrate that he meets this test, the owner or operator must submit the following items to the Office of Environmental Services:

a. – c.ii. ...

4. The owner or operator may obtain an extension of the time allowed for submission of the documents specified in Paragraph E.3 of this Section if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Office of Environmental Services. This letter from the chief financial officer must:

a. – f. ...

5. After the initial submission of items specified in Paragraph E.3 of this Section, the owner or operator must send updated information to the Office of Environmental Services within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in Paragraph E.3 of this Section.

6. If the owner or operator no longer meets the requirements of Paragraph E.1 of this Section, he must send notice to the Office of Environmental Services of intent to establish alternate financial assurance as specified in this Section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

7. – 11.a. ...

b. the corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Office of Environmental Services. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts; and

E.11.c. – F. ...

G. Use of a Financial Mechanism for Multiple Facilities. An owner or operator may use a financial assurance mechanism specified in this Subsection to meet the requirements of this Subsection for more than one facility. Evidence of financial assurance submitted to the Office of Environmental Services must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for post-closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established

and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the administrative authority may direct only the amount of funds designated for that particular facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

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 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1521 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2504 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2479 (October 2005), LR 33:2131 (October 2007).

#### **§4411. Liability Requirements**

A. – A.1. ...

a. Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in LAC 33:V.3719.I. The wording of the certificate of insurance must be identical to the wording specified in LAC 33:V.3719.J. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Office of Environmental Services. If requested by the administrative authority, the owner or operator must provide a signed duplicate original of the insurance policy.

1.b. – 6. ...

7. An owner or operator shall notify the Office of Environmental Services in writing within 30 days whenever:

A.7.a. – B.1. ...

a. Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in LAC 33:V.3719.I. The wording of the certificate of insurance must be identical to the wording specified in LAC 33:V.3719.J. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Office of Environmental Services. If requested by the administrative authority, the owner or operator must provide a signed duplicate original of the insurance policy.

1.b. – 6. ...

7. An owner or operator shall notify the Office of Environmental Services in writing within 30 days whenever:

B.7.a. – F.2. ...

3. To demonstrate that he meets this test, the owner or operator must submit the following three items to the Office of Environmental Services.

a. – c.ii. ...

4. The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in Paragraph F.3 of this Section if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited

by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the chief financial officer for the owner or operator must send a letter to the Office of Environmental Services. This letter from the chief financial officer must:

a. – f. ...

5. After the initial submission of items specified in Paragraph F.3 of this Section, the owner or operator must send updated information to the Office of Environmental Services within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in Paragraph F.3 of this Section.

6. If the owner or operator no longer meets the requirements of Paragraph F.1 of this Section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this Section. Evidence of liability coverage must be submitted to the Office of Environmental Services within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

F.7. – G.3. ...

#### H. Letter of Credit for Liability Coverage

1. An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Subsection and submitting a copy of the letter of credit to the Office of Environmental Services.

2. – 5. ...

#### I. Surety Bond for Liability Coverage

1. An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this Subsection and submitting a copy of the bond to the Office of Environmental Services.

2. – 4. ...

#### J. Trust Fund for Liability Coverage

1. An owner or operator may satisfy the requirements of this Section by establishing a trust fund that conforms to the requirements of this Subsection and submitting an originally signed duplicate of the trust agreement to the Office of Environmental Services.

J.2. – 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 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:399 (May 1990), LR 18:723 (July 1992), repromulgated LR 19:627 (May 1993), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1521 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2506 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2481 (October 2005), LR 33:2133 (October 2007).

### **§4413. Incapacity of Owners or Operators, Guarantors, or Financial Institutions**

A. An owner or operator must notify the Office of Environmental Services by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as

specified in LAC 33:V.4403.E and 4407.E must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (see LAC 33:V.3719.H).

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2507 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2482 (October 2005), LR 33:2134 (October 2007).

### **Subchapter I. Tanks**

#### **§4437. Containment and Detection of Releases**

A. – H. ...

1. The Office of Environmental Services must be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in Subsection G of this Section according to the following schedule:

a. – b. ...

2. As part of the notification, the owner or operator must also submit to the Office of Environmental Services a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in Paragraph G.1 or 2 of this Section.

3. The demonstration for a variance must be completed and submitted to the Office of Environmental Services within 180 days after notifying the administrative authority of intent to conduct the demonstration.

H.4. – I.4. ...

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 13:651 (November 1987), LR 14:790 (November 1988), LR 16:614 (July 1990), LR 18:723 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2507 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2482 (October 2005), LR 33:2134 (October 2007).

### **Subchapter J. Surface Impoundments**

#### **§4449. Action Leakage Rate**

A. The owner or operator of surface impoundment units subject to LAC 33:V.4462.A must submit a proposed action leakage rate to the Office of Environmental Services when submitting the notice required under LAC 33:V.4462.B. Within 60 days of receipt of the notification, the administrative authority will establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this Section, or extend the review period for up to 30 days. If no action is taken by the administrative authority before the original 60- or the extended 90-day review periods, the action leakage rate will be approved as proposed by the owner or operator.

B. – C. ...

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 21:266 (March 1995), amended by the Office of Environmental



Assessment, Environmental Planning Division, LR 26:2508 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2482 (October 2005), LR 33:2134 (October 2007).

#### **§4451. Response Actions**

A. The owner or operator of surface impoundment units subject to LAC 33:V.4462.A must submit a response action plan to the Office of Environmental Services when submitting the proposed action leakage rate under LAC 33:V.4449. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in Subsection B of this Section.

B. – C.4. ...

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 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2508 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2483 (October 2005), LR 33:2135 (October 2007).

#### **§4462. Design Requirements**

A. ...

B. The owner or operator of each unit referred to in Subsection A of this Section must notify the Office of Environmental Services at least 60 days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part II application within six months of the receipt of such notice.

C. – 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 16:220 (March 1990), amended LR 17:368 (April 1991), LR 18:723 (July 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2508 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2483 (October 2005), LR 33:2135 (October 2007).

#### **Subchapter K. Waste Piles**

##### **§4472. Response Actions**

A. The owner or operator of waste pile units subject to LAC 33:V.4476 must submit a response action plan to the Office of Environmental Services when submitting the proposed action leakage rate under LAC 33:V.4474. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in Subsection B of this Section.

B. – C.4. ...

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 26:2508 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2483 (October 2005), LR 33:2135 (October 2007).

#### **§4474. Action Leakage Rates**

A. The owner or operator of waste pile units subject to LAC 33:V.4476 must submit a proposed action leakage rate to the Office of Environmental Services when submitting the notice required under LAC 33:V.4476. Within 60 days of receipt of the notification, the administrative authority will establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this Section, or extend the review period for up to 30 days. If no action is taken by the administrative authority before the original 60- or the extended 90-day review periods, the action leakage rate will be approved as proposed by the owner or operator.

B. – C. ...

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 26:2508 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2483 (October 2005), LR 33:2135 (October 2007).

#### **Subchapter L. Land Treatment**

##### **§4489. Closure and Post-Closure**

A. – D.4. ...

E. For the purpose of complying with LAC 33:V.4387, when closure is completed the owner or operator may submit to the Office of Environmental Services certification both by the owner or operator and by an independent qualified soil scientist in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

F. – F.4. ...

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 18:723 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2509 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2483 (October 2005), LR 33:2135 (October 2007).

#### **Subchapter M. Landfills**

##### **§4512. Design and Operating Requirements**

A. ...

B. The owner or operator of each unit referred to in Subsection A of this Section must notify the Office of Environmental Services at least 60 days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part II application within six months of the receipt of such notice.

C. – I. ...

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 16:220 (March 1990), amended LR 18:723 (July 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2509 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2483 (October 2005), LR 33:2135 (October 2007).

## **Subchapter N. Incinerators**

### **§4522. Interim Status Incinerators Burning Particular Hazardous Wastes**

A. – B. ...

1. The owner or operator will submit an application to the Office of Environmental Services containing applicable information in LAC 33:V.529 and 3115 demonstrating that the incinerator can meet the performance standards in LAC 33:V.Chapter 31 when they burn these wastes.

2. – 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 16:220 (March 1990), amended LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2509 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2484 (October 2005), LR 33:2136 (October 2007).

## **Subchapter O. Thermal Treatment**

### **§4534. Interim Status Thermal Treatment Devices Burning Particular Hazardous Waste**

A. – B. ...

1. The owner or operator will submit an application to the Office of Environmental Services containing the applicable information in LAC 33:V.529 and 3115 demonstrating that the thermal treatment unit can meet the performance standard in LAC 33:V.Chapter 31 when they burn these wastes.

2. – 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 16:220 (March 1990), amended LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2509 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2484 (October 2005), LR 33:2136 (October 2007).

## **Subchapter T. Containment Buildings**

### **§4703. Design and Operating Standards**

A. – C.3.a.iii. ...

iv. within seven days after the discovery of the condition, notify the Office of Environmental Services of the condition and, within 14 working days, provide a written notice to the administrative authority with a description of the steps taken to repair the containment building and the schedule for accomplishing the work;

b. ...

c. upon completing all repairs and cleanup, the owner or operator must notify the Office of Environmental Services in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with LAC 33:V.4703.C.3.a.iv; and

C.4. – E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning

Division, LR 26:2509 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2136 (October 2007).

## **Chapter 53. Military Munitions**

### **§5309. Standards Applicable to the Storage of Solid Waste Military Munitions**

A. – A.1.c. ...

d. within 90 days of when a storage unit is first used to store waste military munitions, whichever is later, the owner or operator must notify the Office of Environmental Services of the location of any waste storage unit used to store waste military munitions for which the conditional exemption in Paragraph A.1 of this Section is claimed;

1.e. – 3. ...

B. Notice of Termination of Waste Storage. The owner or operator must notify the Office of Environmental Services when a storage unit identified in Subparagraph A.1.d of this Section will no longer be used to store waste military munitions.

C. – E. ...

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 24:1757 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2510 (November 2000), LR 30:1675 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2484 (October 2005), LR 33:2136 (October 2007).

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

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

#### **§103. Regulatory Overview**

A. ...

B. Site Discovery and Evaluation

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

B.2. – E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2178 (November 1999), amended LR 26:2510 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2136 (October 2007).

#### **§117. Definitions**

A. ...

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SPOC—the Office of Environmental Compliance, Emergency and Radiological Services Division, Single Point of Contact (SPOC).

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment,

Environmental Planning Division, LR 25:2179 (November 1999), amended LR 26:2511 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2136 (October 2007).

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

### **§201. Site Discovery**

A. Site Discovery Reporting Requirements. As part of a program to identify inactive or uncontrolled contaminated sites, the owner, operator, or other responsible person shall report to SPOC, within 24 hours, in the manner provided in LAC 33:I.3923, any sites where hazardous substances have been, or could have been, disposed of or discharged. This Section sets forth the requirements for reporting such sites.

B. – B.5.f. ...

C. Voluntary Reporting. In addition to the mandatory reporting by those persons listed under Subsection B of this Section, all members of the public are encouraged to report to the department any suspected discharge, disposal, or presence of any hazardous substance at any inactive or uncontrolled site. This voluntary reporting can be made by contacting SPOC in the manner provided in LAC 33:I.3923.

D. – D.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2182 (November 1999), amended LR 26:2511 (November 2000), LR 28:1762 (August 2002), LR 30:1675 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2484 (October 2005), LR 33:2137 (October 2007).

## **Chapter 3. Administrative Processes**

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

A. – B.2. ...

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

C. – C.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2184 (November 1999), amended LR 26:2511 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2484 (October 2005), LR 33:2137 (October 2007).

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

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

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

B. – D. ...

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

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

LR 26:2511 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2137 (October 2007).

## **Chapter 5. Site Remediation**

### **§501. Remedial Actions**

A. ...

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

B.1. – E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2186 (November 1999), amended LR 26:2511 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2137 (October 2007).

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

A. The Office of Environmental Assessment may, at its sole discretion, direct PRPs to perform any site investigation, remedial investigation, corrective action study, and/or remedial action in accordance with the following:

1. – 5. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2186 (November 1999), amended LR 26:2511 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2137 (October 2007).

### **§505. Removal Action**

A. – A.3. ...

4. If the removal action results in achievement of the RECAP standards established by the department, the Office of Environmental Assessment may determine that no further action is required. The department may then issue a decision document stating that the removal action is the final remedy and no further action is required.

5. ...

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

B.1. – C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2187 (November 1999), amended LR 26:2512 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2137 (October 2007).

### **§507. Remedial Investigation**

A. – B. ...

C. To complete a RI the Office of Environmental Assessment, or PRPs as directed by the department, shall provide the following.

1. – 3. ...

4. Remedial Investigation Report. Following the completion of the RI, a remedial investigation report shall be prepared by the Office of Environmental Assessment, or by

PRPs as directed by the department. Any RI report prepared by PRPs shall be reviewed and approved by the department. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' report. At a minimum, this report shall include:

C.4.a. – D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2187 (November 1999), amended LR 26:2512 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2137 (October 2007).

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

A. – C.5. ...

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2188 (November 1999), amended LR 26:2512 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2138 (October 2007).

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

A. – B. ...

1. notify the Office of Environmental Assessment that a modification is necessary;

2. – 3. ...

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

1. – 3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2191 (November 1999), amended LR 26:2512 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2138 (October 2007).

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

A. – A.2. ...

B. Operation and Maintenance. An operation and maintenance (O and M) plan shall be prepared for all sites assigned post-remedial management because hazardous substances remain at the site at levels above remedial goals or where O and M is part of the approved remedy. O and M plans prepared by PRPs shall be submitted to the Office of Environmental Assessment for review and approval. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' plan. O and M plans prepared by PRPs for a site where leaving hazardous substances at the site is part of the approved and completed remedy shall be submitted to the department for

review and approval at least six months prior to completion of the remedy. Each O and M plan shall include, but not be limited to:

1. – 8. ...

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

C.1. – E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2191 (November 1999), amended LR 26:2512 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2138 (October 2007).

### **Chapter 6. Cost Recovery**

#### **§607. Determination of Remedial Costs; Demand to PRPs**

A. Timing. The Office of Environmental Assessment may at any time prepare a written determination of the cost of partial or complete remediation of a site. The department may revise its determination in writing at any time thereafter.

B. – D.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2193 (November 1999), amended LR 26:2513 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2138 (October 2007).

### **Chapter 7. Settlement and Negotiations**

#### **§705. Negotiations**

A. – B.4. ...

C. Negotiations after Issuance of Administrative Orders. PRPs who have received unilateral administrative orders may negotiate with the Office of Environmental Assessment for dismissal of the administrative order upon execution of a cooperative agreement unless an emergency situation has been declared or the department determines that a stay of remedial actions or of enforcement will be detrimental to the public health, welfare, or the environment. The department has sole discretion in determining whether to enter into negotiations after issuance of a unilateral administrative order. Except by written determination of the department, no request for or conduct of negotiations in accordance with this Section shall serve to stay or modify the terms of any such unilateral administrative order.

D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2194 (November 1999), amended LR 26:2513 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2138 (October 2007).

## §709. De Minimis Settlements

A. – C. ...

D. To attain the goal set forth in Subsection C of this Section, the de minimis settlement should ordinarily involve a cash payment to the Office of Management and Finance by the settling party or parties, rather than a commitment to perform work. Where a remedial action is being conducted in whole or in part by PRPs, it may be appropriate for settling de minimis parties to deposit the amount paid in accordance with the de minimis settlement into a site-specific trust fund to be administered by a third party trustee and used for remedial action for that site.

E. – F.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2195 (November 1999), amended LR 26:2513 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2139 (October 2007).

## §711. Mixed Funding

A. – B. ...

C. Eligibility and Mixed Funding Criteria. The Office of Environmental Assessment shall make a determination whether a proposal is eligible for funding. The only circumstances under which mixed funding can be approved by the department are when the funding will achieve both:

C.1. – E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2195 (November 1999), amended LR 26:2513 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2139 (October 2007).

## Chapter 8. Public Information and Participation

### §801. Public Information

A. – B. ...

1. Information Repositories. The Office of Environmental Assessment may establish and maintain an information repository in a public location near the site. If a repository is established, PRPs shall provide the department with copies of all necessary documents.

2. – 3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2196 (November 1999), amended LR 26:2513 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2139 (October 2007).

### §803. Public Participation

A. In order to ensure that the public has an opportunity to comment on site-related decisions, the Office of Environmental Assessment, or PRPs as directed by the department, shall provide opportunities for public participation as listed in this Section. All public participation activities undertaken by PRPs shall be performed under the direction and approval of the department.

1. – 1.b. ...

2. For sites where the secretary has made a demand for remedial action in accordance with R.S. 30:2275, the department shall, upon written request, provide an opportunity for a public meeting prior to approval of a site

remedial investigation plan and selection of a remedy. Additionally, if a written request is received, the department shall hold a public comment period of not more than 60 calendar days duration prior to approval of a site remedial investigation plan and selection of a site remedy. Written requests shall be mailed to the Office of Environmental Assessment.

a. ...

b. Prior to any public comment period, the Office of Environmental Assessment, or PRPs as directed by the department, shall place a copy of the document being reviewed in a public location near the site.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2196 (November 1999), amended LR 26:2513 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2139 (October 2007).

## Chapter 9. Voluntary Remediation

### §911. Application Process

A. ...

1. a Voluntary Remedial Investigation Application Form VCP001, available from the Office of Environmental Assessment and on the department's website, with required attachments, accompanied by the remedial investigation work plan review fee; and

2. – 2.f. ...

B. Voluntary Remediation Applications. Prior to implementation of a voluntary remedial action at a site, applicants must submit a voluntary remediation application to the Office of Environmental Assessment for review and final approval. The application shall consist of the following:

1. a Voluntary Remediation Application Form VCP002, available from the Office of Environmental Assessment and on the department's website, with required attachments, accompanied by the remedial action plan review fee;

B.2. – C.1. ...

2. After the application is accepted for public review and before the beginning of the public comment period provided in Subsections D and F of this Section, the applicant shall provide the number of copies of the accepted application specified by the administrative authority to the Office of Environmental Assessment.

3. ...

D. Public Notice. Upon acceptance of the voluntary remediation application, as set forth in Subsection C of this Section, the applicant must place a public notice of the proposed voluntary remedial action plan in the local newspaper of general circulation in the parish where the voluntary remediation site is located. The public notice shall be a single classified advertisement at least 4 inches by 6 inches in size in the legal or public notices section. The applicant must provide proof of publication of the notice to the Office of Environmental Assessment prior to final approval of the plan. The public notice shall:

1. – 2. ...

3. indicate that comments shall be submitted to the Office of Environmental Assessment (including the contact person, mailing address, and physical address), as well as indicate the deadline for submission of comments;

4. – 5. ...

E. Direct Notice to Landowners. Within five days of the public notice in Subsection D of this Section, the applicant must send a direct written notice of the voluntary remedial action plan to persons owning immovable property contiguous to the voluntary remediation site. This notice shall be sent to persons listed as owners of the property on the rolls of the parish tax assessor as of the date on which the voluntary remediation application is submitted. The notice must be sent by certified mail and contain the same information that is provided in the public notice. Return receipts or other evidence of the receipt or attempted delivery of the direct notice must be provided to the Office of Environmental Assessment prior to final approval of the plan.

F. Public Hearing and Comment

1. Comments on the voluntary remedial action plan shall be accepted by the Office of Environmental Assessment for a period of 30 days after the date of the public notice and shall be fully considered by the division prior to final approval of the plan. However, if the administrative authority determines a shorter or longer comment period is warranted, the administrative authority may provide for a shorter or longer comment period in the public notice described in Paragraph D.1 of this Section. Also, the comment period provided in the public notice may be extended by the administrative authority if the administrative authority determines such an extension is warranted.

F.2. – H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:516 (April 2001), amended by the Office of Environmental Assessment, LR 30:2024 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2485 (October 2005), LR 33:2139 (October 2007).

### **§913. Completion of Voluntary Remedial Actions**

A. – D. ...

1. the applicant provides written notice to the Office of Environmental Assessment at least 15 days in advance of the termination;

2. – 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:518 (April 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2485 (October 2005), LR 33:2140 (October 2007).

## **Part VII. Solid Waste**

### **Subpart 1. Solid Waste Regulations**

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

##### **§113. Public Information Service**

A. – B. ...

C. Mailing List. The department shall maintain a mailing list of groups or individuals interested in public hearings and other such activities of the Office of Environmental Services.

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2514 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2485 (October 2005), LR 33:1019 (June 2007), LR 33:2140 (October 2007).

#### **Chapter 3. Scope and Mandatory Provisions of the Program**

##### **§301. Exempted Waste**

A. – A.1. ...

a. agricultural-crop residues, aquacultural residues, silvicultural residues, and other agricultural wastes stored, processed, or disposed of on the site where the crops are grown or that are stored, processed, or disposed in accordance with a best management practice plan that has been provided to the Office of Environmental Services and approved in writing by the Department of Agriculture, and within the jurisdiction of the Department of Agriculture;

1.b. – 2.f. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2515 (November 2000), LR 28:780 (April 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2485 (October 2005), LR 33:1027 (June 2007), LR 33:2140 (October 2007).

##### **§303. Wastes Not Subject to the Permitting Requirements or Processing or Disposal Standards of These Regulations**

A. – A.9. ...

10. woodwastes that are beneficially-used in accordance with a Best Management Practice Plan approved in writing by the Department of Agriculture and submitted to the Office of Environmental Services, provided that the following requirements are met:

a. the generator shall notify the Office of Environmental Services of such activity at each site in accordance with LAC 33:VII.401.A;

b. the generator shall submit to the Office of Management and Finance a disposer annual report that reports amounts of woodwastes beneficially-used at each site;

11. – 13. ...

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 by the Office of the Secretary, LR 24:2250 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2515 (November 2000), repromulgated LR 27:703 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2486 (October 2005), LR 33:1027 (June 2007), LR 33:2140 (October 2007).

##### **§305. Facilities Not Subject to the Permitting Requirements or Processing or Disposal Standards of These Regulations**

A. – A.4. ...

a. the facility shall notify the Office of Environmental Services of such activity in accordance with LAC 33:VII.401.A; and

b. the facility shall submit to the Office of Management and Finance a disposer annual report in accordance with the standards for construction/demolition-debris disposal facilities found in LAC 33:VII.721.B.1;

c. the facility owner shall update the parish mortgage and conveyance records by entering the specific location of the facility and specifying that the property was used for the disposal of solid waste. The document shall identify the name and address of the person with the knowledge of the contents of the facility. An example of the form to be used for this purpose is provided in LAC 33:VII.3011.Appendix F. The facility shall provide the Office of Environmental Services with a true copy of the document filed and certified by the parish clerk of court;

5. – 8. ...

a. the facility shall notify the Office of Environmental Services of such activity in accordance with LAC 33:VII.401.A;

b. the facility shall submit to the Office of Management and Finance a disposer annual report in accordance with the standards for woodwaste disposal facilities in LAC 33:VII.721.B.1;

8.c. – 9.c. ...

d. the facility shall notify the Office of Environmental Services of its activities in accordance with LAC 33:VII.401.A;

e. the facility shall submit to the Office of Management and Finance a disposer annual report that accurately estimates volumes of waste disposed in accordance with the standards for woodwaste disposal facilities found in LAC 33:VII.721.B.1; and

9.f. – 12. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1264 (June 2000), LR 26:2515, 2609 (November 2000), repromulgated LR 27:703 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2486 (October 2005), LR 33:1028 (June 2007), LR 33:2140 (October 2007).

### **§307. Exemptions**

A. – C.1. ...

2. Persons granted emergency exemptions by the administrative authority shall publish a notice to that effect in the legal-notices section of a newspaper of general circulation in the area and parish where the facility requesting the exemption is located. The notice shall be published one time as a single classified advertisement in the legal-notices section of a newspaper of general circulation in the area and parish where the facility is located, and one time as a classified advertisement in the legal-notices section of the official journal of the state. The notice shall describe the nature of the emergency exemption and the period of time for which the exemption was granted. Proof of publication of the notice shall be forwarded to the Office of Environmental Services within 60 days after the granting of an emergency exemption.

D. – E. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2516 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2486 (October 2005), LR 33:1029 (June 2007), LR 33:2141 (October 2007).

### **§311. Submittal of Information by Persons Other than Permit Holder or Applicant**

A. Documentation must be provided to the Office of Environmental Services by the permit holder or applicant authorizing other persons to submit information on their behalf.

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2516 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2486 (October 2005), LR 33:1030 (June 2007), LR 33:2141 (October 2007).

### **Chapter 4. Administration, Classifications, and Inspection Procedures for Solid Waste Management Systems**

[Formerly Chapter 5.Subchapter A]

#### **§401. Notification**

[Formerly §503]

A. Persons who generate industrial solid waste and/or persons who transport, process, or dispose of solid waste shall, within 30 days after they become subject to these regulations, notify the Office of Environmental Services in writing of such activity. A form to be used for notification shall be obtained from the Office of Environmental Services or through the department's website.

B. – C. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2517 (November 2000), amended by the Office of Environmental Assessment, LR 30:2024 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2487 (October 2005), LR 33:1031 (June 2007), LR 33:2141 (October 2007).

#### **§403. Existing Facilities Classification**

[Formerly §505]

A. – A.2. ...

3. Within 30 days after the classification inspection, any person who processes or disposes of solid waste shall file with the Office of Environmental Services a notice of his intent to upgrade or close a facility.

B. – E.3. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2517 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2487 (October 2005), LR 33:1031 (June 2007), LR 33:2141 (October 2007).

**§407. Inspection Types and Procedures**  
**[Formerly §509]**

A. – B. ...

**C. Initial Start-Up Inspection—Newly Permitted Facilities**

1. For existing facilities, the initial start-up inspection shall be made after a standard permit has been issued, all upgrading measures are completed, new activities as a result of upgrade are implemented, and certification is submitted to the Office of Environmental Services by a professional engineer, licensed in the state of Louisiana, that the facility is constructed and has been upgraded in accordance with the permit.

2. For new facilities, the initial start-up inspection shall be made after a standard permit has been issued, construction measures have been completed, and certification is submitted to the Office of Environmental Services by a professional engineer, licensed in the state of Louisiana, that the facility is constructed in accordance with the permit.

3. All start-up inspections shall be initiated within 10 working days of receipt of certification by the Office of Environmental Services unless a longer time period is set by mutual agreement.

4. ...

**D. Construction Inspections.** At least 10 days prior to commencing construction of a liner, leak-detection system, leachate-collection system, or monitoring well at a Type I or Type II facility, the permit holder shall notify the Office of Environmental Services, in writing, of the date on which construction will begin, in order to allow a representative of the department the opportunity to witness the construction.

**E. Unit Start-Up Inspections—All Facilities**

1. Start-up inspections for new units of a standard permitted facility shall be conducted after completion of all construction measures and after submittal of certification to the Office of Environmental Services by a professional engineer licensed in the state of Louisiana, that the unit is constructed in accordance with the permit.

2. All start-up inspections shall be initiated within 10 working days of receipt of certification by the Office of Environmental Services.

3. ...

**F. Modification Start-Up Inspections—All Facilities**

1. Start-up inspections for modified construction of a standard permitted facility shall be conducted after construction measures of the modification are completed and certification is submitted to the Office of Environmental Services by a professional engineer licensed in the state of Louisiana, that the modified feature/unit has been constructed in accordance with the modification approved by the administrative authority and any conditions specified in such approval.

2. ...

**G. Closure Inspections.** Closure inspections will be conducted within 30 days after the Office of Environmental Services has received written notice from the permit holder that closure requirements have been met in accordance with the approved closure plan and the permit holder has filed a request for a closure inspection. Closure inspections shall be

conducted before backfilling of a facility takes place. The administrative authority reserves the right to determine if a facility has been closed properly.

**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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2517 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2487 (October 2005), LR 33:1032 (June 2007), LR 33:2142 (October 2007).

**Chapter 5. Solid Waste Management System**

**Subchapter A. General Standards for Nonpermitted Facilities**

**[Formerly Chapter 7.Subchapter A]**

**§501. Standards Governing Industrial Solid Waste Generators**

**[Formerly §701]**

**A. Annual Reports**

1. Generators of industrial solid waste shall submit annual reports to the Office of Management and Finance listing the types and quantities, in wet-weight tons per year, of industrial solid waste they have disposed of off-site.

2. – 3. ...

4. The report shall be submitted to the Office of Management and Finance by August 1 of each reporting year.

**A.5. – B.1. ...**

a. submit to the Office of Environmental Services a generator notification form, which is available on the department's website or by contacting the Office of Environmental Services, that includes analysis, analytical data, and/or process knowledge that confirms that the waste is not a characteristic or listed hazardous waste as defined in LAC 33:V or by federal regulations; and

**B.1.b. – C. ...**

**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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2521 (November 2000), repromulgated LR 27:703 (May 2001), amended by the Office of Environmental Assessment, LR 30:2024 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2490 (October 2005), LR 33:1033 (June 2007), LR 33:2142 (October 2007).

**§508. Standards Governing Non-Processing Transfer Stations for Solid Waste**

**A. – A.1. ...**

2. notify the Office of Environmental Services in accordance with LAC 33:VII.401;

**A.3. – L. ...**

**M.** All waste shall be removed to a permitted facility at closure. Notification of closure shall be submitted to the Office of Environmental Services.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1034 (June 2007), amended LR 33:2142 (October 2007).



## Subchapter B. Permit Administration

### §509. Permit System

[Formerly §511, §315.E and F, and §513.F.5-7]

A. – A.1. ...

2. Generators that are not processors or disposers of solid waste are not required to secure a permit. Generators of industrial solid waste shall notify the Office of Environmental Services in accordance with LAC 33:VII.501.B. Generators of industrial solid waste are subject to the applicable standards provided in LAC 33:VII.501.

3. Transporters that are not processors or disposers of solid waste are not required to secure a permit. Transporters of solid waste shall notify the Office of Environmental Services in accordance with LAC 33:VII.401.A and B. Transporters of solid waste are subject to the applicable standards provided in LAC 33:VII.505.

4. Collection facilities and non-processing transfer stations at which no solid waste is processed or disposed of are not required to secure a permit. Non-processing transfer stations and collection facilities are subject to the standards found in LAC 33:VII.503, 507, and 508 and shall notify the Office of Environmental Services in accordance with LAC 33:VII.401.A and B.

A.5. – B.2. ...

C. Existing Facilities Not Previously Classified or Not Presently Operating Under a Standard Permit

1. Only those existing facilities that the administrative authority classifies for upgrading may apply for a standard permit. The person notifying the Office of Environmental Services shall be issued a temporary permit and may continue operations in accordance with the interim operational plan, pending a decision on the standard permit application.

C.2. – D.2. ...

a. Processing and/or disposal facilities with an effective standard permit shall submit to the Office of Environmental Services a new permit application at least 455 calendar days before the expiration date of the standard permit, unless permission for later filing is granted by the administrative authority. If the reapplication is submitted on or before the deadline above, and the administrative authority does not issue a final decision on the reapplication on or before the expiration date of the standard permit, the standard permit shall remain in effect until the administrative authority issues a final decision.

D.2.b. – F.4. ...

5. Public Opportunity to Request a Hearing. Any person may, within 30 days after the date of publication of the newspaper notice (LAC 33:VII.513.F.3), request that the administrative authority consider whether a public hearing is necessary. If the administrative authority determines that the requests warrant it, a public hearing will be scheduled. If the administrative authority determines that the requests do not raise genuine and pertinent issues, the Office of Environmental Services shall send the person requesting the hearing written notification of the determination. The request for a hearing shall be in writing and shall contain the name and affiliation of the person making the request and the comments in support of or in objection to the issuance of a permit.

6. Public Notice of a Public Hearing. If the administrative authority determines that a hearing is necessary, notices shall be published at least 20 days before a fact-finding hearing in the official journal of the state and in the official journal of the parish where the facility is located. The notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of the parish where the facility is located. If the affected area is in the same parish or area as the official journal of the state, a single classified advertisement in the official journal of the state shall be the only public notice required. Those persons on the Office of Environmental Services mailing list for hearings shall be mailed notice of the hearing at least 20 days before a public hearing. A notice shall also be published in the departmental bulletin, if available.

7. Receipt of Comments Following a Public Hearing. Comments received by the Office of Environmental Services until the close of business 30 days after the date of a public hearing shall be reviewed by the Office of Environmental Services.

G. – G.2. ...

3. The applicant shall provide appropriate documentation to the Office of Environmental Services that the proposed use does not violate zoning or other land-use regulations that exist at the time of the submittal of the standard permit application.

H. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2518, 2519 (November 2000), amended by the Office of Environmental Assessment, LR 30:2032 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2488 (October 2005), LR 33:1035 (June 2007), LR 33:2143 (October 2007).

### §513. Permit Process for Existing Facilities and for Proposed Facilities

A. Applicant Public Notice

1. The prospective applicant shall publish a notice of intent to submit an application for a standard permit. This notice shall be published 1 to 45 days prior to submission of the application to the Office of Environmental Services. This notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of this state and in a major local newspaper of general circulation. If the affected area is in the same parish or area as the official journal of the state, a single classified advertisement in the legal or public notices section of the official journal of the state will be the only public notice required.

A.2. – B.1. ...

2. Submittal of Permit Applications

a. Any applicant for a standard permit for existing or proposed processing and disposal facilities shall complete Part I, Part II, and Part III of the standard permit application, following the instructions for the appropriate facility class in LAC 33:VII.519, 521, 522, and 523, and submit six copies to the Office of Environmental Services. Each individual

copy of the application shall be a standard three-ring-bound document measuring 8 1/2 by 11 inches. All appendices, references, exhibits, tables, etc., shall be marked with appropriate tabs.

b. ...

c. The completed separate standard permit application for each existing facility shall be submitted to the Office of Environmental Services within 180 days after issuance of the temporary permit.

C. Notices to Parish Governing Authorities. As provided in R.S. 30:2022, upon receipt of a permit application the Office of Environmental Services shall provide written notice on the subject matter to the parish governing authority, which shall promptly notify each parish municipality affected by the application.

D. – D.3. ...

E. Standard Permit Applications Deemed Unacceptable or Deficient

1. Applications deemed unacceptable for technical review will be rejected. For the administrative authority to reconsider the application, the applicant shall resubmit the entire standard permit application to the Office of Environmental Services, including the review fee, by a reasonable due date set by the administrative authority.

E.2. – F.2. ...

3. After the six copies are submitted to the Office of Environmental Services, notices shall be placed in the department's bulletin (if one is available), the official journal of the state, and in a major local newspaper of general circulation. The Office of Environmental Services shall publish a notice of acceptance for review one time as a single classified advertisement in the legal or public notices section of the official journal of the state and one time as a classified advertisement in the legal or public notices section of a major local newspaper of general circulation. If the affected area is in the same parish or area as the official journal of the state, a single classified advertisement in the official journal of the state shall be the only public notice required. The notices will solicit comment from interested individuals and groups. Comments received by the administrative authority within 30 days after the date the notice is published in the local newspaper shall be reviewed by the Office of Environmental Services. The notice shall be published in accordance with the sample public notice provided by the Office of Environmental Services. The applicant is responsible for providing the Office of Environmental Services with proof of publication.

G. – G.2. ...

H. Public Notice of Permit Issuance. No later than 10 days following the issuance of a standard permit, the permit holder shall publish a notice of the issuance of the standard permit. This notice shall be published in the official journal of the state and in a major local newspaper of general circulation. The notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of the state, and one time as a classified advertisement in the legal or public notices section of a major local newspaper of general circulation. If the affected area is in the same parish or area as the official journal of the state, a single classified advertisement in the official journal of the state shall be the only public notice required. The notice shall be published in accordance with

the sample public notice provided by the Office of Environmental Services. The applicant is responsible for providing the Office of Environmental Services with proof of publication.

I. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2519 (November 2000), amended by the Office of Environmental Assessment, LR 30:2032 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2488 (October 2005), LR 33:1037 (June 2007), LR 33:2143 (October 2007).

### **Subchapter C. Permit System for Facilities Classified for Upgrade or Closure**

#### **§515. Permit Process for Existing Facilities Classified for Closure**

A. Closure Plan Review and Evaluation. LAC 33:VII.403 and Chapters 7 and 8 establish the criteria used by the Office of Environmental Services in evaluating closure plans.

B. Submittal of Closure Plans

1. Permit holders for facilities classified for closure shall submit to the Office of Environmental Services four bound copies of a closure plan within 60 days after issuance of the temporary permit for the facility. Each individual copy of the plan shall be a standard three-ring-bound document measuring 8 1/2 by 11 inches. All appendices, references, exhibits, tables, etc., shall be marked with appropriate tabs.

2. – 3. ...

C. Closure Plans Determined Unacceptable or Deficient

1. Closure plans that are determined unacceptable for a technical review will be rejected. The permit holder shall be required to resubmit the entire application to the Office of Environmental Services, including the review fee, by a date set by the administrative authority.

2. ...

D. Closure Plans Deemed Technically Complete. Closure plans that have been deemed technically complete shall be approved. Within 30 days after receipt of closure plan approval, the permit holder shall submit to the Office of Environmental Services three copies of the closure plan that incorporate all revisions made during the closure plan review process. Additional copies will be required if deemed necessary by the administrative authority. Each copy shall be provided as a standard three-ring-bound document measuring 8 1/2 by 11 inches, and shall include appropriate tabbing for all appendices, figures, etc. Closure plans shall incorporate revisions made during the review process. Closure plans that present revisions made during the review process as a separate supplement to the closure plan shall not be accepted.

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2520 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2489 (October 2005), LR 33:1038 (June 2007), LR 33:2144 (October 2007).

**§517. Modifications of Permits and Other Authorizations to Operate**

**A. Modification Requests**

1. The permit holder shall notify the Office of Environmental Services, in advance, of any change in a facility or deviation from a permit. Such notification shall detail the proposed modification and shall include an assessment of the effects of the modification on the environment and/or the operation. Modification details shall include, but not be limited to, a summary detailing the modification request and all appropriate drawings, narratives, etc., which shall illustrate and describe the originally-permitted representations and the proposed modifications thereto. New language requested in the permit narrative and existing language requested to be deleted from the permit narrative shall be identified therein.

a. Initially, six copies of all modification requests shall be provided to the Office of Environmental Services. Each individual copy of the document shall be 8 1/2 by 11 inches and shall be bound in a standard three-ring binder. The modification shall incorporate, in the appropriate sections, all required plans, narratives, and revisions made during the review process and shall include appropriate tabbing, if applicable, for all appendices, figures, etc.

b. ...

2. All notifications of proposed changes in ownership of a permit for a facility are the responsibility of the permittee and shall include the following, to be submitted to the Office of Environmental Services:

A.2.a. – B.1.j. ...

2. Permit modifications that require public notice and that have been determined by the Office of Environmental Services to be technically complete will be accepted for public review. When the permit modification is accepted for public review, the administrative authority shall request an additional six copies, or more if necessary. The copies will be distributed for public review as follows:

a. three copies to the Office of Environmental Services in Baton Rouge;

b. – d. ...

3. After distribution of the permit modification, a notice shall be published by the department in the official journal of the state and in the official journal of the parish where the facility is located. The notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of the state, one time as a classified advertisement in the legal or public notices section of the official journal of the parish where the facility is located, and one time in the department's bulletin. The cost of the publication shall be borne by the applicant. If the affected area is in the same parish or area as the official journal of the state, a single classified advertisement in the official journal of the state shall be the only public notice required. The notice shall solicit comments from interested individuals and groups. Comments delivered or received within 30 days after the date the notices are published shall be reviewed by the Office of Environmental Services. The notice shall be published in accordance with a sample public notice provided by the Office of Environmental Services.

B.4. – D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2520 (November 2000), amended by the Office of Environmental Assessment, LR 30:2033 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2430, 2490 (October 2005), LR 33:1039 (June 2007), LR 33:2145 (October 2007).

**Subchapter D. Permit Application**

**§519. Part I: Permit Application Form**

A. The applicant shall complete a standard permit application Part I Form obtained from the Office of Environmental Services or the department's website. The form requires the following information:

1. – 18. ...

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 by the Office of the Secretary, Legal Affairs Division, LR 33:1040 (June 2007), LR 33:2145 (October 2007).

**Chapter 7. Solid Waste Standards**

**Subchapter A. Landfills, Surface Impoundments, Landfarms**

**§711. Standards Governing Landfills (Type I and II)**

A. – B.6.d. ...

C. Facility Administrative Procedures

1. Reports

a. The permit holder shall submit annual reports to the Office of Management and Finance indicating quantities and types of solid waste (expressed in wet-weight tons per year, or for landfarms, expressed in both wet- and dry-weight tons per year), received from in-state generators and from out-of-state generators, during the reporting period. The annual disposer's report shall also indicate the estimated remaining permitted capacity at the facility as of the end of the reporting period (expressed in wet-weight tons). All calculations used to determine the amounts of solid waste received for disposal during the annual-reporting period and to determine remaining capacity shall be submitted to the Office of Management and Finance. A form to be used for this purpose shall be obtained from the Office of Management and Finance or through the department's website.

b. ...

c. Annual reports shall be submitted to the Office of Management and Finance by August 1 of each reporting year.

1.d. – 3.a. ...

b. Facilities receiving residential and commercial solid waste shall have the numbers and levels of certified operators employed at the facility as required by the department in accordance with LAC 46:XXIII. Operator certificates shall be prominently displayed at the facility. The Board of Certification and Training for Solid Waste Disposal System Operators and the Office of Environmental Services shall be notified within 30 days of any changes in the employment status of certified operators.

D. – D.3.a.i. ...

ii. The permit holder or applicant subject to air-monitoring requirements shall submit to the Office of Environmental Services a comprehensive air-monitoring

plan that will limit methane gas levels to less than the lower-explosive limits at the facility boundary and to 25 percent of the lower-explosive limits in facility buildings.

ii.(a). – iii.(a). ...

(b). within 30 days of detection, submit a remediation plan to the Office of Environmental Services for the methane gas releases. The plan shall describe the nature and extent of the problems and the proposed remedy and shall include an implementation schedule. The plan shall be implemented within 60 days of detection.

a.iv. – c.i. ...

ii. A schedule of the type and frequency of vector control measures to be used shall be submitted to the Office of Environmental Services for approval in the operational plan.

3.d. – 5.c. ...

#### 6. Facility Operations, Emergency Procedures, and Contingency Plans

a. A plan outlining facility operations and emergency procedures to be followed in case of accident, fire, explosion, or other emergencies shall be developed and filed with the Office of Environmental Services and with the local fire department and the closest hospital or clinic. The plans shall be updated annually or when implementation demonstrates that a revision is needed.

b. Training sessions concerning the procedures outlined in Subparagraph D.6.a of this Section shall be conducted annually for all employees working at the facility. A copy of the training program shall be filed with the Office of Environmental Services.

c. – e. ...

#### E. Facility Closure Requirements

1. Notification of Intent to Close a Facility. All permit holders shall notify the Office of Environmental Services in writing at least 90 days before closure or intent to close, seal, or abandon any individual units within a facility and shall provide the following information:

1.a. – 3.a.ii. ...

iii. The Office of Environmental Services shall be notified after the final cover is applied.

a.iv. – c. ...

d. The permit holder shall update the parish mortgage and conveyance records by recording the specific location of the facility and specifying that the property was used for the disposal of solid waste. The document shall identify the name and address of the person with knowledge of the contents of the facility. An example of the form to be used for this purpose is provided in LAC 33:VII.3011.Appendix F. The facility shall provide the Office of Environmental Services with a true copy of the document filed and certified by the parish clerk of court.

4. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder. The permit holder shall submit a request for the release of this fund to the Office of Management and Finance.

#### F. Facility Post-Closure Requirements

1. The post-closure period begins when the Office of Environmental Services approves closure. The length of the post-closure care period for landfills may be:

1.a. – 3. ...

a. maintaining the integrity and effectiveness of the final cover (including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events), preventing run-on and runoff from eroding or otherwise damaging the final cover; and providing annual reports to the Office of Environmental Services on the integrity of the final cap (The Office of Environmental Compliance shall be notified of any problems and corrective action measures associated with the integrity and effectiveness of the final cover.);

b. – d. ...

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 19:1143 (September 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2523 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:1676 (August 2004), amended by the Office of Environmental Assessment, LR 30:2024 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2492 (October 2005), LR 33:1047 (June 2007), LR 33:2145 (October 2007).

### §713. Standards Governing Surface Impoundments (Type I and II)

A. – B.4.d. ...

#### C. Facility Administrative Procedures

##### 1. Reports

a. The permit holder shall submit annual reports to the Office of Management and Finance indicating quantities and types of solid waste (expressed in wet-weight tons per year), received from in-state generators and from out-of-state generators, during the reporting period. If applicable, the annual disposer's report shall also indicate the estimated remaining permitted capacity at the facility as of the end of the reporting period (expressed in wet-weight tons). All calculations used to determine the amounts of solid waste received for disposal and to determine remaining capacity during the annual-reporting period shall be submitted to the Office of Management and Finance. A form to be used for this purpose shall be obtained from the Office of Management and Finance or through the department's website.

b. ...

c. Annual reports shall be submitted to the Office of Management and Finance by August 1 of each reporting year.

1.d. – 3.a. ...

b. Facilities receiving residential and commercial solid waste shall have the numbers and levels of certified operators employed at the facility as required by the department in accordance with LAC 46:XXIII. Operator certificates shall be prominently displayed at the facility. The Board of Certification and Training for Solid Waste Disposal System Operators and the Office of Environmental Services shall be notified within 30 days of any changes in the employment status of certified operators.

D. – D.3.a.i. ...

ii. The permit holder or applicant subject to air-monitoring requirements shall submit to the Office of Environmental Services a comprehensive air-monitoring plan that will limit methane gas levels to less than the lower-

explosive limits at the facility boundary and to 25 percent of the lower-explosive limits in facility buildings.

ii.(a). – iii.(a). ...

(b). within 30 days of detection, submit a remediation plan for the methane gas releases to the Office of Environmental Services. The plan shall describe the nature and extent of the problem and the proposed remedy, and shall include an implementation schedule. The plan shall be implemented within 60 days of detection.

3.a.iv. – 4. ...

5. Facility Operations, Emergency Procedures, and Contingency Plans

a. A plan outlining facility operations and emergency procedures to be followed in case of accident, fire, explosion, or other emergencies shall be developed and filed with the Office of Environmental Services and with the local fire department and the closest hospital or clinic. The plans shall be updated annually or when implementation demonstrates that a revision is needed.

b. Training sessions concerning the procedures outlined in Subparagraph D.5.a of this Section shall be conducted annually for all employees working at the facility. A copy of the training program shall be filed with the Office of Environmental Services.

c. – e. ...

E. Facility Closure Requirements

1. Notification of Intent to Close a Facility. All permit holders shall notify the Office of Environmental Services in writing at least 90 days before closure or intent to close, seal, or abandon any individual units within a facility and shall provide the following information:

1.a. – 3.b.ii. ...

iii. sampling and analyses of the uncontaminated soils in the general area of the facility for a determination of background levels using the indicator parameters selected. A diagram showing the location of the area proposed for the background sampling, along with a description of the sampling and testing methods, shall be provided and the Office of Environmental Services shall be notified at least five days prior to any sampling event;

iv. – v. ...

vi. analyses to be sent to the Office of Environmental Services confirming that clean closure has been achieved;

vii. ...

viii. a statement from the permit holder indicating that, after the closure requirements have been met, the permit holder will file a request for a closure inspection with the Office of Environmental Services before backfilling takes place. The administrative authority shall determine whether the facility has been closed properly.

c. – c.i. ...

ii. The Office of Environmental Services shall be notified after the final cover is applied.

3.c.iii. – 5. ...

6. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder. The permit holder shall submit a request for the release of this fund to the Office of Management and Finance.

F. Facility Post-Closure Requirements

1. The post-closure period begins when the Office of Environmental Services approves closure. The length of the post-closure care period for surface impoundments may be:

1.a. – 2.b. ...

i. maintaining the integrity and effectiveness of the final cover (including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events), preventing run-on and runoff from eroding or otherwise damaging the final cover; and providing annual reports to the Office of Environmental Services on the integrity of the final cap;

ii. – iv. ...

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), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2524 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:1676 (August 2004), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2493 (October 2005), LR 33:1053 (June 2007), LR 33:2146 (October 2007).

### **§715. Standards Governing Landfarms (Type I and II)**

A. – B.2.b. ...

C. Facility Administrative Procedures

1. Reports

a. The permit holder shall submit annual reports to the Office of Management and Finance indicating quantities and types of solid waste (expressed in wet-weight and dry-weight tons per year) received from in-state generators and from out-of-state generators during the reporting period. The annual disposer's report shall also indicate the estimated remaining permitted capacity at the facility as of the end of the reporting period (expressed in wet-weight tons). All calculations used to determine the amounts of solid waste received for disposal during the annual-reporting period shall be submitted to the Office of Management and Finance. A form to be used for this purpose shall be obtained from the Office of Management and Finance or through the department's website.

b. ...

c. Annual reports shall be submitted to the Office of Management and Finance by August 1 of each reporting year.

d. – e. ...

f. The following reports shall be submitted to the Office of Environmental Services:

i. ...

ii. annual reports of the analysis of all test results on the soils, land-use, and crop information, calculated amounts of waste applied per acre, total amounts of nitrogen applied per acre, and cumulative-metals loading. Annual reports shall be submitted to the Office of Environmental Services for a minimum of three years for Type II landfarms and 10 years for Type I landfarms after closure and shall contain analyses of all test results of the soils. The post-closure monitoring annual reporting may be reduced for certain types of landfarms if the permit holder demonstrates to the administrative authority's satisfaction that such a change is warranted.

2. – 3.a. ...

b. Facilities receiving residential and commercial solid waste shall have the numbers and levels of certified operators employed at the facility as required by the department in accordance with LAC 46:XXIII. Operator certificates shall be prominently displayed at the facility. The Board of Certification and Training for Solid Waste Disposal System Operators and the Office of Environmental Services shall be notified within 30 days of any changes in the employment status of certified operators.

D. – D.4. ...

5. Facility Operations, Emergency Procedures, and Contingency Plans

a. A plan outlining facility operations and emergency procedures to be followed in case of accident, fire, explosion, or other emergencies shall be developed and filed with the Office of Environmental Services and with the local fire department and the closest hospital or clinic. The plans shall be updated annually or when implementation demonstrates that a revision is needed.

b. Training sessions concerning the procedures outlined in Subparagraph D.5.a of this Section shall be conducted annually for all employees working at the facility. A copy of the training program shall be filed with the Office of Environmental Services.

c. – e. ...

E. Facility Closure Requirements

1. Notification of Intent to Close a Facility. All permit holders shall notify the Office of Environmental Services in writing at least 90 days before closure or intent to close, seal, or abandon any individual units within a facility and shall provide the following information:

a. – c. ...

2. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder. The permit holder shall submit a request for the release of this fund to the Office of Management and Finance.

3. – 3.e. ...

F. Facility Post-Closure Requirements

1. The post-closure period begins when the Office of Environmental Services approves closure. The length of the post-closure care period for landfarms may be:

1.a. – 3.a. ...

b. Annual reports shall be submitted to the Office of Environmental Services for a period of three years after closure and shall contain results of analyses of all soil/waste.

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), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2525 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:1676 (August 2004), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2493 (October 2005), LR 33:1058 (June 2007), LR 33:2147 (October 2007).

## Subchapter B. Solid Waste Processors

### §717. Standards Governing All Type I-A and II-A Solid Waste Processors

A. – D.1. ...

2. A design for surfacing natural soils that do not meet the requirement in Paragraph D.1 of this Section shall be prepared and installed under the supervision of a professional engineer, licensed in the state of Louisiana, with expertise in geotechnical engineering and hydrogeology. Written certification by the engineer that the surface satisfies the requirements of Paragraph D.1 of this Section shall be provided to the Office of Environmental Services.

D.3. – E.2.b. ...

F. Facility Administrative Procedures

1. Reports

a. The permit holder shall submit annual reports to the Office of Management and Finance indicating quantities and types of solid waste (expressed in both dry- and wet-weight tons per year), received from in-state generators and from out-of-state generators, during the reporting period. All calculations used to determine the amounts of solid waste received for processing during the annual-reporting period shall be submitted to the Office of Management and Finance. A form to be used for this purpose shall be obtained from the Office of Management and Finance or through the department's website.

b. ...

c. Annual reports shall be submitted to the Office of Management and Finance by August 1 of each reporting year.

1.d. – 3.a. ...

b. Facilities receiving residential and commercial solid waste shall have the numbers and levels of certified operators employed at the facility as required by the department in accordance with LAC 46:XXIII. Operator certificates shall be prominently displayed at the facility. The Board of Certification and Training for Solid Waste Disposal System Operators and the Office of Environmental Services shall be notified within 30 days of any changes in the employment status of certified operators.

G. – G.3.h.i. ...

ii. Testing. Testing procedures, schedules, and methods shall be submitted to the Office of Environmental Services for review and approval before disposal operations begin. Disposal of ash shall be only in a permitted Type I facility. Processing of ash shall be only in a permitted Type I-A facility.

4. ...

5. Facility Operations, Emergency Procedures, and Contingency Plans

a. A plan outlining facility operations and emergency procedures to be followed in case of accident, fire, explosion, or other emergencies shall be developed and filed with the Office of Environmental Services and with the local fire department and the closest hospital or clinic. The plans shall be updated annually or when implementation demonstrates that a revision is needed.

b. Training sessions concerning the procedures outlined in Subparagraph G.5.a of this Section shall be conducted annually for all employees working at the facility. A copy of the training program shall be filed with the Office of Environmental Services.

G.5.c. – H.2. ...

I. Facility Closure Requirements

1. Notification of Intent to Close a Facility. All permit holders shall notify the Office of Environmental Services in writing at least 90 days before closure or intent to close, seal, or abandon any individual units within a facility and shall provide the following information:

1.a. – 2.b. ...

c. The permit holder shall verify that the underlying soils have not been contaminated due to the operation of the facility. If contamination exists, a remediation/removal program developed to meet the standards of LAC 33:VII.713.E.3-6 shall be provided to the administrative authority. The Office of Environmental Services shall conduct a closure inspection to verify that the facility was closed in accordance with the approved closure plan.

3. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder. The permit holder shall submit a request for the release of this fund to the Office of Management and Finance.

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 by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2526, 2610 (November 2000), repromulgated LR 27:704 (May 2001), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2494 (October 2005), LR 33:1061 (June 2007), LR 33:2148 (October 2007).

**Subchapter C. Minor Processing and Disposal Facilities**

**§719. Standards Governing All Type III Processing and Disposal Facilities**

[Formerly some of the provisions in Subsections A, B, and E existed in §521.]

A. – B.4. ...

a. A plan outlining facility operations and emergency procedures to be followed in case of accident, fire, explosion, or other emergencies shall be developed and filed with the Office of Environmental Services and with the local fire department and the closest hospital or clinic. The plans shall be updated annually or when implementation demonstrates that a revision is needed.

b. Training sessions concerning the procedures outlined in Subparagraph B.4 of this Section shall be conducted annually for all employees working at the facility. A copy of the training program shall be filed with the Office of Environmental Services.

B.5. – D.1. ...

2. A design for surfacing natural soils that do not meet the requirement in Paragraph D.1 of this Section shall be prepared and installed under the supervision of a professional engineer, licensed in the state of Louisiana, with expertise in geotechnical engineering and hydrogeology. Written certification by the engineer that the surface satisfies the requirements of Paragraph D.1 of this Section shall be provided to the Office of Environmental Services.

D.3. – E.2. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2527 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2495 (October 2005), LR 33:1065 (June 2007), LR 33:2149 (October 2007).

**§721. Standards Governing Construction and Demolition Debris and Woodwaste Landfills (Type III)**

A. – A.3.b. ...

B. Facility Administrative Procedures

1. Reports

a. The permit holder shall submit annual reports to the Office of Management and Finance indicating quantities and types of solid waste (expressed in both dry- and wet-weight tons per year), received from in-state generators and from out-of-state generators, during the reporting period. All calculations used to determine the amounts of solid waste received for processing or disposal during the annual-reporting period shall be submitted to the Office of Management and Finance. A form to be used for this purpose shall be obtained from the Office of Management and Finance or through the department's website.

b. ...

c. Annual reports shall be submitted to the Office of Management and Finance by August 1 of each reporting year.

1.d. – 3.a. ...

b. Type III facilities receiving construction and demolition debris and woodwaste shall have the numbers and levels of certified operators employed at the facility as required by the department in accordance with LAC 46:XXIII. Operator certificates shall be prominently displayed at the facility. The Board of Certification and Training for Solid Waste Disposal System Operators and the Office of Environmental Services shall be notified within 30 days of any changes in the employment status of certified operators. The requirements of this Subparagraph are not applicable to facilities meeting the criteria of LAC 33:VII.305.A.4.

C. – C.4. ...

5. Facility Operations, Emergency Procedures, and Contingency Plans

a. A plan outlining facility operations and emergency procedures to be followed in case of accident, fire, explosion, or other emergencies shall be developed and filed with the Office of Environmental Services and with the local fire department and the closest hospital or clinic. The plans shall be updated annually or when implementation demonstrates that a revision is needed.

b. Training sessions concerning the procedures outlined in Subparagraph C.5.a of this Section shall be conducted annually for all employees working at the facility. A copy of the training program shall be filed with the Office of Environmental Services.

c. – d. ...

D. Facility Closure Requirements

1. Notification of Intent to Close a Facility. All permit holders shall notify the Office of Environmental Services in writing at least 90 days before closure or intent to close, seal, or abandon any individual units within a facility and shall provide the following information:

1.a. – 2.f. ...

### 3. Closure Requirements

#### a. Final Cover

i. Final cover shall consist of a minimum of 24 inches of silty clays and 6 inches of topsoil cover for supporting vegetative growth; however, other covers that provide a more practical answer and satisfy the purposes of minimizing fire hazards, odors, vector food and harborage, and infiltration of precipitation, as well as discouraging scavenging and limiting erosion, may be submitted to the Office of Environmental Services for approval.

ii. ...

iii. The Office of Environmental Services shall be notified prior to planting a ground cover, and the permit holder shall notify the Office of Environmental Services once the ground cover is established.

iv. Quality-assurance/quality-control procedures shall be developed and implemented to ensure that the final cover is designed, constructed, and installed properly. An engineering certification verifying that the facility meets the final cover requirements shall be prepared under the supervision of a professional engineer licensed in the state of Louisiana. This certification shall be submitted to the Office of Environmental Services for approval.

a.v. – b. ...

c. The permit holder shall update the parish mortgage and conveyance records by recording the specific location of the facility and specifying that the property was used for the disposal of solid waste. The document shall identify the name and address of the person with knowledge of the contents of the facility. An example of the form to be used for this purpose is provided in LAC 33:VII.3011.Appendix F. The facility shall provide the Office of Environmental Services with a true copy of the document filed and certified by the parish clerk of court.

4. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority may release the closure fund to the permit holder. The permit holder shall submit a request for the release of this fund to the Office of Management and Finance.

#### E. Facility Post-Closure Requirements

1. The post-closure period begins when the Office of Environmental Services approves closure. The time frame of post-closure care may be lengthened, if necessary, to protect human health or the environment in accordance with LAC 33:I.Chapter 13.

2. The integrity of the grade and cap shall be maintained for no less than three years after the date of the administrative authority's approval of the closure of the facility. The Office of Environmental Services shall be notified of any problems and corrective action measures associated with the integrity and effectiveness of the final cover.

3. Annual reports concerning the integrity of the cap shall be submitted to the Office of Environmental Services for a period of three years after closure.

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 20:1001 (September 1994), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of

Environmental Assessment, Environmental Planning Division, LR 26:2527 (November 2000), repromulgated LR 27:705 (May 2001), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2495 (October 2005), LR 33:1067 (June 2007), LR 33:2149 (October 2007).

### §723. Standards Governing Composting Facilities

A. – B. ...

#### C. Facility Administrative Procedures

##### 1. Reports

a. The permit holder shall submit annual reports to the Office of Management and Finance indicating quantities and types of solid waste (expressed in both dry- and wet-weight tons per year), received from in-state generators and from out-of-state generators, during the reporting period. All calculations used to determine the amounts of solid waste received for processing during the annual-reporting period shall be submitted to the Office of Management and Finance. A form to be used for this purpose shall be obtained from the Office of Management and Finance or through the department's website.

b. ...

c. Annual reports shall be submitted to the Office of Management and Finance by August 1 of each reporting year.

1.d. – 3.a. ...

b. Type III facilities receiving solid waste for composting shall have the number and levels of certified operators employed at the facility as required by the department in accordance with LAC 46:XXIII. Operator certificates shall be prominently displayed at the facility. The Board of Certification and Training for Solid Waste Disposal System Operators and the Office of Environmental Services shall be notified within 30 days of any changes in the employment status of certified operators.

D. – D.5.c. ...

##### 6. Facility Operations, Emergency Procedures, and Contingency Plans

a. A plan outlining facility operations and emergency procedures to be followed in case of accident, fire, explosion, or other emergencies shall be developed and filed with the Office of Environmental Services and with the local fire department and the closest hospital or clinic. The plans shall be updated and submitted annually or when implementation demonstrates that a revision is needed.

b. Training sessions concerning the procedures outlined in Subparagraph D.6.a of this Section shall be conducted annually for all employees working at the facility. A copy of the training program shall be filed with the Office of Environmental Services.

c. – d. ...

#### E. Facility Closure Requirements

1. Notification of Intent to Close a Facility. All permit holders shall notify the Office of Environmental Services in writing at least 90 days before closure or intent to close, seal, or abandon any individual units within a facility and shall provide the following information:

1.a. – 2.b. ...

c. The permit holder shall verify that the underlying soils have not been contaminated in the operation of the facility. If contamination exists, a remediation/removal program developed to meet the standards of LAC 33:VII.713.E.4 and 6 shall be provided to the Office of Environmental Services. The Office of Environmental



Services shall conduct a closure inspection to verify that the facility was closed in accordance with the approved closure plan.

3. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder. The permit holder shall submit a request for the release of this fund to the Office of Management and Finance.

4. ...

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 20:1001 (September 1994), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2528 (November 2000), repromulgated LR 27:705 (May 2001), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2496 (October 2005), LR 33:1069 (June 2007), LR 33:2150 (October 2007).

### **§725. Standards Governing Separation and Woodwaste Processing Facilities (Type III)**

A. – A.2.b. ...

B. Facility Administrative Procedures

1. Reports

a. The permit holder shall submit annual reports to the Office of Management and Finance indicating quantities and types of solid waste (expressed in both dry- and wet-weight tons per year), received from in-state generators and from out-of-state generators, during the reporting period. All calculations used to determine the amounts of solid waste received for processing during the annual-reporting period shall be submitted to the Office of Management and Finance. A form to be used for this purpose shall be obtained from the Office of Management and Finance or through the department's website.

b. ...

c. Annual reports shall be submitted to the Office of Management and Finance by August 1 of each reporting year.

1.d. – 2.a. ...

b. The permit holder shall maintain records of transporters transporting waste for processing at the facility. The records shall include the date of receipt of shipments of waste and the transporter's solid waste identification number issued by the Office of Environmental Services.

2.c. – 3. ...

4. Type III facilities receiving solid waste for processing shall have the number and levels of certified operators employed at the facility as required by the department in accordance with LAC 46:XXIII. Operator certificates shall be prominently displayed at the facility. The Board of Certification and Training for Solid Waste Disposal System Operators and the Office of Environmental Services shall be notified within 30 days of any changes in the employment status of certified operators.

C. – C.4. ...

5. Facility Operations, Emergency Procedures, and Contingency Plans

a. A plan outlining facility operations and emergency procedures to be followed in case of accident, fire, explosion, or other emergencies shall be developed and

filed with the Office of Environmental Services and with the local fire department and the closest hospital or clinic. The plans shall be updated annually or when implementation demonstrates that a revision is needed.

b. Training sessions concerning the procedures outlined in Subparagraph C.5.a of this Section shall be conducted annually for all employees working at the facility. A copy of the training program shall be filed with the Office of Environmental Services.

c. – d. ...

D. Facility Closure Requirements

1. Notification of Intent to Close a Facility. All permit holders shall notify the Office of Environmental Services in writing at least 90 days before closure or intent to close, seal, or abandon any individual units within a facility and shall provide the following information:

1.a. – 2.b. ...

c. The permit holder shall verify that the underlying soils have not been contaminated from the operation of the facility. If contamination exists, a remediation/removal program developed to meet the standards of LAC 33:VII.713.E.4 and 6 shall be provided to the Office of Environmental Services. The Office of Environmental Compliance shall conduct a closure inspection to verify that the facility was closed in accordance with the approved closure plan.

3. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder. The permit holder shall submit a request for the release of this fund to the Office of Management and Finance.

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 20:1001 (September 1994), LR 22:280 (April 1996), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2528 (November 2000), repromulgated LR 27:705 (May 2001), amended by the Office of Environmental Assessment, LR 30:2026 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2496 (October 2005), LR 33:1073 (June 2007), LR 33:2151 (October 2007).

### **Chapter 8. Standards Governing General Facility Geology, Subsurface Characterization, and Facility Groundwater Monitoring for Type I, I-A, II, II-A, and III Facilities [Formerly §709.C-E]**

#### **§803. Subsurface Characterization**

A. – A.2.a. ...

b. Existing permitted facilities that are planning a lateral and/or vertical expansion or changing the permitted lowest point of excavation within the permitted footprint may submit a work plan to the Office of Environmental Services to demonstrate that an alternative to the geotechnical borehole minimum spacing requirements set forth in Subparagraph A.2.a of this Section will achieve adequate characterization of the subsurface soils and groundwater conditions for the facility. The proposed alternative method shall include a demonstration that the subsurface soils and groundwater conditions have been adequately characterized or shall propose additional actions

necessary to achieve adequate characterization. If the department concurs that adequate characterization has been performed, the spacing requirements of Subparagraph A.2.a of this Section may be waived.

c. – d. ...

e. All borings shall be continuously sampled to at least 30 feet below the elevation (NGVD) of the lowest point of excavation (or lowest point of the zone of incorporation, for landfarms), with the use of thin-wall and/or split-spoon devices or similar coring devices. After 30 feet, samples shall be at a maximum of 5-foot intervals. The Office of Environmental Services may approve other forms of boreholes logging on a case-by-case basis and with proper justification.

A.3. – C.2.i. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1075 (June 2007), amended LR 33:2151 (October 2007).

### §805. Facility Groundwater Monitoring

A. – A.3.c.iv.(e). ...

4. Post Construction. Within 90 days after construction of the wells, the permit holder or applicant shall submit to the Office of Environmental Services well-completion details to verify that the wells were constructed according to the approved specifications and to document construction procedures. A permit modification fee will not be required. Well-completion details shall include, but are not limited to:

4.a. – 5.b.iii. ...

iv. The permit holder shall notify the Office of Environmental Services of the plugging and abandonment of monitoring wells or geotechnical borings and keep records of such abandonments.

A.6. – C.1. ...

#### 2. Initial Sampling

a. For a new facility, monitoring wells shall be sampled and the groundwater monitoring data for a sampling event shall be submitted to the Office of Environmental Services before waste is accepted.

b. For an existing facility with no wells in place at the time of the application submittal or at the time at which the facility becomes subject to these regulations, the groundwater monitoring data shall be submitted to the Office of Environmental Services within 90 days after installation of the monitoring wells.

2.c. – 4. ...

5. The permit holder or applicant shall submit three bound copies (8 1/2 by 11 inches) of a report of all groundwater sampling results to the Office of Environmental Services no later than 90 days after each sampling event.

5.a. – 6. ...

a. submit to the Office of Environmental Services:

a.i. – b.i. ...

ii. submit a report to the Office of Environmental Services demonstrating that a source other than the facility being sampled caused the contamination or that the statistically significant increase resulted from an error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. If the administrative authority approves this demonstration, in writing, the permit holder

may continue the detection monitoring program. If the administrative authority does not approve the demonstration, in writing, the permit holder shall establish an assessment monitoring program meeting the requirements of Subsection D of this Section within 90 days after the determination in this Paragraph is made.

C.7. – D.3.b. ...

4. No later than 90 days after the completion of the initial or subsequent sampling events for all assessment monitoring parameters or constituents required in Paragraph D.3 of this Section, the permit holder shall submit a report to the Office of Environmental Services, identifying the assessment monitoring parameters or constituents that have been detected. No later than 180 days after completion of the initial or subsequent sampling events for all assessment monitoring parameters or constituents required in Paragraph D.3 of this Section, the permit holder shall:

a. – c. ...

5. If the concentrations of all assessment monitoring parameters or constituents are shown to be at or below background values, using the statistical procedures in Paragraph B.6 of this Section or other EPA-approved methods for comparison to a fixed limit (such as an MCL), for two consecutive sampling events, the permit holder shall notify the Office of Environmental Services and, upon written approval of the administrative authority, may return to detection monitoring.

6. If the concentrations of any assessment monitoring parameters or constituents are above background values, but all concentrations are below the groundwater protection standard established under Paragraph D.8 of this Section, using the statistical procedures in Paragraph B.6 of this Section or other EPA-approved methods for comparison to a fixed limit (such as an MCL), the permit holder will be placed in assessment monitoring for the life of the facility or until the assessment monitoring parameters are below the established background values. As part of the corrective action development, the permit holder shall submit a work plan for approval to the Office of Environmental Services.

a. – a.v. ...

b. The Office of Environmental Services may request additional information based on the data submitted in the work plan.

7. If one or more assessment monitoring parameters or constituents are detected at statistically significant levels above the groundwater protection standard established in Paragraph D.8 of this Section, in any sampling event, using the statistical procedures in Paragraph B.6 of this Section or other EPA-approved methods for comparison to a fixed limit (such as an MCL), the permit holder shall, within 14 days of the determination, notify all appropriate local government officials and submit a report to the Office of Environmental Services identifying the assessment monitoring parameters or constituents that have exceeded the groundwater protection standard. The permit holder shall comply with one of the following requirements.

a. ...

i. within 90 days after the determination is made, submit four bound copies (8 1/2 x 11 inches) of an assessment plan to the Office of Environmental Services, as well as any necessary permit modification, that provides for:

i.(a). – iv. ...

b. If the facility being sampled did not cause the contamination, the permit holder may submit a report to the Office of Environmental Services demonstrating that a source other than the facility being sampled caused the contamination, or the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. If the administrative authority approves this demonstration in writing, the permit holder shall continue assessment monitoring at the facility in accordance with this Subsection or may return to detection monitoring if the assessment monitoring parameters or constituents are below background as specified in Paragraph D.5 of this Section. Until such a written approval is given, the permit holder shall comply with Subparagraph D.7.a of this Section, including initiating an assessment of corrective action measures.

D.8. – E.4. ...

F. Selection of Remedy and Corrective Action Plan at Type II Landfills and Associated Surface Impoundments

1. Based on the results of the corrective measures assessment required in Subsection E of this Section, the permit holder shall select a remedy that, at a minimum, meets the standards of Paragraph F.2 of this Section. Within 180 days after initiation of the corrective measures assessment required in Subsection E of this Section, the permit holder shall submit four bound copies (8 1/2 by 11 inches) of a corrective action plan to the Office of Environmental Services describing the selected remedy, which will meet the requirements of Paragraphs F.2-4 of this Section and be in accordance with LAC 33:I.Chapter 13. The corrective action plan shall also provide for a corrective action groundwater monitoring program as described in Subparagraph G.1.a of this Section.

F.2. – G.1.b. ...

2. A permit holder may submit a report to the Office of Environmental Services demonstrating, based on information developed after implementation of the corrective action plan has begun or other information, that compliance with requirements of Paragraph F.2 of this Section are not being achieved through the remedy selected. A revised corrective action plan providing other methods or techniques that could practically achieve compliance with the requirements of Paragraph F.2 of this Section shall accompany the demonstration.

3. ...

4. The permit holder may submit a report to the Office of Environmental Services demonstrating that compliance with the requirements of Paragraph F.2 of this Section cannot be achieved with any currently available methods.

5. If the administrative authority approves, in writing, the demonstration submitted in accordance with Paragraph G.4 of this Section, the permit holder shall, within 30 days of the approval, submit a plan to the Office of Environmental Services (which includes an implementation schedule) to implement alternate measures in accordance with LAC 33:I.Chapter 13:

5.a. – 10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2250 (December 1998), amended by

the Office of Environmental Assessment, Environmental Planning Division, LR 26:2521 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2490 (October 2005), LR 33:1077 (June 2007), LR 33:2152 (October 2007).

## **Chapter 9. Enforcement**

### **§909. Closing Unauthorized and Promiscuous Dumps**

A. – C.2.e. ...

f. record in the parish mortgage and conveyance records a document describing the specific location of the facility and specifying that the property was used for the disposal of solid waste. The document shall identify the name of the person with knowledge of the contents of the facility, as well as providing the chemical levels remaining, if present. A true copy of the document, filed and certified by the parish clerk of court, shall be sent to the Office of Environmental Compliance; and

C.2.g. – F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and specifically 2025, 2039, and 2155.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2536 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2501 (October 2005), LR 33:1085 (June 2007), LR 33:2153 (October 2007).

## **Chapter 11. Solid Waste Beneficial Use and Soil Reuse**

### **§1103. On-Site Soil Reuse Requirements**

A. – B.1. ...

2. the owner or operator of the property notifies the Office of Environmental Services, in writing, of his intent to reuse soil on-site, and attaches the following to the notification:

B.2.a. – C. ...

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 by the Office of the Secretary, Legal Affairs Division, LR 33:1086 (June 2007), LR:

## **Chapter 13. Financial Assurance for All Processors and Disposers of Solid Waste**

### **[Formerly Chapter 7.Subchapter E]**

### **§1301. Financial Responsibility During Operation**

#### **[Formerly §727.A.1]**

A. ...

1. Type I and II facilities shall maintain liability insurance, or its equivalent, for sudden and accidental occurrences in the amount of \$1 million per occurrence and \$1 million annual aggregate, per site, exclusive of legal-defense costs, for claims arising from injury to persons or property, owing to the operation of the site. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services.

2. Type I-A and II-A facilities shall maintain liability insurance, or its equivalent, for sudden and accidental occurrences in the amount of \$500,000 per occurrence, and \$500,000 annual aggregate, per site, exclusive of legal-defense costs, for claims arising from injury to persons or property, owing to the operation of the site. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services.

3. Type III facilities shall maintain liability insurance, or its equivalent, for sudden and accidental occurrences in the amount of \$250,000 per occurrence, and \$250,000 annual aggregate, per site, exclusive of legal-defense costs, for claims arising from injury to persons or property, owing to the operation of the site. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services.

B. – B.1.a.iii.(c). ...

(d). cancellation of the policy, whether by the insurer or the insured, shall be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the Office of Environmental Services;

(e). any other termination of the policy shall be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the Office of Environmental Services; and

1.a.iii.(f). – 2.c.vi. ...

d. The letter of credit must be irrevocable and issued for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and the administrative authority by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the permit holder and the Office of Environmental Services receive the notice, as evidenced by the return receipts.

e. ...

### 3. Financial Test

a. To meet this test, the applicant, the permit holder, or the parent corporation (corporate guarantor) of the applicant or permit holder must submit to the Office of Environmental Services the documents required by LAC 33:VII.1303 demonstrating that the requirements of that Section have been met. Use of the financial test may be disallowed on the basis of the accessibility of the assets of the permit holder, applicant, or parent corporation (corporate guarantor). If the applicant, permit holder, or parent corporation is using the financial test to demonstrate liability coverage and closure and post-closure care, only one letter from the chief financial officer is required.

3.b. – 4.a.iii. ...

iv. the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days, by certified mail, notice to the Office of Environmental Services and to the permit holder or applicant that he intends to provide alternative financial assurance as specified in this Section, in the name of the permit holder or applicant, and that within 120 days after the end of said fiscal year the guarantor shall establish such financial assurance, unless the permit holder or applicant has done so;

v. the guarantor agrees to notify the Office of Environmental Services by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

vi. – x. ...

b. A corporate guarantee may be used to satisfy the requirements of this Section only if the attorney general(s) or insurance commissioner(s) of the state in which the guarantor is incorporated, and the state in which the facility

covered by the guarantee is located, has submitted a written statement to the Office of Environmental Services that a corporate guarantee is a legally valid and enforceable obligation in that state.

B.4.c. – D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2521 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1088 (June 2007), amended LR 33:2153 (October 2007).

### §1303. Financial Responsibility for Closure and Post-Closure Care

[Formerly §727.A.2]

A. – A.1. ...

2. The applicant or permit holder shall submit to the Office of Environmental Services the estimated closure date and the estimated cost of closure and post-closure care in accordance with the following procedures.

a. – b. ...

c. The cost estimates must be adjusted within 30 days after each anniversary of the date on which the first cost estimate was prepared on the basis of either the inflation factor derived from the Annual Implicit Price Deflator for Gross Domestic Product, as published by the U.S. Department of Commerce in its *Survey of Current Business* or a reestimation of the closure and post-closure costs in accordance with Subparagraphs A.2.a and b of this Section. The permit holder or applicant must revise the cost estimate whenever a change in the closure/post-closure plans increases or decreases the cost of the closure/post-closure plans. The permit holder or applicant must submit a written notice of any such adjustment to the Office of Environmental Services within 15 days following such adjustment.

A.2.d. – B.4. ...

C. Trust Funds. A permit holder or applicant may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the following requirements and submitting an originally signed duplicate of the trust agreement to the Office of Environmental Services.

1. – 7. ...

8. After beginning final closure, a permit holder, or any other person authorized by the permit holder to perform closure and/or post-closure, may request reimbursement for closure and/or post-closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving bills for such activities, the administrative authority will determine whether the closure and/or post-closure expenditures are in accordance with the closure plan or otherwise justified, and, if so, he or she shall instruct the trustee to make reimbursement in such amounts as the administrative authority specifies in writing. If the administrative authority has reason to believe that the cost of closure and/or post-closure will be significantly greater than the value of the trust fund, he may withhold reimbursement for such amounts as he deems prudent until he determines that the permit holder is no longer required to maintain financial assurance.

9. ...

D. Surety Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a surety

bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

1. – 5. ...

6. Whenever the current cost estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the administrative authority.

7. – 8. ...

E. Performance Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

1. – 5. ...

6. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Section. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate after written approval of the administrative authority.

7. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the Office of Environmental Services. Cancellation may not occur before 120 days have elapsed beginning on the date that both the permit holder and the administrative authority receive the notice of cancellation, as evidenced by the return receipts.

8. ...

F. Letter of Credit. A permit holder or applicant may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the following requirements and submitting the letter to the Office of Environmental Services.

1. – 3.f. ...

4. The letter of credit must be irrevocable and issued for a period of at least one year, unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and the Office of Environmental Services by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the administrative authority receive the notice, as evidenced by the return receipts.

5. ...

6. Whenever the current cost estimates increase to an amount greater than the amount of the credit, the permit holder, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance

as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure and post-closure cost estimates upon written approval of the administrative authority.

7. – 8. ...

G. Insurance. A permit holder or applicant may satisfy the requirements of this Section by obtaining insurance that conforms to the following requirements and submitting a certificate of such insurance to the Office of Environmental Services.

1. – 4. ...

5. After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure or post-closure may request reimbursement for closure or post-closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving such bills, the administrative authority will determine whether the expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she shall instruct the insurer to make reimbursement in such amounts as the administrative authority specifies in writing.

6. – 7. ...

8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the permit holder and the Office of Environmental Services. Cancellation, termination, or failure to renew may not occur, however, before 120 days have elapsed, beginning on the date that both the administrative authority and the permit holder receive notice of cancellation, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect in the event that, on or before the date of expiration:

a. – e. ...

9. Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the permit holder, within 60 days after the increase, must either increase the face amount to at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current closure and post-closure cost estimates following written approval by the administrative authority.

G.10. – H.1.b.iii. ...

2. To demonstrate that he or she meets this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must submit the following three items to the Office of Environmental Services:

2.a. – 3. ...

4. The permit holder, applicant, or parent corporation (if a corporate guarantor) of the permit holder or applicant shall provide to the Office of Environmental Services a letter from the chief financial officer, the wording of which shall be identical to the wording in LAC 33:VII.1399.Appendix I,

except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The letter shall certify the following information:

4.a. – 6. ...

7. After initial submission of the items specified in Paragraph H.2 of this Section, the permit holder, applicant, or parent corporation of the permit holder or applicant must send updated information to the Office of Environmental Services within 90 days after the close of each succeeding fiscal year. This information must include all three items specified in Paragraph H.2 and the adjusted item specified in Subparagraph A.2.c of this Section.

8. – 9.d. ...

e. the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days after the end of the fiscal year, by certified mail, notice to the Office of Environmental Services and to the permit holder or applicant that he intends to provide alternative financial assurance as specified in this Section, in the name of the permit holder or applicant, and that within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless the permit holder or applicant has done so;

f. the guarantor agrees to notify the Office of Environmental Services by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

g. – h. ...

i. the guarantor agrees to remain bound under the guarantee for as long as the permit holder must comply with the applicable financial assurance requirements of this Section, except that the guarantor may cancel this guarantee by sending notice by certified mail to the Office of Environmental Services and the permit holder or applicant. The cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the permit holder or applicant, as evidenced by the return receipts;

H.9.j. – I.3.d.ii. ...

e. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this Section, place the required submissions for that assurance in the operating record, and notify the Office of Environmental Services that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

I.3.f. – J.1.a.ii. ...

b. the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Office of Environmental Services. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts; and

c. if a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the administrative authority, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the Office of Environmental Services. If the owner or operator fails to provide alternate financial assurance within the 90-day period, then the owner or operator must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the Office of Environmental Services.

2. – 2.b.ii. ...

c. If a local government guarantor no longer meets the requirements of Subsection I of this Section, the owner or operator must, within 90 days, obtain alternate assurance, place evidence of the alternate assurance in the facility operating record, and notify the Office of Environmental Services. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

K. – L. ...

1. the administrative authority determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a professional engineer to the Office of Environmental Services so stating;

2. – 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2522 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1090 (June 2007), amended LR 33:2154 (October 2007).

### **§1305. Financial Responsibility for Corrective Action for Type II Landfills [Formerly §727.B]**

A. A permit holder of a Type II landfill required to undertake a corrective action program under LAC 33:VII.805 must provide to the Office of Environmental Services a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under LAC 33:VII.805. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period.

1. The permit holder must provide an annual adjustment of the estimate for inflation to the Office of Environmental Services until the corrective action program is completed in accordance with LAC 33:VII.805.

2. The permit holder must provide an increased corrective action cost estimate to the Office of Environmental Services and the amount of financial assurance provided under Subsection B of this Section if changes in the corrective action program or landfill conditions increase the maximum costs of corrective action.

3. Subject to approval of the administrative authority, the permit holder shall provide a reduced corrective action cost estimate to the Office of Environmental Services and the amount of financial assurance provided under Subsection

B of this Section if the cost estimate exceeds the maximum remaining costs of corrective action. The permit holder must provide the Office of Environmental Services justification for the reduction of the corrective action cost estimate and the revised amount of financial assurance.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2524 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1098 (June 2007), amended LR 33:2156 (October 2007).

**Chapter 14. Statewide Beautification  
[Formerly Chapter 13]**

**§1403. Definitions**

**[Formerly §1303]**

A. ...

\* \* \*

*Section*—Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 30:2522 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:2610 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2501 (October 2005), repromulgated LR 33:1107 (June 2007), amended LR 33:2157 (October 2007).

**§1405. Louisiana Litter Abatement Program**

**[Formerly §1305]**

A. – B.2. ...

3. All requests for awards shall be made in writing, on a form provided by the department, to the Office of Environmental Services.

4. – 5. ...

6. Awards shall be awarded based on a comparative basis as determined by the Office of Environmental Services.

AUTHORITY NOTE: Promulgated in accordance with R. S. 30:2524 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:2610 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2502 (October 2005), repromulgated LR 33:1107 (June 2007), amended LR 33:2157 (October 2007).

**Chapter 30. Appendices**

**§3001. Public Notice Example—Appendix A**

A. The following is an example of a public notice to be placed in the local newspaper for intention to submit a permit application to the Office of Environmental Services for existing/proposed solid waste facilities.

**PUBLIC NOTICE  
OF**

**INTENT TO SUBMIT PERMIT APPLICATION  
[NAME OF APPLICANT/FACILITY]  
FACILITY [location], PARISH [location],  
LOUISIANA**

Notice is hereby given that [name of applicant] does intend to submit to the Department of Environmental Quality, Office of Environmental Services, [insert division name], an application for a permit to operate a [type of solid waste facility] in [parish name], Range\_\_, Township\_\_, Section\_\_, which is approximately [identify the physical location of the site by direction and distance from the nearest town].

Comments concerning the facility may be filed with the secretary of the Louisiana Department of Environmental Quality at the following address:  
Louisiana Department of Environmental Quality  
Office of Environmental Services  
[insert division name]  
Post Office Box 4313  
Baton Rouge, Louisiana 70821-4313

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2536 (November 2000), amended by the Office of Environmental Assessment, LR 30:2027 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2502 (October 2005), LR 33:1109 (June 2007), LR 33:2157 (October 2007).

**Subpart 2. Recycling**

**Chapter 103. Recycling and Waste Reduction Rules  
§10307. Development of Local Plan**

A. – A.2.a. ...

b. an annual progress report must be submitted to the Office of Environmental Services no later than December 31 of each year after submittal and approval.

A.3. – C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:35 (January 1992), repromulgated LR 18:164 (February 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2537 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2502 (October 2005), LR 33:2157 (October 2007).

**Chapter 105. Waste Tires**

**§10513. Permit Process for Existing Facilities Classified for Upgrade and for Proposed Facilities**

A. Applicant Public Notice

1. No sooner than 45 days prior to the submittal of a standard permit application to the Office of Environmental Services, the prospective applicant shall publish a notice of intent to submit an application for a waste tire standard permit. This notice shall be published one time as a single classified advertisement measuring 3 columns by 5 inches, in the legal or public notices section of the official journal of this state and a major local newspaper of general circulation. If the affected area is Baton Rouge, a single classified advertisement measuring 3 columns by 5 inches, in the legal or public notices section of the official journal of the state will be the only public notice required.

2. – 3. ...

B. Submittal of Permit Applications

1. Any applicant for a standard permit for an existing or proposed facility shall complete a waste tire standard permit application, and submit four copies to the Office of Environmental Services. Each individual copy of the application shall be in standard three-ring-bound documents measuring 8 1/2 by 11 inches. All appendices, references, exhibits, tables, etc., shall be marked with appropriate tabs.

B.2. – H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:39 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2775 (December 2000), LR 27:829 (June 2001), amended by the Office of Environmental Assessment, LR 30:2033 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2502 (October 2005), LR 33:2157 (October 2007).

#### **§10515. Agreements with Waste Tire Processors**

Standard permitted waste tire processors may apply to the Office of Management and Finance for subsidized funding to assist them with waste tire processing and marketing costs. This application form is available from the Office of Management and Finance.

A. – F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:39 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2776 (December 2000), LR 27:830 (June 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2502 (October 2005), LR 33:2158 (October 2007).

#### **§10517. Standard Waste Tire Permit Application**

Each applicant requesting a standard permit in accordance with these regulations shall complete the permit application, including, but not limited to, the information included in this Section and submit it to the Office of Environmental Services.

A. – C.3. ...

4. governmental agency collection centers may accept waste tires from roadside pickup, from rights-of-way, individual residents, and unauthorized waste tire piles. For the tires from unauthorized waste tire piles to be eligible for the \$1.50 per 20 pounds marketing payment to permitted processors as indicated in LAC 33:VII.10535, the governmental agency must notify the Office of Management and Finance, in writing, of the agency's intent prior to removing the tires from said site;

5. – 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:39 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2776 (December 2000), LR 27:830 (June 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2502 (October 2005), LR 33:2158 (October 2007).

#### **§10519. Standards and Responsibilities of Generators of Waste Tires**

A. Within 30 days of commencement of business operations, generators of waste tires shall notify the Office of Environmental Services of their existence and obtain a generator identification number prior to initiating a waste tire manifest. Notification shall be on a form provided by the Office of Environmental Services.

B. – C. ...

D. Each dealer of passenger/light truck tires, medium truck tires, or off-road tires shall remit all waste tire fees collected as required by LAC 33:VII.10535.B and C to the

department on a monthly basis on or before the twentieth day following the month during which the fees were collected. The fees shall be remitted to the Office of Management and Finance. Each such dealer shall also submit a Monthly Waste Tire Fee Report (Form WT02, available from the Office of Management and Finance) to the Office of Management and Finance on or before the twentieth day of each month for the previous month's activity, including months in which no fees were collected. Each tire dealer required to make a report and remit the fee imposed by this Section shall keep and preserve records as may be necessary to readily determine the amount of fee due. Each such dealer shall maintain a complete record of the quantity of tires sold, together with tire sales invoices, purchase invoices, inventory records, and copies of each Monthly Waste Tire Fee Report for a period of no less than three years. These records shall be maintained by all parties for a minimum of three years and shall be made available for audit and/or inspection at the place of business during regular business hours.

E. Tire dealers must provide notification to the public sector via signs made available by the Office of Management and Finance indicating that:

E.1. – K. ...

L. A generator who ceases the sale of tires at the registered location shall notify the Office of Management and Finance within 10 days of the date of the close or relocation of the business. This notice shall include information regarding the location and accessibility of the tire sale and monthly report records.

M. – P. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:40 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2777 (December 2000), LR 27:830 (June 2001), LR 27:2227 (December 2001), LR 28:1953 (September 2002), LR 29:1818 (September 2003), LR 29:2780 (December 2003), amended by the Office of Environmental Assessment, LR 31:1323 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2503 (October 2005), LR 33:90 (January 2007), LR 33:2158 (October 2007).

#### **§10521. Standards and Responsibilities of Motor Vehicle Dealers**

A. All existing motor vehicle dealers shall notify the Office of Management and Finance of their existence and obtain an identification number. Notification shall be on a form provided by the Office of Management and Finance. Any new motor vehicle dealer shall notify the Office of Management and Finance within 30 days of commencement of business operations.

B. ...

C. Motor vehicle dealers shall remit all waste tire fees collected as required by LAC 33:VII.10535.B and C to the department on a monthly basis on or before the twentieth day following the month during which the fees were collected. The fees shall be remitted to the Office of Management and Finance. Each such dealer shall also submit a Monthly Waste Tire Fee Report (Form WT02, available from the Office of Management and Finance) to the Office of Management and Finance on or before the



twentieth day of each month for the previous month's activity, including months in which no fees were collected. Each motor vehicle dealer is required to make a report and remit the fee imposed by this Section and shall keep and preserve records as may be necessary to readily determine the amount of fee due. Each such dealer shall maintain a complete record of the quantity of vehicles sold, together with vehicle purchase and sales invoices, and inventory records, for a period of no less than three years. These records shall be maintained by all parties for a minimum of three years and shall be made available for audit and/or inspection at the place of business during regular business hours.

D. Motor vehicle dealers must provide notification to the public via a sign made available by the Office of Management and Finance, indicating that:

"All Louisiana motor vehicle dealers selling new vehicles are required to collect a waste tire cleanup and recycling fee from the consumer of \$2 for each tire upon the sale of each vehicle that has passenger/light truck tires, \$5 for each tire upon the sale of each vehicle that has medium truck tires, and \$10 for each tire upon the sale of each off-road vehicle. These fees shall also be collected upon replacement of all recall and adjustment tires. No fee shall be collected on the designated spare tire."

E. ...

F. A motor vehicle dealer who ceases the sale of motor vehicles at the registered location shall notify the Office of Management and Finance, within 10 days of the date of the close or relocation of the business. This notice shall include information regarding the location and accessibility of the motor vehicle sales and monthly report records.

G. – H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:1324 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:91 (January 2007), LR 33:2158 (October 2007).

### **§10523. Standards and Responsibilities of Waste Tire**

#### **Transporters**

A. Transporters of waste tires shall complete the application for transporter authorization form and submit the application, with the payment of the transporter fees as specified in LAC 33:VII.10535.A, to the Office of Management and Finance.

B. – F. ...

G. All persons subject to this Section shall notify the Office of Management and Finance in writing within 10 days when any information on the authorization certificate form changes, or if they close their business and cease transporting waste tires.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:41 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2778 (December 2000), LR 27:831 (June 2001), repromulgated LR 27:1885 (November 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2503 (October 2005), LR 33:2159 (October 2007).

### **§10525. Standards and Responsibilities of Waste Tire Processors**

A. – A.2.g. ...

B. On a form obtained from the Office of Management and Finance, all processors shall submit to the Office of Management and Finance a monthly report which shall include a certified record of pounds of tires processed during the month, along with all completed manifests for the month and the log recording all unmanifested waste tires deposited at the facility. The monthly report shall also include a certified record of the pounds of waste tire material that have been marketed and delivered as a product or raw material for beneficial reuse. An alternative method of reporting sale of waste tire material shall be developed and approved for each processor that uses a process other than shredding. The alternative method shall be approved by the administrative authority.

C. – D.13. ...

a. the waste tire facility operator shall submit to the Office of Management and Finance an estimate of the maximum total amount by weight of waste tire material that will be stored at the processing facility at any one time;

b. the waste tire facility operator shall also submit to the Office of Management and Finance two independent, third-party estimates of the total cost of cleaning up and closing the facility, including the cost of loading the waste tire material, transportation to a permitted disposal site, and the disposal cost; and

D.13.c. – E.6. ...

7. Mobile processors are responsible for notifying the Office of Environmental Services in writing within 10 days when any information on the notification changes or if they cease processing waste tires with a mobile unit.

F. Governmental agencies may operate tire splitting equipment for the purposes of volume reduction prior to disposal without a permit to process waste tires, provided they meet the requirements outlined in LAC 33:VII.10517.C and request authorization from the Office of Management and Finance before initiating any processing.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:41 (January 1992), amended LR 20:1001 (September 1994), LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2779 (December 2000), LR 27:831 (June 2001), LR 27:2228 (December 2001), LR 28:1953 (September 2002), LR 29:2780 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2503 (October 2005), LR 33:2159 (October 2007).

### **§10531. Standards and Responsibilities of Qualified**

#### **Recyclers**

A. Within 30 days of promulgation of these rules and regulations, recyclers shall notify the Office of Environmental Services of their existence and obtain an identification number. Notification shall be on a form provided by the Office of Environmental Services including, but not limited to:

A.1. – C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2780 (December 2000), LR 27:831 (June 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2503 (October 2005), LR 33:2159 (October 2007).

### **§10533. Manifest System**

A. – B.2. ...

3. the designated processing facility operator completes Section 3 of the manifest and retains a copy for his files. The designated processing facility operator shall submit the original manifest to the Office of Management and Finance with the monthly processor report. The designated processing facility shall send all remaining copies to the generator no later than seven days after delivery;

4. ...

5. a generator must submit to the Office of Management and Finance written notification, if he has not received a copy of the manifest with the handwritten signature of the designated destination facility operator within 45 days of the date the shipment was accepted by the transporter. The notification shall include:

a. – b. ...

C. Upon discovering a discrepancy in the number or type of tires in the load, the designated destination facility must attempt to reconcile the discrepancy with the generator(s) or transporter(s). The destination facility operator must submit to the Office of Management and Finance, within five working days, a letter describing the discrepancy and attempts to reconcile it and a copy of the manifest(s). After the discrepancy is resolved a corrected copy is to be sent to the Office of Management and Finance.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2780 (December 2000), LR 27:831 (June 2001), LR 27:2228 (December 2001), LR 29:2780 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2504 (October 2005), LR 33:91 (January 2007), LR 33:2160 (October 2007).

### **§10535. Fees and Fund Disbursement**

A. Permit and Application Fees. Each applicant shall submit to the Office of Environmental Services a non-refundable application fee in the amount specified, according to the categories listed below. The appropriate fee must accompany the permit application or authorization application form.

A.1. – C. ...

1. The entire waste tire fee shall be forwarded to the Office of Management and Finance by the tire dealer and shall be deposited in the Waste Tire Management Fund.

C.2. – D.6. ...

7. Payments shall be made to the processor on a monthly basis, after properly completed monthly reports are submitted by the processor to the Office of Management and Finance. Reporting forms will be provided by the Office of Management and Finance.

8. – 10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2781 (December 2000), LR 27:832 (June 2001), LR 27:2228 (December 2001), amended by the Office of Environmental Assessment, LR 31:1324 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2504 (October 2005), LR 33:2160 (October 2007).

### **§10536. Remediation of Unauthorized Tire Piles**

A. ...

B. In order to apply for and receive funding for unauthorized waste tire site remediation, local governments must provide the Office of Management and Finance with unauthorized waste tire site information. This information includes, but is not limited to, accurate site location, number of tires on site, visual report on site with photographs and proximity to residences, schools, hospitals and/or nursing homes, and major highways. Such information shall be submitted using forms available from the Office of Management and Finance.

C. ...

D. State agencies, parish, or local governments may consolidate several smaller waste tire piles provided they obtain prior approval from the Office of Management and Finance. Consolidating the piles for the purpose of remediation may increase the priority ranking of the site in question.

E. Waste tires may not be removed from unauthorized waste tire piles without prior approval of the Office of Management and Finance.

F. – G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, amended LR 20:1001 (September 1994), LR 22:1213 (December 1996), LR 23:722 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2782 (December 2000), LR 27:832 (June 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2504 (October 2005), LR 33:2160 (October 2007).

## **Part IX. Water Quality**

### **Subpart 1. Water Pollution Control**

#### **Chapter 3. Permits**

##### **Subchapter A. General Requirements**

#### **§301. Scope**

A. – E.7. ...

F. Any unpermitted facility or activity that exists or is under construction on the effective date of these regulations and falls under the jurisdiction of Subsection B of this Section shall submit a completed application to the Office of Environmental Services within 180 days of the effective date. Upon receipt of the application by the department within the prescribed 180 days, the facility shall be deemed in compliance with Subsection B of this Section except where the administrative authority has initiated action against the facility following an investigation or complaint. All facilities or activities that meet the requirements outlined in Paragraph J.4 or K.4 of this Section shall be exempt from the requirements of this Subsection.

G. – J.3.b.ii. ...

4. A permit application shall not be required from a concentrated animal feeding operation until the department has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. However, all concentrated animal feeding operations that meet the criteria in LAC 33:IX.321.Appendix B shall so notify the Office of Environmental Services within 180 days of the effective date of these regulations.

K. – K.3.a.iv. ...

4. A permit application shall not be required from a concentrated aquatic animal production facility until the department has conducted an on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program. However, all concentrated aquatic animal production facilities that meet the criteria in LAC 33:IX.321.Appendix C shall so notify the Office of Environmental Services within 180 days of the effective date of these regulations.

L. – N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2273 (October 2000), LR 26:2538 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2504 (October 2005), LR 33:2160 (October 2007).

### **§303. Permit Application Information**

A. – D. ...

E. All applicants for a LWDPs permit shall provide the following information to the Office of Environmental Services using the application form provided by the department, unless the department determines that such information is not required for applicant's facility or activity:

E.1. – G.2.c. ...

3. Exception. In cases where the application is withdrawn by the applicant, a written notification must be provided to the Office of Environmental Services stating that no discharge or other activity that would require a permit under these regulations is currently taking place. Provided that the application was not made in response to previous enforcement action, the applicant is then exempt from enforcement action for causes listed under Paragraph G.2 of this Section.

H. – H.2.b. ...

c. the written authorization is submitted to the Office of Environmental Services.

3. If an authorization under this Subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Paragraph H.2 of this Section shall be submitted to the Office of Environmental Services prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. – Certification. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066

(November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2539 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2505 (October 2005), LR 33:2161 (October 2007).

### **§307. Modification, Revocation and Reissuance**

A. Any permittee shall report to the Office of Environmental Services any facility changes that result in increases in the quantity of pollutants discharged or decreases in the quality of the discharges. The permittee shall also report any facility changes that result in decreases in the quantity of pollutants discharged or increases in the quality of discharges of pollutants where such change is expected to last in excess of 180 days. Such report shall be by submission of a modified permit application or, if the discharge does not violate the effluent limitations specified in the permit, by submission of notice to the Office of Environmental Services of the nature of such facility changes. The permittee shall not commence any facility expansion, production increases, or process modifications that result in new or increased discharges of pollutants without receiving a modified LWDPs permit or written authorization from the Office of Environmental Services. The provisions of this Subsection shall not apply to facility changes that were considered during the permitting process.

B. When the Office of Environmental Services receives any new information or receives a request for modification or revocation, such permit may, after an opportunity for hearing, be modified, or alternatively revoked and reissued, in whole or in part, for cause, including but not limited to:

B.1. – D.3. ...

4. allow for a change in ownership or operational control of a facility where the Office of Environmental Services determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the department (see LAC 33:IX.307.B.8 and 311.D);

D.5. – F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2540 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2505 (October 2005), LR 33:2161 (October 2007).

### **§309. Renewal and Termination**

A. At least 180 days prior to the expiration date of a LWDPs permit issued pursuant to state law and this regulation, a permittee who wishes to continue to operate under such permit shall submit an application for renewal to the Office of Environmental Services.

B. – H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2541 (November 2000), amended by the Office of the Secretary, Legal

Affairs Division, LR 31:2505 (October 2005), LR 33:2161 (October 2007).

### **§311. Standard Permit Conditions**

In addition to the following standard conditions required in all permits, the department shall establish additional requirements as deemed necessary on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of the act, these regulations, and constitutional and statutory mandates.

A. – I.4. ...

J. Monitoring, Recordkeeping, and Reporting

1. All sampling and analyses shall be performed in accordance with the analytical test procedures approved by the Office of Environmental Services. Where no approved sampling or test procedure is available, the permittee must:

1.a. – 13. ...

14. The permittee shall report any noncompliance as required by R.S. 30:2025(J), R.S. 30:2076(D), or departmental regulations promulgated under these statutes. In addition, all maximum limitation excursions shall be reported in writing to the Office of Environmental Compliance within five days of the time the permittee becomes aware of the excursions.

J.15. – K.1.c. ...

i. if the permittee knows in advance of the need for a bypass, it shall submit to the Office of Environmental Services prior written notice, at least 10 days before the date of the bypass if possible;

ii. if the permittee does not know in advance of the need for a bypass, notice shall be submitted to the Office of Environmental Services within 24 hours after the initiation of the bypass unless an earlier notice is required in R.S. 30:2025(J).

2. – 3. ...

4. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if the bypass is required for essential maintenance to ensure efficient operation. Any bypass that meets the requirements of this Paragraph and is expected to or does continue for longer than seven days shall be reported in writing to the Office of Environmental Services within 10 working days of initiation of the bypass. These bypasses are not subject to the provisions of Paragraphs K.1 and 2 of this Section.

L. – L.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2541 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2505 (October 2005), LR 33:2162 (October 2007).

### **§315. Public Information**

A. – B. ...

C. The department shall send the public notice to the applicant who shall be responsible for publication of the notice once in the official state journal and once in any other local newspapers specified by the department. Upon publication, the applicant shall send the Office of Environmental Services a copy of the certificate of publication. The costs of publication shall be borne by the applicant.

D. – F.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2542 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2506 (October 2005), LR 33:2162 (October 2007).

## **Chapter 7. Effluent Standards**

### **§708. Exploration for and Production of Oil and Natural Gas**

A. – C.1.b.iii. ...

iv. In the event of an unauthorized discharge of oil, produced water, or any other product or waste material, a remedial response must be immediately initiated and the Office of Environmental Compliance shall be notified in accordance with LAC 33:I.3901 et seq. The remedial response shall include immediate removal of discharged materials and, to the extent practicable, decontamination of any water, soil, sediment, or vegetation adversely impacted by the unauthorized discharge. If immediate cleanup is not considered to be an appropriate remedial measure, the responsible party shall notify the Office of Environmental Compliance of the alternative remedial plan and shall promptly implement said plan upon approval by the department. Submission of an alternate plan shall in no way relieve the responsible party of its duty to contain and mitigate the effects of the discharge.

1.b.v. – 3.d. ...

e. The discharge of drill cuttings or bulk drilling fluids (if allowed) must not occur within 1,300 feet (via water) of an active oyster lease, live natural oyster or other molluscan reef, designated oyster seed bed, or sea grass bed. No discharge shall be made in such a manner as to allow deposition of drill cuttings or drilling fluids in or upon any active oyster lease, live natural reef, or seed bed. If the discharge is to take place within one mile of an area containing oyster leases, a lease map must be forwarded to the Office of Environmental Services showing the location of the discharge and surrounding leases. If the applicant considers any oyster lease, live natural oyster or other molluscan reef, or designated seed bed within 1,300 feet of a discharge of drilling fluids or drill cuttings to be inactive, written documentation and evidence must be submitted to the Office of Environmental Services for a determination to be made as to the acceptability of such a discharge.

3.f. – 5.b.ii. ...

c. Each discharge will require specific prior approval from a representative of the Office of Environmental Compliance. An analysis of the treated water shall be submitted to and approved by a representative of the Office of Environmental Compliance prior to discharge.

i. – iii. ...

d. Dilution shall not be used to comply with any of the discharge limitations unless specific written authorization from the Office of Environmental Compliance has been obtained. The only parameter for which dilution will be considered is chloride. Formal written requests for approval to allow dilution of chloride levels should be addressed to the Office of Environmental Compliance.

Consideration of written requests to allow dilution of chloride levels in drilling site reserve pits, ring levee borrow ditches, shale barges, drilling fluid dewatering systems, and abandoned or inactive oil field production pits will be made on a case-by-case basis and only if the following conditions can be met.

i. – iv. ...

v. The Office of Environmental Compliance representative concludes that no adverse environmental effects will result from the discharge of pretreated and diluted wastewater.

e. An on-site inspection by department personnel may be required prior to discharge approval.

f. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:261 (April 1989), amended LR 17:263 (March 1991), LR 23:860 (July 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2544 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2506 (October 2005), LR 33:2162 (October 2007).

## **Chapter 9. Spill Prevention and Control**

### **§905. Requirements for Preparation and Implementation of Plans**

A. Operators of facilities in operation or under construction on or before the effective date of these regulations that meet the criteria outlined in LAC 33:IX.903 shall prepare a plan within 180 days of the effective date of these regulations. The plan shall be fully implemented as soon as possible after preparation, but not later than one year after it was prepared. The Office of Environmental Services may, upon written request, grant additional implementation time to existing facilities in those cases where substantial upgrading or modification may be required in order to comply with this Chapter.

B. – F. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2545 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2507 (October 2005), LR 33:2163 (October 2007).

## **Chapter 11. Surface Water Quality Standards**

### **§1117. References**

A. – A.1. ...

2. Louisiana Department of Environmental Quality. (continuous). Fixed Station Long-Term Ambient Surface Water Quality Network. Baton Rouge: Office of Environmental Compliance.

3. – 13. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2403 (December 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2507 (October 2005), LR 33:2163 (October 2007).

## **§1121. Regulation of Toxic Substances Based on the General Criteria**

A. – A.2. ...

B. Effluent Characterization/Toxicity Testing and/or Instream Assessment

1. When determining the need for limits based on water quality, the Office of Environmental Services may identify data needs and request that the permittee submit additional data along with the application. Permits may be placed into three categories:

1.a. – 3.b.iii.(c). ...

4. For water bodies whose designated use is as a drinking water supply, the department will calculate the in-stream concentration for all discharged pollutants for which EPA has promulgated a maximum contaminant level (MCL). The permittee will be required to submit to the Office of Environmental Services sufficient effluent characterization data to make these calculations. Where dilution calculations indicate that in-stream concentrations may exceed the MCL requirements at appropriate flow conditions, the permittee may be required to conduct in-stream chemical monitoring or monitoring at the water supply.

5. To protect human health by eliminating chronic exposure to potentially toxic amounts of pollutants from aquatic species consumed by humans, the department will calculate the in-stream concentrations of all applicable pollutants for which EPA has published human health criteria in the Quality Criteria for Water, 1986, EPA 440/5-86-001, or subsequent revisions. The permittee will be required to submit to the Office of Environmental Services sufficient effluent characterization data to make these calculations. For operational considerations, if dilution calculations show that after mixing, a suspected carcinogen would be present in the receiving water body at a concentration associated with a  $10^{-6}$  risk level, in-stream chemical monitoring may be required of the appropriate dischargers. The department will list the water body as a priority water body and develop a wasteload allocation or make other consideration for it.

C. – E.2. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2404 (December 1999), LR 26:2548 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2507 (October 2005), LR 33:832 (May 2007), LR 33:2163 (October 2007).

## **Chapter 15. Water Quality Certification Procedures**

### **§1507. Procedures for Issuance of Water Quality Certification**

A. – A.2.a, Table. ...

b. Payment shall accompany the application for certification. The department shall consider the application incomplete and initiation of the application review process will not begin until payment of the processing fee is received. Payment shall be by check or money order to Department of Environmental Quality, Office of Environmental Services, and shall be nonrefundable.

3. ...

4. **Approved Land Management Plan Requirement.** Applicants whose applications involve the clearing of land for agricultural purposes shall submit to the Office of Environmental Services an approved land management plan for the land to be cleared before the application will be deemed adequate.

5. – 8. ...

B. **Alternative Application Submittal.** Any applicant may elect to submit to the Office of Environmental Services a duplicate of the proposed federal permit application in lieu of a separate application for state certification. Such submittal must include a cover letter requesting state certification and indicating that the attached copy of a federal permit application is to serve as the application for state certification.

C. – H.2. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(A)(3).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:496 (July 1984), amended by the Office of the Secretary, LR 22:345 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2550 (November 2000), LR 29:690 (May 2003), LR 29:2052 (October 2003), amended by the Office of Environmental Assessment, LR 30:2027 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2507 (October 2005), LR 33:2163 (October 2007).

## **Chapter 21. Municipal Facilities Revolving Loan Fund**

### **§2109. Priority System**

A. ...

B. **Determination of Priority for Participation in the Program.** Any municipality that has the authority under applicable law to undertake a wastewater facility project and desires to apply for a loan may submit a completed Pre-Application Form (RF-100) to the Office of Environmental Services. Such projects shall be included on the next fiscal year's state project priority list in accordance with the priority system.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2011(D)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 13:742 (December 1987), repromulgated LR 14:862 (December 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2550 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2508 (October 2005), LR 33:2164 (October 2007).

### **§2111. Application for Loan**

A. – E.4. ...

F. **Plans and Specifications.** The applicant shall submit plans and specifications to the Office of Environmental Services for review to ensure the proposed project meets minimum technical and administrative requirements of federal and state law, is biddable and constructable and will satisfy discharge requirements in accordance with the project's National Pollution Discharge Elimination System (NPDES) and/or State Pollutant Discharge Elimination System permit.

G. – H. ...

I. **Financial and Management Capability.** The applicant is required to submit to the Office of Environmental Services sufficient information to demonstrate its legal, institutional,

managerial, and financial capability to ensure the adequate building, operation, maintenance of the facility, and debt repayment of the loan.

J. – M.6....

N. **Sludge Management Plan.** The applicant shall submit a plan to the Office of Environmental Services that complies with the Department of Environmental Quality rules and regulations.

O. – P. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2011(D)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 13:742 (December 1987), repromulgated LR 14:862 (December 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2550 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2508 (October 2005), LR 33:2164 (October 2007).

### **§2115. Construction of Wastewater Facility Project**

A. – B.2.c. ...

d. submit to the Office of Environmental Services all change orders for review and approval.

C. **Bid Proposals.** The applicant shall submit to the Office of Environmental Services for review a complete statement of work to be performed, the terms and conditions of the proposed contract to be awarded, a clear explanation of the methods of bidding and of evaluating bid prices and the limits of work for each item on the proposal form.

D. – E. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2011(D)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 13:742 (December 1987), repromulgated LR 14:862 (December 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2551 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2508 (October 2005), LR 33:2164 (October 2007).

### **§2119. Miscellaneous**

A. **Annual Audit.** The Office of Management and Finance shall conduct, or have conducted, an annual audit of the fiscal operation of the revolving loan fund for submission to the governor and the legislature.

B. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2011(D)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 13:742 (December 1987), repromulgated LR 14:862 (December 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2551 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2508 (October 2005), LR 33:2164 (October 2007).

### **§2123. Appendix 2—Construction Grants Priority System**

A. – D.2.i. ...

3. It is the responsibility of each authorized project representative to maintain current and accurate information for his/her project, and to submit any revised or updated project information to the Office of Environmental Services each year for use in preparing the project priority list. Only project information received by April 1 will be considered for inclusion on the next fiscal year's project priority list.

4. – 19. ...

20. Those projects that have already received federal assistance for Step 1 or Step 2 work must complete and submit the required grant documents to the Office of Environmental Services within the time period allotted. Failure to submit the required documents or a request for a time extension by the scheduled project completion date may result in the removal of the project from the fundable portion of the project priority list.

D.21. – F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 17:342 (December 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2551 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2508 (October 2005), LR 33:2164 (October 2007).

### **§2125. Appendix 3—State Environmental Review Process**

A. General. As required by the provisions of Section 602(b)(6) of the 1987 Amendments to the Clean Water Act, the department shall conduct an interdisciplinary environmental review consistent with the National Environmental Policy Act of the project proposed for funding through the municipal facilities revolving loan fund. This review will ensure that the project will comply with the applicable local, state, and federal laws and department rules relating to the protection and enhancement of the environment. Based upon the staff's review, the secretary, or his duly authorized representative, will make formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determination will include mitigative provisions as a condition of financial assistance for building and no financial assistance will be provided until a final environmental determination has been made. Nothing in these rules shall prohibit any public, private or governmental party from seeking administrative or legal relief from the determinations of the department. Potential applicants to the municipal facilities revolving loan fund should obtain guidance from the staff regarding the scope of the environmental review to be conducted by the department and the environmental information that the applicant will be required to submit to the Office of Environmental Services in support of the proposed project.

A.1. – C.5. ...

#### **GUIDELINES FOR LOUISIANA REVOLVING LOANS FUND ENVIRONMENTAL REVIEW PROCESS**

\* \* \*

[See Prior Text in Document]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 14:862 (December 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2551 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2509 (October 2005), LR 33:2165 (October 2007).

## **Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program**

### **Chapter 25. Permit Application and Special LPDES Program Requirements**

#### **§2501. Application for a Permit**

##### **A. Duty to Apply**

1. Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 40 CFR Part 503, and who does not have an effective permit, except persons covered by general permits under LAC 33:IX.2515, or discharges excluded under LAC 33:IX.2315, or a user of a privately owned treatment works unless the state administrative authority requires otherwise under LAC 33:IX.2707.M, must submit a complete application to the Office of Environmental Services in accordance with this Section and LAC 33:IX.Chapters 31-35. All concentrated animal feeding operations have a duty to seek coverage under an LPDES permit as described in LAC 33:IX.2505.D.

##### **2. Application Forms**

a. All applicants for LPDES permits must submit applications on either state- or EPA-approved permit application forms. More than one application form may be required from a facility depending on the number and types of discharges or outfalls found there. Application forms may be obtained by contacting the Office of Environmental Services or may be obtained electronically through the department's website.

A.2.b. – C.1.b. ...

c. Any other TWTDS not addressed under Subparagraph C.1.a or b of this Section must submit the information listed in Clauses C.1.c.i-v of this Section, to the Office of Environmental Services within one year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using Form 2S or another form provided by the department. The Office of Environmental Services will determine when such TWTDS must submit a full permit application. The following information must be submitted:

c.i. – d. ...

e. Any owner or operator of a TWTDS that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the Office of Environmental Services at least 180 days prior to the date proposed for commencing operations.

D. – E.2. ...

F. Information Requirements. All applicants for LPDES permits, other than permits for POTWs and other TWTDS, must provide the following information to the Office of Environmental Services using the application form provided by the state administrative authority (additional information required of applicants is set forth in Subsections G-K of this Section and LAC 33:I.1701):

1. – 9. ...

G. Application Requirements for Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. Existing manufacturing, commercial, mining,

and silvicultural dischargers applying for LPDES permits, except for those facilities subject to the requirements of Subsection H of this Section, shall provide the following information to the Office of Environmental Services using application forms provided by the state administrative authority:

1. – 13. ...

H. Application Requirements for Manufacturing, Commercial, Mining and Silvicultural Facilities That Discharge Only Nonprocess Wastewater. Except for stormwater discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for LPDES permits that discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the Office of Environmental Services using application forms provided by the state administrative authority.

H.1. – I.2.e. ...

J. Application Requirements for New and Existing POTWs. Unless otherwise indicated, all owners/operators of POTWs and other dischargers designated by the state administrative authority must provide, at a minimum, the information in this Subsection to the Office of Environmental Services. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the state administrative authority. The state administrative authority may waive any requirement of this Subsection if he or she has access to substantially identical information. The state administrative authority may also waive any requirement of this Subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the state's justification for the waiver. A regional administrator's disapproval of a state's proposed waiver does not constitute final agency action, but does provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information.

1. – 3.c.ii. ...

#### 4. Effluent Monitoring for Specific Parameters

a. As provided in Subparagraphs J.4.b-j of this Section, all applicants must submit to the Office of Environmental Services effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the state. The state administrative authority may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The state administrative authority may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

4.b. – 5.a. ...

b. As provided in Subparagraphs J.5.c-i of this Section, applicants for the following facilities must submit to the Office of Environmental Services the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters:

J.5.b.i. – R.5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2552 (November 2000), LR 26:2756 (December 2000), LR 27:45 (January 2001), LR 28:465 (March 2002), LR 28:1766 (August 2002), LR 29:1462 (August 2003), repromulgated LR 30:229 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), LR 31:425 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2509 (October 2005), LR 32:819 (May 2006), LR 33:2165 (October 2007).

### §2511. Storm Water Discharges

A. – A.9.b. ...

c. Operators of storm water discharges designated in accordance with Clauses A.9.a.iii and iv of this Section shall apply to the Office of Environmental Services for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the department.

B. – C.1.e. ...

2. Group Application for Discharges Associated with Industrial Activity. In lieu of individual applications or notice of intent to be covered by a general permit for storm water discharges associated with industrial activity, a group application may be filed by an entity representing a group of applicants (except facilities that have existing individual LPDES permits for storm water) that are part of the same subcategory (see 40 CFR Subchapter N, Part 405 to 471) or, where such grouping is inapplicable, are sufficiently similar as to be appropriate for general permit coverage under LAC 33:IX.2515. The Part 1 application shall be submitted to the Office of Environmental Services for approval. Once a Part 1 application is approved, group applicants are to submit Part 2 of the group application to the Office of Environmental Services. A group application shall consist of:

a. – b. ...

D. Application Requirements for Large and Medium Municipal Separate Storm Sewer Discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the state administrative authority under Subparagraph A.1.e of this Section may submit a jurisdiction-wide or system-wide permit application to the Office of Environmental Services. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a co-applicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under Subparagraph A.1.e of this Section shall include:

D.1. – G.4.d, Certification. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:957 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2273 (October 2000), LR 26:2552 (November 2000), repromulgated LR 27:40 (January 2001), amended LR 28:467 (March 2002), LR 29:701 (May 2003), repromulgated LR 30:230 (February 2004), amended by the Office



of Environmental Assessment, LR 31:1321 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2510 (October 2005), LR 32:1603 (September 2006), LR 33:2166 (October 2007).

#### **§2515. General Permits**

A. – B.1. ...

2. Authorization to Discharge, or Authorization to Engage in Sludge Use and Disposal Practices

a. Except as provided in Subparagraphs B.2.e and f of this Section, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Office of Environmental Services a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with Subparagraph B.2.e of this Section, contains a provision that a notice of intent is not required or the state administrative authority notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with Subparagraph B.2.f of this Section. A complete and timely notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of LAC 33:IX.2321, 2501, and 2511.

B.2.b. – C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2276 (October 2000), LR 26:2553 (November 2000), LR 28:468 (March 2002), LR 29:1466 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2511 (October 2005), LR 33:2167 (October 2007).

#### **§2521. If I am an operator of a regulated small MS4, how do I apply for an LPDES permit and when do I have to apply?**

A. If you operate a regulated small MS4 under LAC 33:IX.2519, you must seek coverage under an LPDES permit issued by the Office of Environmental Services.

B. ...

1. if the Office of Environmental Services has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you must submit a Notice of Intent (NOI) that includes the information on your best management practices and measurable goals required by LAC 33:IX.2523.D. You may file your own NOI or you and other municipalities or governmental entities may jointly submit a NOI. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit a NOI that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization;

2.a. if you are seeking authorization to discharge under an individual permit and wish to implement a program under

LAC 33:IX.2523, you must submit an application to the Office of Environmental Services that includes the information required under LAC 33:IX.2501.F and 2523.D, an estimate of square mileage served by your small MS4, and any additional information that the Office of Environmental Services requests. A storm sewer map that satisfies the requirement of LAC 33:IX.2523.B.3.a will satisfy the map requirement in LAC 33:IX.2501.F.7;

b. ...

c. if approved by the Office of Environmental Services, you and another regulated entity may jointly apply under either Subparagraph B.2.a or b of this Section to be co-permittees under an individual permit;

B.3. – C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:2278 (October 2000), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2511 (October 2005), LR 33:2167 (October 2007).

#### **§2523. As an operator of a regulated small MS4, what will my LPDES MS4 storm water permit require?**

A. – C. ...

D.1. In your permit application (either a notice of intent for coverage under a general permit or an individual permit application) you must identify and submit to the Office of Environmental Services the following information:

a. – c. ...

2. If you obtain coverage under a general permit, you are not required to meet any measurable goal(s) identified in your notice of intent in order to demonstrate compliance with the minimum control measures in Paragraphs B.3-6 of this Section unless, prior to submitting your NOI, the Office of Environmental Services has provided or issued a menu of BMPs that addresses each such minimum measure. Even if that office does not issue the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

D.3. – G.3.e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:2278 (October 2000), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2511 (October 2005), LR 33:2167 (October 2007).

#### **§2525. As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?**

A. – A.3. ...

B. In some cases the Office of Environmental Services may recognize, either in your individual LPDES permit or in an LPDES general permit, that another governmental entity is responsible under an LPDES permit for implementing one or more of the minimum control measures for your small MS4 or that the department itself is responsible. Where the Office of Environmental Services does so, you are not required to include such minimum control measure(s) in your storm water management program (e.g., if a state or

tribe is subject to an LPDES permit that requires it to administer a program to control construction site runoff at the state or tribal level and that program satisfies all of the requirements of LAC 33:IX.2523.B.4, you could avoid responsibility for the construction measure, but would be responsible for the remaining minimum control measures). Your permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:2282 (October 2000), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2512 (October 2005), LR 33:2167 (October 2007).

#### **§2529. Will the small MS4 storm water program regulations at LAC 33:IX.2519-2527 change in the future?**

A. EPA will evaluate the small MS4 regulations at LAC 33:IX.2519-2527 after December 10, 2012, and recommend any necessary revisions. Required revisions will then be incorporated into the LPDES program by the Office of Environmental Services. (EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 storm water program. EPA will re-evaluate the regulations based on data from the NPDES MS4 storm water program, from research on receiving water impacts from storm water, and the effectiveness of BMPs, as well as other relevant information sources.)

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:2282 (October 2000), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2512 (October 2005), LR 33:2168 (October 2007).

### **Chapter 27. LPDES Permit Conditions**

#### **§2701. Conditions Applicable to All Permits**

The following conditions apply to all LPDES permits. Additional conditions applicable to LPDES permits are in LAC 33:IX.2703. All conditions applicable to LPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved state regulations) must be given in the permit.

A. – M.2. ...

3. Notice

a. Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Office of Environmental Services, if possible at least 10 days before the date of the bypass.

M.3.b. – N.4. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:724 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2553 (November 2000), LR 28:468 (March 2002),

repromulgated LR 30:230 (February 2004), amended LR 30:1676 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2431, 2512 (October 2005), LR 32:1220 (July 2006), LR 33:2168 (October 2007).

#### **§2703. Additional Conditions Applicable to Specified Categories of LPDES Permits**

The following conditions, in addition to those set forth in LAC 33:IX.2701, apply to all LPDES permits within the categories specified below.

A. Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. In addition to the reporting requirements under LAC 33:IX.2701.L, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Office of Environmental Services as soon as they know or have reason to believe:

A.1. – B.3.b. ...

C. Municipal Separate Storm Sewer Systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the state administrative authority under LAC 33:IX.2511.A.1.e must submit an annual report to the Office of Environmental Services by the anniversary of the date of the issuance of the permit for such system. The report shall include:

C.1. – E.4.g. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 29:1466 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2512 (October 2005), LR 32:819 (May 2006), LR 33:2168 (October 2007).

#### **§2709. Calculating LPDES Permit Conditions**

A. – B.2.b.ii. ...

(a) the permit shall require the permittee to notify the Office of Environmental Services at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice;

(b) the permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Office of Environmental Services under Subclause B.2.b.ii.(a) of this Section, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice;

(c) the permittee shall submit to the Office of Environmental Compliance with the DMR the level of production that actually occurred during each month and the

limitations, standards, or prohibitions applicable to that level of production.

C. – I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 28:470 (March 2002), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2513 (October 2005), LR 33:2168 (October 2007).

### **Chapter 31. General LPDES Program Requirements**

#### **§3115. Public Comments and Requests for Public Hearings**

A. During the public comment period provided under LAC 33:IX.3113, any interested person may submit written comments to the Office of Environmental Services on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in LAC 33:IX.3125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), repromulgated LR 30:231 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2513 (October 2005), LR 33:2169 (October 2007).

#### **§3117. Public Hearings**

A.1. – A.4. ...

B. Any person may submit to the Office of Environmental Services oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under LAC 33:IX.3113 shall automatically be extended to the close of any public hearing under this Section. The hearing officer may also extend the comment period by so stating at the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), repromulgated LR 30:231 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2513 (October 2005), LR 33:2169 (October 2007).

### **Chapter 45. Criteria for Determining Alternative Effluent Limitations under Section 316(a) of the Act**

#### **§4505. Early Screening of Applications for Section 316(a) of the Act Variances**

A. – A.4. ...

B. After submitting the early screening information under Subsection A of this Section, the discharger shall consult with the state administrative authority at the earliest practicable time (but not later than 30 days after the application is filed) to discuss the discharger's early

screening information. Within 60 days after the application is filed, the discharger shall submit to the Office of Environmental Services, for approval, a detailed plan of study that the discharger will undertake to support its Section 316(a) of the Act demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies; representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the state administrative authority shall either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies that the state administrative authority subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies that the discharger feels are appropriate to support the demonstration.

C. – F, NOTE. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2555 (November 2000), repromulgated LR 30:231 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2513 (October 2005), LR 33:2169 (October 2007).

### **Chapter 57. Toxic Pollutant Effluent Standards and Prohibitions**

#### **§5709. Compliance**

A.1. Within 60 days from the date of promulgation of any toxic pollutant effluent standard or prohibition each owner or operator with a discharge subject to that standard or prohibition must notify the Office of Environmental Services of such discharge. Such notification shall include such information and follow such procedures as the state administrative authority may require.

A.2. – G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2555 (November 2000), repromulgated LR 27:191 (February 2001), LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2514 (October 2005), LR 33:2169 (October 2007).

### **Chapter 61. General Pretreatment Regulations for Existing and New Sources of Pollution**

#### **§6113. Removal Credits**

A. – E.7. ...

F. Continuation and Withdrawal of Authorization

1. Effect of Authorization. Once a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical pretreatment standard it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards,

unless granting the removal credit will cause the POTW to violate the sludge requirements identified in Subparagraph A.3.d of this Section or its LPDES permit limits and conditions as required by Subparagraph A.3.e of this Section. If a POTW elects at a later time to extend removal credits to a certain categorical pretreatment standard, industrial subcategory or one or more industrial users that initially were not granted removal credits, it must notify the Office of Environmental Services.

F.2. – H.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2555 (November 2000), repromulgated LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2514 (October 2005), LR 32:1035 (June 2006), LR 33:2169 (October 2007).

**§6117. POTW Pretreatment Programs and/or Authorization to Revise Pretreatment Standards: Submission for Approval**

A. Who Approves Program. A POTW requesting approval of a POTW pretreatment program shall develop a program description that includes the information set forth in Paragraphs B.1-4 of this Section. This description shall be submitted to the Office of Environmental Services, which will make a determination on the request for program approval in accordance with the procedures described in LAC 33:IX.6121.

B. – D. ...

E. Approval Authority Action. Any POTW requesting POTW pretreatment program approval shall submit to the Office of Environmental Services three copies of the submission described in Subsection B of this Section, and, if appropriate, Subsection D of this Section. Within 60 days after receiving the submission, the Office of Environmental Services shall make a preliminary determination of whether the submission meets the requirements of Subsection B of this Section and, if appropriate, Subsection D of this Section. If the approval authority makes the preliminary determination that the submission meets these requirements, the approval authority shall:

E.1. – G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2555 (November 2000), repromulgated LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2514 (October 2005), LR 33:2170 (October 2007).

**§6121. Approval Procedures for POTW Pretreatment Programs and POTW Granting of Removal Credits**

The following procedures shall be adopted in approving or denying requests for approval of POTW Pretreatment Programs and applications for removal credit authorization.

A. – B.1.a.ii. ...

b. the public notice shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their

written views on the submission to the Office of Environmental Services; and

B.1.c. – F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 25:1093 (June 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2556 (November 2000), repromulgated LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2514 (October 2005), LR 33:2170 (October 2007).

**§6123. Reporting Requirements for POTWs and Industrial Users**

A. – G.1. ...

2. If sampling performed by an industrial user indicates a violation, the user shall notify the Office of Environmental Services within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation. Where the control authority has performed the sampling and analysis in lieu of the industrial user, the control authority must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. Resampling is not required if:

G.2.a. – K.2. ...

3. Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the Office of Environmental Services, including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Office of Environmental Services.

L. – Q. Certification. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 24:2122 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2556 (November 2000), repromulgated LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2514 (October 2005), LR 32:1038 (June 2006), LR 33:2170 (October 2007).

**§6125. Variances from Categorical Pretreatment Standards for Fundamentally Different Factors**

A. – F. ...

G. Application Deadline

1. Requests for a variance and supporting information must be submitted in writing to the Office of Environmental Services or to the administrator (or his delegate), as appropriate.

G.2. – J.1.c. ...

2. The public notice shall provide for a period not less than 30 days following the date of the public notice during which time interested persons may review the request and submit their written views on the request to the Office of Environmental Services.

J.3. – L.2.b.iv. ...

c. notify the Office of Environmental Services and the POTW of his or her determination; and

L.2.d. – M.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2556 (November 2000), repromulgated LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2515 (October 2005), LR 33:2170 (October 2007).

#### **§6135. Modification of POTW Pretreatment Programs**

A. – B.1.g. ...

##### **C. Approval Procedures for Substantial Modifications**

1. The POTW shall submit to the Office of Environmental Services a statement of the basis for the desired program modification, a modified program description (see LAC 33:IX.6117.B), or such other documents the approval authority determines to be necessary under the circumstances.

2. – 4. ...

##### **D. Approval Procedures for Nonsubstantial Modifications**

1. The POTW shall notify the Office of Environmental Services of any other (i.e., nonsubstantial) modifications to its pretreatment program at least 45 days prior to when they are to be implemented by the POTW, in a statement similar to that provided for in Paragraph C.1 of this Section.

D.2. – E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 24:2122 (November 1998), LR 25:1093 (June 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2556 (November 2000), repromulgated LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2515 (October 2005), LR 33:2171 (October 2007).

#### **Chapter 65. Additional Requirements Applicable to the LPDES Program**

##### **§6507. Enforcement Actions**

A. – A.6. ...

B. Exception. In cases where the application is withdrawn by the applicant, a written notification shall be provided to the Office of Environmental Services stating that no discharge or other activity that would require a permit from the Office of Environmental Services is currently taking place. Provided that the application was not made in response to previous enforcement action, the applicant is then exempt from enforcement action for causes listed under Paragraphs A.3 and 4 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:726 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2557 (November 2000), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2515 (October 2005), LR 33:2171 (October 2007).

## **Part XI. Underground Storage Tanks**

### **Chapter 3. Registration Requirements, Standards, and Fee Schedule**

#### **§301. Registration Requirements**

A. – A.2. ...

3. All existing UST systems previously registered with the department shall be considered to be in compliance with this requirement if the information on file with the department is current and accurate. Maintaining current and accurate information with the department includes notifying the Office of Environmental Assessment of changes in ownership, or of changes in UST system descriptions resulting from upgrading, by filing an amended registration form within 30 days of the change in ownership or in description of the UST system.

B. New UST Systems. Upon the effective date of these regulations, all owners of new *UST systems* (as defined in LAC 33:XI.103) must, at least 30 days before bringing such tanks into use, register them on an *Underground Storage Tank Registration Form* (UST-REG-01). Registration forms shall be filed with the Office of Environmental Assessment. The following registration requirements apply to new UST systems:

B.1. – C. ...

1. Any person who sells a UST system shall so notify the Office of Environmental Assessment in writing within 30 days after the date of the transaction. A person selling a UST must also notify the person acquiring a regulated UST system of the owner's registration obligations under this Section.

2. Any person who acquires a UST system shall submit to the Office of Environmental Assessment an amended registration form within 30 days after the date of acquisition.

3. – 4. ...

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, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), LR 20:294 (March 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), repromulgated LR 32:393 (March 2006), amended LR 32:1852 (October 2006), LR 33:2171 (October 2007).

#### **§303. Standards for UST Systems**

A. – B.4.b.i.(e). ...

ii. Beginning January 20, 1992, all owners and operators must ensure that the individual exercising supervisory control over *installation-critical junctures* (as defined in LAC 33:XI.1303) of a UST system is certified in accordance with LAC 33:XI.Chapter 13. To demonstrate compliance with Subparagraph B.4.a of this Section, all owners and operators must provide a certification of compliance on the *UST Registration of Technical Requirements Form* (UST-REG-02) within 60 days of the introduction of any regulated substance. Forms shall be filed with the Office of Environmental Assessment.

c. Notification of Installation. The owner and operator must notify the Office of Environmental

Assessment in writing at least 30 days before beginning installation of a UST system by:

- i. ...
- ii. notifying the appropriate regional office of the Office of Environmental Assessment by mail or fax seven days prior to commencing the installation and before commencing any *installation-critical juncture* (as defined in LAC 33:XI.1303);

B.4.c.iii. – C.5. ...

#### 6. Reporting Requirements

a. The owner and operator must notify the Office of Environmental Assessment in writing at least 30 days before beginning a UST system upgrade.

b. An amended registration form (UST-REG-02) must be submitted to the Office of Environmental Assessment within 30 days after the UST system is upgraded. The owner and operator must certify compliance with Subsection C of this Section on the amended registration form (UST-REG-02). Beginning January 20, 1992, the amended registration forms (UST-REG-01 and 02) shall include the name and department-issued certificate number of the individual exercising supervisory control over those steps in the upgrade that involve *repair-critical junctures* or *installation-critical junctures* (as defined in LAC 33:XI.1303) of a UST system.

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, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:728 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), LR 33:2171 (October 2007).

### Chapter 5. General Operating Requirements

#### §507. Repairs Allowed

A. ...

1. Except in emergencies, the owner and operator shall notify the Office of Environmental Assessment in advance of the necessity for conducting a repair to a UST system.

A.2. – B. ...

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), amended by the Office of Environmental Assessment, LR 31:1070 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007).

#### Chapter 7. Methods of Release Detection and Release Reporting, Investigation, Confirmation, and Response

#### §701. Methods of Release Detection

A. – A.8.a. ...

b. The release-detection method has been approved by the Office of Environmental Assessment on the basis of a demonstration by the owner and operator that the method can detect a release as effectively as any of the methods

allowed in Paragraphs A.3-8 of this Section. In comparing methods, the Office of Environmental Assessment shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed on its use by the Office of Environmental Assessment.

B. – B.3. ...

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1072 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007).

#### §703. Requirements for Use of Release Detection Methods

A. – C.2.e.ii. ...

iii. obtain approval from the Office of Environmental Assessment to use the alternate release detection method before the installation and operation of the new UST system.

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), amended by the Office of Environmental Assessment, LR 31:1073 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007).

#### §715. Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

A. – C.1.f. ...

2. Within 20 days after release confirmation or another reasonable period of time determined by the department in writing, owners and operators must submit a report to the Office of Environmental Assessment summarizing the initial abatement steps taken under Paragraph C.1 of this Section and any resulting information or data.

D. – D.1.e. ...

2. Within 60 days of release confirmation or another reasonable period of time determined by the department in writing, owners and operators must submit the information collected in compliance with Paragraph D.1 of this Section to the Office of Environmental Assessment in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the department.

E. Free Product Removal. At sites where investigations under Subparagraph C.1.f of this Section indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the Office of Environmental Assessment, while continuing, as necessary, any actions initiated under Subsections B-D of this Section, or preparing for actions required under Subsections F-G of this Section. To meet the requirements of this Subsection, owners and operators must take the following actions.

1. – 3. ...

4. Unless directed to do otherwise by the department, prepare and submit to the Office of Environmental Assessment, within 45 days after confirming a release, a free product removal report that provides at least the following information:

E.4.a. – G.4. ...

a. notify the Office of Environmental Assessment of their intention to begin cleanup;

G.4.b. – H.4. ...

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of the Secretary, LR 24:2253 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), LR 30:1677 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007).

## **Chapter 9. Out-of-Service UST Systems and Closure**

### **§903. Temporary Closure**

A. – B.2. ...

3. submit a completed copy of the registration form UST-REG-01 to the Office of Environmental Assessment, indicating the dates the UST system was temporarily closed.

C. ...

D. When a UST system is temporarily closed for more than 24 months, owners and operators shall complete a site assessment in accordance with LAC 33:XI.907. The results of the assessment and documentation of compliance with the temporary closure requirements in Subsection A of this Section must be submitted in duplicate to the Office of Environmental Assessment within 60 days following the end of the 24-month temporary closure period.

E. ...

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, LR 31:1074 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), LR 33:2173 (October 2007).

### **§905. Permanent Closure and Changes-in-Service**

A. At least 30 days before beginning either permanent closure or a change-in-service under Subsections B, C, and D of this Section, owners and operators must notify the Office of Environmental Assessment of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action.

1. – 1.a. ...

b. notifying the appropriate regional office of the Office of Environmental Assessment by mail or fax at least seven days prior to implementing the removal or change.

A.2. – D. ...

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR

26:2560 (November 2000), amended by the Office of Environmental Assessment, LR 31:1074 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2173 (October 2007).

### **§907. Assessing the Site at Closure or Change-in-Service**

A. Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site, utilizing the procedure approved by the department. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release. Results of this assessment must be submitted in duplicate to the Office of Environmental Assessment within 60 days following permanent closure or change in service. The assessment results shall include a site diagram indicating locations where samples were collected and a written statement specifying which USTs have been closed.

B. ...

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:728 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2560 (November 2000), amended by the Office of Environmental Assessment, LR 31:1074 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2173 (October 2007).

## **Chapter 11. Financial Responsibility**

### **§1111. Financial Test of Self-Insurance**

A. – C.5.b. ...

D. To demonstrate that it meets the financial test under Subsection B or C of this Section, the chief financial officer of the owner or operator, or guarantor, must sign, within 120 days of the close of each *financial reporting year*, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted. To prepare this letter, the owner or operator must use the form required by the department. This form may be obtained from the Office of Environmental Assessment.

LETTER FROM CHIEF FINANCIAL OFFICER

\* \* \*

[See Prior Text in Letter]

E. – F. ...

G. If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the administrative authority that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Office of Environmental Assessment of such failure within 10 days.

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,

Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2560 (November 2000), LR 27:2232 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2521 (October 2005), LR 33:2173 (October 2007).

#### **§1113. Guarantee**

A. – A.2. ...

B. Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of LAC 33:XI.1111 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in LAC 33:XI.1111.D and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator and to the Office of Environmental Assessment. If the Office of Environmental Assessment notifies the guarantor that he no longer meets the requirements of the financial test of LAC 33:XI.1111.B or C and D, the guarantor must notify the owner or operator within 10 days of receiving such notification from the Office of Environmental Assessment. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in LAC 33:XI.1139.C.

C. – D. ...

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2521 (October 2005), LR 33:2174 (October 2007).

#### **§1123. Trust Fund**

A. – C. ...

D. If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the Office of Environmental Assessment for release of the excess.

E. If other financial assurance as specified in this Chapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Office of Environmental Assessment for release of the excess.

F. ...

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2521 (October 2005), LR 33:2174 (October 2007).

#### **§1129. Cancellation or Nonrenewal by a Provider of Financial Assurance**

A. – A.2. ...

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in LAC 33:XI.1131, the owner or operator must obtain alternate coverage as specified in this Section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the Office of Environmental Assessment of such failure and submit:

1. – 3. ...

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2521 (October 2005), LR 33:2174 (October 2007).

#### **§1131. Reporting by Owner or Operator**

A. An owner or operator must submit to the Office of Environmental Assessment the appropriate forms listed in LAC 33:XI.1133.B documenting current evidence of financial responsibility as follows.

A.1. – C. ...

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2562 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2521 (October 2005), LR 33:2174 (October 2007).

#### **§1139. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance**

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the Office of Environmental Assessment by certified mail of such commencement and submit the appropriate forms listed in LAC 33:XI.1133.B documenting current financial responsibility.

B. – D. ...

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2562 (November 2000), amended by the Office of Environmental Assessment, LR 31:1578 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2522 (October 2005), LR 33:2174 (October 2007).

#### **Chapter 12. Requirements for Response Action Contractors who Assess and Remediate Motor Fuel Contaminated Sites Eligible for Cost Reimbursement in Accordance with the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF)**

#### **§1205. Qualifications**

A. – B. ...

C. The RAC List will be updated once per quarter to include applicants who have met the requirements of this



Section. All new applications or annual updates shall be submitted to the Office of Management and Finance by 4:30 p.m. on or before the fifteenth day of March, June, September, and December.

D. – E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194(C) and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:523 (April 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2522 (October 2005), LR 33:2174 (October 2007).

#### **§1209. Suspension/Revocation from RAC Listing**

A. – D.1.b. ...

c. unless the RAC, within 30 days after receipt of the notice, submits a request for an informal hearing before the board, the department shall recommend to the administrative authority that the RAC's listing be suspended or revoked. The request for informal hearing shall be submitted to the Office of Management and Finance. A written statement giving the RAC's view of the circumstances shall accompany the request for hearing.

D.2. – F.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194(C) and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:524 (April 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2175 (October 2007).

#### **Chapter 13. Certification Requirements for Persons Who Install, Repair, or Close Underground Storage Tank Systems**

#### **§1305. Categories of Certification and Requirements for Issuance and Renewal of Certificates**

A. – A.2. ...

B. Requirements for Certification Examination

1. To qualify for an examination, a person need not be a resident of Louisiana. A person must provide, to the Office of Environmental Assessment, payment of the examination fee and meet the following requirements to be eligible for a UST certification examination.

B.1.a. – E. ...

F. Expiration and Renewal of Certificates

1. All UST certificates and certificate renewals shall expire December 31 of every second year. Applications for certificate renewal and payment of the renewal fee should be submitted to the Office of Environmental Assessment by November 1 of each year they expire. A person whose certificate has expired prior to his or her submission of evidence of compliance with Paragraph F.2 of this Section shall be considered a new applicant for certification.

F.2. – G.2. ...

H. Changes in Employment. It is incumbent upon a certified person to provide written notification to the Office of Environmental Assessment within 20 days after his or her knowledge of a change in employment.

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR

26:2562 (November 2000), LR 29:691 (May 2003), LR 29:2052 (October 2003), amended by the Office of Environmental Assessment, LR 30:2804 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2522 (October 2005), LR 33:2175 (October 2007).

#### **§1309. Approval of Continuing Training Courses**

A. No course in continuing education submitted to the Office of Environmental Assessment will be considered for approval unless the course:

1. – 2. ...

B. Applications for approval of specific training programs shall be submitted to the Office of Environmental Assessment in writing. Such submissions shall contain a complete course outline; training material; sample certificates; methodology for verifying attendance; date, time, and location of the course; the name of the offering organization; the credentials of the instructors; and a certification that the technology or methods that will be presented in the training program will satisfy department rules, and state and federal laws governing UST system installation, repair, or closure.

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, Underground Storage Tank Division, LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2562 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2522 (October 2005), LR 33:2175 (October 2007).

#### **Part XV. Radiation Protection**

#### **Chapter 1. General Provisions**

#### **§102. Definitions and Abbreviations**

As used in these regulations, these terms have the definitions set forth below. Additional definitions used only in a certain chapter may be found in that chapter.

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*SPOC*—the Office of Environmental Compliance, Emergency and Radiological Services Division, Single Point of Contact (SPOC).

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 19:1421 (November 1993), LR 20:650 (June 1994), LR 22:967 (October 1996), LR 24:2089 (November 1998), repromulgated LR 24:2242 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2563 (November 2000), LR 26:2767 (December 2000), LR 30:1171, 1188 (June 2004), amended by the Office of Environmental Assessment, LR 31:44 (January 2005), LR 31:1064 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:811 (May 2006), LR 32:1853 (October 2006), LR 33:1016 (June 2007), LR 33:2175 (October 2007).

#### **Chapter 2. Registration of Radiation Machines and Facilities**

#### **§204. Application for Registration of Radiation Machines and Facilities**

A. ...

1. apply for registration of such facility and each radiation machine with the Office of Environmental Compliance prior to the operation of a radiation machine

facility. Application for registration shall be completed on Form DRC-6 furnished by the department upon request in writing and shall contain all the information required by the form and accompanying instructions. The registration of the first radiation producing machine at a facility constitutes registration of the facility itself;

2. – 3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2565 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2523 (October 2005), LR 33:2175 (October 2007).

### **§205. Application for Registration of Servicing and Services**

A. Each person who is engaged in the business of installing or offering to install radiation machines or is engaged in the business of furnishing or offering to furnish radiation machine servicing or services in this state shall apply for registration of such services with the Office of Environmental Compliance within 30 days after the effective date of this Chapter or thereafter prior to furnishing or offering to furnish any such services.

B. Application for registration shall be completed on Form DRC-22 furnished by the Office of Environmental Compliance upon request in writing and shall contain all information required by the form and accompanying instructions.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2565 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2523 (October 2005), LR 33:2176 (October 2007).

### **§209. Report of Changes**

A. The registrant shall notify the Office of Environmental Compliance in writing before making any change that would render the information contained in the application for registration and/or registration certificate no longer accurate.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2566 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2523 (October 2005), LR 33:2176 (October 2007).

### **§211. Assembler and/or Transferor Obligation**

A. Any person who sells, leases, transfers, lends, disposes, assembles, or installs radiation machines in this

state shall notify the Office of Environmental Compliance at 15-day intervals of:

A.1. – C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2566 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2523 (October 2005), LR 33:2176 (October 2007).

### **§212. Reciprocal Recognition of Out-of-State Radiation Machines**

A. ...

1. the person proposing to bring such machine into the state shall give written notice to the Office of Environmental Compliance at least three working days before such machine is to be used in the state. Additional requirements for work involving industrial radiography at temporary job sites may be found in LAC 33:XV.Chapter 5. The notice shall include:

a. – c. ...

2. if, for a specific case, the three-working-day period would impose an undue hardship on the person, upon written application to the Office of Environmental Compliance permission to proceed sooner may be granted.

B. – B.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2566 (November 2000), LR 29:1815 (September 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2523 (October 2005), LR 33:2176 (October 2007).

### **§213. Modification, Revocation, and Termination of Registration Certificate**

A. – C. ...

D. The department will terminate a registration certificate upon written request by the registrant, provided the registrant no longer possesses the registered device or provided the registrant has rendered the unit permanently incapable of producing radiation. The registrant shall notify the Office of Environmental Compliance within 60 days of the final disposition of the X-ray machine.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2566 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2524 (October 2005), LR 33:2176 (October 2007).

## **Chapter 3. Licensing of Radioactive Material**

### **Subchapter B. Licenses**

#### **§320. Types of Licenses**

A. ...

1. General licenses provided in this Chapter are effective without the filing of application with the Office of Environmental Compliance or the issuance of licensing documents to the particular persons, although the filing of certain information with the Office of Environmental Compliance may be required by the particular general license. The general licensee is subject to all other applicable portions of these regulations and to any limitations of the general license.

2. Specific licenses require the submission of an application to the Office of Environmental Compliance and the issuance of a licensing document by the administrative authority. The licensee is subject to all applicable portions of these regulations as well as to any limitations specified in the licensing document. The licensee shall notify the Office of Environmental Compliance in writing before making any change that would render the information contained in the application for license no longer accurate.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2566 (November 2000), LR 29:1816 (September 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2524 (October 2005), LR 33:2176 (October 2007).

### Subchapter C. General Licenses

#### §321. General Licenses: Source Material

A. – E.2. ...

##### 3. Depleted Uranium

a. Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by Paragraph E.1 of this Section shall file Form DRC-21, "General License Certificate—Use of Depleted Uranium Under General License," with the Office of Environmental Compliance. Form DRC-21 will be furnished by the Office of Environmental Compliance upon written request. The form shall be submitted within 30 days after the first receipt or acquisition of such depleted uranium. The general licensee shall furnish on Form DRC-21 the following information and such other information as may be required by that form:

i. – iii. ...

b. The licensee possessing or using depleted uranium under the general license established by Paragraph E.1 of this Section shall report in writing to the Office of Environmental Compliance any changes in information furnished by him in Form DRC-21, "General License Certificate—Use of Depleted Uranium Under General License." The report shall be submitted within 30 days after the effective date of such change.

4. – 4.c. ...

d. within 30 days of any transfer, shall report in writing to the Office of Environmental Compliance the name and address of the person receiving the depleted uranium pursuant to such transfer; and

4.e. – 5. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569

(October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2567 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2524 (October 2005), LR 33:2177 (October 2007).

#### §322. General Licenses: Radioactive Material Other Than Source Material

A. – D.3.d. ...

e. upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 0.005 microcurie or more of removable radioactive material, immediately suspend operation of the device until it has been repaired by the manufacturer or other person holding an applicable specific license from the administrative authority, the U.S. Nuclear Regulatory Commission, or any other agreement state or licensing state to repair such devices, or disposed of by transfer to a person authorized by an applicable specific license to receive the radioactive material contained in the device and, within 30 days, furnish to the Office of Environmental Compliance a report containing a brief description of the event and the remedial action taken;

f. ...

g. except as provided in Subparagraph D.3.h of this Section, transfer or dispose of the device containing radioactive material only by export as provided in 10 CFR Part 110 or by transfer to a specific licensee of the department, the U.S. Nuclear Regulatory Commission, or any other agreement state or licensing state whose specific license authorizes him or her to receive the device and, within 30 days after transfer of a device to a specific licensee, except when the device is transferred to the specific licensee in order to obtain a replacement device, shall furnish to the Office of Environmental Compliance a report containing:

g.i. – h. ...

i. where the device remains in use at a particular location. In such case the transferor shall give the transferee a copy of this regulation and any safety documents identified in the label on the device and, within 30 days of the transfer, report to the Office of Environmental Compliance the manufacturer's (or the initial transferor's) name; the model number and serial number of the device transferred; the name, mailing address for the location of use, and license number of the transferee; the date of the transfer; and the name and/or position of an individual who may constitute a point of contact between the department and the transferee; or

h.ii. – 1. ...

i. annual registration with the Office of Environmental Compliance shall include payment of the fee required by LAC 33:XV.2505. Registration must be done by verifying, correcting, and/or adding to the information provided in a request for registration received from the department. The registration information must be submitted to the department within 30 days of the date of the request for registration or as otherwise indicated in the request;

ii. – iii. ...

m. report changes to the mailing address for the location of use (including change in the name of the general licensee) to the Office of Environmental Compliance within 30 days of the effective date of the change. For a portable device, a report of address change is only required for a change in the device's primary place of storage;

D.3.n. – J.4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2567 (November 2000), LR 27:1226 (August 2001), LR 30:1663 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2524 (October 2005), LR 32:811 (May 2006), LR 33:448 (March 2007), LR 33:2177 (October 2007).

#### **Subchapter D. Specific Licenses**

##### **§324. Filing Application for Specific Licenses**

A. Applications for specific licenses shall be filed on a form prescribed by the Office of Environmental Compliance or in any other manner specified by the department.

B. – J.13. ...

K. The licensee shall allow the off-site response organizations expected to respond in case of accident 60 days to comment on the licensee's emergency plan before submitting it to the Office of Environmental Compliance. The licensee shall provide any comments received within the 60 days to the Office of Environmental Compliance with the emergency plan.

<sup>1</sup>These reporting requirements do not supersede or release licensees of complying with requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499 or other state or federal reporting requirements.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 20:179 (February 1994), amended by the Office of the Secretary, LR 22:345 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2567 (November 2000), LR 27:1227 (August 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2525 (October 2005), LR 33:2178 (October 2007).

##### **§325. General Requirements for the Issuance of Specific Licenses**

A. – D.3.a. ...

b. submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Paragraph D.5 of this Section using one of the methods described in Paragraph D.7 of this Section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued, but prior to the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Paragraph D.7 of this Section shall be submitted to the Office of Environmental Compliance before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall

submit to the Office of Environmental Compliance, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of Paragraph D.7 of this Section.

4. – 7.b. ...

i. The surety method or insurance must be opened or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Office of Environmental Compliance, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the department within 30 days after receipt of notification of cancellation.

7.b.ii. – 8.d.iv. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 23:1140 (September 1997), LR 24:2091 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1017 (May 2000), LR 26:2568 (November 2000), LR 27:1227 (August 2001), amended by the Office of Environmental Assessment, LR 31:44 (January 2005), LR 31:1578 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2178 (October 2007).

##### **§326. Special Requirements for Issuance of Certain Specific Licenses for Radioactive Material**

A. – E.1. ...

a. The applicant will have an adequate program for training radiographers and submits to the Office of Environmental Compliance a schedule or description of such program that specifies the:

i. – iv. ...

b. The applicant has established and submits to the Office of Environmental Compliance satisfactory written operating and emergency procedures as described in LAC 33:XV.576.

c. ...

d. The applicant submits to the Office of Environmental Compliance a description of his or her overall organizational structure pertaining to the industrial radiography program, including specified delegations of authority and responsibility for operation of the program.

e. The applicant who desires to conduct his or her own leak tests of sealed sources or exposure devices containing depleted uranium (DU) shielding has established adequate procedures to be followed in testing for possible leakage and contamination and submits to the Office of Environmental Compliance a description of such procedures including:

e.i. – k. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 24:2092 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning

Division, LR 26:2569 (November 2000), LR 27:1228 (August 2001), LR 30:1188 (June 2004), amended by the Office of Environmental Assessment, LR 31:45 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2525 (October 2005), LR 33:2178 (October 2007).

**§328. Special Requirements for Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices that Contain Radioactive Material**

A. – A.1. ...

a. the applicant submits to the Office of Environmental Compliance a description of the product or material into which the radioactive material will be introduced, the intended use of the radioactive material, and the product or material into which it is introduced, method of introduction, initial concentration of the radioactive material in the product or material, control methods to ensure that no more than the specified concentration is introduced into the product or material, estimated time interval between introduction and transfer of the product or material, and estimated concentration of the radioactive material in the product or material at the time of transfer;

b. ...

2. Each person licensed under this Subsection shall file an annual report with the Office of Environmental Compliance that shall identify the type and quantity of each product or material into which radioactive material has been introduced during the reporting period; name and address of the person who owned or possessed the product or material into which radioactive material has been introduced, at the time of introduction; the type and quantity of radionuclide introduced into each such product or material; and the initial concentrations of the radionuclide in the product or material at time of transfer of the radioactive material by the licensee. If no transfers of radioactive material have been made pursuant to this Subsection during the reporting period, the report shall so indicate. The report shall cover the year ending June 30 and shall be filed within 30 calendar days thereafter.

B. – B.1.a.ii. ...

iii. the applicant submits copies of prototype labels and brochures, and the Office of Environmental Compliance approves such labels and brochures.

b. – b.iv.(c). ...

c. Each person licensed under this Subsection shall maintain records identifying, by name and address, each person to whom radioactive material is transferred for use under LAC 33:XV.304.B or the equivalent regulations of the licensing state and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the Office of Environmental Compliance. Each report shall cover the year ending June 30 and shall be filed within 30 calendar days thereafter. If no transfers of radioactive material have been made pursuant to this Subsection during the reporting period, the report shall so indicate.

C. – D.1.a. ...

b. The applicant submits to the Office of Environmental Compliance sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing,

operating and safety instructions, and potential hazards of the device to provide reasonable assurance of the following.

1.b.i. – 4.a. ...

b. Report all transfers of devices to persons for use under the general license in LAC 33:XV.322.D.1 and all receipts of devices from persons licensed under LAC 33:XV.322.D.1 to the Office of Environmental Compliance. The report must be submitted on a quarterly basis on a RAD-41 Form or in a clear and legible report containing all of the data required by the form.

b.i. – d. ...

e. Report to the Office of Environmental Compliance all transfers of such devices to persons for use under the general license in LAC 33:XV.322.D. Such reports must be maintained for a period of three years following the date of the recorded event and shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the department and the general licensee, the type and model number of device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user. If no transfers have been made to persons generally licensed under LAC 33:XV.322.D during the reporting period, the report shall so indicate. The report shall cover each calendar quarter and shall be filed within 30 days thereafter.

D.4.f. – J.1.a. ...

b. the applicant submits to the Office of Environmental Compliance evidence that the applicant is at least one of the following:

i. – iv. ...

c. the applicant submits to the Office of Environmental Compliance information on the radionuclide, chemical and physical form, packaging including maximum activity per package, and shielding provided by the radioactive material that is appropriate for safe handling and storage of radiopharmaceuticals by group licensees; and

1.d. – 2.d. ...

e. shall provide to the Office of Environmental Compliance a copy of each individual's certification by the Board Of Pharmaceutical Specialties and the department, licensing state, Nuclear Regulatory Commission, or agreement state license or the permit issued by a licensee of broad scope and a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows the individual to work as an authorized nuclear pharmacist, in accordance with Clauses J.2.b.i and iii of this Section.

J.3. – L.1.a. ...

b. The applicant submits to the Office of Environmental Compliance sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

L.1.b.i. – M.1.a. ...

b. the applicant submits to the Office of Environmental Compliance sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and

potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in any period of one calendar quarter a radiation dose in excess of 10 percent of the limits specified in LAC 33:XV.410.A; and

c. the applicant submits to the Office of Environmental Compliance sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

2. – 4.d.ii. ...

e. report to the Office of Environmental Compliance all transfers of industrial products or devices to persons for use under the general license in LAC 33:XV.321.E. Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the department and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which such a product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under LAC 33:XV.321.E during the reporting period, the report shall so indicate;

f. – g. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 24:2092 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2569 (November 2000), LR 26:2768 (December 2000), LR 27:1228 (August 2001), LR 30:1664 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2526 (October 2005), LR 33:2179 (October 2007).

### **§331. Specific Terms and Conditions of Licenses**

A. – C. ...

D. Each licensee shall notify the Office of Environmental Compliance in writing when the licensee decides to permanently discontinue all activities involving materials authorized under the license. This notification requirement applies to all specific licenses issued under this Chapter.

E. Each licensee shall notify the Office of Environmental Compliance in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11 (Bankruptcy) of the *United States Code* by or against:

E.1. – F. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2571 (November 2000), amended by the Office of the Secretary, Legal

Affairs Division, LR 31:2527 (October 2005), LR 33:2180 (October 2007).

### **§332. Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas**

A. ...

B. Each licensee shall notify the Office of Environmental Compliance immediately, in writing, and request termination of the license when the licensee decides to terminate all activities involving radioactive material authorized under the license. This notification and request for termination of the license must include the reports and information specified in Subparagraph D.1.e of this Section.

C. – C.1. ...

2. notify the Office of Environmental Compliance, in writing, if the licensee decides not to renew the license.

D. – D.1.c. ...

d. submit a completed form to the Office of Environmental Compliance that certifies information concerning the disposition of materials; and

e. submit a radiation survey report to the Office of Environmental Compliance to confirm the absence of radioactive material or to establish the levels of residual radioactive contamination, unless the licensee demonstrates the absence of residual radioactive contamination in some other manner. The licensee shall, as appropriate:

1.e.i. – 5.c.ii.(b). ...

6. Timeliness of Decommissioning

a. Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the Office of Environmental Compliance in writing of such occurrence and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is suitable for release for unrestricted use, or submit within 12 months of notification a decommissioning plan, if required by Paragraph D.2 of this Section, and begin decommissioning upon approval of that plan if:

D.6.a.i. – E.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 24:2094 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2571 (November 2000), LR 26:2768 (December 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2527 (October 2005), LR 33:2180 (October 2007).

### **§361. Registration of Product Information**

A. ...

B. The request for review must be sent by an appropriate method to the Office of Environmental Compliance.

C. – G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:45 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2528 (October 2005), LR 33:1017 (June 2007), LR 33:2180 (October 2007).

## Subchapter E. Reciprocity

### §390. Reciprocal Recognition of Licenses

A. – A.1. ...

2. For each separate location in Louisiana, the out-of-state licensee notifies the Office of Environmental Compliance in writing at least three working or business days prior to engaging in such activity. Such notification shall indicate the location, period, and type of proposed possession and use within the state and shall be accompanied by a copy of the pertinent licensing document. If, for a specific case, the three working or business day period would impose an undue hardship on the out-of-state licensee, he or she may, upon written application to the Office of Environmental Compliance obtain permission to proceed sooner. The department may waive the requirement for filing additional written notifications following the receipt of the initial written notification from a person engaging in activities under the general license provided in this Subsection.

3. – 5. ...

6. Any out-of-state licensee who establishes a permanent office in Louisiana shall notify the Office of Environmental Compliance within 10 calendar days of establishing such office and shall, upon direction by the department and within 30 calendar days, make application for a radioactive material license in accordance with LAC 33:XV.326.E.

A.7. – B. ...

1. Such person shall file a report with the Office of Environmental Compliance within 30 calendar days after the end of each calendar quarter in which any device is transferred to or installed in this state. Each such report shall identify each general licensee to whom such device is transferred by name and address, the type of device transferred, and the quantity and type of radioactive material contained in the device.

B.2. – C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2574 (November 2000), LR 26:2768 (December 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2528 (October 2005), LR 33:2181 (October 2007).

## Subchapter Z. Appendices

### §399. Schedules A and B, and Appendices A, B, C, D, E, F, and G

Schedule A. – Appendix A. ...

#### Appendix B

#### Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds will be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This Appendix establishes criteria for passing the

financial test and for obtaining the parent company guarantee.

A. – A.2.c. ...

B. The parent company's independent certified public accountant must have compared the data used by the parent company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform the Office of Environmental Compliance within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

C. ...

D. If the parent company no longer meets the requirements of Subsection A of this Appendix, the licensee must send notice to the Office of Environmental Compliance of intent to establish alternate financial assurance as specified in these regulations. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the parent company no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

E. ...

1. the parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the Office of Environmental Compliance. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the department, as evidenced by the return receipt;

2. – 4. ...

Appendix C. – Appendix G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 20:180 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2574 (November 2000), LR 27:1228 (August 2001), amended by the Office of Environmental Assessment, LR 31:46 (January 2005), LR 31:1580 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2528 (October 2005), LR 32:820 (May 2006), LR 32:1853 (October 2006), LR 33:449 (March 2007), LR 33:1017 (June 2007), LR 33:2181 (October 2007).

## Chapter 4. Standards for Protection against Radiation

### Subchapter C. Surveys and Monitoring

#### §430. General

A. – C.1.b. ...

2. Dosimetry reports received from the processor must be recorded and maintained indefinitely or until the Office of Environmental Compliance terminates the license.

D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November

1993), amended LR 20:653 (June 1994), LR 22:971 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:1468 (August 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2529 (October 2005), LR 33:2181 (October 2007).

#### **Subchapter D. Control of Exposure From External Sources in Restricted Areas**

##### **§436. Control of Access to High Radiation Areas**

A. – B. ...

C. The licensee or registrant may apply to the Office of Environmental Compliance for approval of alternative methods for controlling access to high radiation areas.

D. – G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2576 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2529 (October 2005), LR 33:2182 (October 2007).

##### **§438. Control of Access to Very High Radiation Areas - Irradiators**

A. – B.9.b. ...

c. the licensee or registrant shall submit to the Office of Environmental Compliance and adhere to a schedule for periodic tests of the entry control and warning systems;

10. – 11. ...

C. Licensees, registrants, or applicants for licenses or registrations for sources of radiation within the purview of Subsection B of this Section that will be used in a variety of positions or in locations, such as open fields or forests, that make it impracticable to comply with certain requirements of Subsection B of this Section, such as those for the automatic control of radiation levels, may apply to the Office of Environmental Compliance for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to those specified in Subsection B of this Section. At least one of the alternative measures shall include an entry-preventing interlock control based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such sources of radiation are used.

D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2576 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2529 (October 2005), LR 33:2182 (October 2007).

#### **Subchapter E. Respiratory Protection and Controls to Restrict Internal Exposure in Restricted Areas**

##### **§442. Use of Individual Respiratory Protection Equipment**

A. – A.1. ...

2. the licensee or registrant may use equipment that has not been tested or certified by NIOSH/MSHA, has not had certification extended by NIOSH/MSHA, or for which there is no schedule for testing or certification, provided the licensee or registrant has submitted to the Office of Environmental Compliance and the Office of Environmental Compliance has approved an application for authorized use of that equipment, including a demonstration by testing, or a demonstration on the basis of test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use;

A.3. – B.1. ...

2. the licensee or registrant shall obtain authorization from the Office of Environmental Compliance before assigning respiratory protection factors in excess of those specified in LAC 33:XV.499.Appendix A. The department may authorize a licensee or registrant to use higher protection factors on receipt of an application that:

B.2.a. – C. ...

D. The licensee or registrant shall notify the Office of Environmental Compliance in writing at least 30 days before the date that respiratory protection equipment is first used pursuant to either Subsection A or B of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 22:972 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2577 (November 2000), LR 29:1469 (August 2003), LR 30:1666 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2529 (October 2005), LR 32:812 (May 2006), LR 33:2182 (October 2007).

#### **Subchapter H. Waste Disposal**

##### **§461. Method for Obtaining Approval of Proposed Disposal Procedures**

A. A licensee or registrant or applicant for a license or registration may apply to the Office of Environmental Compliance for approval of proposed procedures, not otherwise authorized in these regulations, to dispose of licensed or registered sources of radiation generated in the licensee's or registrant's operations. Each application shall include:

1. – 4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment,



Environmental Planning Division, LR 26:2577 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2529 (October 2005), LR 33:2182 (October 2007).

#### **Subchapter J. Records**

##### **§488. Reports of Planned Special Exposures**

A. The licensee or registrant shall submit a written report to the Office of Environmental Compliance within 30 days following any planned special exposure conducted in accordance with LAC 33:XV.415, informing the department that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by LAC 33:XV.475.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2579 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2530 (October 2005), LR 33:2183 (October 2007).

##### **§490. Reports of Individual Monitoring**

A. – A.3, Footnote <sup>a</sup>. ...

B. Each licensee or registrant in a category listed in Subsection A of this Section shall submit to the Office of Environmental Compliance an annual report of the results of individual monitoring carried out by the licensee or registrant for each individual for whom monitoring was required by LAC 33:XV.431 during that year. The licensee or registrant may include additional data for individuals for whom monitoring was provided but not required. The licensee or registrant shall use department Form DRC-5 or equivalent or electronic media containing all the information required by department Form DRC-5.

C. The licensee or registrant shall file the report required by Subsection B of this Section, covering the preceding year, on or before April 30 of each year. The licensee or registrant shall submit the report to the Office of Environmental Compliance.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2579 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2530 (October 2005), LR 33:2183 (October 2007).

#### **Subchapter K. Additional Requirements**

##### **§496. Vacating Premises**

A. Each specific licensee or registrant shall, no less than 30 days before vacating or relinquishing possession or control of premises that may have been contaminated with radioactive material as a result of his activities, notify the Office of Environmental Compliance in writing of intent to vacate. When deemed necessary by the department, the licensee shall decontaminate the premises in such a manner as the department may specify.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2580 (November 2000),

amended by the Office of the Secretary, Legal Affairs Division, LR 31:2530 (October 2005), LR 33:2183 (October 2007).

#### **Subchapter Z. Appendices**

##### **§499. Appendices A, B, C, D, E**

Appendix A. – Appendix C, Footnote<sup>1</sup>. ...

##### **Appendix D**

##### **Requirements for Transfer of Low-Level Radioactive Waste for Disposal at Land Disposal Facilities and Manifests**

A. – H.2.g. ...

h. notify the shipper and the Office of Environmental Compliance when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.

3. – 3.j. ...

k. notify the shipper and the Office of Environmental Compliance when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.

4. – 4.b. ...

c. notify the shipper and the Office of Environmental Compliance when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.

5. – 5.a. ...

b. be traced and reported. The investigation shall include tracing the shipment and filing a report with the Office of Environmental Compliance. Each licensee who conducts a trace investigation shall file a written report with the Office of Environmental Compliance within two weeks of completion of the investigation.

Appendix E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular 2104.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 20:653 (June 1994), LR 22:973 (October 1996), LR 24:2096 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2580 (November 2000), LR 28:1012 (May 2002), amended by the Office of Environmental Assessment, LR 31:48 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2530 (October 2005), LR 33:2183 (October 2007).

#### **Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations**

#### **Subchapter B. Personal Radiation Safety Requirements for Radiographers**

##### **§575. Training and Testing**

A. – A.2.c. ...

d. The current Form DRC-20, available from the department or the department's website, must be submitted to the Office of Environmental Compliance documenting the on-the-job training.

A.3. – B.5. ...

6. The current Form DRC-20, available from the department or the department's website, must be submitted to the Office of Environmental Compliance documenting the on-the-job training, instruction in the subjects outlined in

Appendix A in this Chapter, and successful completion of a company-specific written examination.

B.7. – E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), LR 20:999 (September 1994), LR 23:1138 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2583 (November 2000), LR 27:1235 (August 2001), LR 28:1951 (September 2002), LR 29:34 (January 2003), LR 29:1470 (August 2003), amended by the Office of Environmental Assessment, LR 30:2029 (September 2004), LR 31:54 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2531 (October 2005), LR 33:2183 (October 2007).

### **§577. Personnel Monitoring Control**

A. – C. ...

D. Direct reading dosimeters, such as electronic personal dosimeters or pocket dosimeters, shall be read and exposures recorded at least daily with use at the beginning and end of each shift, and records must be maintained for three years or until the Office of Environmental Compliance authorizes their disposition.

E. If an individual's pocket dosimeter is discharged beyond its range (i.e., goes "off-scale"), or an individual's electronic pocket dosimeter reads greater than 2 millisieverts (200 millirems) and the possibility of radiation exposure cannot be ruled out as the cause, industrial radiographic operations by that individual shall cease and the individual's personnel dosimeter shall be sent for processing immediately. The individual shall not return to work with sources of radiation until a determination of the radiation exposure has been made. This determination must be made by the RSO or the RSO's designee. The results of this determination must be recorded and maintained indefinitely or until the Office of Environmental Compliance authorizes their disposition.

F. Records of the pocket dosimeter readings shall be maintained for inspection by the department for three consecutive years. If the dosimeter readings were used to determine external radiation dose, the records shall be maintained indefinitely or until the Office of Environmental Compliance authorizes their disposition.

G. If a personnel dosimeter is lost or damaged, the worker shall cease work immediately until a replacement personnel dosimeter is provided and the exposure is calculated for the time period from issuance to loss or damage of the personnel dosimeter. The results of the calculated exposure and the time period for which the personnel dosimeter was lost or damaged must be recorded and maintained indefinitely or until the Office of Environmental Compliance authorizes their disposition.

H. – H.4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2583 (November 2000), LR 27:1235 (August 2001), LR 28:1951 (September 2002), LR

29:35 (January 2003), LR 29:1470 (August 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2531 (October 2005), LR 33:2184 (October 2007).

### **§578. Reciprocity**

A. – A.2. ...

3. the applicant presents the certification to the Office of Environmental Compliance prior to entry into Louisiana; and

A.4. – B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2583 (November 2000), LR 29:35 (January 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2531 (October 2005), LR 33:2184 (October 2007).

### **§579. Identification (I.D.) Cards for Radiographers or Radiographer Trainees**

A. – A.3. ...

4. Any individual who wishes to replace his/her I.D. card shall submit to the Office of Environmental Compliance a written request for a replacement I.D. card, stating the reason a replacement I.D. card is needed. A non-refundable fee of \$26 shall be paid to the department for each replacement of an I.D. card. The prescribed fee shall be submitted with the written request for a replacement I.D. card. The individual shall maintain a copy of the request in his/her possession while performing industrial radiographic operations until a replacement I.D. card is received from the department.

B. – E.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2584 (November 2000), LR 29:36 (January 2003), LR 29:691 (May 2003), LR 29:2053 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2531 (October 2005), LR 33:2184 (October 2007).

## **Chapter 6. X-Rays in the Healing Arts**

### **§603. General and Administrative Requirements**

A. – A.10.c. ...

11. Any person proposing to conduct a healing arts screening program shall not initiate such a program without prior approval of the department. When requesting such approval, that person shall submit the information outlined in LAC 33:XV.699. Appendix C to the Office of Environmental Compliance. If any information submitted to the department becomes invalid or outdated, the Office of Environmental Compliance shall be immediately notified. See the definition of *healing arts screening* in LAC 33:XV.602.

A.12. – B.3.g. ...

C. Plans Review

1. Except for dedicated mammography radiographic systems, podiatric radiographic systems, panoramic dental radiographic systems, and intraoral dental radiographic systems, prior to construction, the floor plans and equipment arrangement of all new installations, or modifications of

existing installations, utilizing X-rays for diagnostic or therapeutic purposes shall be submitted to the Office of Environmental Compliance for review and approval. The required information is specified in LAC 33:XV.699.Appendices A and B.

2. – 4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 22:976 (October 1996), LR 23:1139 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2585 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2532 (October 2005), LR 33:2184 (October 2007).

#### **§608. Therapeutic X-Ray Systems of Less Than 1 MeV**

A. – C.1.a. ...

b. the registrant or licensee shall obtain a written report of the survey from the qualified expert, and a copy of the report shall be transmitted by the registrant or licensee to the Office of Environmental Compliance within 30 calendar days of receipt of the report; and

1.c. – 3. ...

a. the spot-check procedures shall be in writing and shall have been developed by a qualified expert. A copy of the procedures shall be submitted to the Office of Environmental Compliance prior to their implementation;

3.b. – 4.e. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2586 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2532 (October 2005), LR 33:2185 (October 2007).

### **Chapter 7. Use of Radionuclides in the Healing Arts**

#### **§704. Notifications**

A. A licensee shall provide to the Office of Environmental Compliance a copy of the board certification, the Nuclear Regulatory Commission or agreement state license, or the permit issued by a licensee of broad scope for each individual no later than 30 days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist in accordance with LAC 33:XV.703.A.2.

B. A licensee shall notify the Office of Environmental Compliance by letter no later than 30 days after:

1. – 2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2101 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2587 (November 2000), LR 30:1173 (June 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2532 (October 2005), LR 33:2185 (October 2007).

#### **§710. Report and Notification of a Dose to an Embryo/Fetus or a Nursing Child**

A. – F. ...

1. annotate a copy of the report provided to SPOC with:

1.a. – 2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:1174 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2185 (October 2007).

#### **§719. Requirements for Possession of Sealed Sources and Brachytherapy Sources**

A. – E.1. ...

2. file a written report with the Office of Environmental Compliance within five days of receiving the leak test results describing the equipment involved, the test results, and the action taken.

F. – O. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2589 (November 2000), LR 30:1176 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2533 (October 2005), LR 33:2185 (October 2007).

#### **§737. Safety Precautions**

A. – A.6. ...

7. submit to the Office of Environmental Compliance an acceptable procedure to measure the thyroid burden of each individual who helps prepare or administer a dosage of iodine-131. Measurements shall be performed within three days after administering the dosage, and records shall include each thyroid burden measurement, date of measurement, the name of the individual whose thyroid burden was measured, and the initials of the individual who made the measurements. The records shall be retained for the period required by LAC 33:XV.472.B.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2105 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2589 (November 2000), LR 30:1178 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2533 (October 2005), LR 32:813 (May 2006), LR 33:2185 (October 2007).

#### **§761. Reports of Teletherapy Surveys, Checks, Tests, and Measurements**

A. A licensee shall furnish a copy of the records required in LAC 33:XV.758, 759, and 760, and the output from the teletherapy source expressed as rems (sieverts) per hour at 1 meter from the source as determined during the full calibration required in LAC 33:XV.756 to the Office of Environmental Compliance within 30 days following completion of the action that initiated the record requirement.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2590 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2533 (October 2005), LR 33:2185 (October 2007).

## **Chapter 8. Radiation Safety Requirements for Analytical X-Ray Equipment**

### **§803. Equipment Requirements**

A. Safety Device. A device which prevents the entry of any portion of an individual's body into the primary X-ray beam path or which causes the beam to be shut off upon entry into its path shall be provided on all open-beam configurations. A registrant or licensee may apply to the Office of Environmental Compliance for an exemption from the requirement of a safety device. Such application shall include:

A.1. – H. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2591 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2533 (October 2005), LR 33:2186 (October 2007).

## **Chapter 9. Radiation Safety Requirements for Particle Accelerators**

### **Subchapter B. Radiation Safety Requirements for the Use of Particle Accelerators**

#### **§907. Shielding and Safety Design Requirements**

A. A qualified expert, specifically accepted in writing by the department, shall be consulted in the design of a particle accelerator installation and shall be called upon to perform a radiation survey when the accelerator is first capable of producing radiation. A copy of the survey shall be submitted to the Office of Environmental Compliance.

B. Plans for construction of new accelerator installations shall be submitted to the Office of Environmental Compliance for approval prior to commencement of construction.

C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2592 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2533 (October 2005), LR 33:2186 (October 2007).

#### **§911. Radiation Monitoring Requirements**

A. ...

B. A radiation protection survey shall be performed, documented, and submitted to the Office of Environmental Compliance by a qualified expert specifically approved in writing by the department when changes have been made in shielding, operation, equipment, or occupancy of adjacent areas.

C. – H. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2592 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2533 (October 2005), LR 33:2186 (October 2007).

## **Chapter 10. Notices, Instructions, and Reports to Workers; Inspections**

### **§1016. Requests by Workers for Inspections**

A. Any worker or representative of workers believing that a violation of the act, LAC 33:XV, or license conditions exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged may request an inspection by giving notice of the alleged violation to the Office of Environmental Compliance. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by the department no later than at the time of inspection except that, upon the request of the worker giving such notice, such worker's name and the names of individuals referred to therein shall not appear in such copy or on any record published, released, or made available by the department, except for good cause shown.

B. – C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2593 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2534 (October 2005), LR 33:2186 (October 2007).

### **§1017. Inspections Not Warranted: Informal Review**

#### **A. Notification to Complainant and Informal Review**

1. If the department determines, with respect to a complaint filed under LAC 33:XV.1016, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists, is occurring, or has occurred, the department shall notify the complainant in writing of such determination. The complainant may obtain review of such determination by submitting a written statement of position with the administrative authority, who will provide the licensee or registrant with a copy of such statement by certified mail, return receipt requested, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position with the Office of Environmental Compliance, who will provide the complainant with a copy of such statement by certified mail, return receipt requested.

A.2. – B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569

(October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2594 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2534 (October 2005), LR 33:2186 (October 2007).

## **Chapter 11. Radiation Safety Requirements for Radioactive Mineral Tailings and Industrial Byproduct Piles**

### **§1103. Sale or Transfer of the Site**

A. The Office of Environmental Compliance shall be given written notice 30 days in advance of any contemplated transfer of right, title or interest in the site by deed, lease or other conveyance. The written notice shall contain the name and address of the proposed purchaser or transferee.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2594 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2534 (October 2005), LR 33:2187 (October 2007).

### **§1104. Abandonment of the Site**

Prior to abandonment of the site, the requirements of this Section shall be fulfilled.

A. – C. ...

D. Detailed plans for compliance with Subsections A, B, and C of this Section shall be submitted to the Office of Environmental Compliance for review and approval.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2594 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2534 (October 2005), LR 33:2187 (October 2007).

## **Chapter 13. Licensing Requirements for Land Disposal of Radioactive Waste**

### **Subchapter A. General Provisions**

#### **§1303. License Required**

A. ...

B. Each person shall file an application with the Office of Environmental Compliance pursuant to LAC 33:XV.324 of these regulations and obtain a license as provided in this Chapter before commencement of construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2595 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2534 (October 2005), LR 33:2187 (October 2007).

#### **§1309. Institutional Information**

The institutional information submitted to the Office of Environmental Compliance by the applicant shall include:

A. – B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2595 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2535 (October 2005), LR 33:2187 (October 2007).

### **§1314. Contents of Application for Site Closure and Stabilization**

A. Prior to final closure of the disposal site, or as otherwise directed by the department, the applicant shall submit an application to the Office of Environmental Compliance to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included as part of the license application submitted under LAC 33:XV.1307.G that includes each of the following:

A.1. – B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2596 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2535 (October 2005), LR 33:2187 (October 2007).

### **Subchapter C. Technical Requirements for Land Disposal Facilities**

#### **§1325. Land Disposal Facility Operation and Disposal Site Closure**

A. – A.11. ...

12. Proposals for disposal of waste that is not generally acceptable for near-surface disposal because the waste form and disposal methods must be different and, in general, more stringent than those specified for Class C waste, may be submitted to the Office of Environmental Compliance for approval.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2596 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2535 (October 2005), LR 33:2187 (October 2007).

### **Subchapter D. Financial Assurances**

#### **§1331. Funding for Disposal Site Closure and Stabilization**

A. – B. ...

C. The licensee's financial or surety arrangement shall be submitted annually for review by the Office of Environmental Compliance to ensure that sufficient funds will be available for completion of the closure plan.

D. ...

E. The financial or surety arrangement shall be written for a specified period of time and shall be automatically renewed unless the person who issues the surety notified the Office of Environmental Compliance, the beneficiary [the site owner], and the principal [the licensee] not less than 90 days prior to the renewal date of its intention not to renew. In

such a situation, the licensee must submit a replacement surety within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the department, the beneficiary may collect on the original surety.

F. – H. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2597 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2535 (October 2005), LR 33:2187 (October 2007).

### **§1332. Financial Assurances for Institutional Controls**

A. Prior to the issuance of the license, the applicant shall provide for Office of Environmental Compliance approval a binding arrangement between the applicant and the disposal site owner that ensures that sufficient funds will be available to cover the costs of monitoring and any required maintenance during the institutional control period. The binding arrangement shall be reviewed annually by the department to ensure that changes in inflation, technology, and disposal facility operations are reflected in the arrangements.

B. Subsequent changes to the binding arrangement specified in Subsection A of this Section relevant to institutional control shall be submitted to the Office of Environmental Compliance for prior approval.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2597 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2535 (October 2005), LR 33:2188 (October 2007).

### **Subchapter E. Records, Reports, Tests, and Inspections**

#### **§1333. Maintenance of Records, Reports, and Transfers**

A. – E. ...

F. Each licensee authorized to dispose of waste received from other persons shall file a copy of its financial report or a certified financial statement annually with the Office of Environmental Compliance in order to update the information base for determining financial qualifications.

G. Each licensee authorized to dispose of waste received from other persons, in accordance with this Chapter, shall submit annual reports to the Office of Environmental Compliance. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year.

G.1. – J.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 24:2111 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2598 (November 2000), LR 27:1238 (August 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2535 (October 2005), LR 33:2188 (October 2007).

## **Chapter 14. Regulation and Licensing of Naturally Occurring Radioactive Material (NORM)**

### **§1407. Surveys**

A. – B. ...

C. Upon completion of survey(s) of equipment and facilities that verify that NORM regulated by this Chapter is not present, an individual may submit documentation to the Office of Environmental Compliance indicating that the equipment and facilities are exempt from the requirements of this Chapter pursuant to LAC 33:XV.1404.

D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 21:26 (January 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2599 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2536 (October 2005), LR 33:2188 (October 2007).

### **§1408. General License**

A. ...

1. Persons subject to the general license shall notify the Office of Environmental Compliance by filing the Notification of NORM Form (Form RPD-36) with the department.

2. A confirmatory survey showing the presence of NORM in excess of exempt levels provided in LAC 33:XV.1404 shall be submitted to the Office of Environmental Compliance.

3. Each general licensee performing on-site maintenance on contaminated facilities, sites, or equipment or the excavation of land shall establish and submit to the Office of Environmental Compliance for approval written procedures as outlined in LAC 33:XV.1499. Appendix B to ensure worker protection and for the survey (or screening) of sites and equipment.

4. ...

5. Each general licensee shall establish and submit to the Office of Environmental Compliance for approval written procedures for the survey (or screening) of sites and equipment to ensure that NORM is not released for unrestricted use except under the provisions of LAC 33:XV.1417.

6. – 6.a. ...

b. To store NORM waste in a container for up to 365 days from generation, a general licensee must first submit a written NORM waste management plan to the Office of Environmental Compliance and receive authorization from the department. The general licensee may store NORM waste in containers up to 365 days from generation under the written NORM waste management plan while waiting for department determination.

A.7. – E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 21:26 (January 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2599 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2536 (October 2005), LR 33:2188 (October 2007).

**§1410. General Licenses: Pipe Yards, Storage Yards, or Production Equipment Yards**

A. – A.1. ...

2. a program is developed and submitted to the Office of Environmental Compliance for approval to screen incoming shipments to ensure that the 50-microroentgens-per-hour limit is not exceeded for individual pieces of tubular goods or equipment;

3. a program is developed and submitted to the Office of Environmental Compliance for approval to ensure worker protection, as outlined in LAC 33:XV.1499.Appendix B;

4. a program is developed and submitted to the Office of Environmental Compliance for approval to control soil contamination;

5. a program is developed and submitted to the Office of Environmental Compliance for approval to prevent release of NORM contamination beyond the site boundary;

6. a program is developed and submitted to the Office of Environmental Compliance for approval for surveying and decontamination to ensure that soil contamination is not allowed to exceed 200 picocuries per gram of radium-226 or radium-228 or an exposure rate of 50 microroentgens per hour at one meter from the soil at any time;

7. a plan for cleanup is submitted to the Office of Environmental Compliance within 180 days of the discovery of NORM contaminated soil in excess of the limit in Paragraph A.6 of this Section. The plan shall include a schedule for cleanup that is to be approved by the department. The general licensee may include in this plan an application to the department for a one time authorization to perform this cleanup or use a specific licensee; and

A.8. – B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Nuclear Energy Division, LR 15:736 (September 1989), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:605 (June 1992), LR 21:26 (January 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2599 (November 2000), LR 30:1189 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2536 (October 2005), LR 33:2189 (October 2007).

**§1417. Release for Unrestricted Use**

A. – A.3. ...

B. If closure activities involve construction with a subsurface impact to a depth greater than three feet, prior approval by the Office of Environmental Compliance must be attached as part of the application addressing the certification of the groundwater quality. All pits, ponds, and lagoons must comply with departmental regulations and/or policies dealing with groundwater quality.

C. Unless otherwise directed in writing by the department, in order to release property for unrestricted use, a licensee shall submit a plan for the decontamination to the Office of Environmental Compliance for approval. Upon approval, the licensee shall implement the plan in accordance with such approval.

C.1. – E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation

Protection, Radiation Protection Division, LR 18:607 (June 1992), amended LR 21:28 (January 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2600 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2537 (October 2005), LR 33:2189 (October 2007).

**§1418. NORM Manifests**

A. – C.6. ...

7. The licensee receiving a shipment is required to report to the Office of Environmental Compliance and to the licensee initiating the shipment any irregularities between the NORM actually received by the designated facility and the NORM described on the manifest, or any other irregularities, within 15 days. If the designated facility or receiving licensee is outside the state of Louisiana, the generating or originating licensee must report the irregularities to the department.

D. – E.3. ...

a. notify the Office of Environmental Compliance in writing within seven days;

b. ...

c. report the results of the investigation to the Office of Environmental Compliance.

F. – G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:608 (June 1992), amended LR 21:28 (January 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2600 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2537 (October 2005), LR 33:2189 (October 2007).

**§1420. Financial Security Requirements for NORM Treaters or Storers**

A. – B. ...

C. On the effective date of these rules, current licenses in effect may continue, provided that the required security arrangements are submitted to the Office of Environmental Compliance within 120 days.

D. – E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:609 (June 1992), amended LR 21:30 (January 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2601 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2537 (October 2005), LR 33:2189 (October 2007).

**Chapter 15. Transportation of Radioactive Material §1515. Reports**

A. The licensee shall report to the Office of Environmental Compliance within 30 days:

1. – 3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1269 (June 2000), LR 26:2602 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2537 (October 2005), LR 33:2189 (October 2007).

**§1516. Advance Notification of Transport of Nuclear Waste**

A. – C.6. ...

D. The notification required by LAC 33:XV.1516.A shall be made in writing to the office of each appropriate governor or governor's designee and to the Office of Environmental Compliance. A notification delivered by mail must be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur. A notification delivered by messenger must reach the office of the governor, or governor's designee, at least four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur. A copy of the notification shall be retained by the licensee for three years.

E. The licensee shall notify each appropriate governor, or governor's designee, and the Office of Environmental Compliance of any changes to schedule information provided in accordance with Subsection A of this Section. Such notification shall be by telephone to a responsible individual in the office of the governor, or governor's designee, of the appropriate state or states. The licensee shall maintain for three years a record of the name of the individual contacted.

F. Each licensee who cancels a nuclear waste shipment, for which advance notification has been sent, shall send a cancellation notice to the governor, or governor's designee, of each appropriate state and to the Office of Environmental Compliance. A copy of the notice shall be retained by the licensee for three years.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1269 (June 2000), LR 26:2602 (November 2000), amended by the Office of Environmental Assessment, LR 30:2029 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2537 (October 2005), LR 33:2190 (October 2007).

**Chapter 17. Licensing and Radiation Safety Requirements for Irradiators**

**§1707. Start of Construction**

A. An applicant for a license shall not begin construction of a new irradiator prior to the submission to the Office of Environmental Compliance of both an application for a license for the irradiator and any fee required by the applicable state requirement or statute. As used in this Chapter, the term *construction* includes the construction of any portion of the permanent irradiator structure on the site but does not include engineering and design work, purchase of a site, site surveys or soil testing, site preparation, site excavation, construction of warehouse or auxiliary structures, and other similar tasks. Any activities undertaken prior to the issuance of a license are entirely at the risk of the applicant and have no bearing on the issuance of a license with respect to the requirements of the appropriate state statute, rules, regulations, and orders issued under the appropriate state statute.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 24:2113 (November

1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2603 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2538 (October 2005), LR 33:2190 (October 2007).

**§1711. Request for Written Statements**

A. Each license is issued with the condition that the licensee shall, at any time before expiration of the license and upon the department's request, submit a written statement to the Office of Environmental Compliance to enable the department to determine whether the license should be modified, suspended, or revoked.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 24:2113 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2603 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2538 (October 2005), LR 33:2190 (October 2007).

**§1755. Records and Retention Periods**

A. – A.2. ...

3. a copy of the current operating and emergency procedures required by LAC 33:XV.1737 until superseded or the Office of Environmental Compliance terminates the license. Records of the radiation safety officer's review and approval of changes in procedures, as required by LAC 33:XV.1737.C.3, shall be retained for three years from the date of the change;

A.4. – B. ...

1. a copy of the license, the license conditions, documents incorporated into the license by reference, and amendments thereto until superseded by new documents or until the Office of Environmental Compliance terminates the license for documents not superseded;

2. personnel dosimeter evaluations required by LAC 33:XV.1739 until the Office of Environmental Compliance terminates the license;

3. – 5. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 24:2120 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2604 (November 2000), LR 29:1471 (August 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2538 (October 2005), LR 33:2190 (October 2007).

**Chapter 20. Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies**

**§2014. Leak Testing of Sealed Sources**

A. ...

B. Method of Testing. Tests for leakage shall be performed only by persons specifically authorized to perform such tests by the Office of Environmental Compliance, the U.S. Nuclear Regulatory Commission, an agreement state, or a licensing state. The wipe of a sealed source must be performed using a leak test kit or method approved by the department, the U.S. Nuclear Regulatory Commission, or an agreement state. The test sample shall be taken from the surface of the source, source holder, or from the surface of the device in which the source is stored or



mounted and on which one might expect contamination to accumulate. The test sample shall be analyzed for radioactive contamination by a person approved by the department, the U.S. Nuclear Regulatory Commission, or an agreement state to perform the analysis. The analysis shall be capable of detecting the presence of 0.005 microcurie (185 Bq) of radioactive material on the test sample.

C. – E.5. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2604 (November 2000), LR 29:1471 (August 2003), LR 30:1667 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2538 (October 2005), LR 33:2190 (October 2007).

### **§2017. Design, Performance, and Certification Criteria for Sealed Sources Used in Downhole Operations**

A. Each sealed source, except those containing radioactive material in gaseous form, used in downhole operations and manufactured after October 20, 1988, shall be certified by the manufacturer, or other testing organization acceptable to the Office of Environmental Compliance, to meet the following minimum criteria:

A.1. – B. ...

C. Each sealed source, except those containing radioactive material in gaseous form, used in downhole operations after October 20, 1988, shall be certified by the manufacturer, or other testing organization acceptable to the Office of Environmental Compliance, as meeting the sealed source performance requirements for oil well-logging as contained in the American National Standard N542, "Sealed Radioactive Sources, Classification," in effect on October 20, 1987.

D. Certification documents shall be kept and maintained for inspection by the Office of Environmental Compliance for a period of two years after source disposal. If the source is abandoned downhole, the certification documents shall be maintained until the Office of Environmental Compliance authorizes disposition in writing.

E. – G.2. ...

H. Use of a Sealed Source in a Well Without a Surface Casing. The licensee may use a sealed source in a well without a surface casing for protecting fresh water aquifers only if the licensee follows a procedure for reducing the probability of the source becoming lodged in the well. The procedure must be approved by the Office of Environmental Compliance.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2605 (November 2000), LR 29:1472 (August 2003), amended by the Office of Environmental Assessment, LR 31:55 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2538 (October 2005), LR 33:2191 (October 2007).

## **Subchapter A. Requirements for Personnel Safety**

### **§2022. Personnel Monitoring**

A. ...

B. Personnel monitoring records shall be maintained for inspection until the Office of Environmental Compliance authorizes disposition.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2605 (November 2000), LR 29:1472 (August 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2539 (October 2005), LR 33:2191 (October 2007).

## **Chapter 25. Fee Schedule**

### **§2506. Reciprocal Agreements—Licenses and Registrants**

A. Persons operating within Louisiana under the provisions of LAC 33:XV.212 or LAC 33:XV.390 shall submit to the Office of Environmental Compliance the annual fee of the applicable category before the first entry into the state. The fee will allow reciprocal recognition of the license or registration for one year from the date of receipt.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, LR 10:1013 (December 1984), amended by the Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:718 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2607 (November 2000), LR 29:1816 (September 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2539 (October 2005), LR 33:2191 (October 2007).

### **§2507. Reimbursements**

A. One-half of the annual fee will be reimbursed to the licensee or registrant upon receipt of a written request to terminate the license or registration, provided that the request has been received by the Office of Environmental Compliance within 180 days after the annual fee due date, and the fee has not been delinquent. Requests for termination of the license or registration received after 180 days of the annual fee due date will not entitle the licensee or registrant to reimbursement of any portion of the annual fee. No interest, legal or otherwise, will be paid on the funds withheld prior to reimbursement.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, LR 10:1013 (December 1984), amended by the Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:718 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2607 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2539 (October 2005), LR 33:2191 (October 2007).

**§2508. Determination of Fee**

A. – C. ...

D. Electronic products that are in storage are subject to the same initial application fee and annual maintenance fee unless the X-ray unit is rendered permanently incapable of producing radiation and this fact is documented in writing to the Office of Environmental Compliance.

E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, LR 10:1013 (December 1984), amended by the Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:718 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1441 (July 2000), LR 26:2607 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2539 (October 2005), LR 33:2192 (October 2007).

Herman Robinson, CPM  
Executive Counsel

0710#016

**RULE**

**Department of Health and Hospitals  
Board of Examiners for Speech-Language  
Pathology and Audiology**

**General Provisions**

(LAC 46:LXXV.103-109, 115-135, 501, 512, and 701)

In accordance with the applicable provisions of R.S. 950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 37:2656 vesting the Louisiana Board of Examiners for Speech-Language Pathology and Audiology with the responsibility for administration of the provisions of that Chapter, and to establish licensure and other necessary administrative fees, and granting the power to adopt and promulgate rules with respect thereto, the Board of Examiners for Speech-Language Pathology and Audiology finds that it is necessary to revise and amend provisions of the rules, regulations and procedures relative to the temporary registration of Speech Pathologists and Audiologists during a declared state of public health emergency, as well as provide for the clarification of supervision requirements, an increase in video rental fees from \$15 to \$20 per video utilized for continuing education, and disciplinary action relative to current board policies and procedures. The temporary registration of professionals during a declared emergency is required by Act 207 of the 2006 Regular Session of the Louisiana Legislature.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXV. Speech Pathology and Audiology**

**Chapter 1. General Rules**

**§103. Definitions**

A. ...

*Aides*—individuals not licensed by the Louisiana Board of Examiners for Speech-Language Pathology and Audiology (LBESPA) who, after appropriate training,

perform tasks that are prescribed, directed, and supervised by speech-language pathologists or audiologists licensed in accordance with R.S. 37:2659(A). Licensed speech-language pathologists and licensed audiologists are legally, ethically, and morally responsible for the services provided by aides working under their direction.

\*\*\*

*Nine Months of Full-Time Supervised Postgraduate Professional Employment/Experience*—nine calendar months.

*On-Site In-View Observation*—the supervisor observing the licensee engaging in a specified clinical activity with his/her patient/client. The supervisor shall accomplish this task either by being physically present in the room or through the use of a live video monitor or web cam.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:705 (October 1988), amended LR 22:346 (May 1996), LR 27:197 (February 2001), LR 28:1781 (August 2002), LR 30:2307 (October 2004), LR 33:2192 (October 2007).

**§105. Designations**

A. - B.1. ...

C. Titles and academic credential designations must represent earned degrees obtained through regionally accredited university programs. To appropriately represent the level of education in the area of practice, when listing an educational designation, the licensee must list the highest degree earned in speech-language pathology or audiology. In addition, graduate degrees earned in other disciplines must specify the area in which the degree was earned [e.g., B.S. (Speech-Language Therapy), M.Ed. (Administration)]. When listing credentials, licensees should sequentially list their name, educational designation, license designation, and professional certification, e.g., M.A., L-SLP, CCC-SLP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 22:346 (May 1996), amended LR 27:197 (February 2001), LR 30:2308 (October 2004), LR 33:2192 (October 2007).

**§107. Qualifications for Licensure**

A. Coursework Requirements: Audiology License and Provisional Audiology License. The applicant shall submit official transcripts from one or more regionally accredited colleges or universities evidencing completion of at least 75 semester credit hours of post-baccalaureate coursework for applicants who began a doctoral program after January 1, 2005.

B. - C.2.c. ...

D. Coursework Requirements: Speech-Language Pathology License and Provisional Speech-Language Pathology License. The applicant shall submit official transcripts from one or more regionally accredited colleges or universities evidencing completion of 75 semester credit hours, including at least 36 at the graduate level, from an accredited speech-language pathology program for applicants who began a graduate program after January 1, 2004.

E. - G. ...

1. A bachelor's degree in speech-language pathology from a regionally accredited institution fulfills the coursework requirements of the board provided the individual has successfully completed coursework in both articulation and language disorders.

2. - 4.b. ...

c. Normal Speech and Language Acquisition\* 3 semester hours

4.d. - 5.c. ...

d. Fluency Disorders 3 semester hours

5.e. - 6.c. ...

H. Clinical Practicum Hour Requirements. An individual shall submit official documentation from a regionally accredited educational institution or its cooperating programs, verifying supervised clinical practicum hours as follows.

1. Speech-Language Pathology and Provisional Speech-Language Pathology Licenses

a. 400 clinical practicum hours if graduate program began after January 1, 2004;

b. 375 clinical practicum hours if graduate program began between January 1, 1994 and January 1, 2004;

c. 300 clinical practicum hours if graduate program began prior to January 1, 1994.

2. Audiology and Provisional Audiology Licenses

a. 1820 clinical practicum hours if the graduate program began after January 1, 2005, 375 hours of which must have been obtained through direct patient/client contact;

b. 375 clinical practicum hours if graduate program began between January 1, 1994 and January 1, 2005;

c. 300 clinical practicum hours if graduate program began prior to January 1, 1994.

3. Speech-Language Pathology Assistant License

a. 225 clinical practicum hours are required, the first 100 of which shall have been obtained through a regionally accredited educational institution or its cooperating programs. Of the 100 hours obtained through a regionally accredited educational institution, 75 shall be obtained through direct patient/client contact, and the remaining 25 hours may be obtained through observation of testing and therapy. It is recommended that the direct patient/client contact hours be obtained in at least two practicum sites with one site being a public school setting. The first 75 hours of direct patient/client contact shall be obtained in the following categories:

i. minimum of 20 hours in speech disorders;

ii. minimum of 20 hours in language disorders;

iii. the remaining 35 hours may be obtained in the areas of speech, language or hearing disorders. It is recommended that a minimum of 20 hours be in articulation.

b. The remaining 125 hours may have been obtained on-the-job and/or through a regionally accredited educational institution or its cooperating programs.

4. Provisional Speech-Language Pathology Assistant License

a. A minimum of 100 clinical practicum hours which have been obtained through a regionally accredited educational institution or its cooperating programs as defined in §107.I.3 is required.

b. The additional 125 hours required to upgrade to the Speech-Language Pathology Assistant License shall be

obtained within three years of the date of issuance of the provisional assistant license and may be obtained by completing the remaining hours on-the-job and/or through a regionally accredited educational institution or its cooperating programs. Supervised on-the-job training which counts toward upgrading the license status will only be accepted from the date that the application for license is acknowledged to have been received by the board.

c. A provisional speech-language pathology assistant may surrender his/her license if unable to find employment in the area of speech-language pathology and may defer the remaining time of the three-year period to complete the licensure requirements.

i. If the licensee has never worked as a provisional speech-language pathology assistant, a notarized statement shall be submitted to the board office.

ii. If the licensee is not currently employed as a provisional speech-language pathology assistant a letter specifying date of termination from the last employer shall be submitted to the board office with Form 200, to verify supervision to the date of termination.

I. Equivalency Requirements: Speech-Language Pathology, Provisional Speech-Language Pathology, Audiology or Provisional Audiology License

1. Individuals who do not possess a graduate degree in either speech-language pathology or audiology but wish to obtain a license through the equivalency process shall meet the coursework, practicum and examination requirements for the area in which licensure is sought as defined in the board's rules entitled Coursework Requirements: Audiology License and Provisional Audiology License; Coursework Requirements: Speech-Language Pathology License and Provisional Speech-Language Pathology License; Clinical Practicum Hour Requirements and Examination Requirement.

J. - K.3 ...

4. repealed.

L. - L.1.c. ....

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:706 (October 1988), amended LR 22:346 (May 1996), LR 27:197 (February 2001), repromulgated LR 27:1690 (October 2001), amended LR 28:1781 (August 2002), LR 30:2308 (October 2004), LR 33:2192 (October 2007).

### §109. Application Procedures

A. - D. ...

E. Speech-language pathologists, assistants and/or audiologists who have held a license in another state, shall provide official verification of their licensure status in each state, including any formal disciplinary action resulting in sanction and/or disciplinary proceedings which are pending.

F. - J. ...

K. Individuals holding an unrestricted speech-language pathology or audiology license from another state shall be allowed to practice in Louisiana for five consecutive days within each renewal period upon proof of current licensure submitted to the board office 10 days prior to the scheduled activity.

L - L.1.d. ...

e. Notice of the consent order and agreement shall be published.

f. ...

M. Applications for licensure will be denied for individuals who are in default on the repayment of any loan guaranteed in accordance with R.S. 17:3023(A)(8) and 37:2951(A)(E).

N. Temporary Registration during a Declared Public Health Emergency

1. In a public health emergency lawfully declared as such by the governor of Louisiana, the requirement for a Louisiana license as an audiologist, speech-language pathologist, or speech-language pathology assistant may be suspended by the board at that time to those out of state audiologists, speech-language pathologists, or speech-language pathology assistants, whose licenses, certifications or registrations are current and unrestricted in another jurisdiction of the United States, for a period of time not to exceed the duration and scope of R.S. 29:769(E), as more particularly set forth in this Section.

2. The following requirements for temporary registration may be imposed pursuant to the declared state of emergency and shall be in accordance with rules promulgated by the board.

3. An audiologist, speech-language pathologist, or speech-language pathology assistant not licensed in Louisiana, whose licenses, certifications or registrations are current and unrestricted in another jurisdiction of the United States, may gratuitously provide audiology and speech-language pathology services if:

a. the audiologist, speech-language pathologist, or speech-language pathology assistant has photo identification and a license to verify a current and unrestricted license, certification or registration in another jurisdiction of the United States, and properly registers with the board prior to providing audiology or speech language pathology services in Louisiana as follows:

i. the audiologist, speech-language pathologist, or speech-language pathology assistant is engaged in a legitimate relief effort during the emergency period, and provides satisfactory documentation to the board of the location site(s) that he will be providing gratuitous audiology or speech-language pathology services;

ii. the audiologist, speech-language pathologist, or speech-language pathology assistant shall comply with the Louisiana Speech-Language Pathology and Audiology Practice Act, board rules, and other applicable laws, as well as practice in good faith, and within the reasonable scope of his skill, training, and ability; and

iii. the audiologist, speech-language pathologist, or speech-language pathology assistant renders services on a gratuitous basis with no revenue of any kind to be derived whatsoever from the provision of services within the state of Louisiana.

4. The authority provided for in the emergency rule shall be applicable for a period of time not to exceed 60 days at the discretion of the board, with the potential extension of up to two additional periods not to exceed 60 days for each extension as determined appropriate and necessary by the board.

5. All interested audiologists, speech-language pathologists, and speech-language pathology assistants shall submit a copy of their respective current and unrestricted licenses, certifications or registrations issued in other

jurisdictions of the United States and photographic identification, as well as other requested information, to the Louisiana Board of Examiners for Speech-Language Pathology and Audiology for registration with this agency prior to gratuitously providing audiology or speech-language pathology services in Louisiana.

6. Should a qualified audiologist, speech-language pathologist, or speech-language pathology assistant registered with the board thereafter fail to comply with any requirement or condition established by this Section, the board may terminate his registration upon notice and hearing.

7. In the event an audiologist, speech-language pathologist, or speech-language pathology assistant fails to register with the board, but practices audiology or speech-language pathology, whether gratuitously or otherwise, then such conduct will be considered the unlawful practice of audiology or speech-language pathology and prosecuted accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:352 (May 1996), LR 27:198 (February 2001), LR 28:1974 (September 2002), LR 30:2311 (October 2004), LR 33:2193 (October 2007).

#### **§115. Requirements to Upgrade License**

A. - H. ...

I. It is the responsibility of the licensee to submit the documents and make a written request for upgrade of his/her license status. Licensees shall complete all supervision requirements consistent with the license held and immediately thereafter submit appropriate supervision forms to the board office along with a written request for license upgrade and the upgrade fee. The licensee shall remain under supervision until the upgrade has been approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 22:349 (May 1996), amended LR 27:197 (February 2001), LR 28:1971 (September 2002), LR 30:2312 (October 2004), LR 33:2194 (October 2007).

#### **§117. Duties: Speech-Language Pathology Assistant License and Provisional Speech-Language Pathology Assistant License**

A.1. All duties performed by the assistant speech-language pathology licensee or provisional speech-language pathology assistant licensee shall be assigned by a licensed speech-language pathologist and shall be supervised in accordance with the rules and regulations specified by the board. Caseload assignments shall be consistent with the knowledge base and training of the licensee for the performance of the following tasks:

a. conduct speech-language screenings and assessments without interpretation, following specified protocols as approved by the supervising speech-language pathologist. An assistant may not administer a test if the publisher's examiner requirements dictate administration by a graduate-degreed individual. All screening and assessment reports shall be cosigned and interpreted by the supervising speech-language pathologist;

b. - g. ...

h. speech-language pathology assistants may participate in parent conferences, case conferences, interdisciplinary team conferences, and research projects. Provisional speech-language pathology assistants may participate in these activities only with the supervising speech-language pathologist.

2. - 2.a.viii. ...

3. Failure to comply with these rules and regulations may result in disciplinary action against the assistant and/or the supervising speech-language pathologist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 30:2312 (October 2004), amended LR 33:2194 (October 2007).

### **§119. Fees**

A. - A.4.k. ...

5. Registration fee for audiologists to dispense hearing aids—\$25.

6. ....

7. Brochures/Pamphlets—\$0.10 ea. plus postage and handling.

8. Continuing Education Pre-Approval Fee for Corporations or Individuals Who Are Not LBESPA Licensees—\$50.

9. Fax transmission—\$3 for first page; \$1 each additional page.

10. Mailing list—\$0.05 per name and address plus postage and handling.

11. NSF or returned check—\$25.

12. Open book test fee—\$30:

a. open book retest fee, per section—\$10.

13. Publications to include law, rules, etc.—\$5 ea. plus postage and handling.

14. Re-issuance of license certificate—\$25.

15. Subpoena within East Baton Rouge Parish—\$50:

a. subpoena plus state-allowed travel rate per mile outside East Baton Rouge Parish—\$50.

16. Verification of license (written)—\$5.

17. Video rental—\$20 per tape for 2 weeks:

a. \$35 for 2-tape set for 2 weeks;

b. late return fee—\$20 per tape;

c. late 30 days or more cost of tape;

d. video catalog—\$5.

18. An additional fee will be charged for on-line renewal in accordance with state treasury rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:706 (October 1988), amended LR 22:350 (May 1996), LR 27:197 (February 2001), repromulgated LR 27:1691 (October 2001) amended LR 30:2313 (October 2004), LR 33:2195 (October 2007).

### **§121. License Renewals**

A. - B. ...

C. Licensees shall list on their renewal form the licensees i.e., provisional speech-language pathologists, provisional audiologists, restricted speech-language pathologists, restricted audiologists, speech-language pathology assistants, or provisional speech-language pathology assistants, and aides that they are supervising.

D. - E. ...

F. Inactive status is granted to licensees who are retired or who do not practice speech-language pathology or audiology during the fiscal year, July 1 through June 30.

1. ...

2. Licensees on inactive status may retain their license by payment of the annual renewal fee. In order to resume the practice of speech-language pathology or audiology, licensees on inactive status shall demonstrate completion of five clock hours of continuing education in the area of licensure for each year that inactive status was maintained (maximum of 25 hours).

3. The licensee may submit the required five hours of continuing education each year he/she is on inactive status or submit all of the hours the year he/she returns to work in the profession.

G. ...

H. Renewal will be denied for licensees who are in default on the repayment of any loan guaranteed in accordance with R.S. 17:3023(A)(8) and R.S. 37:2951(A)(E).

I. Delinquent Renewal

1. Delinquent requests for renewals will be accepted by the board through October 31, provided the delinquent renewal fee is paid in accordance with §119.C and D, and the continuing education summary form is submitted.

2. A licensee whose license lapsed on November 1, and applies to reinstate prior to the following June 30, is required to submit a completed application, proof of continuing education, initial license fee and delinquent renewal fee in accordance with §119.A and D and §123.

3. A licensee whose license lapsed on November 1, and applies for reinstatement after June 30, of the following year, is subject to the initial license fee and the requirements of §121.I.3.

J. Conditional Renewal

1. Licensees who previously held a full, valid license which was obtained under the grandfather clause of Act 260 of the 1978 Regular Session of the Louisiana Legislature, whether delinquent or lapsed, for a period not to exceed five years, shall be eligible for licensure renewal or reinstatement upon meeting the continuing education requirement and submitting the appropriate renewal fee in accordance with §119. If the license has lapsed for a period of more than five years, applicants shall reapply in accordance with the requirements enumerated in R.S. 37:2651 et seq., as amended by Act 892 of the 1995 Regular Session of the Louisiana Legislature.

2. Licensees who previously held a restricted license which was obtained under Act 260 of the 1978 Regular Session of the Louisiana Legislature, whether delinquent or lapsed, shall be eligible for licensure renewal or reinstatement, upon meeting the continuing education requirement and submitting the appropriate renewal fee as required in accordance with §119 and §123.

3. Licensees who allow their license to lapse (November 1) shall submit documentation of completion of five clock hours of continuing education (maximum of 25 hours) in the area of licensure for each year that the license has lapsed in addition to meeting the license requirements enumerated in R.S. 37:2650 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:351 (May 1996), LR 27:198 (February 2001), LR 28:1972 (September 2002), LR 30:2314 (October 2004), LR 33:2195 (October 2007).

### **§123. Continuing Education Requirements**

A. - I.1. ...

2. workshops in the area of communication disorders sponsored by individual professional practitioners and/or professional organizations such as American Academy of Audiology (AAA), American Speech-Language-Hearing Association (ASHA), Louisiana Speech-Language-Hearing Association (LSHA), Speech Pathologists and Audiologists in Louisiana Schools (SPALS), Louisiana Society for Hearing Aid Specialists, etc. (maximum of 10 hours);

3. activities provided by ASHA-approved continuing education providers or AAA-approved continuing education activities;

4. meetings of related professional organizations (e.g., Council for Exceptional Children, Orton Dyslexia Society) (maximum of 10 hours);

5. college courses in the area of licensure taken for credit or official audit (three semester hours or six quarter hours = 10 hours of continuing education);

6. distance learning (video conferences, telephone seminars and Internet courses sponsored by individual private practitioners, universities, schools, clinics, state agencies, hospitals, professional organizations, or related professional organizations) (maximum of 10 hours);

7. workshops and in-services that are university, school, clinic, hospital or state agency sponsored (maximum of 5 hours in a related area, maximum of 10 hours if in the area of licensure);

8. publication of articles in a peer-reviewed journal for the year in which they are published (5 hours);

9. scientific or educational lectures to include presentations such as poster sessions given by the licensee (maximum of 5 hours);

10. audio, video and other media from the LBESPA library as well as ASHA-approved and AAA-approved continuing education media (maximum of 5 hours);

11. the presenting licensee may count 1 1/2 times the value of an activity the first time it is presented to allow for preparation time (Example: a 3 hour workshop = 4 1/2 hours). The activity will count for the actual hour value for each subsequent presentation of the same activity;

12. teaching at the college level in the area of communication disorders is not acceptable.

J. - J.2. ...

3. Individuals not licensed by LBESPA as well as corporations offering continuing education not addressed under §123.I, must submit a \$50 continuing education review fee along with the pre-approval request.

4. Licensees who elect to attend university classes/courses in speech-language pathology and/or audiology without payment of the university fee shall submit a self-study plan for pre-approval from the Louisiana Board of Examiners for Speech-Language Pathology and Audiology to receive continuing education credits.

5. Self-study activities in the area of communication disorders:

a. audio or video tapes (maximum of 5 hours);

b. reading of journal articles that contain self-examination questions at the end. Articles shall be submitted for pre-approval (maximum of 5 hours).

6. Publication of diagnostic and/or therapeutic materials (maximum of 5 hours).

K. - K.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 22:351 (May 1996), amended LR 27:199 (February 2001), LR 28:1973 (September 2002), LR 30:2314 (October 2004), LR 33:2196 (October 2007).

### **§125. Supervision Requirements for Restricted License, Provisional Speech-Language Pathology License and Provisional Audiology License**

A. Restricted licensees, provisional speech-language pathology licensees and provisional audiology licensees are required to undergo direct supervision by a licensed speech-language pathologist or audiologist, licensed in the area in accordance with R.S. 37:2659.A. The on-site in-view supervision as well as the alternative methods of supervision must occur in every work setting in which the licensee is employed. An individual may not be supervised by a provisional licensee, restricted licensee, or assistant licensee.

B. Supervision must involve the personal and direct participation of the supervisor in order for the supervisor to monitor, observe, evaluate, and make suggestions for improvement regarding the supervisee's professional employment.

C. Restricted licensees, provisional speech-language pathology licensees and provisional audiology licensees must submit a supervisory agreement signed by the supervisor and supervisee as prescribed by the board. The form must be submitted to the board by the supervisee within 30 days of employment and submitted annually at the time of renewal. If there is a change in supervisor(s) at any time, a new supervisory agreement must be submitted to the board within 30 days of the change in supervision. If there are multiple supervisors for the same supervisee, all supervisors must sign the supervisory agreement.

D. Speech-language pathologists or audiologists may share the supervision responsibility for Provisional or Restricted licensees, but each supervising speech-language pathologist or audiologist shall complete and submit the necessary supervision forms.

E. Supervisory records, including supervision logs and other documentation of supervision, shall be maintained by both the supervisor and supervisee for a period of three years. Documentation of supervision may be requested by the board.

F. The direct supervision of the licensee, whether employed full-time or part-time, shall include 12 monitoring activities annually.

1. At least four shall be on-site, in-view observations divided between the areas of diagnostics and management. Alternative methods may include conferences, audio and videotape recordings, review of written records, staffings and discussions with other persons who have participated in the licensee's training.

2. For 12-month employees, one on-site, in-view observation shall be conducted each quarter.

3. For nine-month employees, two on-site, in-view observations shall occur in each semester. If the nine-month employment is extended for a period of time, additional on-site, in-view as well as alternative methods of supervision must occur.

G. Documentation of supervision shall be submitted annually at the time of license renewal on Form 100 provided by the board.

H. Licensees shall complete all supervision requirements consistent with the license held and immediately thereafter submit appropriate supervision forms to the board office along with a written request for license upgrade and the upgrade fee. The licensee shall remain under supervision until the upgrade has been approved by the board.

I. The board will accept supervision provided out-of-state by an individual licensed or ASHA-certified in the area of practice. Supervision must be documented on Form 100.

a. Restricted licensees, provisional speech-language pathology licensees and provisional audiology licensees who have not worked in Louisiana, may submit their Clinical Fellowship Report as proof of supervision that was carried out during the license period. Otherwise licensees must submit at the time of license renewal, appropriate proof of supervision consistent with Louisiana supervision requirements.

J. Licensees who are not working in the field of speech-language pathology and/or audiology and who hold a license requiring supervision, shall submit a notarized statement at the time of license renewal attesting to the fact that they did not work in the profession during the license period.

K. All costs of supervision shall be borne by the licensee or his/her employer, but in no event will those costs be borne by the board.

L. When supervision requirements have not been met in accordance with §125, licensees shall complete additional months of supervision to replace months of incomplete supervision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:352 (May 1996), LR 27:199 (February 2001), LR 28:1974 (September 2002) LR 30:2315 (October 2004), LR 33:2196 (October 2007).

### **§127. Supervision Requirements for Speech-Language Pathology Assistant and Provisional Speech-Language Pathology Assistant**

A. ...

B. Supervision must involve the personal and direct participation of the supervisor in order for the supervisor to monitor, observe, evaluate, and make suggestions for improvement regarding the supervisee's employment.

C. Speech-language pathology assistants and provisional speech-language pathology assistants must submit a supervisory agreement signed by the supervisor and supervisee as prescribed by the board. The form must be submitted to the board by the supervisee within 30 days of employment and submitted annually at the time of renewal. If there is a change in supervisor(s) at any time, a new supervisory agreement must be submitted to the board

within 30 days of the change in supervision. If there are multiple supervisors for the same supervisee, all supervisors must sign the supervisory agreement.

D. Speech-language pathologists may share the supervision responsibility for speech-language pathology assistants or provisional speech-language pathology assistants, but each supervising speech-language pathologist shall complete and submit the necessary supervision forms.

E. Treatment for the patient/client served remains the responsibility of the supervisor. The level of supervision required is considered the minimum necessary to ensure appropriate patient/client care. The minimum level of supervision may not be reduced until such time as the licensee has been notified by the board that an upgrade has been approved.

F. The board will accept supervision given out-of-state by a licensed or ASHA certified speech-language pathologist or audiologist in the area of licensure. Licensees must submit at the time of license renewal, appropriate proof of supervision consistent with Louisiana supervision requirements.

G. Assistants who are not working in the field of speech-language pathology shall submit a notarized statement at the time of license renewal attesting to the fact that they did not work in the profession during the license period.

H. Although more than one speech-language pathologist may provide supervision of an assistant licensee and provisional assistant licensee, at no time may a licensed speech-language pathologist supervise or be listed as a supervisor for more than three assistant or provisional assistant licensees. When multiple supervisors are used, the supervisors are encouraged to coordinate and communicate with each other.

I. Provisional speech-language pathology assistants and speech-language pathology assistants must undergo on-site in-view supervision as well as alternative methods of supervision in every work setting in which the licensee is employed.

J. Documentation of supervision shall be submitted annually at the time of license renewal on Form 200 provided by the board.

K. The supervising speech-language pathologist shall be readily available for consultation with the assistant licensee. This includes personal contact, telephone, pager, or other means of communication.

L. Supervision Requirements for the Speech-Language Pathology Assistant

1. A minimum of one clock hour of on-site, in-view supervision shall be completed in the primary work setting each week for each licensee. If the assistant is employed in more than one work setting, additional on-site, in-view supervision must occur in the secondary work setting.

2. A minimum of one clock hour of alternative supervision methods shall be completed each week for each licensee. These methods should include, but are not limited to:

a. specifying protocols for speech-language screenings and assessments conducted by the assistant licensee;

b. specifying protocols for hearing screenings conducted by the assistant licensee;

- c. approving treatment plans or protocols and documenting approval;
- d. monitoring patient/client progress toward meeting established objectives;
- e. monitoring, scheduling, charting and data collection;
- f. directing maintenance of equipment;
- g. directing research projects, in-service training and public relations programs;
- h. conducting telephone conferences.

3. If circumstances prohibit a supervisor from completing the minimum supervision requirements (§127.I.1 and 2) in a given week, the remaining supervision may be completed the following week in conjunction with the required supervision hours for that week.

4. When the supervising speech-language pathologist is unavailable for supervision for an extended period of time, arrangements shall be made for another qualified supervisor or the speech-language pathology assistant shall be transferred to other duties.

**5. Speech-Language Pathology Assistant Full-Time and Part-Time Supervision Requirements**

Hours Worked	Required Supervision On-Site, In-View	Required Supervision Alternative Method
21-40 hours	1 hour/week	1 hour/week
20 hours or less	1 hour/every 2 weeks	1 hour/every 2 weeks

6. Assistant licensees shall be supervised only by a speech-language pathologist licensed under the provisions of R.S. 37:2659(A) with the exception of hearing screenings which may be supervised by an audiologist, licensed under the provisions of R.S. 37:2659. An individual may not be supervised by a provisional licensee or restricted licensee.

**M. Supervision Requirements for the Provisional Speech-Language Pathology Assistant**

1. A minimum of three clock hours of on-site, in-view supervision shall be completed in the primary work setting each week for each licensee. If the provisional speech-language pathology assistant is employed in more than one work setting, additional on-site, in-view supervision must occur in the secondary work setting.

2. A minimum of two clock hours of alternative supervision methods shall be completed each week for each licensee.

3. These methods should include, but are not limited to:

- a. specifying protocols for speech-language screenings and assessments conducted by the assistant licensee;
- b. specifying protocols for hearing screenings conducted by the assistant licensee;
- c. approving treatment plans or protocols and documenting approval;
- d. monitoring patient/client progress toward meeting established objectives;
- e. monitoring scheduling, charting and data collection;
- f. directing maintenance of equipment;
- g. directing research projects, in-service training and public relations programs;
- h. conducting telephone conferences.

4. If extenuating circumstances prohibit a supervisor from completing the minimum supervision requirements (§127.J.1 and 2) in a given week, the remaining supervision may be completed the following week in conjunction with the required supervision hours for that week.

5. When the supervising speech-language pathologist is out for an extended period of time, arrangements shall be made for another qualified supervisor or the provisional speech-language pathology assistant shall be transferred to other duties.

6. When supervision requirements have not been met, in accordance with §127 licensees shall complete additional months of supervision to replace months of incomplete supervision.

7. Provisional speech-language pathology assistant full-time and part-time supervision requirement:

Hours Worked	Required Supervision On-Site, In-View	Required Supervision Alternative Method
21-40 hours	3 hours/week	2 hours/week
20 hours or less	1.5 hours/every 2 weeks	1 hour/every 2 weeks

8. Provisional assistant licensees shall be supervised by a speech-language pathologist licensed under the provisions of R.S. 37:2659(A) with the exception of hearing screenings which may be supervised by an audiologist, licensed under the provisions of R.S. 37:2659. An individual may not be supervised by a provisional licensee or a restricted licensee.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2650 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:353 (May1996), LR 27:200 (February 2001), repromulgated LR 27:1691 (October 2001), amended LR 30:2316 (October 2004), LR 33:2197 (October 2007).

**§129. Independent Practice**

A. Licensed audiologists and speech-language pathologists, by virtue of academic coursework, clinical practicum, and professional experience, are qualified to engage in the autonomous or independent practice of the professions. Individuals who hold a license, i.e., provisional, restricted, assistant or provisional assistant, mandating supervision during the practice of the professions may not engage in the autonomous or independent practice of audiology or speech-language pathology.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2650 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 33:2198 (October 2007).

**§131. Hearing Aid Dispensing**

A. Audiologists who dispense hearing aids shall meet the coursework and practicum requirements for dispensing as specified in R.S. 37:2650 et seq., and shall register their intent to do so at the time of each license renewal.

1. Dispensing audiologists shall pay an initial registration fee of \$25 and an annual renewal fee of \$10 in addition to the fees charged for licensure renewal.

2. Dispensing audiologists shall affix an annual registration seal to the displayed audiology license.

B. Audiologists who hold a provisional audiology license shall be supervised by a licensed, registered



dispensing audiologist while completing the postgraduate professional employment/experience requirements for full licensure.

C. Audiologists who hold an audiology license but are completing the coursework or practicum requirements for registration as a dispenser shall follow the supervision requirements as specified in §125 and shall submit the board's Form 100 at the time of renewal. The board's Form 100 shall be submitted to upgrade the license status.

D. Audiologists who dispense hearing aids shall maintain annual calibration records on audiometric equipment.

E. Audiologists who dispense hearing aids shall meet the minimum continuing education requirements for license renewal with at least three of the required 10 hours in areas specifically related to hearing aids and/or the dispensing of hearing aids.

F. Audiologists who dispense hearing aids shall comply with the following guidelines.

1. Audiologists shall ensure that a pre-purchase evaluation includes:

- a. a case history;
- b. an otoscopic examination;
- c. a basic audiological test battery within the preceding six month period, including:
  - i. pure tone air and bone conduction testing;
  - ii. speech reception threshold;
  - iii. word recognition testing;
  - iv. appropriate tolerance testing;
  - v. middle ear measurements when indicated.

2. Audiologists shall provide the consumer with a minimum 30-day trial period on all new hearing aids purchased.

3. Audiologists shall inform the consumer of the total cost of the hearing aid, including any fees for returning the aid at the end of the trial period.

4. Audiologists shall conduct a post-fitting evaluation that includes functional gain measurements and/or real ear measurements unless the patient's physical condition prohibits accomplishment of these procedures.

5. Audiologists who engage in the fitting or selling of hearing aids shall deliver to each person supplied with a hearing aid, a bill of sale which shall contain the dispenser's signature, address and license number, together with a description of the make, model and serial number of the hearing aid and the amount charged. The bill of sale shall also indicate whether the hearing aid is new, used, or reconditioned.

G. Audiologists who meet the qualifications for licensure as an audiologist and who were exempt under R.S. 37:2464(A) as part of their employment with a state health agency may register as dispensing audiologists by presenting proof of employment and dispensing experience in that job setting.

H. Audiologists who meet the qualifications for licensure as an audiologist but lack the coursework and practicum requirements necessary for registration as a dispenser may fulfill the requirements by completing nine months of postgraduate professional employment/experience under the supervision of a licensed dispensing audiologist, and by proof of the successful completion of a study course by the National Institute for Hearing Instruments Studies, or its

equivalent. Equivalency for National Institute for Hearing Instruments Studies is defined as:

1. an individualized program of study that shall include:

a. hearing aid technology and dispensing courses sponsored by hearing aid manufacturers to include a minimum of 15 clock hours;

b. workshops in the area of hearing aid technology and dispensing sponsored by professional organizations or individual practitioners to include a minimum of 15 clock hours;

c. successful completion of university coursework in the area of hearing aid technology and dispensing; or

d. programs of independent study consisting of a minimum of 15 clock hours in the area of hearing aid technology and dispensing.

2. Any individualized program of study shall be submitted to the board a minimum of 30 days in advance for pre-approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 22:353 (May 1996), amended LR 27:201 (February 2001), LR 28:1975 (September 2002), LR 30:2317 (October 2004), LR 33:2198 (October 2007).

### §133. Qualifications and Duties of Aides

A. Speech-language pathologists and audiologists are legally, ethically, and morally responsible for the services provided by aides working under their direction.

B. Requirements for the use of aides follow.

1. A licensed speech-language pathologist or audiologist may utilize an aide who meets the following qualifications. The aide shall:

- a. be of good moral character;
- b. be at least 18 years old;
- c. possess appropriate communication skills;
- d. have a high school diploma or G.E.D.

2. The supervising speech-language pathologist or audiologist is responsible for determining that the aide is qualified and prepared for the duties which s/he will be assigned. It is recommended that the aide be afforded continuing education opportunities. Appropriate areas of training may include:

- a. normal processes in speech, language and hearing;
- b. disorders of speech, language and hearing;
- c. record-keeping and data compilation;
- d. utilization of equipment and materials;
- e. professional ethics and their application to the aide's duties;
- f. administration of hearing screening tests.

C. Supervision

1. The licensed speech-language pathologist or audiologist shall provide periodic direct observation for each aide at least once per month during the initial year of the aide's employment. Speech-language pathology aides are required to undergo direct supervision by a licensed speech-language pathologist, licensed in the area in accordance with R.S. 37:2659(A). Audiology aides are required to undergo direct supervision by a licensed audiologist, licensed in the area in accordance with R.S. 37:2659(A). Speech-language pathology aides and audiology aides may not be supervised

by a provisional licensee, restricted licensee, or assistant licensee.

2. The direct observation in subsequent years shall be established by the supervising speech-language pathologist or audiologist on an individual basis but shall be no less than once every three months.

3. The supervising speech-language pathologist or audiologist shall be readily available for consultation with the aide at all times.

4. Documentation of on-site, in-view supervision shall be maintained by the supervising speech-language pathologist or audiologist and shall be submitted to the board upon request.

5. The supervising speech-language pathologist or audiologist shall report to the board at the time of licensure renewal, the names and employment locations of aides.

D. The speech-language pathology aide may engage in activities limited to those that are planned and directed by the supervising speech-language pathologist. Providing that the preparation, training, and supervision are appropriate, the following tasks may be assigned to speech-language pathology aides:

1. setting up room and equipment;
2. clearing room and storing equipment;
3. preparing materials (such as making copies, typing forms) for use by the speech-language pathologist;
4. checking equipment to determine if the equipment is performing adequately;
5. transporting patients/clients to and from sessions;
6. assisting with field trips;
7. performing hearing screenings limited to pure-tone air conduction screening and screening tympanometry;
8. recording, charting, graphing, or otherwise displaying objective data relative to the patient's/client's performance.

E. The audiology aide may engage in activities limited to those that are planned and directed by the supervising audiologist. Providing that the preparation, training, and supervision are appropriate, the following tasks may be assigned to audiology aides:

1. setting up room and equipment;
2. clearing room and storing equipment;
3. preparing materials (such as making copies, typing forms) for use by the audiologist;
4. checking equipment to determine if the equipment is performing adequately;
5. transporting patients/clients to and from sessions;
6. assisting with field trips;
7. performing hearing screening tests and pure-tone air conduction threshold tests without interpretation;
8. recording, charting, graphing, or otherwise displaying objective data relative to the patient/client's performance.

F. Only the speech-language pathologist or audiologist shall exercise independent judgment in the provision of professional services. Specifically, the speech-language pathologist or audiologist may not delegate any of the following to the aide:

1. speech-language screening;
2. evaluation, diagnosis, or therapy with individuals with speech, language or hearing disorders;

3. interpretation of test results or discussion of confidential information despite the fact that this information may have been requested by the patient/client, parent or referring agency;

4. performance of any procedure for which the aide has not been trained.

G. Exemption. Aides employed on or before April 1996 may continue to operate under the provisions of Chapter 3, §§301-305 of the *Louisiana Register* 16:409 (May 1990) of the Louisiana Board of Examiners for Speech Pathology and Audiology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 16:409 (May 1990), amended LR 22:355 (May 1996), LR 27:201 (February 2001), LR 28:1781 (August 2002), LR 30:2318 (October 2004), LR 33:2199 (October 2007).

### **§135. Disciplinary Actions**

A. This board may refuse to issue, may suspend or revoke a license for the practice of speech-language pathology or audiology or otherwise discipline an applicant or licensee, upon finding that the applicant or licensee has violated any provisions of R.S. 37:2650 et seq., or any of the rules or regulations promulgated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:354 (May 1996), LR 28:1975 (September 2002), LR 30:2319 (October 2004), LR 33:2200 (October 2007).

## **Chapter 5. Procedural Rules**

### **§501. Investigation of Complaints**

A. - D. ...

E. The board's designated investigator shall have authority to investigate the nature of the complaint through conference, correspondence, and other investigative procedures, directed to those parties or witnesses involved. The board's designated investigator shall send the involved licensee notice by certified mail, return receipt requested, of the investigation containing a short summary of the complaint. All subsequent letters to the involved licensee, all letters to the complainant, or any other witness, shall be sent with a designation "personal and confidential" clearly marked on the outside of the envelope.

F. The designated investigator shall conclude the investigation as quickly as possible, without compromising thoroughness. Unless good cause is shown by the designated investigator satisfactory to the board, which may extend the time for the investigation, the investigation and recommendations to the board shall be delivered to the board within 60 days of the date that the designated investigator first received the assignment from the board.

G. Following an investigation, the designated investigator shall report to the board and make a recommendation for either dismissal of the complaint or proceeding to an informal hearing, consent order, or formal hearing. Recommendation for dismissal of the complaint or other proceedings shall be forwarded to the complainant and to the licensee.

H. The designated investigator may determine that the licensee's explanation satisfactorily answers the complaint

and may recommend to the board that the matter be dismissed.

I. ...

J. A complaint may be resolved by a consent order and agreement approved by the board and entered into by the licensee.

K. The designated investigator shall recommend to the board the initiation of a formal disciplinary hearing if the investigation discloses any of the following: the complaint is sufficiently serious to require a formal adjudication; the licensee fails to respond to the correspondence by the designated investigator concerning the complaint; the licensee's response to the designated investigator discloses that further action is necessary; an informal hearing is held but does not resolve all of the issues; or the licensee refuses to comply with the recommended remedial action.

L. The designated investigator shall submit any recommended action to the board in brief, concise language, without any reference to the particulars of the investigation, to any findings of fact or any conclusions of law arrived at during the investigative process.

M. The board shall have the authority to delegate to the designated investigator any alleged violations of the Speech-Language Pathology and Audiology Act, R.S. 37:2650 et seq., and any alleged violations of any and all rules and regulations adopted by the board pursuant thereto, prior to board action on those alleged violations. If requested by the board, the designated investigator shall submit to the board the complete investigation file. Final authority for appropriate action rests solely with the board.

N. At no time shall the designated investigator investigate any case as authorized by the board where the investigator has any personal or economic interest in the outcome of the investigation, or is personally related to or maintains a close friendship with the complainant, the licensee, or any of the witnesses involved. In such event, the designated investigator shall immediately notify the board, who shall appoint a substitute investigator for disposition of that particular case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 17:373 (April 1991), amended LR 22:356 (May 1996), LR 30:2320 (October 2004), LR 33:2200 (October 2007).

#### **§512. Summary Suspension of License**

A. The board may suspend an existing license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensee. The board may also suspend an existing license if there are allegations of fact that the board believes demonstrates a substantial likelihood that the licensee poses a risk of harm to the public health, safety or welfare.

B. If the board finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

C. Following the proceedings, the notice to summarily suspend an existing license shall be serviced personally upon the respondent or by certified mail or by other reasonable

means. The notice shall inform the licensee of the opportunity, including the time and place, to appear before the board to show cause regarding why the license should not be suspended. The opportunity for the licensee to be heard shall occur from 2 to 10 days following the summary suspension of the license.

D. The proceedings shall be conducted in accordance with Louisiana's Administrative Procedures Act.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2651-2666.

HISTORICAL NOTE: Promulgated by the Department of Hospitals, Louisiana Board of Examiners for Speech-Language Pathology and Audiology, LR 33:2201 (October 2007).

### **Chapter 7. Code of Ethics**

#### **§701. Preamble**

A. - D. ...

E. Rules of Ethics

1. Principle of Ethics I. Licensees shall honor their responsibility to hold paramount the welfare of persons they serve and provide professional services with honesty and compassion and shall respect the dignity, worth, and rights of those served. The licensee shall take all reasonable precautions to avoid harm to the individual served professionally.

1.a. - 2.c. ...

d. Individuals shall provide appropriate supervision and assume full responsibility for services delegated to all supervisees, including assistants or aides. Individuals shall not delegate any service requiring professional competence to persons unqualified.

e. Individuals shall neither provide services nor supervision of services for which they have not been properly prepared, nor shall individuals require or permit their professional staff to provide services or conduct research activities that exceed the staff member's competence, level of education, training, or experience.

2.f. - 4.i. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 17:370 (April 1991), amended LR 22:360 (May 1996), LR 30:2324 (October 2004), LR 33:2201 (October 2007).

Jolie Jones  
Interim Administrator

0710#013

#### **RULE**

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

Early and Periodic Screening, Diagnosis and Treatment  
Personal Care Services  
Personal Care Workers Wage Enhancement  
(LAC 50:XV.7321)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.7321 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the

Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:9530 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment**

**Chapter 73. Personal Care Services**

**§7321. Reimbursement**

A. ...

B. Personal Care Workers Wage Enhancement

1. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) personal care workers who provide services to Medicaid recipients.

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

b. The minimum hourly rate paid to personal care workers shall be the current minimum wage plus 75 percent of the wage enhancement.

2. Providers shall be required to submit a certified wage register to the department verifying the personal care workers' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

a. gross wage paid to the direct support professional(s);

b. total number of direct support hours worked; and

c. the amount paid in employee benefits.

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

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

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

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

7. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to personal care workers may result in:

a. forfeiture of eligibility for wage enhancement payments;

b. recoupment of previous wage enhancement payments;

c. Medicaid fraud charges; and

d. disenrollment in the Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:179 (February 2003), amended LR 33:2202 (October 2007).

Roxane A. Townsend, M.D.  
Secretary

0710#061

**RULE**

**Department of Health and Hospitals**

**Office of the Secretary**

**Bureau of Health Services Financing**

Intermediate Care Facilities for the Mentally Retarded  
Direct Service Professionals—Wage Enhancement  
(LAC 50:VII.32903)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:VII.32903 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part VII. Long Term Care**

**Subpart 3. Intermediate Care Facilities for the Mentally Retarded**

**Chapter 329. Reimbursement**

**Subchapter A. Reimbursement Methodology**

**§32903. Rate Determination**

A. - D.1.d. ...

\*\*\*

e. Direct Service Provider Wage Enhancement. For dates of service on or after February 9, 2007, the direct care reimbursement in the amount of \$2 per hour to ICF-MR providers shall include a direct care service worker wage enhancement incentive. It is the intent that this wage enhancement be paid to the direct care staff. Non compliance with the wage enhancement shall be subject to recoupment.

i. At least 75 percent of the wage enhancement shall be paid to the direct support professional and 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

ii. The wage enhancement will be added on to the current ICAP rate methodology as follows:

(a). per diem rates for recipients residing in 1-8 bed facilities will increase \$16;

(b). per diem rates for recipients residing in 9-16 bed facilities will increase \$14.93; and

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

D.2. - H.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1592 (July 2005), repromulgated LR 31:2253 (September 2005), amended LR 33:2202 (October 2007).

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Roxane A. Townsend, M.D.  
Secretary

0710#062

## RULE

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

Nursing Facilities  
Direct Support Professionals—Wage Enhancement  
(LAC 50:VII.1305)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:VII.1305 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part VII. Long Term Care Services

##### Subpart 1. Nursing Facilities

#### Chapter 13. Reimbursement

##### §1305. Rate Determination

A. - D.1.h.Example ...

i. For dates of service on or after February 9, 2007, the facility-specific direct care rate will be increased by a \$4.70 wage enhancement prior to the case-mix adjustment for direct care staff. The \$4.70 wage enhancement will be included in the direct care component of the floor calculations. It is the intent that this wage enhancement be paid to the direct care staff.

D.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1474 (June 2002), repromulgated LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007).

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Roxane A. Townsend, M.D.  
Secretary

0710#063

## RULE

### Department of Social Services Office of Family Support

Electronic Benefits Transfer  
(LAC 67:III.401-409)

Editor's Note: This Rule is being repromulgated to correct citation errors. The original Rule may be viewed in its entirety on pages 1878-1879 of the September 20, 2007 edition of the Louisiana Register.

The Department of Social Services, Office of Family Support, amended LAC 67:III, Subpart 1, Chapter 4, Electronic Benefits Issuance System to provide delivery of benefits through electronic disbursements. Electronic

disbursement has allowed the agency to provide effective and efficient disbursement of payments to our clients while eliminating the need to print and mail checks.

The agency amended Chapter 4 Electronic Benefits Issuance System in its entirety which adds the types of electronic disbursements utilized and to address program payments by Electronic Benefits Transfer (EBT) to Family Independence Temporary Assistance Program (FITAP), Kinship Care Subsidy Program (KCSP), and Food Stamp Program Benefits. Sections in Chapter 4 have been recodified and renumbered.

#### Title 67

### SOCIAL SERVICES

#### Part III. Office of Family Support

##### Subpart 1. General Administrative Procedures

#### Chapter 4. Electronic Benefits Issuance System

##### §401. Electronic Benefits Transfer (EBT)

A. The Office of Family Support utilizes an electronic benefits issuance system referred to as Electronic Benefits Transfer (EBT) that allows eligible individuals and households to have their governmental benefits deposited into an account to pay for products purchased or to obtain authorized cash payments. Programs that utilize the EBT are Family Independence Temporary Assistance Program (FITAP), Kinship Care Subsidy Program (KCSP), and Food Stamp Program Benefits.

B. - B.6. repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:450.1, 7 CFR 274.12 and 45 CFR 95(F). Section 404(g) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 22:1231 (December 1996), amended LR 23:869 (July 1997), LR 33:1878 (September 2007), repromulgated LR 33:2203 (October 2007).

##### §403. Cash Benefits

###### [Formerly §402]

A. Cash benefits and Food Stamp Program benefits shall be available through EBT in staggered cycles to on-going households beginning on the first day of each month. The last digit of the Social Security number determines the date that benefits are issued. Cash benefits will be available within the first five days of each month. Food stamp benefits will be available within the first 14 days of each month. Food stamp cases that contain elderly or disabled persons will have benefits available during the first four days of each month. Other issuance authorizations will be posted to the EBT account the day after they are authorized except in emergency circumstances in which case benefits will be available on the same day.

B. Benefits are delivered in this manner for households certified on an on-going basis. Benefits can accumulate but are accounted for according to the month of availability and will be withdrawn on a first-in-first-out basis. Each month's benefits with no activity by the client for a period of 90 days from the date of availability will be moved to dormant status. These benefits can be returned to active status at the local Office of Family Support offices upon request of the head of household or upon reapplication for assistance if the case is in inactive status. Benefits that remain in dormant status for a period of 270 days will be expunged and will not be available to the household after expungement. FITAP benefits which have been expunged may be reauthorized for

availability if the recipient has good cause for not having accessed them during the original availability period.

**AUTHORITY NOTE:** Promulgated in accordance with 7 CFR 272.3(c)(1)(ii) and P.L. 104-193.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Family Support, LR 24:1322 (July 1998), amended LR 33:1878 (September 2007), repromulgated LR 33:2203 (October 2007).

**§405. Participation of Retailers (Effective October 1, 1997)**

**[Formerly §403]**

A. Retail establishments which are U.S. Department of Agriculture, Food and Nutrition Service (FNS), authorized food stamp benefit redemption points must be allowed the opportunity to participate in the state EBT system. FNS approved retailer may choose to accept EBT cards for cash transactions (FITAP and KCSP). All other retail establishments must be approved by the Agency in order to participate in the cash access component of the system. Retailers approved by the Agency to participate in cash access may be charged connection fees and/or monthly lease fees for electronic and telephone equipment lines necessary to establish connection to the EBT System.

B. Retail establishments found guilty of abuse, misuse or fraud of the system by using the EBT "Louisiana Purchase" card in a manner or intent contrary to the purpose of the card, in providing benefits to eligible recipients, shall be permanently disqualified from participating as a cash redemption point and shall have all equipment provided by the vendor disconnected and removed from the establishment after due process.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:474.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Family Support, LR 24:106 (January 1998), amended LR 33:1878 (September 2007), repromulgated LR 33:2204 (October 2007).

**§407. Service Fees Effective October 1, 1997**

**[Formerly §405]**

A. Recipients of cash assistance may be charged fees for accessing cash only benefits. Retailers may charge their usual and customary check cashing fee for providing cash only benefits to FITAP recipients under the following circumstances:

1. the recipient presents a valid EBT system card (known as the "Louisiana Purchase Benefit Card"); and
2. the recipient is not using the card to obtain cash in conjunction with the purchase of goods or services through the EBT system.

B. Retailers may process cash transactions through the EBT system only while the system is available. Retailers shall not dispense cash to recipients using vouchers or other means of implied payment to the retailer.

C. Retailers are prohibited from recovering losses through the EBT system due to their errors that are discovered after the transaction is completed and the recipient has left the place of business.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:450.1(C)(3), R.S. 46:231.13, R.S. 36:474.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Family Support, LR 24:107 (January

1998), amended LR 33:1879 (September 2007), repromulgated LR 33:2204 (October 2007).

**§409. Participation of Approved Prepared-Meal Facilities**

**[Formerly §407]**

A. Facilities providing prepared meals that are authorized by the United States Department of Agriculture, Food and Nutrition Service and, in some instances, the agency, to accept food stamp benefits for prepared meals may be authorized redemption points using the EBT card. Participating facilities are subject to all applicable regulations of this provision. If found guilty of abuse, misuse or fraud by using the EBT card or benefits in a manner or intent contrary to the purpose of the Food Stamp Program, a facility may be permanently disqualified from participation and have all equipment provided by the vendor disconnected and removed from the facility after due process.

1. A facility must maintain confidentiality in accordance with Food Stamp Program rules by requiring privacy when accepting payments or payment/contributions from recipients.

2. Settlement of funds to a facility will be made electronically as a direct deposit to the financial institution selected by the facility.

3. A facility must sign a contract with the agency's EBT vendor and be certified to the vendor's system prior to participation.

**B. Types of Facilities**

1. Duly authorized non-residential facilities such as communal dining facilities or Meals-on-Wheels may accept food stamp benefits for single meals.

2. Duly authorized residential facilities such as homeless shelters or battered women's shelters may accept food stamp benefits for multiple meals or on-going food maintenance. Such establishments may accept food stamp payments or contributions not to exceed the biweekly rate of the facility. This requirement will ensure that recipients have adequate benefits remaining in their accounts upon departure from the establishment.

C. A facility with redemption of food stamp benefits of \$100 or more per month will be provided a Point-of-Sale (POS) terminal to enable acceptance of the EBT card. A facility with redemption of less than \$100 per month will utilize paper voucher authorizations for the acceptance of food stamp benefits.

**AUTHORITY NOTE:** Promulgated in accordance with 7 CFR 282.1(a).

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Family Support, LR 24:1322 (July 1998), amended LR 33:1879 (September 2007), repromulgated LR 33:2204 (October 2007).

Ann Silverberg Williamson  
Secretary

0710#027

**RULE**

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

**TANF—Domestic Violence Services and Homeless Initiatives (LAC 67:III.5509 and 5589)**

In accordance with R.S.49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, amended the Louisiana Administrative Code, Title 67, Part III, Subpart 15, Temporary Assistance to Needy Families (TANF).

Pursuant to Act 17 of the 2006 Regular Session of the Louisiana Legislature, the agency amended §5509 Domestic Violence Services and §5589 Homeless Initiative.

Section 5509 Domestic Violence Services was amended to clarify services provided to victims of domestic violence and their children. This amendment allows the agency to provide community collaboration training for the purpose of educating the community regarding domestic violence and the available services to victims of domestic violence provided by the agency.

Section 5589 Homeless Initiative was amended to clarify the definition of basic needs.

This Rule is effected by an Emergency Rule effective June 15, 2007, and published in the July issue of the *Louisiana Register*.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5509. Domestic Violence Services**

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to provide services for victims of domestic violence and their children, including rural outreach and community collaboration training for the purpose of educating attendees about domestic violence and the available services provided by the Department of Social Services including but not limited to TANF, food stamps, child care, and employment training.

B. - D. ...

E. Direct services that provide for basic needs and are provided in response to an episode of need or a specific crisis situation and are non-recurrent, such as but not limited to food, clothing, and shelter assistance, will not be provided beyond four months.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 46:231 and R.S. 36:474, HB 1 2006 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2099 (November 2006), amended LR 33:2205 (October 2007).

**§5589. Homeless Initiative**

A. Effective December 1, 2006, the Office of Family Support shall enter into contracts with public agencies, non-profit organizations, or for-profit organizations to end the cycle of homelessness in Louisiana by providing services to homeless families which include but are not limited to comprehensive case management, educational and employment opportunities for adult participants, community

referrals, life skill modules, and housing options. Direct services that are provided in response to an episode of need or a specific crisis situation and are non-recurrent, such as but not limited to food, clothing, and shelter assistance, will not be provided beyond four months.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq., R.S. 46:231 and R.S. 36:474, Act 17, 2006 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:674 (April 2007), amended LR 33:2205 (October 2007).

Ann S. Williamson  
Secretary

0710#044

**RULE**

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

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

In accordance with R.S.49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, amended the Louisiana Administrative Code, Title 67, Part III, Subpart 15, Temporary Assistance to Needy Families (TANF).

Pursuant to Act 16 of the 2005 Regular Session of the Louisiana Legislature, the agency amended §5583, Temporary Emergency Disaster Assistance Program (TEDAP). The agency expanded the income eligibility criteria of the TEDAP Program to 250 percent of the federal poverty level and to expand the list of allowable household establishment funds available to eligible families to include living accommodations, transportation, job skills or employment assistance, child care vouchers, non-medical substance abuse treatment, mental health services, utility assistance, property repair, household items, basic personal items and moving assistance.

This Rule was effected by a Declaration of Emergency effective May 1, 2007, and published in the May issue of the *Louisiana Register*.

**Title 67**

**SOCIAL SERVICES**

**Part III. Family Support**

**Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5583. Temporary Emergency Disaster Assistance Program**

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

1. services or benefits considered to meet on-going basic needs. These services shall not be provided for a period (in whole or in part) to exceed four months. Such services and benefits include, but are not limited to the provision of such items as basic personal items, household

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

A.2. - B. ...

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

1. ...

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

Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), or free or reduced school lunch.

D. - F. ...

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:32:1617 (September 2006), amended LR 33:2205 (October 2007).

Ann S. Williamson  
Secretary

0710#045



# Notices of Intent

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators (LAC 28:LXXIX.303, 2103, 2703, 3301, and 3303)

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 revisions to *Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*. Bulletin 741 is being revised to clarify those areas where interpretations are required and may be potentially inconsistent.

### Title 28 EDUCATION

#### Part LXXIX. Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators Chapter 3. Certification of Personnel §303. Instructional Staff

A. - A.2.b. ...

i. for teachers in self-contained classrooms in grades 1 through 8, the major shall be in elementary education;

c. earn 12 semester hours of Knowledge of the Learner and the Learning Environment. A beginning teacher shall have a three-year period in which to meet this 12-semester hour standard:

i. requirements provide the prospective teacher with a fundamental understanding of the learner and the teaching and learning process. Coursework should address the needs of the regular and the exceptional child, such as:

- (a). child/adolescent development/psychology;
- (b). educational psychology;
- (c). the learner with special needs;
- (d). classroom organization and management;
- (e). multicultural education.

3. ...

a. Teachers of grades 1 through 8 without an elementary education major shall also work towards a practitioner's license through an alternative program as outlined in Bulletin 746.

B. A secondary teacher may teach in areas other than the major field for a period of time that is less than one-half of the school day provided that he has earned at least 12 semester hours in each such area. (Exception may be made for teachers in trade and industrial education classes.) These teachers must hold a degree from a regionally accredited institution and have earned 12 semester hours of Knowledge of the Learner and the Learning Environment courses.

1. A graduate of a foreign university or college, notwithstanding his/her major in college, may teach a foreign language if that language is his/her native tongue. The teacher must also earn 12 semester hours of Knowledge

of the Learner and the Learning Environment courses within a three-year period.

C. - G. ...

H. Credentials for graduates of foreign universities or colleges must be submitted to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) or any agency approved by BESE, for evaluation according to the DOE procedures. After reviewing the evaluation, the local administrator shall determine if the applicant is qualified to teach according to the requirements of this Section. A copy of the evaluation shall be kept on file in the principal's office.

H.1. - I.1. ...

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, LR 29:2344 (November 2003), amended LR 31:3075 (December 2005), LR 32:1417 (August 2006), LR 32:2237 (December 2006), LR 34:

#### Chapter 21. Curriculum and Instruction Subchapter B. Elementary Program of Studies §2103. Minimum Time Requirements

A. - A.3.b. ...

B. Elementary Schools

1. Nonpublic elementary schools shall devote no less than 50 percent of the school day to the skill subjects: reading, language arts, and mathematics. The remainder of the school day shall be devoted to social studies, science, health and physical education, and electives such as religion, foreign languages, and visual and performing arts.

2. The following elementary program of studies will be followed for nonpublic elementary schools.

Program of Studies for Nonpublic Elementary Schools Self-Contained Classrooms	
Subject	Percent of School Day
Reading	50% (minimum)
Language Arts	
Mathematics	
Social Studies	50% (maximum)
Science	
Health and Physical Education	
Visual and Performing Arts	
Religion and/or Electives	

3. - 5. ...

Departmental Classes 6-Period Day Option		
	Periods per Week	Recommended
Language Arts	5	55
Mathematics and Introduction to Algebra	5	55
Social Studies (LA Studies & Am. History)	5	55
Science	5	55
Health and Physical Education	5	30
Religion and Electives	5	80
330 minutes per day		

Departmental Classes 7-Period Day Option		
	Periods per Week	Recommended
Language Arts	5	50
Mathematics and Introduction to Algebra	5	50
Social Studies (LA Studies & Am. History)	5	50
Science	5	50
Health and Physical Education	5	30
Religion and Electives	10	100
330 minutes per day		

- 6. - 6.g. ...
- h. Visual Arts;
- i. ...
- j. Performing Arts;
- k. - m. ...

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, LR 29:2349 (November 2003), amended LR 31:3080 (December 2005), LR 34:

## Chapter 27. Summer Schools

### Subchapter A. Elementary Summer Schools

#### §2703. Administration

A. - E. ...

F. Summer schools may be subject to an on-site visit by personnel from the SDE to verify information submitted on the report.

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, LR 29:2362 (November 2003), amended LR 31:3093 (December 2005), LR 34:

## Chapter 33. Glossary

### §3301. Abbreviations/Acronyms

- ADA—Americans with Disabilities Act
- AP—Advanced Placement
- BESE—Board of Elementary and Secondary Education
- CPR—Cardiopulmonary Resuscitation
- CTE—Career/Technical Education
- DOE—Department of Education
- GED—General Educational Development Test
- GEE—Graduation Exit Examination
- IDEA—Individuals with Disabilities Education Act; The Special Education Law
- IAP—Individualized Accommodation Program
- IB—International Baccalaureate
- IBC—Industry-Based Certification
- IEP—Individualized Education Program
- JROTC—Junior Reserve Officer Training Corps
- LEA—Local Education Agency
- LEAP—Louisiana Educational Assessment Program
- LHSAA—Louisiana High School Athletic Association
- LMA—Louisiana Montessori Association
- MPS—Minimum Proficiency Standards
- NAEP—National Assessment of Educational Progress
- NCLB—No Child Left Behind
- SAPE—Substance Abuse Prevention Education
- TOPS—Tuition Opportunity Program for Students

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

### §3303. Definitions

*Academically Able Student*—a student who is functioning at grade level as determined by the local school system. For special education students identified in accordance with Bulletin 1508—Pupil Appraisal Handbook, the IEP Committee shall determine the student's eligibility to receive foreign language instruction, provided the student is performing at grade level.

*Accommodation*—any technique that alters the academic setting or environment. An accommodation generally does not change the information or amount of information learned. It enables students to show more accurately what they actually know.

*Activity Class*—any class such as band, theatre, or chorus for which a large class size is acceptable due to the nature of the instruction.

*Adapted Physical Education*—specially designed physical education for those exceptional students for whom significant deficits in the psychomotor domain have been identified according to Bulletin 1508—Pupil Appraisal Handbook, and who, if school-aged, are unable to participate in regular physical education programs on a full-time basis.

*Adult Education*—instruction below the college level for adults who have not been awarded a regular high school diploma and who are not currently required to be enrolled in school.

*Advanced Placement Program the Advanced Placement Program of the College Board*—gives students the opportunity to pursue college-level studies while still in secondary school and to receive advanced placement and/or credit upon entering college.

*Alternative School/Program*—an educational school/program that deviates from the standards stated in *Bulletin 741* in order to meet the specific needs of a particular segment of students within the community. There are two types of alternative schools/programs:

1. alternative within Regular Education: the curriculum addresses state standards; and upon graduation, students earn a state-approved diploma;
2. alternative to Regular Education: the curriculum does not address state standards; and upon graduation, students do not earn a state-approved high school diploma.

*Alternative to Regular Placement*—placement of students in programs that are not required to address BESE performance standards.

*Annual School Approval*—an approval classification, based on the analysis of the Annual School Report, which is granted by the State Department of Education to each school.

*Annual School Report*—the report of the implementation by a school of the standards/regulations of this bulletin. It is submitted annually to the DOE by each school.

*Approved School*—a public or nonpublic school that has an approval classification based upon a degree of compliance with standards/regulations prescribed by BESE.

*Articulated Credit*—promotes a smooth transition from secondary to postsecondary education. It serves as a vehicle for high school students to earn postsecondary credit while

enrolled in high school or upon entering postsecondary study.

*Assessment*—the act or process of gathering data in order to better understand the strengths and weaknesses of a student learning as by observation, testing, interviews, etc.

*Attendance (Half-Day)*—a student is considered to be in attendance for one-half day when he or she:

1. is physically present at a school site or is participating in an authorized school activity; and
2. is under the supervision of authorized personnel for more than 25 percent but more than half (26-50 percent) of the student's instructional day.

*Attendance (Whole-Day)*—a student is considered to be in attendance for a whole day when he or she:

1. is physically present at a school site or is participating in an authorized school activity; and
2. is under the supervision of authorized personnel for more than 50 percent (51-100 percent) of the student's instructional day.

*BESE Policy*—a comprehensive statement that has the force and effect of law and that has been adopted by BESE to govern and to bring uniformity in education throughout Louisiana.

*Certification*—a licensing process whereby qualified professionals become legally authorized to teach or to perform designated duties in the schools under the jurisdiction of the State Board of Elementary and Secondary Education (BESE).

*Class Size*—the maximum enrollment allowed in a class or section.

*Co-Curricular Activities*—those activities that are relevant and supportive, that are an integral part of the program of studies in which the student is enrolled, and that are under the supervision and/or coordination of the school instructional staff.

*Cooperative Education*—programs that provide opportunities for career and technical education students to receive on-the-job training and related classroom instruction in the areas of Agriculture, Business, Health, Family and Consumer Science, Marketing, and Trade and Industrial Education programs.

*Credit Exam*—an examination for the purpose of verifying a student has mastered a course taken under conditions that do meet the requirements for awarding Carnegie credit, such as teacher certification or time requirements.

*Cultural Arts*—that subject area that includes music, arts and crafts, and the fine arts.

*Cumulative Record*—a current record of academic, health, and other special types of information maintained for each student throughout his progress in school.

*Education Records*—

1. those records, files, documents, and other materials which:

- a. contain information directly related to a student; and
- b. are maintained by an educational agency or institution or by a person acting for such agency or institution.

2. The term education records does not include:

a. records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

b. records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;

c. in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

d. records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

*Elementary School*—a school composed of any span of grades kindergarten through the eighth grade.

*Equivalent Major*—the number of credit hours awarded from a regionally accredited college or university to meet the required content hours needed to teach in a core content area.

*Equivalent Day*—the number of minutes that reflect the required number of school and/or instructional day. School days may equal 180 days or 59,400 minutes. Instructional days may equal 175 days or 57,750 minutes.

*Evaluation*—the in-depth process of review, examination, and interpretation of intervention efforts, test results, interviews, observations, and other assessment information relative to predetermined criteria.

*Exceptional Child*—a child who is evaluated in accordance with §430-436 of Bulletin 1706, Regulations for Implementation of Exceptional Children's Act (R.S. 17:1941 et seq.) and who is determined according to Bulletin 1508, Pupil Appraisal Handbook, to have an exceptionality that adversely affects educational performance to the extent that special education is needed.

*Extracurricular Activities*—those activities which are not directly related to the Program of Studies, which are under the supervision and/or coordination of the school instructional staff, and which are considered valuable for the overall development of the student.

*Fine Arts*—those arts produced or intended primarily for beauty rather than utility, such as music, dance, drama, and the visual arts (i.e., drawing, painting, sculpture).

*Gifted*—children or youth who demonstrate abilities that give evidence of high performance in academic and intellectual aptitude.

*Home Study Program (Approved)*—program in which an approved curriculum can be implemented under the direction and control of a parent or a tutor (i.e., court appointed guardian under Louisiana law).

*Individualized Education Program (IEP)*—a written statement of specially designed instruction developed, reviewed and revised by a group of qualified education personnel and the parent/guardian for each student with a disability.

*Industry-Based Certification*—a portable, recognized credential (tangible evidence) that an individual has successfully demonstrated skill competencies on a core set of content and performance standards in a specific set of work related tasks, single occupational area, or a cluster of related occupational areas.

*Instructional Time*—shall include the scheduled time within the regular school day devoted to teaching courses outlined in the Program of Studies. Instructional time does not include such things as recess, lunch, change of class time, and parent-teacher conferences.

*Internship*—student internships are situations where students work for an employer for a specified period of time to learn about a particular industry or occupation. Students' workplace activities may include special projects, a sample of tasks from different jobs, or tasks from a single occupation. These may or may not include financial compensation.

*Knowledge of the Learner and the Learning Environment*—course requirements that provide the prospective teacher with a fundamental understanding of the learner and the teaching and learning process. Coursework should address the needs of the regular and the exceptional child, such as:

1. child/adolescent development/psychology;
2. educational psychology;
3. the learner with special needs;
4. classroom organization and management;
5. multicultural education.

*Language Arts*—a broad subject area which includes reading, literature, speaking, listening, oral and written composition, English grammar, and spelling. (Foreign language may be included as part of the language arts program.)

*Least Restrictive Environment*—the educational placement of an exceptional child in a manner consistent with the Least Restrictive Rules in 1448 of Bulletin 1706—Regulations for Implementation for the Exceptional Children's Act and R.S. 17:1941 et seq.

*Locally Initiated Elective*—an elective course developed by a school and submitted to the DOE for approval according to the standards in §2125.

*Modification*—any technique that alters the work product in some way that makes it different from the work required of other students in the same class. A modification generally does change the work format or amount of work required of students. It encourages and facilitates academic success.

*Paraprofessional*—a person who is at least 18 years of age, possesses a certificate of good health signed by a physician, possesses an appropriate permit, and 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 services to exceptional children.

*Paraprofessional Training Unit*—a setting that may be used for the self-help training (toilet-training, dressing skills, grooming skills, feeding skills, and pre-academic readiness activities) of severely and profoundly handicapped children or preschool children. A school-aged unit may be comprised of no more than six paraprofessionals. A preschool unit may be comprised of no more than four paraprofessionals. All units must be supervised directly by a certified special education teacher. Each paraprofessional must have a full quota of students (three) before an additional paraprofessional can be added to the unit. A paraprofessional training unit must be approved by the Office of Special Educational Services for the DOE in accordance with operational standards established by BESE.

*Preschool*—no more than one year younger than the age established for kindergarten.

*Procedures*—specific actions or steps developed and required by the DOE to implement standards or regulations of BESE.

*Proficiency Exam*—an examination taken by a student to demonstrate mastery of a course they have not taken.

*Pupil Appraisal Personnel*—professional personnel who meet the certification requirements for school personnel for such positions and who are responsible for delivery of pupil appraisal services included in §410-436 of Bulletin 1706—Regulations for Implementation of the Exceptional Children's Act, and R.S. 17:1941 et seq.

*Qualified Teacher*—a teacher is considered qualified to teach in nonpublic schools if all of the following criteria are met:

1. has a bachelor's degree from a regionally accredited institution;
2. has a college major or the equivalent in the area of his/her teaching assignment; and
3. has earned 12 semester hours of Knowledge of the Learner and the Learning Environment

*School Building Level Committee*—a committee of at least three school level staff members. It 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 school 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 solve problems or address concerns from teachers, parents, or other professionals on individual students who are experiencing difficulty in school because of academic and/or behavior problems. In most cases, for enrolled students, it is only through the SBLC that a referral can be made to pupil appraisal services for an individual evaluation.

*Special Education*—specially designed instruction, at no cost to the parent, to meet the unique needs of the student with an exceptionality.

*Talented*—children or youth who give evidence of measurable abilities of unique talent in visual and/or performing arts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary, Education, LR 34:

Interested persons may submit written comments until 4:30 p.m., December 9, 2007, 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: **Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators**

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

Bulletin 741 is revised to clarify those areas where interpretations are required and may be potentially inconsistent.

§303.A.2.b.i—clarifies that elementary teacher in self-contained classrooms in grades 1 through 8, the major shall be in elementary education.

§303.A.2.c, 303.B, and 303.B.1—replaces the term "professional education courses" with the term used in *Bulletin 746, Teacher Certification*, "Knowledge of the Learner and Learning Environment."

§303.2.c.i—adds Section "i". Requirements provide the prospective teacher and the coursework that should be addressed for regular students and exceptional students.

§303.3.a—adds Section "a." Teachers of grades 1 through 8 without an elementary education major shall also work towards a practitioner's license through an alternative program as outlined in *Bulletin 746*."

§303.H—adds language that will allow any agency approved by the State Board to be used for the evaluation of foreign transcripts.

§2103.B—clarifies the subjects that "shall" be devoted to the remainder of the school day, and adds additional subjects that "shall" be included: health and electives such as religion, foreign language, and visual and performing arts.

§2103.2—revises subjects to the *Program of Studies for Nonpublic Elementary Schools Self-Contained Classroom* chart; deletes Fine Arts and replaces Science, deletes Science and replaces Health with Physical Education, and adds Visual and Performing Arts.

§2103.5—adds the term "Recommended" and removes the term "Minimum" in the Departmental Classes 6-Period Day Option and Departmental 7-Period Day Option Charts. Also, corrects and adds: "Period per Week and Recommended Periods.

§2103.6.h—clarifies the elective Art as "Visual Arts."

§2103.6.j—deletes elective "Instrumental or Vocal Music" and adds "Performing Arts."

§2703.F—revises language concerning Summer School on-site visit by personnel from SDE.

§3301—adds Abbreviations/Acronyms Section.

§3303—adds *Definitions* Section.

There are no estimated implementation costs (savings) to state or local governmental units as a result of these changes.

#### 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 be no estimated costs and/or economic benefits to persons or non-governmental groups directly affected.

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

There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0710#066

H. Gordon Monk  
Legislative Fiscal Office  
Legislative Fiscal Officer

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for  
State Certification of School Personnel  
Foreign Language Special Certificate PK-8  
(LAC 28.CXXXI.311)

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 revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §311, Foreign Language Special Certificate PK-8. This revision in policy will allow an individual applying for a Foreign Language Special Certificate PK-8 to present a course-by-course evaluation from World Education Services (WES) for certification. Previously applicants were limited to one credentialing evaluation company; this change will give applicants an additional option to determine degree equivalency.

### Title 28

### EDUCATION

#### Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

#### Chapter 3. Teaching Authorizations and Certifications

#### §311. Foreign Language Special Certificate PK-8

A. - C. ...

D. Eligibility guidelines:

1. a bachelor's degree in education or equivalent preparation in education from a foreign country. The status of this degree will be determined by the Louisiana Department of Education (LDE), Division of Student Standards and Assessments. If LDE staff cannot make a degree equivalent determination, the candidate's credentials must be evaluated by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) or by World Education Services. In the case of an AACRAO or World Education Services evaluation, the determination must be on "safe script" paper and must include a course-by-course evaluation;

D.2. - E. ...

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, LR 32:1800 (October 2006), amended LR 33:1618 (August 2007), LR 34:

### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., December 9, 2007, 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: Foreign Language Special Certificate PK-8**

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

This revision in policy will allow an individual applying for a Foreign Language Special Certificate PK-8 to present a course-by-course evaluation from World Education Services (WES) for certification. 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)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

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

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0710#018

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for  
State Certification of School Personnel  
Professional Level Certificates  
(LAC 28:CXXXI.305)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §305. Professional Level Certificates. This revision in policy will allow an individual coming from another country to present a course-by-course evaluation from World Education Services (WES) for Louisiana certification. Previously applicants were limited to one credentialing evaluation company; this change will give applicants an additional option to determine degree equivalency.

### Title 28

### EDUCATION

#### Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

#### Chapter 3. Teaching Authorizations and Certifications

#### §305. Professional Level Certificates

A. - A1.b.ii.(c). ...

c. Foreign Applicant—(OS) Certificate

i. Eligibility requirements:

(a). bachelor's or higher level degree verified by a regionally accredited institution in the United States. If the institution is located in Louisiana, the dean of the College of Education must recommend the applicant for certification based upon Louisiana requirements. If the institution is located in another state/country, the guidelines prescribed for out-of-state applicants must be followed; or

(b). credentials may be submitted to the American Association of Collegiate Registrars and Admissions Officers (AACRAO), Office of International Education Services or World Education Services for evaluation. The original course-by-course evaluation from AACRAO and World Education Services must be submitted directly from those agencies and must include a statement verifying the comparability of the baccalaureate degree in the field of education.

d. Foreign Applicant—Level 1 Certificate

i. Eligibility requirements:

(a). bachelor's or higher level degree verified by a regionally accredited institution in the United States. If the institution is located in Louisiana, the dean of the College of Education must recommend the applicant for certification based upon Louisiana requirements. If the institution is located in another state/country, the guidelines prescribed for out-of-state applicants must be followed; or

(b). credentials may be submitted to the American Association of Collegiate Registrars and Admissions Officers (AACRAO), Office of International Education Services or World Education Services for evaluation. The original course-by-course evaluation for certification must come directly from the evaluating agency and must include a statement verifying the comparability of the baccalaureate degree in the field of education; and

(c). present appropriate scores on the NTE core battery (common exams) or the corresponding Praxis exams (Pre-Professional Skills Tests in reading, writing, and mathematics); the Principles of Learning and Teaching (PLT) or other pedagogy exam required for the area(s) of certification; and the specialty area exam(s) in the certification area(s) in which the teacher preparation program was completed or in which the initial certificate was issued.

A.2. - E.3. ...

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, LR 32:1797 (October 2006), amended LR 34:

#### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., December 9, 2007, 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 Professional Level Certificates**

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

This revision in policy will allow an individual coming from another country to present a course-by-course evaluation from World Education Services (WES) for Louisiana certification. 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)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

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

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
0710#017

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

#### NOTICE OF INTENT

##### Department of Environmental Quality Office of the Secretary Legal Affairs Division

Evidentiary Hearings on  
Hazardous Waste Permit Applications  
(LAC 33:V.709)(HW101)

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.709 (Log #HW101).

This rule revises the circumstances for which an evidentiary hearing is held for operating permit applications for commercial hazardous waste treatment, storage, disposal, or recycling facilities under LAC 33:V.709. Currently, evidentiary hearings are conducted for all commercial hazardous waste facilities. The department is proposing to mandate evidentiary hearings only for initial permit applications for proposed, nonexistent facilities (consistent with LAC 33:V.Chapter 4, Requirements for Commercial Treatment, Storage, and Disposal Facility Permits) and to have the discretionary authority to hold evidentiary hearings for permit renewal applications at existing facilities when deemed beneficial to do so by the department. R.S. 30:2181 originally required an evidentiary hearing for operating permit applications for commercial hazardous waste treatment, storage, disposal, or recycling facilities. That statute was repealed by Act No. 947 of the 1995 Legislature, effective January 1, 1996. This act created R.S. 30:2016, which gives the department discretionary authority to hold either a fact-finding (evidentiary) hearing or a public comment hearing for any kind of permit application, policy decision, or rule development. During the last 10 years there have been approximately 6 evidentiary hearings. There were no interveners for any of these hearings and no additional substantial information was gathered that had not already been provided during the application process and public comment period. Evidentiary hearings will continue to be public noticed and held for initial permit applications in order to encourage involvement from all entities with a substantial interest in the hearing. In addition, a public comment period will be held on the draft permitting decision pursuant to LAC 33:V.713.A, and a public hearing may be

held on the draft permitting decision pursuant to LAC 33:V.707.A. Evidentiary hearings for other permit applications may be held when deemed beneficial by the department. The basis and rationale for this rule are to align the hazardous waste regulations with the intent of Act No. 947 of the 1995 Legislature.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) 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 7. Administrative Procedures for Treatment, Storage, and Disposal Facility Permits**

##### **Subchapter B. Hearings**

#### **§709. Evidentiary Hearings on Operating Permit Applications for Commercial Hazardous Waste Treatment, Storage, Disposal, or Recycling Facilities**

A. ...

B. Applicability

1. An evidentiary hearing shall be held after the technical review of an initial permit application for the operation of a proposed, nonexistent commercial hazardous waste treatment, storage, disposal, or recycling facility.

2. An evidentiary hearing may be held after the technical review of a permit application, other than an initial application for a proposed, nonexistent facility, for the operation of a commercial hazardous waste treatment, storage, disposal, or recycling facility upon a determination by the administrative authority that the hearing would be beneficial in making a permit decision. Considerations by the administrative authority in making this determination include, but are not limited to, fact-finding or clarification of issues.

3. Permit applications for which evidentiary hearings may be held pursuant to Paragraph B.2 of this Section include, but are not limited to:

a. initial permit applications for interim status facilities;

b. renewal permit applications for existing facilities; and

c. major modification (Class 2 or 3) applications for existing facilities (including requests for conversion of noncommercial status to commercial status).

C. - 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 10:200 (March 1984), amended LR 16:683 (August 1990), LR 17:362 (April 1991), LR 21:565 (June 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2469 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

A public hearing will be held on November 28, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference

Room, 602 N. Fifth Street, Baton Rouge, LA 70802. 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW101. Such comments must be received no later than December 5, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to [judith.schuerman@la.gov](mailto:judith.schuerman@la.gov). Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of HW101. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM  
Executive Counsel

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

### **RULE TITLE: Evidentiary Hearings on Hazardous Waste Permit Applications**

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

The state should realize minimal savings because of the proposed rule change. Over the next three years it is estimated that the agency will review six operating permit applications for commercial hazardous waste facilities. All of these applications will be for renewal permits for existing facilities; none will be for initial permits for proposed, non-existent facilities. The proposed rule change will give the agency discretionary authority to hold evidentiary hearings for renewals; therefore, it is estimated that fewer evidentiary hearings will be held under this rule change.

#### **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 by this proposed rule change.

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

Commercial hazardous waste facilities with renewal operating permit applications may realize minimal savings from this proposed rule change. Historically, facilities that have been required to have an evidentiary hearing have used their consultants to prepare brief presentations for the hearings. The usual extent of this information is a summary of the application. If the agency uses its discretionary authority under the proposed rule change and does not hold an evidentiary hearing for a renewal application for a facility, the costs



associated with the presentation would not be incurred by the facility.

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

There will be no appreciable effect on competition or employment by this proposed rule change since there are only six potentially affected facilities, and outside expenditures involved with an evidentiary hearing are limited to advertisement in the local newspaper, possible rental of space at a public building, hiring a consultant for a brief presentation, procuring a hearing officer, and procuring a court reporter.

Herman Robinson, CPM     Robert E. Hosse  
Executive Counsel         Staff Director  
0710#022                     Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Environmental Quality Office of the Secretary

Incorporation by Reference of 40 CFR 63  
(LAC 33:III.501, 3003, and 5122)(AQ290ft)

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 regulations, LAC 33:III.501, 3003, and 5122 (Log #AQ290ft).

This proposed rule is identical to federal regulations found in 70 FR 55568-55581, September 22, 2005, and 40 CFR 63, Subpart DDDDD, which are applicable in Louisiana. For more information regarding the federal requirements, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. 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 rule repeals the department's incorporation by reference of 40 CFR 63, Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (hereafter, the Boiler MACT) and the September 22, 2005, revisions to the definitions of *commercial and industrial solid waste incineration (CISWI) unit*, *commercial or industrial waste*, and *solid waste* found in 40 CFR 60.2265 and 60.2875 (hereafter, the CISWI Definitions Rule). The department incorporated by reference the provisions of the revisions to the definitions in 40 CFR 60.2265 and 60.2875 at LAC 33:III.3003, and the Boiler MACT at LAC 33:III.5122.A. On June 8, 2007, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Boiler MACT and the CISWI Definitions Rule (*Natural Resources Defense Council v. EPA*, D.C. Cir., No. 04-1385). The Court made its ruling effective on July 30, 2007.

In sum, the Court concluded that EPA's definition of "commercial or industrial waste" was too narrow in scope, thereby improperly limiting the number of solid waste incineration units subject to Section 129 of the Clean Air Act. Thus, the standard to which a number of sources will ultimately be subject—whether it be the "re-promulgated" Boiler MACT, federal rules for commercial and industrial

solid waste incineration units (i.e., 40 CFR 60, Subpart CCCC), or Louisiana's §111(d) plan implementing 40 CFR 60, Subpart DDDD (69 FR 9949-9954, March 3, 2004)—is ambiguous at best and not likely to be resolved in the near term. Prior to the court's ruling, the department incorporated requirements of the rules into air operating permits. In light of the ruling, the department is seeking to maintain consistency with the federal rules and to provide the public with information regarding the status of existing permit conditions citing the vacated federal provisions. The basis and rationale for this rule are to amend the regulations to be identical to federal rules in response to the Court ruling vacating the Boiler MACT and the CISWI Definitions Rule.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) 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.

The full text of this proposed Rule may be viewed in the Emergency Rule portion of this edition of the *Louisiana Register*.

Herman Robinson, CPM  
Executive Counsel

0710#019

### NOTICE OF INTENT

#### Department of Environmental Quality Office of the Secretary

Motor Fuels UST Trust Fund Procedures  
(LAC 33:XI.1121)(UT012)

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 Underground Storage Tanks regulations, LAC 33:XI.1121 (Log #UT012).

This proposed rule provides for the use of a lien in substitute for the owner's financial responsibility required by law for an underground storage tank owner who has established inability to pay and who has ceased operations. In addition, the rule provides that the use of the lien be limited to 20 percent of the amount collected in the previous fiscal year. The rule also defines, from the requirements of R.S. 30:2195.2 and 2194.4(A)(1), that reimbursement from the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) for "all necessary and appropriate expenditures" to owners for response actions taken "when authorized by the secretary" shall be made, in cases with multiple releases from, and multiple owners of, one or more UST systems, for work done in compliance with a single corrective action plan approved by the department. The rule allows the department to choose a response action contractor (RAC) should the owners, within 90 days of the most recent release, be unable to agree on a single RAC to submit work plans and applications to investigate and perform the cleanup. This rule revision implements Act 447 of the 2006 Regular Session of the Louisiana Legislature, provides

guidance for the regulated community, and eliminates the recurring problem concerning multiple RACs when a site has more than one release and more than one owner. These changes are necessary to ensure the fiscal stability of the MFUSTTF. The basis and rationale for this proposed rule are to implement Act 447 and to ensure the continuing financial viability of the Motor Fuels Underground Storage Tank Trust Fund.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) 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 XI. Underground Storage Tanks**

#### **Chapter 11. Financial Responsibility**

##### **§1121. Use of the Motor Fuels Underground Storage Tank Trust Fund**

The administrative authority was authorized by R.S. 30:2194-2195.10 to receive and administer the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) to provide financial responsibility for owners and/or operators of underground motor fuel storage tanks. Under the conditions described in this Section, an owner and/or operator who is eligible for participation in the MFUSTTF may use this mechanism to partially fulfill the financial responsibility requirements for eligible USTs. To use the MFUSTTF as a mechanism for meeting the requirements of LAC 33:XI.1107, the owner and/or operator must be an *eligible participant* as defined in Subsection A of this Section. In addition, the owner and/or operator must use one of the other mechanisms described in LAC 33:XI.1111-1119 or 1123-1125 to demonstrate financial responsibility for the amounts specified in Subsection C of this Section, which are the responsibility of the participant and not covered by the MFUSTTF.

A. Definitions. The following terms shall have the meanings ascribed to them as used in this Section.

\* \* \*

*Eligible Participant*—any owner of an operating or newly-installed underground storage tank who has registered the tank with the department prior to the date of a release, has paid the annual tank registration fees along with any late payment fees, has met the financial responsibility requirements imposed by Subsection B of this Section, and, if applicable, has met the noncompliance financial responsibility amounts provided in R.S. 30:2195.10.

\* \* \*

B. Financial Responsibility Requirements for MFUSTTF Participants

1. Unless revised by the administrative authority in accordance with R.S. 30:2195.9(A)(3), MFUSTTF participants taking response actions must pay the following amounts before any disbursements are made from the fund:

a. \$10,000 per occurrence for cleanup and an additional \$10,000 per occurrence for third-party judgments, for the period from July 15, 1988 through December 31, 1989;

b. \$15,000 per occurrence for cleanup and an additional \$15,000 per occurrence for third-party judgments, for the period from January 1, 1990 through July 14, 1992;

c. for the period from July 15, 1992 through June 15, 1995:

i. \$5,000 per occurrence for cleanup and an additional \$5,000 for third-party judgments for owners with 1 to 12 tanks in Louisiana;

ii. \$10,000 per occurrence for cleanup and an additional \$10,000 for third-party judgments for owners with 13 to 99 tanks in Louisiana; and

iii. \$15,000 per occurrence for cleanup and an additional \$15,000 for third-party judgments for owners with 100 or more tanks in Louisiana; and

d. \$5,000 per occurrence for cleanup and an additional \$5,000 per occurrence for third-party judgments, for the period from June 16, 1995 through December 31, 2001.

2. Thereafter, the advisory board shall review the financial responsibility requirements on an annual basis and may recommend adjustments to the requirements to the administrative authority. The administrative authority shall determine and set the financial responsibility requirements annually [as provided in R.S. 30:2195.9(A)(3)].

3. Eligible participants must demonstrate financial responsibility for the established amounts by the allowable mechanisms described in LAC 33:XI.1111-1119 and LAC 33:XI.1123-1125.

4. Substitution of a Departmental Lien

a. A lien filed by the department with the same ranking and privilege as that authorized by R.S. 30:2195(F)(2) may be substituted for the financial responsibility requirement of this Section, but in no case shall the lien be substituted on behalf of an owner and/or operator who continues to operate the system. The use of the funds in the MFUSTTF during any fiscal year on a site for which the lien, as authorized by this Section, has been used to substitute for the financial responsibility amount shall not exceed 20 percent of the amount collected in the previous fiscal year. The administrative authority is authorized to exceed the 20 percent limitation contained in this Paragraph upon recommendation by the advisory board.

b. Upon recommendation by the advisory board to exceed the 20 percent limitation as provided in Subparagraph B.4.a of this Section, the administrative authority shall provide written notification to the Senate Committee on Environmental Quality and the House Committee on the Environment listing the project name, the project location, and the amount of the project that exceeds the 20 percent limitation.

C. - D.2. ...

3. For sites with more than one eligible release and with multiple owners and/or operators wishing to use MFUSTTF monies, cost effective procedures shall require that the multiple owners and/or operators provide to the administrative authority a single investigation and corrective action plan that complies with the requirements of LAC 33:XI.709, 711, and 715. The MFUSTTF shall reimburse the owners and/or operators only after the submittal of one certified request for reimbursement for work that has been

completed according to the administrative authority's approved investigation and corrective action plan.

4. For sites with more than one eligible release and with multiple owners and/or operators wishing to use MFUSTTF monies who cannot agree on the selection of a single qualified response action contractor (RAC) for the purpose of complying with Paragraph D.3 of this Section, or who have failed to begin investigation or corrective action within the time required by the administrative authority, the administrative authority shall select a RAC to carry out the investigation and/or corrective action or order the respective owners and/or operators to begin investigation or corrective action without MFUSTTF monies. The administrative authority, in choosing a RAC, shall solicit notices of interest in the project from all approved RACs and select a RAC randomly through a public drawing from all RACs expressing an interest in the project. The RAC selected shall not be one currently under contract to any one of the multiple owners and/or operators of the site. Owners and/or operators shall continue to monitor site cleanup and shall sign and submit a sworn application requesting reimbursement. Thereafter, the administrative authority shall determine all reasonable costs and shall pay the RAC directly.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq. and specifically 2195-2195.10.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), LR 27:521 (April 2001), amended by the Office of Environmental Assessment, LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

A public hearing will be held on November 28, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by UT012. Such comments must be received no later than December 5, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to [judith.schuerman@la.gov](mailto:judith.schuerman@la.gov). Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of UT012. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive,

Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM  
Executive Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Motor Fuels UST Trust  
Fund Procedures**

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

New costs to the state are expected to be minimal, consisting of fees paid by the department to file liens with the clerks of court. The rule implements the provisions of Act 447 of the 2006 legislature, which provides that the state may substitute a lien for the financial responsibility amounts found in R.S. 30:2195.9. The use of the lien is limited and the department does not anticipate that the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) will be adversely impacted. There are no additional costs to local government.

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

The rule should have minimal effects on the revenue collections of state and local governmental units. A small increase in local revenues will result from filing fees for the new liens with the clerks of court. These types of cases will be very limited in number.

The rule should result in additional cleanups of contaminated underground storage tank (UST) sites, placing them back into commerce, with resulting benefits to state and local governments.

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

There will be no additional costs to directly affected persons or non-governmental groups. There will be a benefit, in that owners/operators of UST systems who do not have the financial means to meet the financial responsibility amounts provided in R.S. 30:2195.9 will still be able to qualify for reimbursement of cleanup costs from the MFUSTTF.

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

There will be no effect on competition or employment.

Herman Robinson, CPM  
Executive Counsel  
0710#024

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Periodic Monitoring  
(LAC 33:III.507)(AQ289ft)

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 regulations, LAC 33:III.507 (Log #AQ289ft).

This proposed rule is identical to federal regulations found in 40 CFR 70.6(a)(3)(i)(B), which are applicable in

Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. 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 rule adds certain language from 40 CFR 70.6(a)(3) to LAC 33:III.507, such that it can be cited in Title V permits as necessary. The Part 70 Operating Permits Program at 40 CFR 70.6(a)(3), generally referred to as EPA's "periodic monitoring rule," requires all Title V permits to include provisions for periodic monitoring where an applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring). Such monitoring requirements shall ensure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

40 CFR 70.6(a)(3) is referenced in the Louisiana air quality regulations at LAC 33:III.507.H.1. This regulation mirrors the more generic provision of the Part 70 Operating Permits Program at 40 CFR 70.6(c)(1), sometimes referred to as EPA's "umbrella monitoring rule," which states that all Part 70 permits shall contain, consistent with 40 CFR 70.6(a)(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to ensure compliance with the terms and conditions of the permit.

EPA's interpretation of 40 CFR 70.6(c)(1) (set forth at 71 FR 75422-75431, December 15, 2006) is that this provision does not establish an independent basis for requiring or authorizing review and enhancement of existing monitoring in Title V permits. Instead, the umbrella monitoring rule simply requires the permitting authority to include in Title V permits a number of elements (e.g., reporting, recordkeeping, compliance certifications) related to compliance; among these elements is the monitoring as specified in the periodic monitoring rule. Given EPA's position, it is better for the department to directly reference EPA's periodic monitoring rule, rather than EPA's umbrella monitoring rule. This rule is also being proposed as a revision to LDEQ's Part 70 Operating Permits Program. The basis and rationale for this rule are to add the language of 40 CFR 70.6(a)(3) to the state regulations, such that it can be cited in Title V permits as necessary.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) 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 5. Permit Procedures**

**§507. Part 70 Operating Permits Program**

A. - G.5. ...

H. Compliance Measures and Certifications of Compliance. Each permit issued to a Part 70 source shall include the following elements with regard to compliance:

1. compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to

assure compliance with the terms and conditions of the permit as required by 40 CFR 70.6(a)(3), including:

a. where an applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to 40 CFR 70.6(a)(3)(iii). Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this Subparagraph;

b. for any document required to be submitted under this Paragraph, a certification by a *responsible official* as defined in LAC 33:III.502 and required by LAC 33:III.517.B.1;

H.2. - J.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:1008 (May 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 32:808 (May 2006), LR 33:1619 (August 2007), LR 33:808 (October 2007), LR 33:

A public hearing will be held on November 28, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. The hearing will also be for the revision to LDEQ's Part 70 Operating Permits Program. 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ289ft. Such comments must be received no later than November 28, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to [judith.schuerman@la.gov](mailto:judith.schuerman@la.gov). The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ289ft. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525

Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM  
Executive Counsel

0710#020

## NOTICE OF INTENT

### Department of Environmental Quality Office of the Secretary

#### Regulation Revisions

(LAC 33:I.3931; III.111, 2121, 2125, 2145, 2147, and 2201; V.109, 1113, 1127, 1315, 1319, 1517, 4397, and 4999; IX.2707, 4905, and 6125; and XI.707)(MM005)

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 Environmental Quality regulations, LAC 33:I.3931; III.111, 2121, 2125, 2145, 2147, and 2201; V.109, 1113, 1127, 1315, 1319, 1517, 4397, and 4999; IX.2707, 4905, and 6125; and XI.707 (Log #MM005).

This proposed rule corrects outline numbering and wording errors that have been discovered in the Title 33, Environmental Quality regulations. Language found to be redundant or not required by federal regulations is deleted, and contact information for referenced publications is corrected. The Environmental Quality Act requires the department to promulgate environmental regulations. Maintenance of these regulations is part of that responsibility. The basis and rationale for this proposed rule are to maintain the regulations that protect the environment and public health of the state, as authorized by the Environmental Quality Act.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) 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 2. Notification

### Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

#### Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges

##### §3931. Reportable Quantity List for Pollutants

A. - B. Footnote #. ...

C. Copies of documents incorporated by reference may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401, or by telephone at (866) 512-1800.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:751 (April 2004), LR 30:1669 (August 2004), amended by the Office of Environmental Assessment, LR 31:919 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:603 (April 2006), LR 32:2248 (December 2006), LR 33:640 (April 2007), LR 34:

### Part III. Air

#### Chapter 1. General Provisions

##### §111. Definitions

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below.

\* \* \*

*Automobile and Light-Duty Truck Assembly Plant*—a facility, excluding customizers, body shops, and other repainters, where automobile and/or light-duty truck bodies, frames, and parts are assembled for eventual inclusion into a finished product ready for sale to vehicle dealers, but excluding the following operations:

- a. wheel coatings;
- b. anti-rust coatings;
- c. trunk coatings;
- d. interior coatings;
- e. flexible coatings;
- f. sealers; and
- g. plastic parts coatings.

*Bubble Concept*—an alternative emission plan whereby a facility with multiple sources of a given pollutant may achieve a required total emission by a different mix of controls from that mandated by regulation. Some sources may be assigned more restrictive limits, while others would meet less restrictive ones, provided the resulting total emissions are equivalent. Such a concept may permit a more expeditious compliance plan.

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 15:1061 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:777 (August 1991), LR 21:1081 (October 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006), LR 32:1599 (September 2006), LR 33:808 (October 2007), LR 34:

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

##### Subchapter A. General

##### §2121. Fugitive Emission Control

A. Applicability. This regulation is applicable to equipment in petroleum refineries, natural gas processing plants, the synthetic organic chemical manufacturing industry (SOCMI), the methyl tertiary butyl ether (MTBE)

manufacturing industry, and the polymer manufacturing industry that contains any of the following components that are intended to operate in VOC service 300 hours or more during the calendar year:

1. pumps;
2. compressors;
3. pressure relief devices;
4. open-ended valves or lines;
5. process drains;
6. valves;
7. agitators;
8. instrumentation systems; and
9. connectors.

B. - G.Liquid Service. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:959 (November 1990), LR 17:654 (July 1991), LR 21:1330 (December 1995), LR 22:1128 (November 1996), LR 22:1212 (December 1996), LR 24:22 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1433 (July 2000), LR 26:2452 (November 2000), LR 30:1659 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2440 (October 2005), LR 34:

### **Subchapter C. Solvent Degreasers**

#### **§2125. Solvent Degreasers**

A. - G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:959 (November 1990), LR 18:1122 (October 1992), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:1765 (August 2002), LR 30:746 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

### **Subchapter I. Pharmaceutical Manufacturing Facilities**

#### **§2145. Pharmaceutical Manufacturing Facilities**

A. - A.2. ...

B. Air Dryers and Production Equipment Exhaust Systems. The owner or operator of a synthesized pharmaceutical manufacturing facility subject to this regulation shall reduce the VOC emissions from all air dryers and production equipment exhaust systems:

1. by at least 90 percent if emissions are 330 lb/day (150 kg/day) or more of VOC; or
2. to 33 lb/day (15.0 kg/day) or less if emissions are less than 330 lb/day (150 kg/day) of VOC.

C. Storage and Loading Controls. The owner or operator of a synthesized pharmaceutical manufacturing facility subject to this regulation shall:

1. provide a vapor balance system or equivalent control that is at least 90 percent effective in reducing emissions from truck or railcar deliveries to storage tanks with capacities greater than 2,000 gallons that store VOC with vapor pressures greater than 4.1 psia (28.0 KPA) at 20°C; and

2. install pressure/vacuum conservation vents set at plus or minus 0.03 psi gauge (plus or minus 0.2 KPA) on all

storage tanks that store VOC with vapor pressures greater than 1.5 psia (10.3 KPA) at 20°C, unless a more effective control system is used.

D. Centrifuges, Filters, and In-process Tank Requirements. The owner or operator of a synthesized pharmaceutical facility subject to this regulation shall:

1. enclose all centrifuges, rotary vacuum filters, and other filters which have exposed liquid surfaces, where the liquid contains volatile organic compounds and exerts a total volatile organic compound vapor pressure of 0.5 psia (3.50 KPA) or more at 20°C;

2. install covers on all in-process tanks containing a volatile organic compound at any time. These covers must remain closed, unless production, sampling, maintenance, or inspection procedures require operator access.

E. - G.4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:964 (November 1990), LR 22:1212 (December 1996), LR 24:25 (January 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

### **Subchapter J. Limiting Volatile Organic Compound (VOC) Emissions from Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry (SOCMI)**

#### **§2147. Limiting VOC Emissions from SOCMI Reactor Processes and Distillation Operations**

A. - C.1.a. ...

- b. combust emissions in a flare. Flares used to comply with this Section shall comply with the requirements of 40 CFR 60.18. The flare operation requirement does not apply if a process vents an emergency relief discharge into a common flare header and causes the flare servicing the process to be out of compliance with one or more of the provisions of the flare operation rule.

C.2. - F.4, Figure 1. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:380 (April 1995), amended LR 22:1212 (December 1996), LR 23:1508, 1510 (November 1997), LR 23:1679 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:746 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

### **Chapter 22. Control of Emissions of Nitrogen Oxides (NO<sub>x</sub>)**

#### **§2201. Affected Facilities in the Baton Rouge Nonattainment Area and the Region of Influence**

A. - C.6. ...

7. flares, incinerators, and kilns and ovens, as defined in Subsection B of this Section;

C.8. - J.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:290 (February 2002),

repromulgated LR 28:451 (March 2002), amended LR 28:1578 (July 2002), LR 30:748 (April 2004), LR 30:1170 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2441 (October 2005), LR 34:

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental Quality—**

**Hazardous Waste**

**Chapter 1. General Provisions and Definitions**

**§109. Definitions**

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

\* \* \*

*Recovery Operations*—activities leading to resource recovery, recycling, reclamation, direct reuse or alternative uses as listed in Table 2.B of the Annex of OECD Council Decision C(88)90(Final) of 27 May 1988, (available from the Environmental Protection Agency, RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC 20460 (Docket Number F-94-IEHF-FFFFF), or at the National Archives and Records Administration (NARA) by telephone at (202) 741-6030, or at the Organisation for Economic Co-operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France), which include the following operations.

Code	Recovery Operations
* * *	
[See Prior Text in Table]	

\* \* \*

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, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended 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 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003); amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:1625 (August 2007), LR 33:822 (October 2007), LR 34:

**Chapter 11. Generators**

**Subchapter A. General**

**§1113. Exports of Hazardous Waste**

A. - G.1.f, certification. ...

2. Reports shall be sent to the administrative authority of the Louisiana Department of Environmental Quality.

NOTE: This does not relieve the regulated community from the requirement of submitting annual reports in accordance with 40 CFR 262.56 to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Hand-delivered reports should be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW, Washington, DC 20004.

H. - I.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 18:1256 (November 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 22:20 (January 1996), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:661 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), LR 27:710 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006), LR 33:824 (October 2007), LR 34:

**Subchapter B. Transfrontier Shipments of Hazardous Waste**

**§1127. Transfrontier Shipments of Hazardous Waste for Recovery within the OECD**

A. - C.2. ...

a. Transactions Requiring Specific Consent

i. Notification. At least 45 days prior to commencement of the transfrontier movement, the notifier must provide written notification in English of the proposed transfrontier movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in Paragraph C.5 of this Section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same notifier, the notifier may submit one notification of intent to export these wastes in multiple shipments during a period of up to one year.

ii. - iii. ...

b. Shipments to Facilities Preapproved by the Competent Authorities of the Importing Countries to Accept Specific Wastes for Recovery

i. The notifier must provide EPA the information identified in Paragraph C.5 of this Section, in English, at least 10 days in advance of commencing shipment to a preapproved facility. The notification should indicate that the recovery facility is preapproved, and the notification may apply to a single specific shipment or to multiple shipments as described in Clause C.2.a.i of this Section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave.,

NW, Washington, DC 20460, with the words "OECD Export Notification-Preapproved Facility" prominently displayed on the envelope.

C.2.b.ii. - D.4. ...

5. Within three working days of the receipt of imports subject to this Subchapter, the owner or operator of the United States recovery facility must send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, and to the competent authorities of the exporting and transit countries.

E. - F.2. ...

#### G. Reporting and Recordkeeping

1. Annual Reports. For all waste movements subject to this Subchapter, persons (e.g., notifiers, recognized traders) who meet the definition of *primary exporter* in LAC 33:V.109 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, no later than March 1 of each year, summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter is required to file an annual report for waste exports that are not covered under this Subchapter, he may include all export information in one report provided the information required by this Subsection on exports of waste destined for recovery within the designated OECD member countries is contained in a separate section.) Such reports shall include the following:

G.1.a. - I.4. ...

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 24:661 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), LR 27:293 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

### Chapter 13. Transporters

#### §1315. Spills

A. - E. ...

1. give notice, if required by 49 CFR 171.15, to the National Response Center by telephone at (800) 424-8802 or (202) 267-2675; and

2. report in writing, as required by 49 CFR 171.16, to the Information Systems Manager, PHH-63, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, Washington, DC 20590-0001, or send an electronic Hazardous Materials Incident Report to the Information System Manager, DHM-63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001. An electronic Hazardous Materials Incident Report form can be obtained at <http://hazmat.dot.gov>.

F. As required by 33 CFR 153.203 for oil and hazardous substance, a water (bulk shipment) transporter who has discharged hazardous waste must immediately notify the

National Response Center (NRC), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593 by telephone at (800) 424-8802 or (202) 267-2675.

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), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

### §1319. Use and Reuse of Containers

A. - B.4. ...

C. Repealed.

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 by the Office of the Secretary, Legal Affairs Division, LR 34:

### Chapter 15. Treatment, Storage, and Disposal Facilities

#### §1517. General Requirements for Ignitable, Reactive, or Incompatible Wastes

A. - D. ...

E. When required to comply with LAC 33:V.1517.A and B, the owner or operator must document that compliance. This documentation may be based on references to published scientific or engineering literature, data from trial tests (e.g., bench scale or pilot scale tests), waste analyses, or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

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 by the Office of the Secretary, Legal Affairs Division, LR 34:

### Chapter 43. Interim Status

#### Subchapter G. Financial Requirements

#### §4397. Applicability

A. ...

B. The requirements of LAC 33:V.4405 and 4407 apply only to owners and operators of:

B.1. - D.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 13:433 (August 1987), LR 13:651 (November 1987), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1109 (June 1998), LR 25:486 (March 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

### Chapter 49. Lists of Hazardous Wastes

#### §4999. Appendices—Appendix A, B, C, D, and E

Appendix A. - Appendix D. ...

Appendix E. Wastes Excluded under LAC 33:V.105.M

A. - B.3.b. ...

Table 1 - Wastes Excluded

\*\*\*

[See Prior Text in Dupont Dow Elastomers LLC, Laplace, LA – BFI Waste Systems of Louisiana LLC, Colonial Landfill, Sorrento, LA, (4)]



<b>Table 1 - Wastes Excluded</b>
<b>Syngenta Crop Protection, Inc., St. Gabriel, LA</b>
Incinerator ash, at a maximum annual generation rate of 3,600 cubic yards per year, and incinerator scrubber water, at a maximum annual generation rate of 420,000 cubic yards per year (approximately 85 million gallons per year), result from incineration at the Syngenta Crop Protection, Inc., facility in St. Gabriel, Louisiana. Syngenta's waste stream includes the United States Environmental Protection Agency (USEPA) hazardous waste codes F001-F005, F024, K157-K159, and all P and U codes. The constituents of concern for these waste codes are listed in LAC 33:V.4901. This exclusion applies only to incinerator ash and incinerator scrubber water resulting from incineration conducted at Syngenta's St. Gabriel facility. Syngenta must implement a testing and management program that meets the following conditions for the exclusion to be valid.
* * *
[See Prior Text in (1) - (3)(A)]
(3)(B). Organic Constituents (all units are milligrams per liter) acetone—26.0; benzene—0.05; carbon tetrachloride—0.18; chloroform—0.14; 1,2-dichlorobenzene—0.77; hexachlorobenzene—0.13; nitrobenzene—0.14; pentachlorobenzene—0.04; pyridine—0.26; toluene—10.0; toxaphene—0.089; and vinyl chloride—0.05.
* * *
[See Prior Text in (4) - (4)(A)]

<b>Table 1 - Wastes Excluded</b>
* * *
[See Prior Text in Murphy Exploration and Production Company, Amelia, LA]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 20:1000 (September 1994), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:944 (September 1995), LR 22:830 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2397 (December 1999), LR 26:2509 (November 2000), LR 29:1084 (July 2003), repromulgated LR 29:1475 (August 2003), amended by the Office of Environmental Assessment, LR 30:2464 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:445 (March 2007), LR 33:825 (May 2007), LR 33:1016 (June 2007), LR 34:

### Part IX. Water Quality

#### Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

#### Chapter 27. LPDES Permit Conditions

#### §2707. Establishing Limitations, Standards, and Other Permit Conditions

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

4. the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA and the LEQA.

NOTE: Additional technical information on BMPs and the elements of BMPs is contained in the following documents: Guidance Manual for Developing Best Management Practices (BMPs), October 1993, EPA No. 833/B-93-004, NTIS No. PB 94-178324, ERIC No. W498; Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, September 1992, EPA No. 832/R-92-005, NTIS No. PB 92-235951, ERIC No. N482; Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R-92-001, NTIS

No. PB 93-223550, ERIC No. W139; Storm Water Management for Industrial Activities; Developing Pollution Prevention Plans and Best Management Practices, September 1992; EPA No. 832/R-92-006, NTIS No. PB 92-235969, ERIC No. N477; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R-92-002, NTIS No. PB 94-133782, ERIC No. W492. Copies of these documents (or directions on how to obtain them) can be obtained by contacting either the Office of Water Resource Center (using the EPA document number as a reference) at (202) 566-1729 or the Educational Resources Information Center (ERIC) (using the ERIC number as a reference) at (800) 538-3742. Updates of these documents or additional BMP documents may also be available. A list of EPA BMP guidance documents is available on the Office of Water Management Home Page at <http://www.epa.gov/owm>. In addition, states may have BMP guidance documents. These EPA guidance documents are listed here only for informational purposes; they are not binding and EPA does not intend that these guidance documents have any mandatory regulatory effect by virtue of their listing in this note.

L. - S. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:724 (June 1997), LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2282 (October 2000), LR 26:2764 (December 2000), LR 28:469 (March 2002), LR 28:1767 (August 2002), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 31:426 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

#### Chapter 49. Incorporation by Reference

#### §4905. Availability

A. Copies of documents incorporated by reference may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401, or by telephone at (866) 512-1800.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), repromulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

#### Chapter 61. General Pretreatment Regulations for Existing and New Sources of Pollution

#### §6125. Variances from Categorical Pretreatment Standards for Fundamentally Different Factors

A. - H.9. ...

I. Deficient Requests. The administrator (or his delegate) or the state administrative authority will only act on written requests for variances that contain all of the information required. Persons who have made incomplete submissions will be notified by the administrator (or his delegate) or the state administrative authority that their requests are deficient and unless the time period is extended, will be given up to thirty days to remedy the deficiency. If the deficiency is not corrected within the time period allowed by the administrator (or his delegate) or the state administrative authority, the request for a variance shall be denied.

J. - M.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2556 (November 2000), repromulgated LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2515 (October 2005), LR 34:

### **Part XI. Underground Storage Tanks**

#### **Chapter 7. Methods of Release Detection and Release**

##### **Reporting, Investigation, Confirmation, and Response**

##### **§707. Reporting of Suspected Releases**

A. - A.4.a. ...

b. a UST system analysis report result of "inconclusive."

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), LR 30:1677 (August 2004), amended by the Office of Environmental Assessment, LR 31:1073 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

A public hearing will be held on November 28, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by MM005. Such comments must be received no later than December 5, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to [judith.schuerman@la.gov](mailto:judith.schuerman@la.gov). Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of MM005. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM  
Executive Counsel

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

### **RULE TITLE: Regulation Revisions**

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

There are no estimated implementation costs (savings) to state or local governmental units as a result of the proposed rule.

#### **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 resulting from the proposed rule.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

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

There is no estimated effect on competition or employment.

Herman Robinson, CPM  
Executive Counsel  
0710#023

Robert E. Hosse  
Staff Director  
Legislative Fiscal Officer

### **NOTICE OF INTENT**

#### **Department of Health and Hospitals Board of Medical Examiners**

Midwives—Licensure and Practice  
(LAC 46:XLV.Chapters 23 and 53)

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. 37:1261-1292, the Louisiana Midwife Practitioners Act, R.S. 37:3240-3257, and the applicable provisions of the Louisiana Administrative Procedure Act, R.S. 49:951 et seq., intends to amend its administrative rules governing licensure and practice of licensed midwives, LAC 46:XLV, Subpart 2, Chapter 23, Subchapters A-D, F-G, §§2303, 2307, 2313, 2317, 2321, 2325, 2345, 2349, 2357, 2359, 2361; and Subpart 3, Chapter 53, Subchapters A-C, §§5301, 5303, 5305, 5307, 5309, 5313, 5315, 5319, 5321, 5327, 5329, 5331, 5333, 5337, 5339, 5343, 5347, 5353, 5355, 5357, 5359, 5361, and 5363. The proposed Rules update a number of provisions generally, incorporate certain revised definitions, and make other substantive modifications consistent with the controlling law.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XLV. Medical Examiners**

#### **Subpart 2. Licensure and Certification**

#### **Chapter 23. Licensed Midwives**

#### **Subchapter A. General Provisions**

#### **§2303. Definitions**

A. As used in this Chapter, the following terms shall have the meanings specified.

\* \* \*

*Certified Nurse-Midwife*—a registered nurse who has been certified as a midwife by the American College of Nurse-Midwives.

\* \* \*

*Physician*—a person licensed to practice medicine in this state who is actively engaged in a clinical obstetrical practice and has hospital privileges in obstetrics in a hospital accredited by the Joint Commission on the Accreditation of Health Care Organizations (JCAHO).

*Physician Evaluation and Examination*—physical examination by a physician at least once during the first or second trimester of pregnancy and again at least once within the last four weeks of pregnancy.

*Practice of Midwifery*—holding oneself out to the public and/or being engaged in the business of attending, assisting, or advising a woman, who has been determined by physician evaluation and examination to be essentially normal for pregnancy and childbirth, during the various phases of the interconceptional and childbearing periods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:513 (August 1986), amended LR 17:779 (August 1991), LR 34:

#### **Subchapter B. Qualifications for Licensure**

##### **§2307. Qualifications for License**

A. To be eligible for licensure as a licensed midwife, an applicant shall:

1. be at least 21 years of age and shall have graduated from high school or possess a graduate education diploma ("GED");

2. - 5. ...

6. have met, within four years prior to the date of application, the requirements for practical clinical experience prescribed by §2357 of this Chapter;

A.7. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:513 (August 1986), amended LR 17:779 (August 1991), LR 34:

#### **Subchapter C. Application**

##### **§2313. Application Procedure**

A. ...

B. An initial application must be received by the board at least 90 days before the administration of the licensing examination. Completed applications must be received by the board at least 60 days before administration of the licensing examination.

C. Application forms and instructions pertaining thereto may be obtained from the office of the board.

D. An application for licensing under this Chapter shall include:

1. proof, documented in a form satisfactory to the board, that the applicant possesses the qualifications set forth in this Chapter;

D.2. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3240-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:514 (August 1986), amended 17:779 (August 1991), LR 30:236 (February 2004), LR 34:

#### **Subchapter D. Examination**

##### **§2317. Scope of Examination**

A. The examination administered by the board pursuant to R.S. 37:3255 shall be administered by the board in two parts. A written examination shall be administered to test the applicant's knowledge of basic sciences, theory regarding pregnancy and childbirth, and clinical judgment in licensed midwifery management. A practical examination shall be administered to test the applicant's mastery of skills necessary for the practice of licensed midwifery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:514 (August 1986), amended LR 17:779 (August 1991), LR 34:

##### **§2321. Dates, Places of Examination**

A. The board's examinations are administered twice a year in the city of New Orleans. Applicants shall be advised of the specific dates, times, and locations of the next scheduled examination upon application to the board and may obtain such information upon inquiry to the office of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:515 (August 1986), amended LR 17:779 (August 1991), LR 34:

##### **§2325. Subversion of Examination Process**

A. - B.6. ...

7. having in one's possession during the administration of the examination any materials or objects other than the examination materials distributed, including, without limitation, any books, notes, recording devices, or other written, printed, or recorded materials or data of any kind;

8. - 10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:515 (August 1986), amended LR 17:779 (August 1991), LR 34:

#### **Subchapter F. License Issuance, Termination, Renewal, Reinstatement**

##### **§2345. Renewal of License**

A. - B. ...

C. Any person who files for renewal of licensure shall present a current certification in cardiopulmonary resuscitation (CPR) of the adult and newborn and shall be required to show proof of completion of 30 contact hours of continuing education as approved by the board, in accordance with §§2361-2364 of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3240-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:516 (August 1986), amended 17:779 (August 1991), LR 30:236 (February 2004), LR 34:

##### **§2349. Reinstatement of License**

A. A license which has been revoked pursuant to §2347 of these rules, may be reinstated upon application for reinstatement on forms supplied by the board.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:516 (August 1986), amended LR 17:779 (August 1991), LR 34:

### **Subchapter G. Education**

#### **§2357. Clinical Experience**

A. Clinical experience in midwifery is required of every applicant for licensure and may be obtained in a variety of settings, including medical offices, clinics, hospitals, maternity centers, and in the home. Clinical experience must include instruction in basic nursing skills, including vital signs, perineal preparation, enema, urethral catheterization, aseptic techniques, administration of medication orally and by injection, local infiltration for anesthesia, administration of intravenous fluids, venipuncture, infant and adult resuscitation, identification and assessment of fetal heart tones and edema, routine urinalysis, and cutting and repair of episiotomy.

B. The clinical experience requisite to licensure shall include care of women in the antepartum, intrapartum, and postpartum periods. Clinical practice must include at least the following types of numbers of experiences (with out-of-hospital births making up at least one-half of the clinical experience):

1. 100 prenatal visits on at least 25 different women, including 20 initial examinations;
2. attendance at the labor and delivery of at least 20 live births as an observer or assistant attendant;
3. management of the labor and delivery of newborn and placenta for at least 20 births as the primary birth attendant;
4. ...
5. 40 postpartum evaluations of mother and baby in home or hospital within 72 hours of delivery;
6. a minimum of five repairs of lacerations or such greater number as necessary to be deemed competent by the clinical supervisor, in addition to any practice on non-human subjects;
7. five observations of hospitalized births involving high-risk obstetric care, provided, however, that this requirement may be waived by the board upon demonstration and documentation by the applicant that opportunity for such observations was not reasonably available to the applicant notwithstanding the applicant's diligent, good faith efforts to obtain opportunity for such observations; and
8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:517 (August 1986), amended LR 17:779 (August 1991), LR 34:

#### **§2359. Supervision of Clinical Experience**

A. Apprentice midwives must obtain their clinical experience under the immediate personal supervision of a physician, certified nurse-midwife, or a licensed midwife.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:517 (August 1986), amended LR 17:779 (August 1991), LR 34:

### **Subchapter H. Continuing Education**

#### **§2361. Scope of Subchapter; Continuing Education Requirement**

A. The rules of this Subchapter provide standards for the continuing education requisite to renewal of any license or permit issued under this Chapter, as required by R.S. 37:3254 and §2345 of these rules, and prescribe the procedures applicable to documentation of continuing education in connection with application for renewal of licensure or permit.

B. To be eligible for renewal of licensure or apprentice permit, a licensed midwife or apprentice midwife shall document, upon forms supplied by the board, successful completion of not less than 30 contact hours of continuing education obtained since such license or permit was last issued, reinstated, or renewed. As used in this Subchapter, "contact hour" means 50 to 60 minutes of participation in an organized learning experience under responsible sponsorship, capable direction, and qualified instruction, as approved by the board, or two hours of planned and supervised clinical practice designed to meet professional educational objectives.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:517 (August 1986), amended LR 17:779 (August 1991), LR 34:

#### **Subpart 3. Practice**

### **Chapter 53. Licensed Midwives**

#### **Subchapter A. Standards of Practice**

##### **§5301. Scope of Practice**

A. Licensed midwife practitioners may provide care only to low risk clients determined by physician evaluation and examination to be prospectively normal for pregnancy and childbirth, and at low risk for the development of medical complications. Licensed midwife practitioners shall refer or consult with a physician when a client's medical condition deviates from normal. Licensed midwife practitioners may provide care in hospitals, birth centers, clinics, offices and home birth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

##### **§5303. Skills**

A. All licensed midwives shall have the skills necessary for safe practice, including the ability to assess, monitor, and manage on an ongoing basis normal antepartum, intrapartum, and postpartum situations; perform newborn evaluations; identify and assess maternal, fetal, and infant deviations from normal; provide effective lifesaving measures, including CPR; manage emergency situations appropriately; establish and maintain aseptic techniques and master basic observational skills and those special observational skills required for out-of-hospital deliveries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5305. Community Resources**

A. The licensed midwife practitioner must be familiar with community resources for pregnant women such as prenatal classes, the parish health unit and supplemental food programs. The client shall be referred to such resources as appropriate and encouraged to take a prepared childbirth class, preferably one oriented toward home birth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5307. Appropriate Equipment**

A. All licensed midwife practitioners shall have available, for their immediate use, appropriate birthing equipment, including equipment to assess maternal, fetal, and newborn well-being, to maintain aseptic technique and to perform emergency maternal or infant resuscitation and accomplish all permitted emergency procedures. All equipment used in the practice of midwifery shall be maintained in an aseptic manner, and be in good working order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5309. Screening**

A. All midwives will use risk factor assessments of their clients in order to establish their initial and continuing eligibility for midwifery services. Clients will be informed of their risk status. All midwives have the right and responsibility to refuse and discontinue services to clients based on these risk factors and to make appropriate referrals when indicated for the protection of the mother and baby. All final decisions on risk factors will be made by the midwife and the client's physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5313. Required Tests**

A. Initial physician examination shall include clinical pelvimetry (ultrasound), and the following laboratory tests:

1. genital cultures for gonorrhea and chlamydia, blood group and Rh, antibody screen, PAP smear, hepatitis B surface antigen, hematocrit or hemoglobin, rubella titer, urinalysis with culture and sensitivity, venereal disease research laboratory test ("VDRL") and human immunodeficiency virus ("HIV");

2. if indicated in certain high risk populations, a sickledex/hemoglobin electrophoresis, purified protein

derivative ("PPD") and cystic fibrosis testing shall be considered;

3. a triple screen test or maternal serum alpha fetal protein ("MSAFP") shall be offered at the appropriate gestational age between 15-20 weeks gestation;

4. at 28 weeks gestation hematocrit or hemoglobin shall be rechecked and a glucose tolerance test and a repeat antibody screen shall be performed;

5. at 36 weeks, a group B beta hemolytic streptococci ("GBBS") culture and repeat hemoglobin or hematocrit shall be performed during examination by a physician.

B. The midwife shall ensure that all women she plans to deliver have received the required tests and have obtained copies of all laboratory results. A midwife may order laboratory testing under the written, verbal or standing orders from a physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5315. Acceptance of Clients**

A. Prior to the acceptance of a client for care, a licensed midwife practitioner shall inform the client orally and in writing that:

1. ...

2. regular documented antepartum care by the midwife or another licensed health care provider is required if the midwife is to attend the birth;

3. certain medical conditions and/or client noncompliance with midwife or physician recommendations may preclude midwife attendance at birth or continued midwife care during any phase of the pregnancy in accordance with §5361 and §5363 of this Chapter;

4. the client shall make arrangements for the contingency services of a physician who holds clinical privileges at a hospital located within a 50 mile radius of the planned delivery site;

5. the midwife shall develop and implement a plan for obtaining consultation from and/or referral to the physician with whom the client has made contingency arrangements for care and delivery, and shall consult with such physician or transfer the client when necessary;

6. emergency transport may be required in certain situations; the midwife shall explain what situations warrant emergency transport and the hazards involved;

7. - 8. ...

9. the midwife's agreement can be terminated at any time that the midwife deems it necessary for maintenance of the client's mental and physical safety. When termination occurs, the reasons for termination will be given in writing and an alternative source of care recommended; and

10. ...

B. Prior to accepting care for a client, the midwife shall conduct a risk assessment evaluation to ensure that the client is at low or normal risk for pregnancy.

C. After accepting care, the midwife shall obtain a detailed obstetric and medical history of the client; including the results of all tests conducted during the initial medical evaluation by the physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5319. Physician Visit**

A. Each client must be evaluated by a physician as defined in §2303 of this Part, at or near the thirty-sixth week. To the extent practicable, this evaluation shall be conducted by the physician with whom the client has made contingency arrangements for care and delivery. The purpose of this visit is to ensure that the client has no potentially serious medical conditions and has no medical contraindications for delivery by a licensed midwife practitioner or for home birth. The midwife shall insure that the physician performing this evaluation receives a complete, updated, copy of the client's record that shall include, at a minimum, observations from each prenatal visit, results of laboratory tests, and records of consultations with physicians or other health care providers commencing from the initial risk assessment evaluation. The midwife shall document in the client's chart compliance with the requirements of this section. A licensed midwife practitioner shall refer or consult with a physician when a client's medical condition deviates from normal. A licensed midwife practitioner may receive written, verbal or standing orders from a physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5321. Advance Preparation for Need**

A. The licensed midwife practitioner, prior to the onset of labor, shall make arrangements for the transport of mother and infant to a hospital and know the client's contingency arrangements for a physician and hospitalization should these needs arise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5327. Normal Delivery**

A. The licensed midwife practitioner shall remain with the mother and infant for at least two hours postpartum, or until the mother's condition is stable and the infant's condition is stable, whichever is longer. Maternal stability is evidenced by normal blood pressure, normal pulse, normal respirations, firm fundus, and normal lochia. Infant stability is evidenced by established respirations, normal temperature, strong sucking, and normal heart rate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5329. Examination and Labor**

A. The licensed midwife practitioner will not perform any vaginal examinations on a woman with ruptured membranes and no labor, other than an initial examination to be certain that there is no prolapsed cord. Once active labor is assured and in progress, exams may be made as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5331. Operative Procedures**

A. The licensed midwife practitioner will not perform, routinely, an operative procedure other than artificial rupture of membranes when the head is well engaged or at zero station, clamping and cutting the umbilical cord, repair of first or second degree perineal lacerations, or repair of episiotomy, if done.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5333. Medications**

A. A midwife licensed under this Chapter shall administer an eye prophylaxis to prevent infant blindness which is authorized by the department and may administer the following medications under the conditions indicated:

1. - 3. ...

4. oxytocin (pitocin by injection or methergine orally or by injection or rectal insertion of misoprostal tablets), only for postpartum control of maternal hemorrhage;

5. intravenous fluids for maternal hydration with additional medications as provided by a physician's order or protocol for the purpose of controlling maternal hemorrhage or for prophylactic treatment where the client has tested positive for Group B Strep;

6. prenatal RhoGam for RH negative clients and glucola for testing of diabetes during pregnancy.

B. A midwife licensed under these regulations may lawfully have possession of small quantities of the above-named medications and the equipment normally required for administration. Each use of medication shall be recorded in the midwife's client charts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5337. Emergency Measures**

A. The following measures are permissible in an emergency situation:

1. - 2. ...

3. intramuscular or intravenous administration of pitocin or intramuscular administration of methergine or rectal insertion of misoprostal tablets for the control of

postpartum hemorrhage in accord with the prescription or standing order of a physician;

A.4. - B. ...

C. When an emergency measure is taken, the physician with whom the client has made contingency arrangements for care and delivery shall be contacted by the midwife immediately upon control of the emergency situation, and the midwife shall then transfer care of the client to such physician as he may direct or request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5339. Prevention of Infant Blindness**

A. Within one hour of birth, the licensed midwife practitioner shall administer two drops of 1.0 percent solution of silver nitrate or other agent of equal effectiveness and harmlessness into the eyes of the infant in accordance with applicable state laws and regulations governing the prevention of infant blindness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5343. Physician Evaluation of Newborn**

A. The licensed midwife practitioner shall recommend that any infant delivered by the midwife be evaluated by a pediatrician or family doctor within three days of age or sooner if it becomes apparent that the newborn needs medical attention for problems associated with, but not limited to, congenital or other anomalies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5347. Record Keeping and Report Requirements**

A. All midwives shall keep accurate and complete records of all care provided and data gathered for each client. Licensed midwife practitioners shall annually submit to the board a summary report on a form developed by the Louisiana Advisory Committee on Midwifery and approved by the board of the statistics of each birth attended. This report must be submitted in March of each year.

B. The midwife shall maintain an individual client chart for each woman under her care. The chart shall include results of laboratory tests, observations from each prenatal visit, records of consultations with physicians or other health care providers, and a postpartum report concerning labor, delivery, and condition of the newborn child. The chart shall be made available to the client upon request, and with the client's consent, to any physician or health care provider who is called in as a consultant or to assist in the client's care. This chart shall be kept on standard obstetric forms, or other forms approved by the board. Inactive records shall be

maintained no less than six years. All records are subject to review by the board.

C. - E. ...

F. The attending midwife shall make a timely report of the birth incidents to the registrar, as required by §5341 of this subchapter.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

### **Subchapter B. Phases of Maternity Care**

#### **§5353. Initiation of Physical Care**

A. At the visit when physical care of the client is initiated, the licensed midwife practitioner shall review the results of the medical evaluation to ensure that the client has received a general physical examination which included the taking of a comprehensive medical, obstetrical, and nutritional history sufficient to identify potentially dangerous conditions that might preclude midwife care. The midwife must ensure that the following examinations have been completed for each client: a pelvic examination to size the uterus, a speculum examination, blood pressure, routine bloodwork (CBC with differential, hepatitis B virus surface antigen, rubella titer, VDRL, hematocrit or hemoglobin, blood group Rh, and antibody screening), Pap smear, height, weight, and urine testing for glucose and protein. After conducting these examinations or reviewing their results, the midwife shall make an initial nutritional assessment, counsel the clients as to the nutritional needs of mother and fetus during pregnancy and develop a comprehensive plan of care for the client which identifies all problems and need for consultation and establishes realistic health care goals. If the client's health status, as determined by medical history, physical examination and laboratory results is determined not to be low risk as outlined in Subchapter C (Risk Factors) of these rules, the client must be referred to a physician for management of the client's pregnancy, labor and delivery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:520 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5355. Routine Antepartum and Intrapartum Care**

A. At each prenatal visit, the midwife will check the client's weight, blood pressure, fundal height, urinalysis (protein and glucose), and general health, including checking for pain, bleeding, headaches, edema, dizziness, and other symptoms of preeclampsia. The midwife shall monitor uterine measurements, fetal heart tones, and fetal activity and shall obtain a medical and nutritional history since the last visit. The midwife shall provide or arrange for the administration of prenatal RhoGam for Rh negative clients and for additional laboratory tests as indicated, including but not limited to serum antibody screening, blood sugar screening, genital cultures, and periodic hematocrit or hemoglobin screening.

B. A record of maternal vital signs shall be recorded at the initial evaluation of labor. Maternal vital signs shall be recorded every 3-4 hours unless otherwise indicated by maternal instability or increased maternal risk factors. Maternal stability is defined as a firmly contracted uterus without excessive vaginal bleeding and stable blood pressure. Risk factors are identified in Subchapter C of this Chapter.

C. A record of fetal heart tones shall be recorded every 30 minutes in the first stage of labor and every 15 minutes in the second stage of labor. Fetal heart tones shall also be recorded immediately after rupture of membranes.

D. During labor and delivery, the attending midwife is responsible for monitoring the condition of mother and fetus; assisting with the delivery; coaching labor; repairing minor tears as necessary; examining and assessing the newborn; inspecting the placenta, membranes, and cord vessels; inspecting the cervix and upper vaginal vault, if indicated; and managing any third-stage maternal bleeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:520 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5357. Routine Postpartum Care**

A. - B. ...

C. In case of an unsensitized Rh negative mother, the midwife shall obtain a sample of cord blood from the placenta and arrange for testing within 24 hours of the birth and ensure referral to a physician so that the mother receives Rh immunoglobulin as indicated within 72 hours of delivery.

D. The midwife shall provide the client with information concerning routine postpartum care of the mother and infant, including information on breast-feeding, care of the infant's umbilical cord, and perinatal care.

E. The midwife shall recommend that the parents immediately contact the pediatrician or family doctor who will be assuming care for the infant to arrange for a neonatal examination within 72 hours or sooner if it becomes apparent that the newborn needs medical attention for problems associated with, but not limited to, congenital or other anomalies. The midwife shall provide the doctor with her written summary of labor, delivery, and assessment of the newborn and shall be available to consult with the doctor concerning the infant's condition.

F. The midwife shall make a postpartum contact within 36 hours of birth, with further visits as necessary. The purpose of these contacts is to ascertain that the infant is alert, has good color, is breathing well, and is establishing a healthy pattern of waking, feeding, and sleeping and that the mother is not bleeding excessively, has a firm fundus, does not have a fever or other signs of infection, is voiding properly, and is establishing successful breastfeeding. In the event that any complications arise, the midwife shall consult with a physician or other appropriate health care provider or shall ensure that the client contacts her own physician or primary care doctor.

G. The midwife may conduct a postpartum office visit not later than six weeks postpartum, to include a recommendation for rubella vaccine if indicated, counseling concerning contraception and answering any other questions

that have arisen. Alternatively, the client may be referred back to her primary care doctor or other health care provider for this care.

H. The midwife shall encourage the mother to have a postpartum evaluation conducted by a physician or primary care doctor within two to six weeks after delivery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:520 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **§5359. Required Newborn Care**

A. The licensed midwife practitioner shall be responsible for care immediately following the delivery only. Subsequent infant care should be managed by a pediatrician or primary care doctor. This does not preclude the midwife from providing counseling regarding routine newborn care and breastfeeding and arranging for the neonatal tests required by state law. If any abnormality is suspected, the newborn must be sent for medical evaluation as soon as possible.

B. - B.4. ...

C. The midwife shall ensure that a medically acceptable drug for eye prophylaxis is available at the time of delivery and take appropriate measures designed to prevent infant blindness. The licensed midwife shall insure that Vitamin K is available at the time of delivery and take appropriate measures designed to prevent neonatal hemorrhage.

D. The midwife is responsible for documenting that the parent(s) are informed that a PKU test and all other neonatal tests required by state law should be performed on the infant between 24 hours and no later than 14 days after birth. If the parents object to the performance of the measures or tests suggested on the infant, the midwife shall document this objection and notify the infant's pediatrician or family doctor.

E. The midwife shall leave clear instructions for follow-up care including signs and symptoms of conditions that require medical evaluation, especially fever, irritability, generalized rash and lethargy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:520 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

#### **Subchapter C. Risk Factors**

##### **§5361. Unapproved Practice**

A. The licensed midwife practitioner shall provide care only to clients determined to be at low or normal risk of developing complications during pregnancy and child birth by a physician.

B. The midwife shall not knowingly accept or thereafter maintain responsibility for the prenatal or intrapartum care of a woman who:

1. has had a previous cesarean section or other known uterine surgery such as hysterotomy or myomectomy except where the client has previously been evaluated by a physician who is informed of the patient's history and who, at each of the visits required by §§5311 and 5319 of these rules, determines that vaginal delivery at the planned



delivery site represents no untoward medical/obstetrical risk for the client, is not contraindicated, and that the client is essentially normal or at low risk for complications of pregnancy and delivery;

2. ...

3. has a history of thromboembolus, deep vein thromboembolus, or pulmonary embolism;

4. has diabetes, hypertension, Rh disease isoimmunization with positive titer, active tuberculosis, active syphilis, active gonorrhea, HIV positive or is otherwise immunocompromised, epilepsy, hepatitis, heart disease, kidney disease, or blood dyscrasia;

5. contracts primary genital herpes simplex during the pregnancy or manifests active genital herpes lesions during the last 4 weeks of pregnancy;

6. - 19. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:521 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

### §5363. Required Physician Consultation

A. The midwife shall obtain medical consultation or refer for medical care any woman who during the antepartum period:

1. develops severe, persistent headaches, epigastric pain, or visual disturbances;

2. develops a blood pressure of 140/90 or greater;

3. does not gain 14 pounds by 30 weeks gestation or at least 4 pounds a month in the last trimester or gains more than 6 pounds in two weeks in any trimester;

4. develops greater than trace glucosuria or any proteinuria on two consecutive separate visits;

5. has abnormal vaginal discharge with no signs of improvement with medication;

6. has symptoms of urinary tract infection;

7. has vaginal bleeding before onset of labor;

8. has rupture of membranes prior to 37 weeks gestation;

9. has marked decrease in or cessation of fetal movement;

10. has inappropriate gestational size;

11. has demonstrated anemia by blood test (hematocrit less than 30 percent);

12. has a fever equal or greater than 100.4°F or 38°C for 24 hours;

13. has polyhydramnios or oligohydramnios;

14. has excessive vomiting or continued vomiting after 24 weeks gestation;

15. has severe, protruding varicose veins of extremities or vulva;

16. has known structural abnormalities of the reproductive tract;

17. has a history of stillbirth from any cause;

18. has an abnormal Pap smear;

19. reaches a gestation of 41 weeks by dates and examination.

B. The midwife shall obtain medical consultation or refer for medical care any woman who during the intrapartum period:

1. develops a blood pressure of 140/90 or greater;

2. ...

3. develops a fever over 100.4°F or 38°C;

4. develops respiratory distress;

5. has persistent or recurrent fetal heart tones below 100 or above 160 beats per minute between or during contractions, or a fetal heart rate that is irregular;

6. has ruptured membranes without onset of labor after 12 hours;

7. has bleeding prior to delivery (other than bloody show);

8. has meconium or blood stained amniotic fluid with abnormal fetal heart tones;

9. has an abnormal presentation other than vertex;

10. does not progress in effacement, dilation, or station after two hours in active labor;

11. does not show continued progress to deliver after two hours of second stage labor;

12. does not deliver the placenta within one hour if there is no bleeding and the fundus is firm;

13. has a partially separated placenta during the third stage of labor with bleeding;

14. has a blood pressure below 100 systolic if the pulse rate exceeds 100 beats per minute or who complains of weakness or dizziness;

15. ...

16. has retained placental fragment or membranes; or

B.17. - C.6. ...

7. develops blood pressure below 100 systolic if pulse exceeds 100, pallor, cold clammy skin, rapid pulse or complains of weakness or dizziness.

D. - D.9. ...

10. has meconium staining of the placenta, cord, and/or infant with signs or symptoms of meconium aspiration pneumonia;

11. does not urinate and pass meconium in the first 12 hours after birth;

12. ...

13. has tremors or seizure activity;

14. ...

15. has persistent temperature below 96.8°F or above 99.5°F;

16. has jitteriness not resolved after feeding; or

17. shows any skin lesions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3241-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:521 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), LR 34:

### Family Impact Statement

The proposed Rule amendments have no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

Interested persons may submit written data, views, arguments, information or comments on the proposed Rule amendments until 4 p.m., November 19, 2007, to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, at P.O. Box 30250, New Orleans, LA, 70190-0250 (630 Camp Street, New Orleans, LA, 70130). She is responsible for responding to inquiries.

Robert L. Marier, M.D.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Midwives Licensure and Practice**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
Other than the rule publication costs, estimated to be \$2,450, it is not anticipated that the proposed rule amendments will result in any material costs or savings to the Board of Medical Examiners or any state or local governmental unit.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is not anticipated that the proposed rule amendments will have any material effect on the revenue collections of the Board of Medical Examiners or of any state or local governmental unit.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
In collaboration with its Midwifery Advisory Committee, the Louisiana State Board of Medical Examiners (the "Board") proposes to modify its existing rules pertaining to midwifery licensure and practice. The proposed amendments redefine the relationship between the midwife, a client, and a client's physician, update a number of provisions generally and incorporate certain revised definitions to be consistent with current Board policies and procedures. While the proposed amendments maintain the requirement for physician examinations, the examinations need not necessarily be conducted by the same physician. Additionally, the proposed amendments make other substantive modifications consistent with the controlling law including, among others: 1) increase the requirement for renewal of licensure from 20 to 30 contact hours of continuing education; 2) modify the requirements for laboratory testing to include newer tests that are considered medically necessary and more appropriate to monitor a normal delivery; and 3) modify clinical experience requirements relative to prenatal visits, attendance and management of labor, delivery and postpartum evaluations of mother and baby. Despite such modifications, it is not anticipated that the proposed rule amendments will have any material effect on costs, paperwork or workload of licensed midwives or applicants for licensure.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed rule amendments are not anticipated to have any material impact on competition and employment in either the public or private sector.

Robert L. Marier, M.D.  
Executive Director  
0710#065

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Medical Examiners**

Physician Assistants Licensing, Certification and Practice  
(LAC 46:XLV.151, 1503, 1508, 1509, 1510,  
1517, 1519, 4501, 4507, and 4509)

Notice is hereby given in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950, et seq., that pursuant to the authority vested in the Louisiana State Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1261-1292, and the Physicians Assistant Practice Act, R.S. 37:1360.21-1360.38, that the board intends to amend LAC 46:XLV, Subpart 1 (General), Chapter 1, §151, Subpart 2 (Licensure and Certification), Chapter 15, §§1503, 1508, 1509, 1510, 1517 and 1519, and Subpart 3 (Practice), Chapter 45, §§4501, 4507 and 4509, of its physician assistant rules. The proposed amendments clarify: the qualifications for proposed supervising physicians; the supervision requirements for physician assistants supervised by multiple supervising physicians; the authority and limitations of supervising physicians; and the roles of primary and locum tenens supervising physicians. The proposed amendments also reduce delays, costs, and administrative burdens attendant to the application process, facilitate the board's use of technology for processing forms and applications, allow the board to forgo collecting and processing criminal history record information for supervising physician applicants who are already licensed and in good standing in this state, and eliminate assessment of fees for physician assistant transfer of certification and physician designation of locum tenens for a physician assistant.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLV. Medical Professions  
Subpart 1. General**

**Chapter 1. Fees and Costs  
Subchapter E. Physicians Assistants Fees  
§151. Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1281 and 37:1360.24.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:907 (November 1984), repealed by the Department of Health and Hospitals, Board of Medical Examiners, LR 34:

**Subpart 2. Licensure and Certification  
Chapter 15. Physician Assistants  
§1503. Definitions**

A. As used in this Chapter, the following terms shall have the meanings specified.

\* \* \*

*Locum Tenens Physician*—a supervising physician approved and registered with the board under this Chapter, who assumes the obligations and responsibilities of a primary supervising physician.

\* \* \*

*Multiple Supervising Physicians*—two or more supervising physicians practicing in any professional or clinical setting.

\* \* \*

*Primary Supervising Physician*—a supervising physician, approved and registered with the board as such under this Chapter.

\* \* \*

*Supervising Physician*—a physician approved by and registered with the board under this Chapter, as a primary supervising physician or a locum tenens physician, to provide supervision to one or more physician assistants.

*Supervision*—responsible direction and control, with the supervising physician assuming responsibility for the services rendered by a physician assistant in the course and scope of the physician assistant's employment, with respect to patients for whose care, or aspect of care, the physician is responsible. Supervision shall not be construed in every case to require the physical presence of the supervising physician. However, the supervising physician and physician assistant must have the capability to be in contact with each other by either telephone or other telecommunications device. Supervision shall exist when the supervising physician responsible for the care, or aspect of care of the patient, gives informed concurrence of the actions of the physician assistant, whether given prior to or after the action, and when a medical treatment plan or action is made in accordance with written clinical practice guidelines or protocols set forth by the supervising physician. Such guidelines or protocols shall require that the physician assistant contact the supervising physician when there is a question or uncertainty as to what should be done in a given case or when an approved protocol does not address the clinical situation presented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 4:109 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1102 (November 1991), LR 22:201 (March 1996), LR 25:27 (January 1999), LR 31:73 (January 2005), LR 34:

### **§1508. Qualifications for Registration as Supervising Physician**

A. To be eligible for approval and registration under this Chapter, a proposed primary supervising physician or locum tenens physician shall, as of the date of the application:

1. ...
2. have been in the active practice of medicine for not less than three years following the date on which the physician was awarded a doctor of medicine or doctor of osteopathy degree and not currently be engaged in a medical residency or other post graduate training program. The board may, in its discretion, grant an exception to the requirement for completion of all post graduate training on a case-by-case basis where the supervising physician applicant is enrolled in fellowship or other advanced training and it has been shown to the board's satisfaction that the applicant has completed all training relevant to his or her designated area of practice; and
3. not be employed by or serve as an independent contractor to a physician assistant or be a party to any other or similar employment, contractual or financial relationship.

The board may, in its discretion, grant an exception to this requirement on a case-by-case basis where it has been shown to its satisfaction that such relationship is structured so as to prohibit interference or intrusion into the physician's relationship with patients, his exercise of independent medical judgment and satisfaction of the obligations and responsibilities imposed by law and the board's rules on a supervising physician.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(b)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:202 (March 1996), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:29 (January 1999), LR 34:

### **§1509. Application for Licensure; Procedure**

A. Application for licensure as a physician assistant must be made in a format approved by the board and must include:

1. ...
2. certification of the truthfulness and authenticity of all information, representations and documents contained in or submitted with the completed application;

A.2. - B.2. ...

C. The board may reject or refuse to consider any application which is not complete in every detail. The board may in its discretion require a more detailed or complete response to any request for information set forth in the application form as a condition to consideration of an application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281, R.S. 37:1360.23, R.S. 37:1360.24.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:110 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1103 (November 1991), LR 22:202 (March 1996), LR 25:29 (January 1999), LR 30:238 (February 2004), LR 34:

### **§1510. Application for Registration as Supervising Physician; Procedure**

A. A physician seeking to supervise a physician assistant, as either primary supervising physician or as locum tenens physician, shall first register with and be approved by the board as a supervising physician for the physician assistant. Application for approval and registration as either a primary supervising physician or locum tenens physician must be made in a format approved by the board and must include:

1. - 2. ...
3. a statement that the physician will exercise supervision over the physician assistant in accordance with any rules and regulations adopted by the board and that the physician will retain professional responsibility for the services provided by the physician assistant to any patient for whose care, or aspect of care, the physician is responsible;
4. certification of the truthfulness and authenticity of all information, representations and documents contained in or submitted with the completed application;
5. ...
6. such other information and documentation as the board may require; provided, however, that criminal history record information is not required for registration as a supervising physician.

B. - B.2. ...

C. The board may reject or refuse to consider any application which is not complete in every detail. The board may in its discretion require a more detailed or complete response to any request for information set forth in the application form as a condition to consideration of an application.

D. Prerequisite to consideration of an application for locum tenens physician, the physician assistant sought to be supervised shall have at least one primary supervising physician registered with and approved by the board.

E. An application completed to the satisfaction of the board may be deemed approved as of the date received by the board, subject to final approval at the next board meeting.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:202 (March 1996), amended LR 25:29 (January 1999), LR 34:

#### **§1517. Expiration of Licensure; Renewals;**

##### **Modification; Notification of Intent to Practice**

A. ...

B. 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 an application for renewal in a format approved by the board, together with:

1. satisfactory verification of current certification by the National Commission on Certificate of Physician Assistants;

2. the applicable fee as provided in Chapter 1 of these rules; and

3. a list of all currently registered supervising physicians (primary and locum tenens).

C. A physician assistant licensed in this state, prior to initiating practice, shall submit in a format approved by the board notification of such intent to practice. Such notification may be deemed effective as of the date received by the board, subject to final approval at the next board meeting and shall include:

1. the name, business address, and telephone number of the supervising physicians (primary and any locum tenens physicians);

2. the name, business address, and telephone number of the physician assistant; and

3. certification that the physician assistant has notified all other primary supervising physicians of intent to practice with one or more additional supervising physician.

D. ...

1. the physician assistant ceases to practice as a physician assistant until such time as he enters into a supervision relationship with another primary supervising physician registered with the board; and

D.2. - F. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1270, R.S. 37:1281, R.S. 37:1360.23, R.S. 37:1360.24.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:111 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1104 (November 1991), LR 22:203 (March 1996), LR 24:1498 (August 1998), LR 25:31 (January 1999), LR 30:238 (February 2004), LR 34:

#### **§1519. Transfer of Certification**

A. A physician assistant previously certified by the board whose certification has terminated pursuant to §1517.D by virtue of the cessation or termination of an employment relationship with his or her approved supervising physician may apply to the board for transfer of certification to a new supervising physician pursuant to the provisions of this Section.

B. Application for transfer of certification to a new supervising physician shall include:

1. the information prescribed by §1510 hereof with respect to the proposed new supervising physician, along with an application for registration of prescriptive authority if such is to be delegated, in accordance with §§1525 and 1527; and

2. a report from the applicant's current or former supervising physician, if such physician is not deceased at the time of the application, describing the circumstances under which the physician's assistant's employment relationship was, or is proposed to be, terminated.

C. If the requirements and procedures of this Section are met to the satisfaction of the board, and the applicant and supervising physician demonstrate that the proposed new supervising physician satisfies the qualifications for approval as a supervising physician prescribed by this Chapter, transfer of the applicant's certification to the proposed new supervising physician may be deemed approved as of the date the application for transfer is received by the board, subject to final approval at the next board meeting.

D. Approval of transfer of certification shall not be deemed to qualify a physician assistant eligible for registration of prescriptive authority.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1270(B)(6), 37:1360.23(D) and (F), 37:1360.31(B)(8).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:111 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1104 (November 1991), LR 31:75 (January 2005), LR 34:

#### **Subpart 3. Practice**

#### **Chapter 45. Physician Assistants**

#### **§4501. Supervision by Multiple Supervising Physicians**

A. A physician assistant may be supervised by two or more supervising physicians practicing in any professional or clinical setting provided that:

1. any physician providing supervision meets and satisfies all of the qualifications, procedures and other requirements of Chapter 15 of this Part and is registered with the board as either a primary supervising physician or locum tenens physician for such physician assistant; and

2. all supervising physicians are identified in the physician assistant's notice of intent to practice as provided in Section 1517 of this Part.

B. If the physician assistant to be supervised is registered with the board to prescribe medication or medical devices a supervising physician shall:

1. meet the qualifications prescribed by §1523 of this Part and shall be registered with the board pursuant to §1527 for delegation of prescriptive authority; or

2. not supervise a physician assistant with respect to the exercise of prescriptive authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F), R.S. 37:1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 4:111 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1105 (November 1991), LR 22:204 (March 1996), LR 25:31 (January 1999), LR 31:78 (January 2005), LR 34:

#### **§4507. Authority and Limitations of Supervising Physician**

A. ...

B. A supervising physician may not serve as primary supervising physician for more than two physician assistants at the same time; provided, however, that a physician may be approved to act as a locum tenens physician for any number of physician assistants in addition to the physician assistants for whom he or she is the primary supervising physician, provided that such physician shall not act as supervising physician for more than four physician assistants at any one time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F), R.S. 37:1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 4:112 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1106 (November 1991), LR 22:205 (March 1996), LR 25:32 (January 1999), LR 34:

#### **§4509. Designation of Locum Tenens Physician**

A. A physician qualified, registered and approved under this Part, who is not registered as a physician assistant's primary supervising physician, shall be designated as locum tenens physician for such physician assistant.

B. If the physician assistant to be supervised is registered with the board to prescribe medication or medical devices, a locum tenens physician shall:

1. meet the qualifications prescribed by §1523 of this Part and be registered with the board pursuant to §1527 for delegation of prescriptive authority; or

2. shall not supervise a physician assistant with respect to the exercise of prescriptive authority.

C. The board may, in its discretion, refuse to approve the use of a locum tenens, or it may restrict or otherwise modify the specified circumstances under which the locum tenens would be authorized to act.

D. While acting under the direction and supervision of an approved locum tenens physician a physician assistant may attend or otherwise provide any services for or with respect to any patient for whose care, or aspect of care, the locum tenens physician is responsible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:112 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1106 (November 1991), LR 22:205 (March 1996), LR 25:33 (January 1999), LR 34:

#### **Family Impact Statement**

The proposed Rule amendments have no known impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Interested persons may submit written data, views, arguments, information or comments on the proposed Rule amendments to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, at

P. O. Box 30250, New Orleans, LA, 70190-0250 (630 Camp Street, New Orleans, LA, 70130), (504) 568-6820, Ex. 242. She is responsible for responding to inquiries on the proposed Rule amendments. Written comments will be accepted until 4 p.m., November 12, 2007. Should it become necessary to convene a public hearing to receive data, views, arguments, information or comments orally, in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on Thursday, November 29, 2007, at 3 p.m., at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA.

Robert L. Marier, M.D.  
Executive Director

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

#### **RULE TITLE: Physician Assistant Licensing, Certification and Practice**

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

Other than notice and rule publication costs estimated at a combined total of \$552, which costs will be absorbed within the Board's budget during FY 2007-2008, it is not anticipated that the proposed rule amendments will result in any additional costs or savings to the Board or any other state or local governmental unit.

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

It is anticipated that the proposed amendments will result in an annual reduction in the board's self-generated revenue collections, estimated at approximately \$5,250. Otherwise, there will be no substantial effect on the revenue collections of the board.

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

Procedurally, the proposed rule amendments reduce delays, costs and administrative burdens in the application process for physician assistants and supervising physicians by: eliminating the need to present certain original, notarized documents; facilitating the board's use of technology for processing forms and applications; allowing the board to forgo collecting and processing criminal history record information from supervising physician applicants who are already licensed and in good standing in this state; and for the other purposes specified in the proposed amendments. Substantively, the amendments clarify: the qualifications for proposed supervising physicians; the supervision requirements for physician assistants supervised by multiple supervising physicians; the authority and limitations of supervising physicians; and the roles of primary and locum tenens supervising physicians. It is anticipated that the proposed amendments will result in an unquantifiable reduction in workload and paperwork of physician assistants and supervising physicians seeking licensure and registration with the board. In addition, physician assistants seeking transfer of certification to a new supervising physician (estimated at 46 annually) will receive an economic benefit in the form of a cost savings equal to the amount of the proposed fee waiver (\$75) associated with filing of such transfer with the board. Physicians seeking locum tenens designation for physician assistants (estimated at 72 annually) will benefit from a cost savings equal to the amount of the proposed fee waiver (\$25) for filing such designation with the board. Supervising physician applicants will be relieved of workload and paperwork attributable to processing criminal

history record information and receive an economic benefit equal to the savings otherwise paid to state or federal agencies for processing criminal history record information (est. at \$50 each). Finally, all applicants will receive an economic benefit in time and costs otherwise attributable to submitting notarized applications, which would not be required under the proposed rule amendments.

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

It is not anticipated that the proposed rule amendments will have any material impact on competition or employment in either the public or private sector. By clarifying application of the rules, facilitating the registration process for physician assistants and supervising physicians, and eliminating certain administrative burdens and fees the rule amendments may, to an extent that is not measurable, serve to increase competition in the market for employment of physician assistants.

Robert L. Marier, M.D.  
Executive Director  
0710#067

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of Public Health**

**Genetic Diseases—Newborn Heel Stick Screening  
(LAC 48:V.6303)**

Under the authority of R.S. 40:5 and 40:1299 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health proposes to amend LAC 48:V.6303, A., C., D., and G.

The proposed Rule updates the newborn screening panel as listed in LAC 48:V.6303 to assure it is consistent with Act 2006, No. 754, which required screening for an additional 17 metabolic disorders, congenital adrenal hyperplasia and cystic fibrosis. The proposed Rule also includes other requirements necessary for ensuring proper laboratory testing, follow-up and reporting.

The proposed Rule should have an overall positive impact on the stability, authority, functioning, behavior and personal responsibility of the family unit as the Rule will reflect the pertaining legislation that requires all Louisiana newborns to be screened for these additional genetic diseases. If untreated, all of these additional diseases cause severe disability and the complications with some of them can be fatal.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part V. Public Health Services**

**Subpart 19. Genetic Diseases Services**

**Chapter 63. Newborn Heel Stick Screening**

**§6303. Purpose, Scope Methodology**

A. R.S. 40:1299.1.2.3, requires physicians to test Louisiana newborns for the disorders listed below along with the abbreviations used by the American College of Medical Genetics (ACMG).

1. Disorders of amino acid metabolism:
  - a. Phenylketonuria (PKU);
  - b. Maple Syrup Urine Disease (MSUD);
  - c. Homocystinuria (HCY);

- d. Citrullinemia (CIT);
- e. Argininosuccinic Aciduria (ASA);
- f. Tyrosinemia type I (TYR I).
2. Disorders of fatty acid metabolism:
  - a. Medium Chain Acyl-CoA dehydrogenase Deficiency (MCAD);
  - b. Trifunctional protein deficiency (TFP);
  - c. Very Long-Chain Acyl-CoA Dehydrogenase Deficiency (VLCAD);
  - d. Carnitine Uptake Defect (CUD);
  - e. Long Chain-3-Hydroxy Acyl-CoA Dehydrogenase Deficiency (LCHAD).
3. Disorders of organic acid metabolism:
  - a. Isovaleric Acidemia (IVA);
  - b. Methylmalonic Acidemia (MUT),(CBL A, B);
  - c. Glutaric Acidemia Type 1 (GA1);
  - d. Propionic Aciduria (PROP);
  - e. 3-Hydroxy-3-Methylglutaryl-CoA Lyase (HMG);
  - f. Multiple Carboxylase Deficiency (MCD);
  - g.  $\beta$ -Ketothiolase Deficiency (BKT);
  - h. 3-Methylcrotonyl CoA Carboxylase Deficiency (3MCC).
4. Other metabolic disorders:
  - a. Biotinidase Deficiency (BIOT);
  - b. Galactosemia (GALT).
5. Endocrine disorders:
  - a. Congenital Hypothyroidism (CH);
  - b. Congenital Adrenal Hyperplasia (CAH).
6. Hemoglobinopathies (Sickle Cell diseases):
  - a. SS disease (Sickle Cell Anemia) (Hb SS);
  - b. SC disease (Hb SC);
  - c. S/Beta Thalassemia (Hb S/ $\beta$ TH);
  - d. Other sickling diseases.
7. Pulmonary disorders:
  - a. Cystic Fibrosis (CF).

**B. ...**

**C. Policy for Pre-Discharge, Repeat Screening and Education to Parents on Repeat Screening**

1. Pre-Discharge Screening. All hospitals that have maternity units shall institute and maintain a policy of screening all newborns before discharge regardless of their length of stay in the hospital. Newborns remaining in the hospital for an extended period should be screened initially no later than seven days after birth.

2. Repeat Screening for Specimens Collected before 24 Hours. There is a greater risk of false negative results for specimens collected from babies younger than 24 hours of age. Therefore, newborns screened prior to 24 hours of age must be rescreened at the first medical visit, preferably between one and two weeks of age, but no later than the third week of life. Repeat screening should be arranged by the primary pediatrician; however, it may be done by any primary healthcare provider or clinical facility qualified to perform newborn screening specimen collection.

3. Education to Parents on Repeat Screening. To ensure that newborns who need rescreening (due to initial unsatisfactory specimen or an initial collection performed on a baby less than 24 hours old) actually receive the repeat test, hospitals with maternity units must establish a system for disseminating information to parents about the importance of rescreening.

**D. Notification of Screening Results**

1. The Genetic Diseases Program follow-up staff notify the appropriate medical provider of the positive screening result by telephone. Otherwise, submitters should receive the result slip from the State Public Health Laboratory within two weeks after collection. Results are also available to submitters 24 hours a day, 365 days a year through the Voice Response System with Fax (VRS) which is accessed by using a touch tone telephone. Information on using VRS can be obtained by calling the Genetic Diseases Program Office at (504) 219-4413. If results are not available, medical providers may fax in their requests to the following numbers: (504) 219-4694 (Public Health Biochemistry Laboratory) or (504) 219-4452 (Genetics Office). To assist the pediatrician's office in the retrieval of the results on the initial specimen of the infant at the first medical visit, the phlebotomist or nurse collecting the initial specimen should tear off the blue carbon of the Lab-10 form and give this to the parent. The parent should be instructed to bring this copy to the first medical visit.

E. - F. ...

**G. Acceptable Newborn Screening Testing Methodologies and Procedures for Medical Providers Not Using the State Laboratory.** Laboratories performing or intending to perform the state mandated newborn screening battery on specimens collected on Louisiana newborns must meet the conditions specified below pursuant to R.S. 40:1299.1.

1. The testing battery must include testing for the disorders listed in Subpart A above.

2. - 4. ...

5. Only the following testing methodologies are acceptable without prior approval.

Disease	Testing Methodology
Disorders of Amino Acid Metabolism Disorders of Fatty Acid Metabolism Disorders of Organic Acid Metabolism (Specific disorders include those as listed under part A)	Tandem Mass Spectrometry (MS/MS)
Biotinidase Deficiency	Qualitative or Quantitative Enzymatic Colorimetric or Fluorometric
Galactosemia	Galt enzyme assay Total Galactose
Hemoglobinopathies (Sickle Cell Diseases)	Cellulose acetate/citrate agar Capillary isoelectric focusing (CIEF) Gel isoelectric focusing (IEF) High Pressure Liquid Chromatography (HPLC) Sickle Dex - NOT Acceptable Controls must include: F, A, S, C, D, E Result Reporting: by phenotype Positive/negative is NOT acceptable
Congenital Hypothyroidism	Radioimmunoassay (RIA), Fluorescent Immunoassay (FIA), Enzyme Immunoassay (EIA) methods for T4 and/or Thyroid Stimulating Hormone (TSH) which have been calibrated for neonates
Congenital Adrenal Hyperplasia	17 hydroxyprogesterone (17OHP)

Disease	Testing Methodology
Cystic Fibrosis	Primary: Immunoreactive Trypsinogen; Second Tier: DNA Qualitative Sweat Conductivity Test is NOT acceptable as a primary screening methodology.  Confirmatory Test Methodologies: Quantitative Pilocarpine Iontophoresis Sweat Chloride Test Qualitative Sweat Conductivity Test is NOT recommended.
New Food and Drug Administration approved methodologies may be used if found to be acceptable by the Genetic Diseases Program. Approval should be requested in writing 60 days before the intended date of implementation (see Genetic Diseases Program mailing address below). Requests for approvals will be based on documentation of FDA approval and an in-house validation study of said methodology.	

6. - 7. ...

**8. Mandatory Reporting of Positive Test Results Indicating Disease**

a. To ensure appropriate and timely follow-up, positive results must be reported, along with patient demographic information as specified below to the Genetic Diseases Program Office by fax at (504) 219-4452. Receipt of faxed results must be verified by call to the Genetics Office at (504) 219-4413.

b. Described below are specific time deadlines after data reduction and interpretation for reporting positive results indicating probable disease to the Genetics Office. Laboratories must make arrangements with the Genetics Office for reporting after hours, weekends and holidays.

i. Metabolic disorders identified by tandem mass spectrometry and for galactosemia—report results by 2 hours.

ii. Biotinidase Deficiency—report results within 24 hours.

iii. Sickle Cell Disease—report results of FS, FSC, FSA from initial specimens within 24 hours.

iv. Congenital Hypothyroidism—report within 24 hours.

v. Congenital Adrenal Hyperplasia—report within 2 hours.

vi. Cystic Fibrosis—report within 24 hours.

8.c. - 11. ...

**H. The Newborn Heel Stick Screening Policy for Result Reporting and Repeat Screening Post Transfusion**

1. Whenever possible, a specimen should be collected prior to transfusion.

2. Repeat testing recommended: 3 days after transfusion and 90 days after last transfusion.

3. If the specimen was not collected before transfusion, the laboratory reporting the results to the submitter must indicate that transfusion may alter all newborn screening results and include the above times for repeat screening.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1299, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR

17:378 (April 1991), LR 18:1131 (October 1992), LR 20:1386 (December 1994), LR 23:301 (March 1997), LR 27:545 (April 2001), LR 29:1490 (August 2003), LR 32:248 (February 2006), LR 34:

### Family Impact Statement

1. The Effect on the Stability of the Family. This proposed Rule reflects the intent of Act 2006, No. 754 which added 17 disorders to the newborn screening testing battery. Better understanding of the requirements involved in newborn screening by the medical providers will translate to enhanced services to patients and their families. Therefore, there should be a positive effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. There should be no deleterious effect on the authority and rights of the parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. For families affected by one of these genetic diseases the effect on the functioning of the family should be positive as diagnosis and treatment can be provided much earlier. Therefore, problems associated with the disease will not become catastrophic debility or fatal health problems.

4. The Effect on the Family Earnings and Family Budget. Families will not experience an extra cost for the additional testing. Affected families will incur less cost as better management of their family member's disease will mean less aggressive and expensive medical procedures.

5. The Effect on the Behavior and Personal Responsibility of Children. No adverse impact is anticipated on the behavior and personal responsibility of children.

6. The Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. For over 40 years, the Office of Public Health's laboratory in collaboration with the Genetic Disease Program has conducted this service.

A public hearing will be held on November 26, 2007 at 10 a.m. in the 2nd floor Conference Room of the Public Health Laboratory located in Metairie at 3101 W. Napoleon Avenue. Interested persons may submit written comments on the proposed Rule by e-mail or by fax to Charles Myers, GSW, Administrator of the Louisiana Genetic Diseases Program, Office of Public Health/DHH, until 4:30 PM on November 9, 2007. The e-mail address is [Charlie@dhh.la.gov](mailto:Charlie@dhh.la.gov) and the fax number is (504) 219-4452.

Roxane A. Townsend, M.D.  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Genetic Diseases—Newborn Heel Stick Screening

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

The proposed rule updates the newborn screening panel as listed in LAC 48:V.6303 to assure the rule is consistent with Act 2006, No. 754, which required screening for an additional

17 metabolic disorders, congenital adrenal hyperplasia and cystic fibrosis. The proposed rule also includes other requirements necessary for ensuring proper laboratory testing, follow-up and reporting.

The testing for cystic fibrosis was implemented July 2, 2007. The total estimated cost for this testing is \$478,695 for FY 2007-08, \$491,836 for FY2008-09, and \$505,393 for FY 2009-10. This cost is for one (1) Lab Scientist position to conduct the testing, test kits, contracts for confirmatory testing, and on-call consultation. OPH will fund these costs with the Medicaid collections that will be generated from the billing of the cystic fibrosis testing of eligible infants. There are no additional costs associated with the testing of the 17 metabolic disorders and the adrenal hyperplasia because the testing for those disorders was implemented in FY 06-07. The Department of Health and Hospitals Medicaid Program will incur the cost of the 30 percent match of state funding to draw down the 70 percent federal funds that make up Medicaid reimbursement for this service. The amount of state funds required for the match is projected as follows for the three fiscal years: FY 2007-08 at \$143,608; FY 2008-09 at \$147,551; FY 2009-10 at \$151,618.

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

The proposed rule change will result in an increase in Medicaid collections from the billing of cystic fibrosis tests performed on Medicaid eligible infants. Based on \$13.92 per test, the billings are expected to generate \$478,695 for FY 2007-08, \$491,836 for FY 2008-09, and \$505,393 for FY 2009-10.

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

The early detection and treatment of an infant with cystic fibrosis results in meaningful benefits as studies have shown some complications will be delayed and life expectancy extended.

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

There is no effect on competition and employment

Sharon Howard  
Assistant Secretary  
0710#038

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health and Hospitals Office of Public Health

Prevention and Control of Yellow Fever  
(LAC 51:II.905)

In accordance with the Administrative Procedure Act, R.S. 49: 950 et seq., the Department of Health and Hospitals, Office of Public Health proposes to amend (LAC 51, Part II, Chapter 9, §905, 7). The proposed Rule changes the storage requirements as listed in LAC 51, Part II, Chapter 9, §905, 7 to assure The proposed Rule change provides that certified yellow fever vaccine centers in Louisiana must store the vaccine at refrigeration temperatures [between 2°-8°C (35° - 46°F)] until used. The previous requirement and the requirement in the present Sanitary Code is that the vaccine must be kept frozen until used. This action is required by the change in the storage requirement of Yellow Fever Vaccine



issued by the vaccine manufacturer in April 2005 and approved by the United States Food and Drug Administration.

## Title 51

### PUBLIC HEALTH—GENERAL

#### Part II. Control of Diseases

#### Chapter 9. Prevention and Control of Yellow Fever

#### §905. Yellow Fever Regulations

A. - A.6. ...

7. "The Center must maintain adequate refrigeration to assure that the yellow fever vaccine will be kept in a refrigerated state with temperatures as recommended by the vaccine manufacturer and included in the storage recommendations of the vaccine package insert. Once the vaccine has been removed from refrigeration and reconstituted, it must be administered within 60 minutes. Any remaining unrefrigerated and unused vaccine must be destroyed." This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

8. - 14. ...

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(2) and R.S. 40:5 and further in full cooperation with the United States Public Health Service requirements for international travel.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1221 (June 2002), LR 34:

#### Family Impact Statement

1. The Effect on the Stability of the Family. The proposed Rule will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. The proposed Rule will have no 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. The proposed Rule will have no effect on the functioning of the family.

4. The Effect on the Family Earnings and Family Budget. The proposed Rule will have no effect on family earnings or budget.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. The proposed Rule will have no effect on the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments until 4:30 p.m., November 9, 2007, to Dr. Louis Trachtman, Louisiana Office of Public Health, P.O. Box 60630, New Orleans, LA 70160-0630.

Roxane A. Townsend, M.D.  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Prevention and Control of Yellow Fever

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

The purpose of this rule is to amend LAC 51, Part II, Chapter 9, §905 to change the storage requirement for yellow fever vaccine centers in Louisiana. In April 2005, the storage requirements for the yellow fever vaccine was changed to require refrigeration (at temperatures between 2°-8°C (35°-46°F) until used. The requirement in the present Sanitary Code is that the vaccine must be kept frozen until used.

The only cost associated with this rule change is approximately \$200 for publishing the notice of intent and the final rule in the Louisiana Register.

#### 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.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

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

There is no estimated effect on competition and employment.

Sharon Howard  
Assistant Secretary  
0710#034

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Office of Public Health Center for Environmental Health Services

Marine and Freshwater Animal Food Products  
and Retail Food Establishments  
(LAC 51:IX.127, 145, 319, 321, and XXIII.1109)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the state health officer acting through the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, pursuant to the authority in R.S. 40:4(A)(1), R.S. 40:4(A)(6), R.S. 40:5, and R.S. 40:5.3, intends to amend and revise Title 51, Part IX (Marine and Fresh Water Animal Food Products), and Title 51 Part XXIII (Retail Food Establishments). The proposed adoption of an equivalent consumer advisory statement from the U.S. Food and Drug Administration (FDA) 2005 Food Code shall be provided when shellstock is intended for raw consumption and shall coincide with the National Shellfish Sanitation Program (NSSP) 2005 Model Ordinance. The NSSP is the federal/state cooperative program recognized by the FDA and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption. Technical changes to the Sanitary Code are being made in Sections 127 and 321 of Part IX.

**Title 51**  
**PUBLIC HEALTH—SANITARY CODE**  
**Part IX. Marine and Fresh Water**  
**Animal Food Products**

**Chapter 1. Shellfish Growing Areas**

**§127. Qualification for Laboratories Conducting Analysis of Shellfish Growing Waters for the Louisiana State Shellfish Sanitation Program [formerly paragraph 9:002-13]**

A. - G. ...

H. The following constitute minimal quality assurance procedure requirements for the laboratory.

1. - 12. ...

13. Glass/mercury thermometer calibration should be checked quarterly against a reference National Institute of Standards and Technology (NIST) thermometer or one which meets the requirements of NIST monograph 150.

14. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5(2)(3)(5)(7)(15), and R.S. 40: 5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1297 (June 2002), amended by the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, LR 34:

**§145. Permits Required for Transplanting [formerly paragraph 9:004-2]**

A. ...

1. No permittee or boat captain may serve on any vessel subject to this permit who has been cited or found guilty of violations relative to the harvesting of shellfish within three years of the application date; provided, however that said permittee or boat captain may receive a waiver of this condition with regard to those citations which did not result in a conviction upon the appropriate showing being made to the Department of Wildlife and Fisheries.

2. - 12. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5 (2)(3)(5)(7)(15), and R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1300 (June 2002), amended by the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, LR 34:

**Chapter 3. Preparation and Handling of Seafood for Market**

**§319. Seafood (Except Shellstock) Shipping Requirements [formerly paragraph 9:042]**

A. - C. ...

D. [Formerly paragraph 9:045] All establishments that sell or serve raw oysters must display signs, menu notices, table tents, or other clearly visible messages at the point of sale with either of the following wording.

1.a. "THERE MAY BE A RISK ASSOCIATED WITH CONSUMING RAW SHELLFISH AS IS THE CASE WITH OTHER RAW PROTEIN PRODUCTS. IF YOU SUFFER FROM CHRONIC ILLNESS OF THE LIVER, STOMACH OR BLOOD OR HAVE OTHER IMMUNE DISORDERS, YOU SHOULD EAT THESE PRODUCTS FULLY COOKED"; or

b. "CONSUMING RAW OR UNDERCOOKED MEATS, POULTRY, SEAFOOD, SHELLFISH OR EGGS MAY INCREASE YOUR RISK OF FOODBORNE ILLNESS, ESPECIALLY IF YOU HAVE CERTAIN MEDICAL CONDITIONS."

D.2. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1), R.S. 40:5(2)(3)(5)(7)(15), and R.S.40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1307 (June 2002), amended by the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, LR 34:

**§321. Shipping Shell-Stock Requirements [formerly paragraph 9:047]**

A. - B. ...

C. [Formerly paragraph 9:049] Bulk shipments of shell-stock by boat may be made in cases where the tongers or dredgers obtain the shellfish directly from growing areas and sell them to various consumers direct without shucking. Where shell-stock is shipped by boat for the shell trade, it shall be labeled as specified in §319. If shellfish shipped by boat are intended for processing in shucking houses, records shall be kept by the boat operator in a book provided for such purposes only, showing the sources and quantity of shellfish, date and local waters where the shellfish were taken, license or certificate number of person or persons from to whom sold. These records shall be retained for 12 months.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5(2)(3)(5)(7)(15), and R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1307 (June 2002), amended by the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, LR 34:

**Part XXIII. Retail Food Establishments**

**Chapter 11. Food Supplies**

**§1109. Raw Shellfish Consumer Information Message [formerly paragraph 22:08-5.1]**

A. All establishments that sell or serve raw oysters must display signs, menu notices, table tents, or other clearly visible messages at point of sale with either of the following wording.

1. "THERE MAY BE A RISK ASSOCIATED WITH CONSUMING RAW SHELLFISH AS IS THE CASE WITH OTHER RAW PROTEIN PRODUCTS. IF YOU SUFFER FROM CHRONIC ILLNESS OF THE LIVER, STOMACH OR BLOOD OR HAVE OTHER IMMUNE DISORDERS, YOU SHOULD EAT THESE PRODUCTS FULLY COOKED"; or

2. "CONSUMING RAW OR UNDERCOOKED MEATS, POULTRY, SEAFOOD, SHELLFISH OR EGGS MAY INCREASE YOUR RISK OF FOODBORNE ILLNESS, ESPECIALLY IF YOU HAVE CERTAIN MEDICAL CONDITIONS."

B. In addition, either of the above messages in Subsection A of this Section must appear on the principal display panel or top of containers of pre-packaged raw oysters. This may be done by printing on the container or by pressure sensitive labels.

C. In addition, one of the following messages must appear on the tag of each sack or other container of unshucked raw oysters:

1. "THERE MAY BE A RISK ASSOCIATED WITH CONSUMING RAW SHELLFISH AS IS THE CASE WITH RAW OTHER PROTEIN PRODUCTS. IF YOU SUFFER FROM CHRONIC ILLNESS OF THE LIVER, STOMACH OR BLOOD OR HAVE OTHER IMMUNE DISORDERS, YOU SHOULD EAT THESE PRODUCTS FULLY COOKED";

2. "RETAILERS, INFORM YOUR CUSTOMERS— Consuming raw or undercooked meats, poultry, seafood,

shellfish or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions"; or

3. equivalent wording as approved by the state authority (see LAC 51:IX.323.B.6.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1). and R.S. 40:5(2)(3)(5)(7)(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:319 (February 2002), amended LR 28:1412 (June 2002), amended by the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, LR 34:

#### **Family Impact Statement**

1. The Effect on the Stability of the Family. There will be no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. There will be no 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. There will be no effect on the functioning of the family.

4. The Effect on the Family Earnings and Family Budget. There will be no effect on family earnings or budget.

5. The Effect on the Behavior and Personal Responsibility of Children. There will be no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. There will be no effect on 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 regulation. Persons may submit written comments no later than November 9, 2007 by 4:30 p.m., to David Guilbeau, Commercial Seafood Program Administrator, Office of Public Health, 628 N. Fourth Street P.O. Box 4489 Baton Rouge, LA 70821.

Roxane A. Townsend, M.D.  
Secretary

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

##### **RULE TITLE: Marine and Freshwater Animal Food Products**

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

This rule proposes to amend Title 51, Part IX (Marine and Fresh Water Animal Food Products) and Title 51 Part XXIII (Retail Food Establishments) to adopt the equivalent consumer advisory statement from the U.S. Food and Drug Administration (FDA) Food Code and the National Shellfish Sanitation Program (NSSP) Model Ordinance to accommodate those harvesters who use the federal standard or the NSSP Ordinance. In addition, this rule removes "crew member" from the regulation that currently prohibits a permittee from obtaining an oyster transplant permit if the permittee, the boat captain, or the crew member have been cited or found guilty of violations relative to the harvesting of shellfish. Lastly, this rule makes technical language changes to sections 127 and 321.

The proposed rule changes will result in an estimated cost of \$325 to publish the notice of intent and the final rule in the Louisiana Register. This cost is routinely covered in the agency's budget.

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

There are no effects on revenue collections of state or local governmental units anticipated as a result of promulgation of this regulation.

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

There are no costs or economic benefits to directly affected persons or non-governmental groups anticipated as a result of promulgation of this regulation, other than the benefit to those individuals who have been cited for violations and can now be hired and those employers who would hire them.

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

By removing the word crewmember from the oyster transplant regulation, the industry would be in a better position of hiring additional employees for this type of operation.

Sharon Howard  
Assistant Secretary  
0710#035

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

#### **NOTICE OF INTENT**

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

Medical Home System of Care—Louisiana Health  
First Program (LAC 50:III.2301 and 10305)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:III.2301 and 10305 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Health Care Reform Act of 2007, Act 243 of the 2007 Regular Session of the Louisiana Legislature, directed the Department of Health and Hospitals (DHH) to lead the initiative to improve health care outcomes in Louisiana by developing and implementing a health care delivery system that provides a continuum of evidence-based, quality-driven health care services. In compliance with Act 243, the Department proposes to adopt provisions to establish a health care delivery system known as Louisiana Health First. The Louisiana Health First Program shall consist of a medical home system of care for low-income, uninsured parents of the state and shall be phased in beginning with the New Orleans and Lake Charles DHH established regions which are declared natural disaster/hurricane recovery zones.

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 this proposed Rule will have a positive effect on family functioning, stability, or autonomy as described in R.S. 49:972 by providing low-income, uninsured parents in the New Orleans and Lake Charles Regions with a health insurance coverage option through the Medicaid Program which will allow them to access needed medical care at little or no cost.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part III. Eligibility**

**Subpart 3. Eligibility Groups and Factors**

**Chapter 23. Eligibility Groups and Medicaid Programs**

**§2301. Louisiana Health First Program**

A. The Health Care Reform Act of 2007 authorized the development and implementation of a medical home system of health care for low-income citizens of the state. This system of care shall provide an alternative benefit package to parents utilizing a mandatory benchmark benefit plan and the traditional benefits package offered under the Medicaid State Plan.

1. The Louisiana Health First Program shall be phased in statewide, beginning with the disaster/hurricane recovery zones in the New Orleans and Lake Charles DHH established regions.

2. Enrollment in the alternative benchmark benefit plan shall be mandatory for eligible parents who live in these regions.

3. Eligible parents that derive their primary income from work in these regions, but do not live there, shall receive traditional benefits under the current Medicaid State Plan.

4. Recipients in the New Orleans Region may also receive wrap-around primary care services available through the Primary Care Access and Stabilization Grant award initiative.

B. Eligibility Criteria. Parents who meet the following requirements may receive health care coverage through the Louisiana Health First Program.

1. Parents must live or work in the New Orleans or Lake Charles regions.

a. The New Orleans Region consists of the following parishes:

- i. Jefferson;
- ii. Orleans;
- iii. Plaquemines; and
- iv. St. Bernard.

b. The Lake Charles Region consists of the following parishes:

- i. Allen;
- ii. Beauregard;
- iii. Calcasieu;
- iv. Cameron; and
- v. Jefferson Davis.

2. Recipients must have earned income below 200 percent of the federal poverty level.

C. Benchmark Benefit Plan. Recipients shall receive coverage of medically necessary health care services including, but not limited to, the following:

1. inpatient and outpatient hospital services;
2. physician services;
3. emergency dental services;
4. home health services;
5. prescription drug services;
6. ambulance services;
7. prosthetics; and
8. durable medical equipment.

D. Recipients with income between 150 and 200 percent of the federal poverty level may be responsible for co-payments for services rendered.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

**Subpart 5. Financial Eligibility**

**Chapter 103. Income**

**§10305. Income Disregards**

A. For recipients in the Louisiana Health First Program, earned income in an amount above the current Low-Income and Families with Children (LIFC) income standard, up to 200 percent of the federal poverty level, is disregarded.

1. Earned income is disregarded when it is derived from activities conducted or performed in conjunction with recovery and/or rebuilding efforts in natural disaster/hurricane recovery zones, as designated by either federal or state declarations.

a. This is earned income that supports and/or contributes to the local economy of a natural disaster/hurricane recovery zone.

b. These individuals may live in the designated area but may not necessarily work there, or vice versa.

2. Any post-certification increases in household income will be disregarded until the 12-month renewal is completed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

Implementation of the provisions of this proposed Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, November 27, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested individuals will be afforded an opportunity to submit data, views or arguments either 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.

Roxane A. Townsend, M.D.  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Medical Home System of  
Care—Louisiana Health First Program**

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

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state

of \$6,645,363 for FY 07-08, \$14,593,987 for FY 08-09 and \$22,505,183 for FY 09-10. In FY 07-08, \$408 (\$204 SGF and \$204 FED) is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$16,902,739 for FY 07-08, \$37,121,064 for FY 08-09 and \$57,243,872 for FY 09-10. There may be an undeterminable amount of revenue to the state or local governmental units due to the co-payment requirements of the program. In FY 07-08, \$204 is included for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This rule proposes to adopt provisions to establish a medical home system of care, called Louisiana Health First, for low-income uninsured parents in the state that live or work in the New Orleans and Lake Charles regions (approximately 7,990 recipients). It is anticipated that implementation of this proposed rule will increase program expenditures in the Medicaid Program by approximately \$23,547,694 for FY 07-08, \$51,715,051 for FY 08-09 and \$79,749,055 for FY 09-10.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will not have an effect on competition and employment.

Jerry Phillips  
Medicaid Director  
0710#060

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Pharmacy Benefits Management Program—Dispensing Fee  
(LAC 50:XXIX.Chapter 9)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.Chapter 9 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of 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 repromulgated all of the Rules governing the Pharmacy Benefits Management Program in a codified format in Title 50 of the Louisiana Administrative Code (*Louisiana Register*, Volume 32, Number 6). Act 801 of the 2006 Regular Session of the Louisiana Legislature directed the department to submit a Medicaid State Plan amendment to the Centers for Medicare and Medicaid Services (CMS) to increase the Medicaid dispensing fee on prescription drugs. Implementation of the proposed dispensing fee increase was contingent upon CMS' approval of the proposed amendment. CMS subsequently disapproved the State Plan amendment submitted in compliance with Act 801. The department now proposes to amend the provisions of the June 20, 2006 rule

governing the Pharmacy Benefits Management Program to increase the dispensing fee on prescription drugs.

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 this proposed Rule will have no impact on family functioning, stability, or autonomy as described in R.S. 49:972.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXIX. Pharmacy**

**Chapter 9. Methods of Payment**

**Subchapter A. General Provisions**

**§901. Definitions**

\* \* \*

*Dispensing Fee*—the charge to Medicaid for the professional services provided by a pharmacist when dispensing a prescription. It is inclusive of the provider fee assessed for each prescription filled in the state of Louisiana or shipped into the state of Louisiana as mandated by R.S. 46:2605.

\* \* \*

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1061 (June 2006), amended LR 34:

**Subchapter B. Dispensing Fee**

**§915. Cost Determination**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1062 (June 2006), repealed LR 34:

**§917. Maximum Allowable Overhead Cost Calculation**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1062 (June 2006), repealed LR 34:

**§919. Parameters and Limitations**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1063 (June 2006), repealed LR 34:

**§921. Interim Adjustment to Overhead Cost**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1063 (June 2006), repealed LR 34:

**§923. Cost Survey**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1063 (June 2006), repealed LR 34:

**§925. Dispensing Fee**

A. The dispensing fee for drugs with a Federal Upper Limit will be \$10.10 per prescription. This includes the provider fee assessed for each prescription filled in the state or shipped into the state, as mandated by R.S. 46:2605.

- 1. Repealed.
- 2. Repealed.

B. The dispensing fee for other drugs not subject to a Federal Upper Limit will be \$10.10 per prescription. This includes the provider fee assessed for each prescription filled in the state or shipped into the state.

C. The dispensing fee for drugs obtained through the Public Health Service 340B Program will be \$10.10 per prescription. This includes the provider fee assessed for each prescription filled in the state or shipped into the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006), amended LR 34:

**Subchapter C. Average Wholesale Price**

**§935. Estimated Acquisition Cost Formula**

A. - B.1.c. ...

2. Louisiana's maximum allowable cost limitation plus the dispensing fee;

3. federal upper limits plus the dispensing fee; or

4. - 4.c. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006), amended LR 34:

**Subchapter D. Maximum Allowable Costs**

**§945. Reimbursement Methodology**

A. ...

1. The maximum payment by the agency for a prescription shall be no more than the cost of the drug ingredient established by the state plus the established dispensing fee.

2. Each pharmacy's records shall establish that the dispensing fee paid by the Medical Assistance Program for a prescription does not exceed the dispensing fee paid by the general public.

3. Payment for insulin and diabetic supplies may not exceed 50 percent of the wholesale price shown in the pharmacy's purchasing records.

B. - F. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006), amended LR 34:

**§949. Cost Limits**

A. - A.1.a. ...

b. At least two suppliers list the drug [which has been classified by the FDA as category "A" in the aforementioned publication based on listings contained in current editions (or updates) of published compendia of cost information for drugs available for sale nationally].

2. ...

3. The Medical Assistance Program shall provide pharmacists who participate in Title XIX reimbursement with updated lists on the Medicaid website:

A.3.a. - B.1. ...

2. The agency shall make determinations of which multiple source drugs are to be subject to LMAC regulation based on the availability of drugs in the Louisiana Medical Assistance Program. The availability of a drug product will be determined by review of provider claim data.

B.3. - D. ...

1. Limits on payments for multiple source drugs shall not be applicable when the prescriber certifies in his own handwriting that a specified brand name drug is medically necessary for the care and treatment of a recipient. Such certification may be written directly on the prescription or on a separate sheet which is attached to the prescription. A standard phrase in the prescriber's handwriting, such as "brand necessary" or "brand medically necessary" will be acceptable.

D.2. - E.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1065 (June 2006), amended LR 34:

**Subchapter E. 340B Program**

**§963. Reimbursement**

A. - B. ...

C. Dispensing Fees. The covered entity shall be paid a dispensing fee of \$10.10 for each prescription dispensed to a Medicaid patient. With respect to contract pharmacy arrangements in which the contract pharmacy also serves as the covered entity's billing agent, the contract pharmacy shall be paid the \$10.10 dispensing fee on behalf of the covered entity.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1066 (June 2006), amended LR 34:

Implementation of the provisions of this proposed Rule shall be contingent upon the implementation of the Federal Upper Limits (FUL) in accordance with Section 6001 of the Deficit Reduction Act of 2005 and approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, November 27, 2007, at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested individuals will be afforded an opportunity to submit data, views or arguments either 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.

Roxane A. Townsend, M.D.  
Secretary

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

**RULE TITLE: Pharmacy Benefits Management  
Program—Dispensing Fee**

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

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$5,821,002 for FY 07-08, \$14,387,836 for FY 08-09 and \$14,819,471 for FY 09-10. In FY 07-08, \$1,360 (\$680 SGF and \$680 FED) is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$14,805,170 for FY 07-08, \$36,596,699 for FY 08-09 and \$37,694,600 for FY 09-10. In FY 07-08, \$680 is included for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This rule proposes to amend the provisions governing the Pharmacy Benefits Management Program to increase the dispensing fee on prescription drugs (approximately 9,649,035 prescriptions/claims). It is anticipated that implementation of this proposed rule will increase expenditures in the Pharmacy Program by approximately \$20,624,812 for FY 07-08, \$50,984,535 for FY 08-09 and \$52,514,071 for FY 09-10.

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

It is anticipated that the implementation of this rule will not have an effect on competition and employment.

Jerry Phillips  
Medicaid Director  
0710#059

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Primary Care and Rural Health**

**Primary Service Areas of Rural Hospitals  
(LAC 48:I.15901-15903)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, proposes to adopt LAC 48:I.15901-15903 as authorized by R.S. 37:1306-1310. This proposed Rule is promulgated in accordance with Act 819.

Act 819 (the Act) of the 2006 Regular Session of the Louisiana Legislature amended R.S. 37:1306-1310 relative to rural hospitals and physician referral practices to encourage innovative collaboration between and among rural hospitals and physicians in delivery of health care services in rural areas.

The Act requires the Department of Health and Hospitals to publish primary service area descriptions and provide annual updates thereafter.

In compliance with the directives of the Act, the Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, proposes the

promulgation of this Rule to describe the primary service area of Louisiana's rural hospitals.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part 1. Public Health Services**

**Subpart 5. Primary Health Care Services**

**Chapter 159. Introduction**

**§15901. Definitions**

A. Act 819 (the Act) defines *primary service area* of a rural hospital as the smaller of either a radius of 25 miles from the rural hospital main campus or the number of postal zip codes, commencing with the rural hospital's zip code, in which 75 percent of a rural hospital's patients reside, as determined by using data derived from the hospital's most recent 12 month Medicare cost reporting period. In determining the primary service area, each outpatient encounter and each inpatient stay shall be viewed as a separate patient, and the zip code attributable to the patient shall be the zip code of the patient at the time of the inpatient stay or outpatient encounter. The term *primary service area* does not include the cities of Alexandria, Baton Rouge, Bossier City, Covington, Hammond, Houma, Kenner, Lafayette, Lake Charles, Mandeville, Monroe, New Iberia, New Orleans, Opelousas, Ponchatoula, Ruston, Shreveport, Slidell, Thibodaux, or West Monroe.

B. *Rural hospital* shall be defined as provided for in R.S.40:1300.143, as such law existed on April 1, 2006.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, LR 34:

**§15902. Determination of Primary Service Area**

A. Geographic Determination. As of July 6 2007, Louisiana has 51 rural hospitals. The 25 miles radius of each rural hospital has been identified by geocoding the zip code of each rural hospital and the 25 miles radius surrounding each of these hospitals. A map depicting the 25 miles radius surrounding each rural hospital is located at [www.dhh.la.gov](http://www.dhh.la.gov). In accordance with the Act, the Bureau of Primary Care and Rural Health will update the list of Louisiana's rural hospitals and their 25-mile radius annually and provide these updates on [www.dhh.la.gov](http://www.dhh.la.gov).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Primary Care and Rural Health, LR 34:

**§15903. Determining the Smaller of the Two Primary  
Service Area Definitions**

A. The Department of Health and Hospitals proposes the following process to determine if the hospital's primary service area is the smaller of either the 25-miles radius of the rural hospital or the number of postal zip codes, commencing with the rural hospital's zip code, in which 75 percent of a rural hospital's patients reside, as determined by using data derived from the hospital's most recent 12 month Medicare cost reporting period.

1. *Primary service area* will be defined as the 25 mile radius of the rural hospital unless a formal request is made in writing to the Department of Health and Hospital's Bureau of Primary Care and Rural Health for a determination on the smaller of the two primary service area definitions. The

request must include the legal name and address of the entity requesting the determination, the name and address of the rural hospital impacted by the request and the type of healthcare facility that seeks to locate in the service area of the rural hospital. Requests for this primary service area determination will be sent to DHH-Bureau of Primary Care and Rural Health.

2. Within 30 days of receipt of the written request for a primary service area determination, the Bureau of Primary Care and Rural Health will request cost report data with service area zip codes from the rural hospital identified in the request. Cost report data will be required to be submitted to the Bureau of Primary Care and Rural Health within 30 days of the bureau's request.

3. Within 30 days of receipt of this cost report data, the Bureau of Primary Care and Rural Health will geocode and map the zip codes of the cost report data to assess the primary service area of the rural hospital. The results of this analysis will be provided to the party issuing the request for the primary service area determination and the rural hospital impacted by the request.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1306-1310.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, LR 34:

#### **Family Impact Statement**

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 this proposed Rule will have no impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Interested persons may submit written comments to Kristy Nichols, Bureau of Primary Care and Rural Health, P.O. Box 3118, Baton Rouge, LA 70821-3118. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, November 27, 2007, at 9:30 a.m. at the Department of Health and Hospitals, 628 N. Fourth Street, Conference Room 118, Baton Rouge, LA 70802. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either 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.

Roxane A. Townsend, M.D.  
Secretary

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

#### **RULE TITLE: Primary Service Areas of Rural Hospitals**

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other

than cost of promulgation for FY 07-08. In FY 07-08, \$275.00 is included for the state's administrative expense for promulgation of this proposed rule and the final rule (\$137.50 SGF and \$137.50 federal funds).

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 07-08. It is anticipated that \$137.50 will be expended in FY 07-08 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This rule forbids any physician to refer a patient to a health care facility, as defined, in which that physician has an ownership interest if the physician provides services within the service area of a rural hospital, or if the facility to which the patient is referred is in the service area of a rural hospital. Violation of this rule shall constitute grounds for suspension or revocation of a healthcare facility's license or other permit to operate.

The following provider types and businesses will be affected by the proposed rule: independent diagnostic testing facility, magnetic resonance imaging equipment or facility, computerized tomography equipment or facility, Positron Emission Tomography scanner or facility, an ambulatory surgical center licensed by the department, or any outpatient surgical facility required to be licensed by the department as an ambulatory surgical center in order to obtain certification by Medicare as an ambulatory surgical center.

The measure will have economic benefits for small rural hospitals by providing standards for ethical referrals by physicians who have ownership interest in one of the above mentioned facility types, thereby limiting duplication of services within the primary service areas of small rural hospitals and ensuring small rural hospitals are not deprived of essential revenues generated by those services.

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

The rule places restrictions on certain types of health care providers (independent diagnostic testing facility, magnetic resonance imaging equipment or facility, computerized tomography equipment or facility, Positron Emission Tomography scanner or facility, an ambulatory surgical center licensed by the department, or any outpatient surgical facility required to be licensed by the department as an ambulatory surgical center in order to obtain certification by Medicare as an ambulatory surgical center) within the service areas of small rural hospitals.

Because violation of this rule shall constitute grounds for suspension or revocation of a health care facility's license or other permit to operate, the rule will limit revenue generation of these certain health care providers. In some cases it will be impossible for these services to be offered by any facility other than a small rural hospital.

Employment opportunities in rural communities that have or may result from the development of the facilities listed above will be affected.

Susan V. Stockstill  
Assistant Budget Director  
0710#064

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office



## NOTICE OF INTENT

### Department of Insurance Office of the Commissioner

#### Regulation 94—Premium Adjustments for Compliance with Building Codes and Damage Mitigation (LAC 37:XIII.Chapter 127)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted under R.S. 22:1 et seq., and R.S. 22:1426, that the Commissioner of Insurance intends to promulgate Regulation 94 to implement the provisions of Acts 2007, No. 323 of the Regular Session of the Louisiana Legislature, which mandates that insurers provide a premium discount for insureds who build or retrofit a structure to comply with the State Uniform Construction Code and/or install mitigation improvements or retrofit their property utilizing construction techniques demonstrated to reduce the amount of loss from a windstorm or hurricane.

#### TITLE 37 INSURANCE

#### Part XIII. Regulations

#### Chapter 127. Regulation Number 94—Premium Adjustments for Compliance with Building Codes and Damage Mitigation

##### §12701. Authority

A. Regulation 94 is issued pursuant to the authority vested in the commissioner pursuant to the provisions of R.S. 49:953 et seq., of the Administrative Procedure Act; R.S. 22:3 and R.S. 22:1426.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to enforce the provisions of R.S. 22:1426.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

##### §12703. Purpose

A. The purpose of Regulation 94 is to implement the provisions of Acts 2007, No. 323 of the Regular Session of the Louisiana Legislature, which mandates that insurers provide a premium discount for insureds who build or retrofit a structure to comply with the State Uniform Construction Code and/or install mitigation improvements or retrofit their property utilizing construction techniques demonstrated to reduce the amount of loss from a windstorm or hurricane.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to enforce the provisions of R.S. 22:1426.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

##### §12705. Scope and Applicability

A. Regulation 94 applies to authorized property and casualty insurers required to submit rates and rating plans for residential property insurance to the Louisiana Department of Insurance.

B. Regulation 94 does not apply to commercial property or commercial residential property insurance.

C. Regulation 94 does not apply to approved unauthorized insurers, i.e., surplus lines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to enforce the provisions of R.S. 22:1426.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

##### §12707. Definitions

A. As used in Regulation 94, these terms shall have the following meaning ascribed herein unless the context clearly indicates otherwise:

*Certification Form*—a form prepared by an insurer, approved by the department, and subsequently completed and signed by the insured, wherein the insured attests to the implementation of specific mitigation items which the insurer recognizes in its rating plan for providing a premium discount under R.S. 22:1426.

*Department*—Louisiana Department of Insurance.

*Discount Plan*—the criteria and items utilized by an insurer to determine or otherwise compute the discount, credit, rate differential, adjustment in deductible, or any other adjustment to reduce the insurance premium for an eligible insured under R.S. 22:1426.

*Qualified Professional*—a building code enforcement officer, registered architect, registered engineer, or a registered third-party provider authorized by the Louisiana State Uniform Construction Code Council to perform building inspections.

*Residential Property Insurance*—fire and extended coverage insurance or homeowners insurance for a one- or two-family owner-occupied premises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to enforce the provisions of R.S. 22:1426.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

##### §12709. New Rate Filings

A. All residential property insurers shall make new rate filings with the department in accordance with R.S. 22:1426 on or before March 31, 2008.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to enforce the provisions of R.S. 22:1426.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

##### §12711. Discount Plan Standards

A. A discount plan submitted to the department shall consider wind mitigation studies conducted by other states, e.g., Florida, unless alternative studies utilized by the insurer are found acceptable by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to enforce the provisions of R.S. 22:1426.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

##### §12713. Mitigation Improvements and Construction

###### Techniques to be Included in the Discount Plan

A. The discount plan shall include but not be limited to the following mitigation improvements and construction techniques:

1. building design code;
2. roof shape;
3. roof bracing;
4. secondary water barriers;
5. opening protection;
6. roof to wall strength;
7. roof deck attachment;
8. roof covering and roof covering performance;
9. wall-to-floor-to-foundation strength;
10. window, door, and skylight strength;
11. the presence or absence of tie-downs for mobile homes; and

12. other mitigation improvements and/or construction techniques that can be determined to reduce the risk of loss due to wind.

B. The discount plan shall provide qualifying rules for all reasonably foreseeable circumstances including the use of multiple building designs in a single structure or the use of multiple wind mitigation techniques. For example, if a house has two wings, one with a hip roof and one with a gable roof, the qualifying rule shall provide whether a hip roof discount is granted in full, in part, or not at all. If the discount is granted in part, additional rules shall describe how the discount is quantified.

C. Discounts shall be displayed in the insurer's rate and rule manual to reflect the interdependence and differing degrees of overlap with regard to the rating elements. That is, rating elements should not be assumed to interact in a simple additive or multiplicative manner. For example, if element A carries a 10 percent discount and element B carries a 5 percent discount, then elements A and B may be of such a nature that the discount elements will not achieve a 15 percent discount but may only entail a 12 percent discount or an 18 percent discount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to enforce the provisions of R.S. 22:1426.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§12715. Form Filing; Notice to Insureds**

A. In addition to new rate filings, insurers shall make new form filings on or before March 31, 2008 to reflect the new requirements of R.S. 22:1426 and Regulation 94. The primary purpose of these form filings shall be to introduce a certification form for the insured to complete, sign, and if required, have countersigned by a qualified professional, claiming entitlement to one or more mitigation discounts. If a countersignature is required by a qualified professional, this instruction shall be included in the certification form.

B. The certification form shall include each of the mitigation items which the insurer recognizes in its rating plan. For each such mitigation item, the certification form shall contain appropriate checkboxes, such as "Yes" and "No," to be appropriately marked by the insured. In addition, for each such item, a "non applicable" and "non determinable" checkbox shall be made available, along with ample space for written comments or qualifications by the qualified professional.

C. New form filings submitted to the department pursuant to Regulation 94 shall, at a minimum, include the following:

1. the written notice that will be sent to the insured describing each discount item set forth in §12713.A. for which a discount may be granted to the insured; and
2. the certification form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to enforce the provisions of R.S. 22:1426.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§12717. Proof of Eligibility**

A. The insured has the obligation to provide the insurer with the appropriate documentation to verify eligibility for a discount under the provisions of R.S. 22:1426 and Regulation 94. Prior to the insurer applying the discount mandated by R.S. 22:1426, the insured shall provide the insurer with the following:

1. a properly completed certification form; and
2. appropriate documentation demonstrating compliance with the State Uniform Construction Code; and/or
3. appropriate documentation attesting to the mitigation improvements made by the insured that reduce the amount of loss from a windstorm or hurricane.

B. Documentation that will satisfy the requirements of this subsection may include but may not be limited to the following:

1. permits;
2. certificates of occupancy;
3. inspection reports; or
4. receipts.

C. The insurer may request additional documentation or proof from an insured if the insurer has a justifiable basis to question the authenticity or accuracy of any of the information or documentation provided by the insured.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to enforce the provisions of R.S. 22:1426.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§12719. Severability**

A. If any Section or provision of this regulation or the application to any person or circumstance is held invalid, such invalidity or determination shall not affect other Sections or provisions or the application of this regulation to any persons or circumstances that can be given effect without the invalid Section or provision or application, and for these purposes the Sections and provisions of this regulation and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to enforce the provisions of R.S. 22:1426.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **§12721. Effective Date**

A. This regulation shall become effective upon final publication in the Louisiana Register. Insurers shall take steps to timely implement the discount so that it is available for all new and renewal residential property insurance business effective June 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to enforce the provisions of R.S. 22:1426.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 34:

#### **Family Impact Statement**

Pursuant to R.S. 49:953.A(1)(a)(viii) the commissioner for the LDOI states that there will be no adverse impact on family formation, family stability, and family autonomy, as set forth in R.S. 49:972 from the promulgation of Regulation 94.

Persons interested in obtaining copies of Regulation 94 or in making comments relative to this proposal may so at the public hearing to be held on Thursday, November 29, 2007, at 10 a.m., in the Poydras Hearing Room of the Louisiana Department of Insurance Building, 1702 N. Third Street, Baton Rouge, LA or by writing to Walter Corey, Attorney, 1702 N. Third Street, Baton Rouge, LA 70802. Written comments will be accepted through the close of business on Thursday November 29, 2007.

Warren E. Byrd  
Executive Counsel

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

**RULE TITLE: Regulation 94—Premium  
Adjustments for Compliance with Building  
Codes and Damage Mitigation**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
DOI does not anticipate any implementation costs as a result of Regulation 94.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no increase or decrease in revenue as a result of Regulation 94.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Consumers purchasing property insurance in Louisiana who qualify for and receive the premium discounts would benefit, but DOI is unable to quantify that benefit. The DOI does not anticipate any change in revenue as a result of Regulation 94.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The implementation of Regulation 94 should increase competition within the property insurance market in the state by bringing in more property insurers.

Chad M. Brown  
Deputy Commissioner  
0710#040

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Labor  
Office of Workers' Compensation**

Fiscal Responsibility Unit  
(LAC 40:I.Chapter 17)

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Louisiana Department of Labor, Office of Workers' compensation, pursuant to authority vested in the Director of the Office of Workers' compensation by R.S. 23:1168 and in accordance with applicable provisions of the Administrative Procedure Act, proposes to amend LAC 40:I, Subpart 1, Chapter 17, Sections 1711, 1721, 1727 and 1731 relative to individual self-insured employers. The proposed amendments are set forth below.

**Title 40**

**LABOR AND EMPLOYMENT**

**Part I. Workers' Compensation Administration**

**Subpart 1. Workers Compensation Administration**

**Chapter 17. Fiscal Responsibility Unit**

**§1711. Filing of Reports—Penalties**

A. - B. ...

C.1. In addition to the above required annual reports, the Office of Workers' Compensation may require interim financial statements, summary loss data, payroll audits, or such other reports or statements upon reasonable notice.

2. Each individual self-insurer shall set reserves for claims in an amount deemed to be sufficient to pay any and all claims expense which may reasonably be expected to be incurred. Such reserves shall be set up in the liabilities section of the balance sheet only. These reserves are to be

independently verified by an independent actuary once every three years following the issuance of a certificate of self-insurance. The actuary's report must be submitted to the office for review accompanied by a letter, signed by an officer of the company, verifying that reserves have been set up in the liabilities section of the balance sheet.

3. The actuarial report must verify the Louisiana workers' compensation claims liability, adequacy of loss reserves for incurred and IBNR claims.

4. Failure to comply with this provision shall be grounds for revocation of the certificate of self-insurance.

D. The director, or the designee of the director, may, examine, review, or inspect all books and records of any individual self-insurer or any applicant for self-insurance to determine the claims liability, the workers' compensation claims paying ability, the financial condition in relation to the claims paying ability, and to ascertain the workers' compensation administrative assessment liability. Any individual self-insurer that refuses to allow the director, or his or her designee, to examine any books or records shall be subject to revocation of the certificate of self-insurance, and to any other penalty allowed by law or regulation. Any applicant for self-insurance who refuses to provide any reports or documentation requested by the director, or who refuses to allow the director or his or her designee to examine or inspect any books or records so requested by the director shall be denied a certificate of self-insurance.

E. The appeal from an adverse decision may be made to the director pursuant to §1731.

F. This rule places the responsibility on the employers, groups and service companies to perform their prescribed duties and responsibilities without prompting from the office. Failure or refusal of any self-insurer to file the required report with the office within the prescribed time period shall subject the self-insurer to a civil penalty in such amount as the office may prescribe, not to exceed \$100 per infraction per day, and may be sufficient cause for the revocation of the self-insurer privilege. Failure to pay such penalty within 30 days of the notification may be considered additional cause for revocation of the self-insurer privilege.

G. Any notice required to be given by these rules and regulations to the director shall be deemed proper if made in writing, addressed to the director. Any notice required by these rules and regulations to be given to a self-insured employer shall be deemed properly given if in writing and addressed to the employer at the address shown on either the application or the last annual report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1168 of Act 938 of 1988 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:961 (October 1991), amended by the Department of Labor, Office of Workers' Compensation, LR 34:

**§1721. Tenure of Authority**

A. The certificate of self-insurance, once issued, shall become effective on the date the certificate is issued or on the date requested on the application and shall remain in force until cancelled or revoked or other wise suspended by the director. Applications cannot be approved retroactively.

B. A certificate shall be valid only to that entity to which it is issued.

C. No self-insured employer has the authority to extend use of its certificate to any other person, firm or corporation,

and the unauthorized extension of said use shall constitute good cause for revocation of the certificate.

D. Any self-insured employer that amends its articles, charter of agreement of incorporation, association of copartnership, or partnership, or merges or attempts to merge with another entity so as to change its identity or business structure or in any other manner materially alters its status as it existed at the time the certificate was issued, shall within 30 days notify the director in writing of such action and provide the director with a copy of such amendments. Failure to comply with this provision may be grounds for revocation of the certificate of self-insurance.

E. Any self-insured employer that proposes to cease doing business in Louisiana, or that proposes to dispose of, by sale, transfer, convey, sell, or otherwise, the controlling interest of the business for which the certificate was issued, or that proposes to dispose of, by sale or otherwise, a significant portion of the in-state assets of the business, or that transfers its workers' compensation liability, for which the certificate was issued, shall immediately notify the director in writing of the proposed action. Failure to comply with this provision shall be grounds for revocation of the certificate of self insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1168 of Act 938 of 1988 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:963 (October 1991), amended by the Department of Labor, Office of Workers' Compensation, LR 34:

#### **§1727. Application for Payment of Security**

A. An injured worker or group of injured workers can apply to the director for the payment of benefits pursuant to R.S. 23:1168.3 if a self-insured employer has failed to pay benefits for undisputed claims.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1168 of Act 938 of 1988 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:964 (October 1991), amended by the Department of Labor, Office of Workers' Compensation, LR 34:

#### **§1731. Appeals**

A. A request for hearing pursuant to §1711.E, §1715.E or §1717.A or the appeal from an adverse discretionary decision made by the office may be made to the director of the Office of Workers' Compensation by an applicant, self-insurer or service company.

B. ...

C. If no request for an oral hearing is made, then the appellant may submit documentation and/or written memorandum to support the appeal at least 15 days prior to the review of the appeal. Appellant will be notified at least 30 days prior to the date of the review by the director. The director will review all the evidence submitted and render a decision.

D. If the appellant requests an oral hearing, then appellant will be given at least 30 days prior notice of the hearing. All hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:955 et seq. On the day of the oral hearing appellant and appellee shall be prepared to start the hearing at the time specified in the notice of hearing. The hearing may be continued for good cause provided a written request for extension is received at the Office of Workers'

Compensation at least seven days prior to the date of the hearing.

E. If after the review of the director a decision adverse to the appellant is made, then appellant within 30 days of the date the order or decision is signed may appeal this administrative decision to the Nineteenth Judicial district court of this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1168 of Act 938 of 1988 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:965 (October 1991), amended by the Department of Labor, Office of Workers' Compensation, LR 34:

#### **Family Impact Statement**

1. The Effect on the Stability of the Family. The proposed Rule for the Office of Workers' Compensation Administration will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. The proposed Rule for the Office of Workers' Compensation Administration will have no 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. The proposed Rule for the Office of Workers' Compensation Administration will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. The proposed Rule for the Office of Workers' Compensation Administration will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed Rule for the Office of Workers' Compensation Administration will have no 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. The family or a local government is not able to perform the functions contained in the proposed Rule for the Office of Workers' Compensation Administration.

Inquiries concerning the proposed repeal and enactment may be directed to Karen Reiners Winfrey, Assistant Secretary, Office of Workers' Compensation Administration, Louisiana Department of Labor, P.O. Box 94094, Baton Rouge, LA 70804-9094.

Interested persons may submit data, views, arguments, information or comments on the proposed repeal and enactment in writing, to the Louisiana Department of Labor, P.O. Box 94094, Baton Rouge, LA 70804-9094., Attention: Karen Reiners Winfrey, Assistant Secretary, Office of Workers' Compensation Administration. Written comments must be submitted and received by the Department within 10 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 department within 20 days of the date of this notice.

John Warner Smith  
Secretary

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

**RULE TITLE: Fiscal Responsibility Unit**

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

There are no estimated implementation costs or saving to state agencies from the proposed rules. Local government units who are self-insured will incur a maximum cost of \$5,000 every three years to complete an actuarial study as required by the proposed rules.

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

There are no estimated effects on revenue collections of state or local governmental groups from the proposed amended rules.

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

Companies who are self-insured will incur a maximum cost of \$5,000 every three years to complete an actuarial study as required by the proposed amended rules.

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

There are no estimated effects on competition or employment from the proposed amended rules.

John W. Smith  
Secretary  
0710#033

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of Mineral Resources**

Mineral Resources, Wind Energy Leasing,  
and Bohemia Spillways  
(LAC 43:I.Chapters 9, 10, 13 and V.Chapters 1, 3)

Pursuant to power delegated under the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statute of 1950, as amended, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary of the Department of Natural Resources hereby gives notice that rulemaking procedures have been initiated to amend Geophysical and Geological Surveys, LAC 43:V.Chapter 1, Fees and Other Charges, LAC 43:V.Chapter 3, amend Mineral Leasing Policy and Royalty Crude Oil LAC 43:I.Chapter 9, promulgate Leasing State Lands and Water Bottoms for Exploration, Development and Production of Wind Energy, LAC 43:I.Chapter 10, and to repeal Bohemia Spillways, LAC 43:I.Chapter 13.

The purpose of the geophysical and geological surveys regulation is to allow the office of mineral resources to provide additional parties with the data collected under the authority of Acts 2006, No. 520. The fees and other charges are being amended to update the regulation authority because current authority as promulgated has legislatively been repealed. Amendment to the mineral leasing policy sets forth additional requirements as to who is required to sign a bid and what occurs when there is a discrepancy in the bid. The regulation relative to wind energy details the procedure to be utilized to administer the leasing of state water bottoms for the exploration, development and production of wind

energy, allowed for by R.S. 41:1731 et seq. The repeal of the Section relative to Bohemia Spillways is appropriate as the date for filing claims for the return of lands was June 30, 2007 per Acts 2005, No. 130.

**Title 43**

**NATURAL RESOURCES**

**Part I. Office of the Secretary**

**Subpart 1. General**

**Chapter 9. Mineral Resources**

**Subchapter A. Mineral Leasing Policy**

**§901. Nomination**

A. All parties desiring to nominate state owned land and waterbottom acreage or land owned by a state agency for which the State Mineral Board is being requested to issue a mineral lease must be registered with the office of mineral resources on a one-time basis and have received an applicant ID number prior to submitting application for nomination.

B. The State Mineral Board has the authority to lease State owned lands and waterbottoms (see R.S. 30:124) and state agency owned land when requested to do so (see R.S. 30:153).

C. Application for nomination generally must include a diskette or CDROM containing a .dxf format of the proposed nominated tract polygon and a word.doc legal description of the same proposed nominated tract which must exactly match the tract polygon exploded from the .dxf as to X,Y coordinates along the polygon outline based on the Lambert Coordinate System; a paper copy of the plat and the legal description which each must match the .dxf exploded polygon and the word.doc; an electronic .pdf file of the plat; a letter of application completely and accurately filled out and a non-refundable check in the amount of the nomination fee as set forth in R.S. 9:301(2) (presently \$400). More detailed requirements and certain exceptions are contained in the Leasing Manual available on the Department of Natural Resources (DNR) website at <http://dnr.louisiana.gov/min/petlan/leasing.asp>.

D. Nominated acreage for one nomination cannot exceed 2,500 acres of state owned lands and waterbottoms, in the aggregate, nor can the polygon outline of the nominated tract exceed 3 1/2 miles on a side, generally speaking, and must be given, where possible, in Lambert (X,Y) Coordinates at critical points along the boundary of the nomination polygon together with meets and bounds. Certain exceptions to this rule may be found in the leasing manual available on the DNR website as hereinabove set forth.

E. Advertising of nominations cannot occur more than 60 days prior to the date on which sealed bids are to be opened and must be done in the official state journal and the official parish journal wherein the nomination lies. The advertisement must contain a description of the land nominated, the time and place where the sealed bids shall be received and opened (which must be a state owned building in the state capital), a statement that the bid may be for the whole or any particularly described portion of the advertised land and may contain any other information deemed necessary by the Mineral Board [R.S. 30:126(A)]. The Office of Mineral Resources also publishes a notice book each month of tracts available for bidding at the next month's mineral lease sale which is available to the public for a yearly subscription price of \$120. A copy of the notice book is available for viewing on the DNR website.

F. A nomination may be withdrawn at the request of the applicant prior to its being advertised for lease; thereafter, the request for withdrawal must be reviewed by the State Mineral Board and approved for withdrawal at the regularly scheduled monthly State Mineral Board meeting.

G. For more detailed information on nominations abutting or enclosing existing, active state mineral leases, abutting the 3 mile boundary between state and federal waters, abutting neighboring states, nominations of particular tract kinds—such as wildlife management areas under the jurisdiction of the Department of Wildlife and Fisheries, Sixteenth Section lands, vacant state lands, school indemnity lands, state agency lands, tax adjudicated lands and other specialized types of acreage requiring type specific handling, see the leasing manual available on the DNR website as set forth hereinabove.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§902. Bidding**

A. Bids for state mineral leases shall only be accepted from those parties who are registered prospective leaseholders (having a registration form containing current information regarding the bidder and a current certificate of good standing from the secretary of state's office indicating prospective bidder is authorized to do business in the state of Louisiana) with the office of mineral resources. Prospective leaseholders must maintain current their registration by notifying the office of mineral resources of any change of information provided on the registration form and prior to January 31 of each year, if applicable, furnishing the office of mineral resources with a copy of a certificate from the secretary of state's office indicating the party is in good standing and remains authorized to do business in the state of Louisiana.

B. Bids for state mineral leases shall be accepted at the place named in the advertisement no later than 12 noon on the Tuesday immediately preceding the Wednesday State Mineral Board meeting (unless specially noticed due to holidays).

C. Bids must be in a sealed envelope with the tract number for which the bid is being submitted legibly typed or written on the outside of the envelope. The bid packet shall contain the official state of Louisiana bid form as secured from the website form file, completely and accurately filled out and signed by an authorized agent of the bidder, a cashier's or certified check, or money order made out to the office of mineral resources for the total amount of the cash bonus being bid (which must match exactly the cash bonus written in on the bid form submitted), a check made out to the office of mineral resources for the sum equaling 10 percent of the total cash bonus bid, a check made out to the office of mineral resources for a sum equaling \$20 multiplied times the total number of acres being bid on (if bid is on entire tract, then multiply \$20 times total tract acreage), a "hard" paper copy of the plat and legal description of a portion bid and a diskette or CDROM containing a .dxf file and a word.doc file describing the portion bid (which must match each other and the "hard" copies) and an electronic .pdf file of the plat. Failure to sign the bid form, or a discrepancy between the amount of the cash bonus set forth on the check presented and, if less than,

the amount written in on the accompanying bid form, shall invalidate the bid, rendering it unacceptable to the State Mineral Board. Bids once submitted shall not be returned prior to the State Mineral Board meeting for which they were submitted, and then only by permission of the State Mineral Board or if the bid is rejected.

D. Bids shall be opened on the date, and at the time and place specified in the advertisement. If a nominated tract is withdrawn from a particular mineral lease sale by the State Mineral Board for any reason, any bids received on the withdrawn tract shall be returned unopened at the end of the State Mineral Board meeting from which the tract was withdrawn.

E. All bids opened shall be evaluated by the staff of the State Mineral Board and recommendations made as to whether each bid should, or should not, be accepted. The State Mineral Board may then award leases on those bids it deems acceptable—usually at the meeting when the corresponding bids are opened. All bids not accepted shall be returned to the unsuccessful bidder at the end of the meeting at which the bids were opened.

F. Awarded leases are prepared by the staff of the Office of Mineral Resources and sent to the new lessee for signature and recordation in the parish records of the parish(s) in which the lease acreage is located. A fully signed and executed copy of the lease, with recording information, shall then be returned to the office of mineral resources within 20 days of receipt therefrom (failure to so return may result in forfeiture of lease) and shall be filed in the lease records of that office.

G. More particular information with regards to the bidding procedure may be obtained from the Leasing Manual located on the DNR website as set forth hereinabove.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§903. Assignments and Other Transfers of Interest**

A. Any assignment or other transfer of an interest in a state mineral lease must be approved by the State Mineral Board and failure to so obtain approval shall render the assignment or transfer null and void (R.S. 30:128).

B. Before any assignment or other transfer of an interest in a state mineral lease is approved, any and all of the assignees must be currently registered prospective leaseholders with the Office of Mineral Resources.

C. Any assignment must clearly show that a working interest in a state mineral lease is being transferred (no net revenue interest, override royalty, well bore interest, or other similar non-working interest transfer will be approved by the State Mineral Board), contain a clear description of the working interest (including legal description of lease portion if applicable) being transferred, not show a greater interest being transferred than is owned by the assignor and be accompanied by a Form B (see the DNR website for file) which shows the decimal working interest of all parties before and after the transfer. The assignment or other transfer must be signed by all assignors requisite to the transfer of the interest being assigned, witnessed and duly notarized (by witness attestation if necessary) in a form legally acceptable in the venue in which the assignment or other transfer is completed.

D. Each assignment or other transfer (more than one lease interest may be assigned or transferred in one assignment document) shall be accompanied by a check for the non-refundable fee as set in the fee schedule of the office of mineral resources (R.S. 43, Part V, §301); presently set at \$100.

E. The assignment or other transfer, once approved by the State Mineral Board, shall be filed in the lease records of the Office of Mineral Resources in the file record of the applicable lease(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

#### **§904. Laws and Instructions**

A. The general statutory provisions applicable to mineral leases from the State of Louisiana on state owned lands and waterbottoms are located in R.S. 30:121-221. The general, applicable provisions of the Constitution of the State of Louisiana of 1974, as amended, are Article IX, §1-5.

B. Instructions regarding obtaining and transferring interests in state mineral leases may be found in the Leasing Manual located on the Department of Natural Resources (DNR) website at <http://dnr.louisiana.gov/min/petlan/leasing.asp>.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

#### **§905. Mineral Board Policy**

A. Mineral Board Policy regarding matters of mineral leasing and transfers of mineral lease interests may be obtained on request by telephoning the office of mineral resources at (225) 342-4606.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

#### **§907. Information Availability**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 4:210 (May 1978), repealed by the Department of Natural Resources, Office of the Secretary, LR 34:

#### **§909. Policy Waiver**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 4:210 (May 1978), repealed by the Department of Natural Resources, Office of the Secretary, LR 34:

#### **§911. Lease Proposal Evaluation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 4:210 (May 1978), repealed by the Department of Natural Resources, Office of the Secretary, LR 34:

### **Subchapter C. Royalty Crude Oil**

#### **§925. Purpose**

A. It is the purpose of these regulations, and in the best interest of the state, to establish a program to provide a mechanism for taking state royalty oil volumes in kind and for the disposition by sales or processing contracts, in a fair and equitable manner, of available supplies of such state royalty oil to eligible refiners within the state, with the intent thereby to increase the supplies of gasoline, diesel or other fuel products available to Louisiana citizens.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:142.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:

#### **§927. Definitions**

*Affiliates*—any business concerns affiliated with each other where either directly or indirectly one concern controls or has the power to control the other or a third party controls or has the power to control both.

*Contract*—a contract for the disposition of state royalty oil.

*Lessee*—the owner or owners of the working interest under a state lease.

*Lessor*—the state of Louisiana acting through the State Mineral Board.

*Louisiana Refiner*—an applicant who is certified by the Mineral Board.

*Refiner*—a qualified applicant who contracts for state royalty oil pursuant to the policies and procedures established by the State Mineral Board and these regulations.

*Royalty Oil*—the state's royalty portion of crude oil or condensate produced from or allocated to state leases.

*Seller*—the State Mineral Board acting on behalf of the state of Louisiana in a contract to sell royalty oil.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:

#### **§929. Policies and Procedures of the State Mineral Board**

A. Royalty oil available through exercise of the state's right to take in kind shall be disposed of pursuant to policies and procedures approved by the State Mineral Board, which shall be consistent with the intent and purpose of R.S. 30:143 and these regulations.

B. Prior to the execution of any contracts by the State Mineral Board, and pending a determination of available supplies, the Office of Mineral Resources, under the direction of the Secretary of the Department of Natural Resources, shall prepare for board consideration recommendations for the disposition of available state royalty oil. Such recommendations shall address the sale and accounting of royalty oil; processing and accounting for royalty oil; and public bidding and accounting for royalty oil.

C. The Office of Mineral Resources shall prepare a projection of the costs of administering the program as well

as a recommendation to the board of the amount of administrative fee, not to exceed \$0.20 per barrel, necessary to cover such costs, and if applicable, the minimum volume of royalty oil which must be included in each type of transaction to be cost efficient.

D. In accomplishing the purposes of the Section, the Office of Mineral Resources shall be authorized to consult with such industry, government and professional persons as may be necessary. Within the limitations of its budget, or utilizing funds made available for that purpose, the office may contract for any professional services necessary, subject to the approval of the Secretary of the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§931. Inventory; Delivery Points; Objections**

A. For each lease, division order or other legal instrument pursuant to the terms of which the state has a royalty oil interest susceptible of taking in kind, the Office of Mineral Resources shall determine the volumes and prices applicable to such royalty.

B. The Office of Mineral Resources shall notify each of the state's lessees of the state's interest in taking in kind the volume of state royalty oil attributable to the production of each such lessee, requesting the designation, within 30 days, of proposed delivery points therefore, and notice of any perceived impediments, objections or hardships with regard to such taking under a particular lease or other legal instrument.

C. Impediments or objections which cannot be resolved within 60 days of notice, by informal conference with the State Mineral Board, shall be referred to the Secretary of the Department of Natural Resources for his review and disposition by such procedures as he may deem appropriate and in the best interest of the state.

D. The lease volumes, prices and proposed delivery points for all state royalty oil for which there is no unresolved impediment or objection to taking in kind, shall be compiled by the Office of Mineral Resources for submission to the State Mineral Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:134 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§933. Louisiana Refiner Criteria**

A. To be eligible to purchase or process state royalty crude oil an applicant therefore must be certified by the State Mineral Board as a Louisiana refiner.

B. To qualify as a Louisiana refiner, an applicant to purchase or process state royalty crude shall meet all of the following criteria.

1. Applicant shall be a Louisiana business entity having its principal place of business in the state of Louisiana. In applying this criterium, principal place of business shall mean:

a. 51 percent of the applicant's and all affiliates' total refining capacity is located in Louisiana; or

b. Louisiana is the applicant's state of incorporation; or

c. applicant's headquarters or corporate offices and at least 51 percent of its officers and employees are located in Louisiana.

2. Applicant shall have facilities in the state with available capacity for refining or processing crude oil or condensate into fuel products and/or the capability for the distillation of methanol or ethanol suitable for blending with gasoline to produce a motor fuel.

3. Applicant must have adequate facilities to receive crude oil and own or have contractual rights to use facilities for storage of royalty crude oil and for storage or products refined therefrom.

4. Applicant must be able to:

a. legally condition the sale of products refined from the state royalty oil upon the right of the state to exercise a right of first refusal to any such products; and

b. to give first priority to Louisiana customers in the usual course of sale of such products.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:134 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§935. Application Requirements**

A. A refiner desiring to purchase or process state royalty oil shall file an application with the Office of Mineral Resources with an original and 10 copies containing the following information:

1. the full name and address of the applicant;

2. a detailed statement showing the applicant's qualifications to be certified a Louisiana refiner pursuant to §933 of these regulations, attested to by affidavit;

3. the capacity of the refinery to be supplied;

4. a tabulation for each of the last 12 months of operation, or since start-up date if less than 12 months, or projection for the next 12 months, of refining capability, of the amount of the thru-put capacity, the source and grades of crude oil refined or refinable, and the kind, amount and percentage of the principle fuel products produced;

5. if applicable, the amount and source of methanol and ethanol production available to applicant including identification of the sources of agricultural products used to produce such methanol and ethanol;

6. a plan of procedure setting forth in detail the mechanisms proposed to be employed to dispose of refined products in the state and to accommodate the state in the event that it exercises its rights of first refusal, together with any approvals from the federal government which may be necessary to carry out such disposition;

7. a complete disclosure of applicant's affiliation, and the nature thereof, with any other producer and refiner;

8. the minimum amount of royalty oil requested and the state lease or leases applicant believes offer a potential source of royalty oil, if known;

9. a list of all customers to whom products were sold in the current and previous year and all customers required to be supplied pursuant to federal law or regulations, including such customer's address and type of products purchased;



10. a contingency plan for handling of the state's royalty crude in the event that a force majeure event occurs disrupting normal operations;

11. such other information as the State Mineral Board may by appropriate notice require for such applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:134 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§937. Disposition; Approval; Priority**

A. Royalty crude shall normally be made available to qualified applicants based upon each qualified applicant receiving an equal proportionate share of the total royalty crude oil available. The State Mineral Board may establish policies and procedures for alternate methods of disposition of royalty crude not otherwise subject to public bid, and for public bidding for royalty crude not subject to price controls when the board deems such alternate methods are appropriate. In either case the board may establish such conditions as it deems necessary, in addition to the conditions set forth in these regulations, to protect the interests of the state and to provide, to the extent practicable, for fair and equitable allocation.

B. Prior to implementing procedures for public bidding, and prior to disposing of royalty crude by a contract, for the sale or processing thereof, the board shall present such procedures, and each such contract, to the House and Senate Committees on Natural Resources, meeting jointly, for approval thereof.

C. The board shall incorporate in its policies and procedures mechanisms which give first priority to eligible refiners with capability to refine typical south Louisiana, light sweet type crude and refiners with operable facilities for the distillation of methanol or ethanol suitable for blending with gasoline to produce a motor fuel. The board shall develop procedures for ranking refiners with facilities for the distillation of methanol or ethanol according to the percentage of Louisiana agricultural products used in such refiners' distillation process, with those refiners deriving ethanol or methanol by using 50 percent or more of Louisiana agricultural products ranked first. Refiners using less than 10 percent Louisiana agricultural products shall not be entitled to ranking in this first priority.

D. No refiner shall be entitled to receive more than 7,500 barrels per day of state royalty crude.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:134 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§939. Contract Term; Renewal; Minimum Requirements**

A. The term of any contract entered into by the board with a qualified refiner for the purchase or processing of state royalty crude oil shall have a maximum primary term of no more than three years. Such contract shall be renewable upon timely application of the same conditions, or such additional conditions as may be deemed necessary to serve the best interest of the state, at the sole discretion of the board.

B. Intention of the refiner to seek renewal of a contract shall be evidenced by written application filed no later than 60 days prior to the expiration date of the contract then in effect.

C. If the board does not receive written application for renewal within the time set forth in Subsection B, the board may readvertise the availability of the volume of royalty crude oil committed under such contract and enter into a new contract with a qualified refiner effective upon the expiration date of the unrenewed contract, or make such other disposition of the royalty oil as it determines to be in the best interest of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§941. Transportation; Delivery; Storage; Transportation Costs; Minimum Requirements**

A. In any contract, the refiner shall be responsible to arrange with the state's lessee for the delivery and receipt of all royalty oil.

B. The point of delivery for royalty oil under any contract shall be the field where produced or a site as near as possible to the point of delivery normally utilized by the state's lessee for delivery of crude oil when state's royalty share is not taken in kind.

C. The refiner shall promptly reimburse state's lessee for the cost of transporting crude oil to the point of delivery at the rate set by the applicable state lease for deductions from royalties for the costs of transportation. If no such rate for deductions is set by the applicable state lease, the refiner shall reimburse the lessee at a rate to be approved by the State Mineral Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§943. Price; Deductions; Method of Payment; Reports; Taxes; Administrative Fee**

A. The price to be paid by a refiner pursuant to any contract for the purchase of royalty crude oil shall be the maximum price allowed pursuant to the applicable and controlling federal or state law on the effective date of the contract. In the event that such price controls are terminated during the term of a contract, the price to be paid by a refiner shall be the fair market value of the state's royalty oil, which condition shall be effective at any time while the contract is in effect.

B. In calculating the payments for royalty crude oil purchased, the refiner may deduct from the price that portion of the transportation costs reimbursed to the state's lessee which represents the actual cost of transportation to the agreed upon point of delivery utilized. Any additional cost of transportation for delivery to a more distant point shall be borne solely by the refiner.

C. Payments due under any contract shall be made monthly, such payments to be consistent with the volume of royalty oil received by the refiner during such preceding month.

D. The refiner shall be required to file monthly reports with the Office of Mineral Resources setting forth by lease and delivery point all volumes of crude oil received.

E. The state shall assume responsibility for all severance taxes due on its royalty production in effect on the contract date. The refiner shall be liable for all other taxes and any additional or increased taxes which become effective following the date of the contract. The board may require the refiner to advance or remit to the appropriate state lessee all severance taxes paid by such lessee which are attributable to the volume of royalty oil acquired by the refiner. In such event the refiner shall be entitled to deduct such taxes on a monthly basis from payments due the state and remit same to the appropriate state lessee.

F. In addition to all other prices, fees, and charges otherwise authorized in these regulations, the board may assess a fee not in excess of \$0.20 per barrel of royalty oil delivered to cover the cost of administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:

**§945. Utilization; Right of First Refusal; Assignment; Resale**

A. Refiner shall not resell any royalty crude oil without the prior written consent of the Mineral Board.

B. All royalty crude oil sold or processed under any contract, or other crude oil received in lieu of royalty crude oil under an exchange agreement, shall be utilized at refiner's facilities in the state and shall not be used for resale in kind except as authorized by the provisions of this Section. To the extent permitted by controlling federal law or regulations no gasoline or diesel end product refined from state royalty crude under any contract shall be sold for the ultimate purpose of retail sale outside of the state of Louisiana.

C. The resale or exchange of royalty crude oil in violation of the provisions of this Section shall be punishable by a fine of not less than \$10,000 per day for each day of violation.

D. Any contract for the sale or processing of state royalty oil shall be conditioned upon the right of the state to exercise a right of first refusal to any product refined from the royalty crude.

E. Any contract for the sale or processing of state royalty oil shall also require that first priority be given to Louisiana customers in the usual course of sale of end products.

F. Refiner shall be required to furnish the board copies of all contracts entered into between refiner and third parties reflecting delivery, receipt, handling, transporting, sale and use of crude oil covered by a contract with the board, or refined products derived therefrom.

G. No contract shall be assignable without the prior written consent of the board.

H. Refiner shall not enter into any exchange agreement whereby other crude oil in lieu of the state's royalty crude oil is delivered to refiner without the prior written consent of the Mineral Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:

**§947. Penalties; Liability; Bond**

A. The board shall provide for the assessment of a late charge at the rate of 7 percent per annum on any payments received from the refiner after the date such payments are due as otherwise provided in these regulations.

B. In any contract for the disposition of royalty crude oil, the board shall assure that the state is held free and harmless from any liability, cost or expense arising from the execution of such contract or from the delivery of any crude oil pursuant thereto. The refiner shall assume all liability for the actions of itself, its agents and employees, and of the state's lessee, its agent and employees in receiving delivery, handling, transporting and refining of royalty oil.

C. Prior to the disposition of any royalty crude oil as provided herein, the board shall require each refiner to furnish to the state a letter of credit from an established and recognized bank within the state, or an acceptable surety bond, in an amount equal to the price and administrative fee for 45 days volume of crude oil to be delivered under any contract, or \$500,000, whichever amount is less, guaranteeing good and faithful performance of the terms and conditions of these regulations and any contract. The full amount of such letter of credit or bond, or any portion thereof, may be applied to any sums or damages due the state as a result of the breach of any condition of the contract or violation of these regulations. Such right shall be in addition to any other legal rights and remedies available to the state. The board shall reserve the right to require the increase in the amount of this security when necessary to protect the interest of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:

**§949. Warranties; Governmental Regulations**

A. In any contract the board shall not warrant the crude oil delivered as being merchantable or suitable for refiner's purpose and the board shall not be liable for the quality of the crude oil or the content thereof. The board shall not warrant to refiner that there are available sufficient quantities of royalty crude oil from any state lease(s) dedicated to a contract to meet refiner's requirements.

B. All contracts shall be subject to applicable state, local and federal laws, rules and regulations. Refiner shall be required to secure all licenses, permits, orders, or waivers necessary for the performance of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:136 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:

**§951. Additional Procedural Rules**

A. The board may from time to time adopt such additional policies and rules of procedures as are deemed necessary to fully effectuate and administer the regulations set forth herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:136 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:

## **Chapter 10. Leasing State Lands and Water Bottoms for the Exploration, Development and Production of Wind Energy**

### **§1001. Authority**

A. These rules and regulations are promulgated by the Secretary of the Department of Natural Resources pursuant to the Administrative Procedure Act as authorized by R.S. 41:1734.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§1003. Purpose**

A. These rules and regulations are promulgated for the following purposes:

1. to implement the provisions of and accomplish the intent of the legislature as set forth in Chapter 14-A of Title 41 of the Louisiana Revised Statutes of 1950;

2. to establish procedures for state wind lease acquisition, transfer, release, operations, electric power production royalty payment and reporting, and decommissioning;

3. to institute reasonable fees for services performed by the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§1005. Overview of the State Wind Lease Acquisition Process**

A. Leases for the exploration, development and production of wind energy on state lands and water bottoms under Chapter 14-A of Title 41 of the Louisiana Revised Statutes of 1950 shall be acquired from the State Mineral Board in conjunction with the Secretary of the Department of Natural Resources, through the Office of Mineral Resources, through a public bid process as set forth in this Chapter. There are nine general steps in the state wind lease acquisition process as outlined below. Each general step has its own set of procedures which are outlined in detail in separate Sections of this Chapter:

1. registration;
2. pre-nomination research;
3. nomination of state lands and water bottoms for wind lease;
4. examination and evaluation of nomination for state wind lease;
5. advertisement of state tract offered for wind lease and request for bids;
6. submission of bids on state tract offered for wind lease;
7. examination and evaluation of bids for state wind lease;
8. award of state wind lease;
9. issuance and execution of state wind lease contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§1007. Registration**

A. Applicant Registration. Any party who wants to apply for a state wind lease shall register certain information with the Office of Mineral Resources on a one-time basis prior to submitting an application. Registration consists of completing and submitting an official Applicant Registration Form.

1. Prospective Leaseholder Registration. All prospective leaseholders of state wind leases shall register certain information and proof of current authorization to do business in the state of Louisiana with the Office of Mineral Resources and thereafter renew their registration annually by January 31. Only those bidders who are registered as prospective leaseholders with the Office of Mineral Resources shall be allowed to bid on tracts for the purpose of obtaining a state wind lease. Transfers or assignments of state wind leases shall not be granted to prospective leaseholders that are not currently registered as a prospective leaseholder with the Office of Mineral Resources.

a. Registration consists of submitting a completed official Prospective Leaseholder Registration Form (obtainable from the Office of Mineral Resources) and an appropriate certificate from the Louisiana Secretary of State to the Office of Mineral Resources as follows:

- i. individual/sole proprietorship—no certificate required;
- ii. corporation—good standing certificate;
- iii. limited liability company—good standing certificate; and
- iv. partnership—existence certificate.

b. If a current record state wind lessee fails to maintain his Prospective Leaseholder Registration with the Office of Mineral Resources, the State Mineral Board may levy liquidated damages of \$100 per day until the unregistered lessee is properly registered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§1009. Pre-Nomination Research**

A. A party seeking to nominate state lands or water bottoms for wind lease shall conduct research prior to nomination to determine and confirm whether the state lands or water bottoms fall under one of the following six categories and comply with any category requirements.

1. Louisiana Wildlife and Fisheries Commission/Louisiana Department of Wildlife and Fisheries Property. The lands and water bottoms in this category are under the jurisdiction of the Wildlife and Fisheries Commission or the Department of Wildlife and Fisheries, including but not limited to, wildlife management areas and refuges. Questions concerning these lands and water bottoms should be directed to the Louisiana Department of Wildlife and Fisheries, Office of Wildlife, Fur and Refuge Division.

2. School Indemnity Lands
3. Tax Adjudicated Lands
4. Vacant State Lands
5. White Lake
6. Legal Areas. Title to certain state lands or water bottoms may have been established by compromise without

litigation, compromise during the course of litigation, or adjudication in a court of law. For state wind leasing purposes, state lands or water bottoms subject to such compromise or adjudication are viewed as a "Legal Area." Determine whether the state lands or water bottoms to be nominated include a Legal Area. If they do, the nominating party shall provide a copy of the compromise instrument(s) or judgment(s) that establish(es) the state ownership interest.

Questions concerning categories 2 through 6 should be directed to the State Land Office, Division of Administration.

B. A party seeking to nominate state lands or water bottoms for wind lease shall conduct research prior to nomination to determine and confirm that the state lands or water bottoms are available for wind lease. The following are some conditions indicating availability.

1. The State Mineral Board has not taken the state lands and water bottoms out of commerce for the purpose of wind leasing.

2. The state lands and water bottoms are subject to an active or non-released land use agreement granted by the state of Louisiana and the user under such an agreement has been notified of the proposed wind leasing.

a. The nominating party shall provide proof of notification consisting of a complete list of the users of the state lands and water bottoms to be nominated for wind lease, the official name and/or number of the governing land use agreement, the official name of the state entity that granted the governing land use agreement, along with an affidavit sworn to by the nominating party, in the presence of a notary and two witnesses, confirming that the party has notified each of the listed users of the state lands and water bottoms of the proposed wind leasing. The nominating party shall follow the notarization requirements of R.S. 35:12.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

#### **§1011. Nomination of State Lands and Water Bottoms for Wind Lease**

A. Interested, registered parties shall nominate state lands and water bottoms for wind lease by scheduling a pre-nomination meeting with and submitting proposals (called "nominations") by application to the Office of Mineral Resources in the form it requires. Each application shall include a description of the land, including a map, on both paper and diskette or CDROM, and be accompanied by submission of a nonrefundable \$400 processing fee made payable to the Office of Mineral Resources, as well as any other documentation and information required.

B. Only those parties who are registered applicants with the Office of Mineral Resources as set forth under §1007.A shall be allowed to nominate state lands and water bottoms for wind lease.

C. A party interested in nominating state lands and water bottoms for wind lease shall observe the following restrictions.

1. Use bearing, distance and X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), to accurately and clearly describe the nominated acreage. Determine whether the acreage to be nominated falls in the North Zone or the South Zone of the Louisiana Coordinate System of 1927 and provide this information in the nomination packet. A single nomination

may contain acreage that falls partially in the North Zone and partially in the South Zone. However, allocate the nominated acreage to the zone wherein the majority of the acreage falls and use that zone's coordinates. See R.S. 50:1.

a. A nominating party is excepted from using the Louisiana Coordinate System of 1927 only if the acreage to be nominated is not susceptible of or has another type legal description not translatable into a description using bearing, distance and X-Y coordinates based on the Louisiana Coordinate System of 1927. If the acreage to be nominated falls under this exception, the nominating party is allowed to provide the legal description of the property as provided in the title deed wherein the state acquired its ownership interest in the property.

2. Nominate 5,000 acres or less of state lands and water bottoms for state wind lease in a single nomination.

3. Delineate the nominated acreage by a square or rectangle only, no side of which shall be greater than 3 1/2 half miles 18,480.00 feet in length.

a. A nominating party is excepted from delineating the nominated acreage by a square or rectangle when the nominated acreage abuts the Three Mile Line as decreed by the United States Supreme Court in *United States v. State of Louisiana et al.* In this situation, use a polygon as close in shape to a square or rectangle as is practical.

D. A party interested in nominating state lands and water bottoms for wind lease shall schedule a pre-nomination meeting with the Office of Mineral Resources, at which meeting the party shall submit a nomination packet that includes one copy (unless required otherwise) of the following items:

1. an official Letter of Application for a State Wind Lease available from the Office of Mineral Resources. Provide three originally signed paper copies and no electronic copy;

2. any title documentation obtained pursuant to §1009.A.6;

3. any proof of notification documentation obtained pursuant to §1009.B.2;

4. a written property description of the nominated acreage, fully justified, using Microsoft Word. Provide three original paper copies and one electronic copy as a Word .doc file on the nomination diskette or CDROM. Include:

a. a designated point of beginning using X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), then going clockwise fully write out (no abbreviations or symbols) bearing and distance to the next X-Y coordinates for each corner back to the point of beginning;

b. the gross acreage amount of state lands and water bottoms, inclusive of Louisiana Wildlife and Fisheries Commission/Louisiana Department of Wildlife and Fisheries Property, contained within the nomination area;

c. the net acreage amount of state lands and water bottoms, exclusive of Louisiana Wildlife and Fisheries Commission/Louisiana Department of Wildlife and Fisheries property, contained within the nomination area; and

d. the net acreage amount of Louisiana Wildlife and Fisheries Commission/Louisiana Department of Wildlife and Fisheries property contained within the nomination area;

5. a plat of the nominated acreage, using the most recent background imagery. Use X-Y coordinates based on

the Louisiana Coordinate System of 1927, North or South Zone (as applicable). Provide three original paper copies and one electronic copy as a .pdf file on the nomination diskette or CDROM. Include:

a. an outline of the nominated acreage with a designated point of beginning and corners using X-Y coordinates that exactly match the X-Y coordinates for the point of beginning and corners provided in the written property description, clearly labeled therein;

b. an outline of the state lands and water bottoms falling in the nomination area, clearly labeled along with the acreage amount contained therein;

c. an outline of any Louisiana Wildlife and Fisheries Commission/Louisiana Department of Wildlife and Fisheries property, school indemnity lands, tax adjudicated lands, vacant state lands, White Lake, and legal areas, falling in the nomination area, clearly labeled along with the acreage amount contained in each;

d. an outline of each active or non-released land use agreement granted by the state of Louisiana including, but not limited to, a state wind lease, state mineral lease, state operating agreement, state exclusive geophysical agreement, state non-exclusive seismic permit, state right of way, and/or state surface/subsurface agreement, as well as any nomination tract approved for advertisement or advertised as offered for state mineral lease, state operating agreement, or state exclusive geophysical agreement abutting, adjacent to, intersecting, and partially/wholly enclosed in the nomination area, clearly labeled with its official number along with the acreage amount contained therein;

e. an outline of any lands and water bottoms not belonging to the state of Louisiana falling in the nomination area, clearly labeled "Not State Owned" along with the acreage amount contained therein;

f. all water bodies, clearly labeled;

g. the block system (if applicable), with block names and numbers;

h. section, township, range information (if applicable);

i. parish name(s); and

j. the name and date of the background imagery used;

6. a .dxf file that contains only the boundary of the nominated acreage, provided on the nomination diskette or CDROM. The boundary shall be a single line with no additional lines, labels, text, or graphics, and shall be constructed of individual line segments between vertices. The X-Y coordinates in the .dxf file must exactly match those in the written property description and the plat;

7. a nomination diskette or CDROM clearly labeled "State Wind Lease Nomination Diskette" that shall have the applicant and project names affixed thereon and contain the written property description as a Word .doc file, the plat as a .pdf file, and the .dxf file;

8. a summary of the environmental issues including, but not limited to, avian and baseline noise levels, the environmental impact of the placement of wind turbines and other equipment necessary for the exploration, development and production of wind energy, and the steps proposed to minimize the environmental impact, along with any supporting environmental impact documentation;

9. a list of governmental entities including each federal, state, parish and local governmental entity that has jurisdiction in the nomination area and for each, the contact person name, title, office address, telephone and fax numbers, and email, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity;

10. a nomination fee payment in the amount of \$400 made payable to the Office of Mineral Resources as a non-refundable fee to satisfy the cost of processing an application for a state wind lease. A personal or business check is acceptable;

11. any other information and documentation required by the Office of Mineral Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§1013. Examination and Evaluation of Nomination for Wind Lease**

A. If the Office of Mineral Resources determines that the state wind lease nomination complies with legal, procedural and technical requirements, as well as with any current policies and practices, it shall:

1. place the state wind lease nomination tract on the State Mineral Board's Tract Evaluation Committee agenda for the next regular board meeting;

2. take the area out of commerce for the purpose of wind leasing while the nomination is being evaluated;

3. transmit a copy of the Letter of Application for a State Wind Lease, written property description, and plat to the State Land Office and to the Louisiana Department of Wildlife and Fisheries, who shall review the proposed location of the state wind lease, certify to the State Mineral Board whether or not there are other leases of any kind at the proposed lease location and if so, provide copies to the State Mineral Board of the other leases as an attachment to the Other Leases Certification; and

4. transmit the nomination packet and the Other Leases Certifications to the Secretary of the Department of Natural Resources for evaluation.

B. The Secretary of the Department of Natural Resources shall evaluate the wind lease nomination pursuant to R.S. 41:1733.B and determine whether the proposed wind lease is appropriate. If so, he shall recommend to the State Mineral Board that it conduct a public bid process and if not, he shall recommend to the State Mineral Board that it not conduct a public bid process. The State Mineral Board, through the Office of Mineral Resources, shall notify the applicant of the secretary's determination via a bid process determination letter.

C. If an applicant wants to withdraw a nomination during the examination and evaluation process, prior to the tract being officially advertised for a state wind lease, he shall submit a letter requesting withdrawal of the nomination to Office of Mineral Resources, Attention: Leasing Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

**§1015. Advertisement of State Tract Offered for Wind Lease and Request for Bids**

A. The State Mineral Board, through the Office of Mineral Resources, shall publish an advertisement of the state tract offered for wind lease and request for bids in the official journal of the state and official journal(s) of the parish(es) where the lands are located, and otherwise at its discretion, not more than 120 days and not less than 60 days prior to the date for the public opening of bids (generally the lease sale date). The advertisement shall contain a description of the land proposed to be leased and its official tract number, any notes pertaining to the nominated tract, the date, time and place where sealed bids shall be received and publicly opened, a statement that a bid shall only be for the whole of the land advertised and no portion bids will be accepted, the minimum dollar amount (bonus) and minimum electric power production royalty to be demanded, and any other information the board may consider necessary. This advertisement and any other published by the board shall constitute judicial advertisement and legal notice within the contemplation of R.S. Title 43, Chapter 5.

B. The advertisement shall also provide notice of the following.

1. A party shall bid on the whole of the land advertised. A portion bid shall not be accepted.

2. A wind lease on state lands and water bottoms shall have a primary term of five years.

3. The dollar amount (bonus) with regard to any wind lease on state lands and water bottoms shall be no less than the minimum amount set by the State Mineral Board. The dollar amount shall be provided on the official Bid Form as a total amount and as an amount per acre (which is equal to the dollar amount divided by the acreage bid on). The dollar amount (bonus) bid shall be due within 24 hours of state wind lease award. Payment shall be made to the Office of Mineral Resources via certified funds or wire transfer. If payment is not made the State Mineral Board may not execute the lease and may rescind it.

4. The annual rental with regard to any wind lease on state lands and water bottoms shall not be for less than one-half of the dollar amount (bonus).

5. The electric power production royalty with regard to any wind lease on state lands and water bottoms shall be no less than the minimum amount set by the State Mineral Board of the lessee's gross revenues. The state may elect, at its option, to take in kind all or any of the portion due it as royalty.

6. A bidder for a state wind lease may offer additional consideration.

7. When two or more parties submit a joint bid, the parties shall designate the undivided percent interest of each party on the official Bid Form. The interests so designated shall be stipulated in any lease that may be awarded. Failure to designate the undivided percent interest of each joint bidder shall result in the State Mineral Board assigning equal interests to each bidder.

8. When two or more parties submit a joint bid, the parties shall designate the party who shall be the principal state wind lessee, authorized to act on behalf of all co-lessees, on the official bid form. Additionally, each party shall submit a Designation of Principal State Wind Lessee and Operator Form with the joint bid. The principal state wind lessee and operator so designated shall be stipulated in any lease that may be awarded.

9. A state wind lease shall not be for more than 5,000 acres.

10. The State Mineral Board is authorized to collect an administrative fee for leasing state lands and water bottoms for the exploration, development and production of wind energy in the amount of 10 percent of the total dollar amount (bonus) bid for a state wind lease. This 10 percent administrative fee shall be in addition to the total dollar amount bid and is due within 24 hours of state wind lease award. Payment shall be made to the Office of Mineral Resources via certified funds or wire transfer. If payment is not made the State Mineral Board may not execute the lease and may rescind it.

11. A bid for a state wind lease shall exclude all rights not specifically granted in any wind lease awarded.

12. Once a bid is submitted, it may not thereafter be withdrawn or cancelled. The State Mineral Board does not obligate itself to accept any bid. Bid acceptance or rejection is at the sole discretion of the State Mineral Board which reserves the right to reject any and all bids or to grant a wind lease on any portion of the state tract advertised and to withdraw the remainder of the tract.

13. If examination of the successful bid acreage amount reveals that there is more or less state acreage than the amount bid on, then the dollar amount (bonus) and annual rental shall be adjusted accordingly.

14. The successful bidder(s) to whom a state wind lease is awarded has 20 days from receipt of the lease contract, properly executed by the State Mineral Board, to execute and return the lease contract to the Office of Mineral Resources. Failure to return the lease contract, properly executed, within 20 days may result in forfeiture of the state wind lease including the dollar amount (bonus) and 10 percent administrative fee.

15. All state wind leases shall be executed upon the terms and conditions provided in the current official state wind lease form with any attached rider(s).

16. Notwithstanding any provisions to the contrary in any state wind lease awarded or in any rider attached thereto, the lease awarded shall be granted and accepted without any warranty of title and without any recourse against the lessor whatsoever, either expressed or implied. Further, lessor shall not be required to return any payments received under the state wind lease awarded or be otherwise responsible to the state wind lessee therefor.

17. Some tracts available for wind leasing may be situated in the Louisiana Coastal Zone as defined in R.S. 49:214.21 et seq., and may be subject to guidelines and regulations promulgated by the Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, Coastal Management Division, for operations in the Louisiana Coastal Zone.

18. Lessor excepts and reserves the full use of the leased premises and all rights with respect to its surface and subsurface for any and all purposes except for those granted to the state wind lessee, including the use of the leased premises for the exploration, production and development of oil, gas and other minerals by the lessor, its mineral lessees, grantees or permittees. Co-users of the leased premises shall agree to coordinate plans and cooperate on activities to

minimize interference with other operations to the extent possible.

19. Any and all wind data collected by the state wind lessee during the primary term of the lease shall become public record at the end of the primary term.

20. Any contract entered into for the lease of state lands for any purpose shall require that access by the public to public waterways through the state lands covered by the lease shall be maintained and preserved for the public by the lessee. This provision shall not prohibit the secretary of the agency having control over the property from restricting access to public waterways if he determines that a danger to the public welfare exists. This provision shall not apply in cases involving title disputes.

21. Prior to commencing construction, each state wind lessee and state wind lease operator shall have a general liability insurance policy in a form acceptable to the State Mineral Board as set forth in §1029.A.2.

22. Prior to commencing construction, each state wind lessee and state wind lease operator shall provide financial security in a form acceptable to the State Mineral Board as set forth in §1029.A.3.

23. The state wind lessee and state wind lease operator shall be required, in the state wind lease contract, to take measures to reduce risk to the state, including but not limited to, effecting compliance with any and all wind energy standards established by the American National Standards Institute (ANSI), the American Wind Energy Association (AWEA), the International Electrotechnical Commission (IEC), and any other entity responsible for establishing wind industry consensus standards. Standards for wind energy development/operations include, but are not limited to:

- a. wind turbine safety and design;
- b. power performance;
- c. noise/acoustic measurement;
- d. mechanical load measurements;
- e. blade structural testing;
- f. power quality; and
- g. siting.

C. A party may request proof that a tract was advertised in the official state and parish journals using the official Request for Proof of Publication form published by the Office of Mineral Resources. Proof of publication consists of certified copies of the affidavits from the official state and parish journals attesting to publication. There is a fee of \$20 for providing proof of publication for a tract.

D. If an applicant wants to withdraw a nomination after the tract has been advertised for state wind lease, he shall submit a letter requesting withdrawal of the nomination to the State Mineral Board. No withdrawal shall be allowed unless approved by the State Mineral Board. If the State Mineral Board approves the request, the nomination fee payment shall not be refunded.

E. If a party wants to protest the State Mineral Board wind leasing a state tract, he shall submit a formal letter of protest to the State Mineral Board at least seven days prior to the meeting of the State Mineral Board to receive bids on the tract (generally the lease sale date). The letter of protest shall reference the appropriate tract number, parish, and state mineral lease sale date, as well as set forth the source and nature of the title claimed, how and when acquired, and by what legal process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

#### **§1017. Submission of Bids on State Tract Offered for Wind Lease**

A. Interested, registered parties shall submit sealed bids on the entirety of a state tract advertised as offered for state wind lease to the Office of Mineral Resources in the form it requires by the bid submission deadline (generally no later than 12 noon CT on the Tuesday immediately prior to the Wednesday lease sale at which the tracts are offered unless otherwise noticed). Each bid shall be accompanied by any other documentation and information required.

B. Only those bidders who are registered prospective leaseholders with the Office of Mineral Resources as set forth under §1007.B shall be allowed to bid on tracts for the purpose of obtaining a wind lease from the state of Louisiana.

C. A party interested in bidding on a state tract for wind lease shall prepare a bid packet that includes the items listed below. The bidder shall place all of the items required to be included in the bid packet in an envelope, completely seal the envelope, write the official tract number on the outside of the envelope, and notate on the outside of the envelope that "Sealed Bid for State Wind Lease is Enclosed." If a bidding party is submitting multiple bids then he may place the individual sealed bid packet envelopes into a larger envelope, completely seal the envelope, and notate on the outside of the envelope that "Sealed Bids for State Wind Lease are Enclosed."

1. An official bid form available from the Office of Mineral Resources. Provide one originally signed paper copies and no electronic copy.

2. A summary of experience that shall include, at a minimum, the number of years experience in the exploration, development and production of wind energy and project descriptions. Experience with wind energy projects involving government lands and water bottoms shall be so specified.

3. A proposed plan of operations that shall set forth the following:

a. a summary of the overall business plan of the proposed wind energy development including size of operation, development costs, marketing of the site, market prices, and status of acquiring a power purchase agreement;

b. a summary of the overall wind project including status of site control (progress with leasing other properties within the entire wind project boundaries), wind data reviews, and application process with the transmission provider, as well as a time frame for the project to be operational;

c. summary of the wind development (include plat) proposed on the state lands and water bottoms sought to be leased including layout of wind power and transmission facilities, proposed wind tower information (size, location, number), which towers will be affixed to existing platforms, which towers will necessitate newly constructed platforms, turbine make, type, nameplate power production capacity, and selection criteria used, and supporting infrastructure;

d. the status and timeline of the major milestones in the wind project exploration, development, production, and decommissioning;

e. the name of the company that will operate the wind project and the linkage, if any, to the applicant;

f. a summary of the expected revenue and cash flow for the wind project on state lands and water bottoms, including a detailed list of assumptions;

g. the measures proposed to reduce risk to the state, including but not limited to, a summary of compliance with any and all wind energy standards established by the American National Standards Institute (ANSI), the American Wind Energy Association (AWEA), the International Electrotechnical Commission (IEC), and any other entity responsible for establishing wind industry consensus standards. Standards for wind energy development/operations include, but are not limited to, wind turbine safety and design, power performance, noise/acoustic measurement, mechanical load measurements, blade structural testing, power quality, and siting;

h. a summary of how the wind energy project will ensure the viability of the state's natural resources, provide a continuing energy source for the citizens and businesses of Louisiana, promote economic development through job retention and creation in the state of Louisiana, and promote a clean and lasting environment;

i. a summary of how the use of the state land and water bottoms for the exploration, development and production of wind energy will be coordinated with other users of the state lands and water bottoms.

4. A summary of the environmental issues including, but not limited to, avian and baseline noise levels, the environmental impact of the placement of wind turbines and other equipment necessary for the exploration, development and production of wind energy, and the steps proposed to minimize the environmental impact, along with any supporting environmental impact documentation.

5. A list of project participants who are or will be participating in the planning, predevelopment, construction, operation, maintenance, remediation, and/or decommission phases of the proposed project, and a brief description of their role. This list shall be supplemented for each new project participant.

6. A summary of project financing which shall include, at a minimum, identification of the sources of financing and a discussion of such financing.

7. A list of governmental entities including each federal, state, parish and local governmental entity that has jurisdiction in the nomination area and for each, the contact person name, title, office address, telephone and fax numbers, and email, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity.

8. If two or more parties are submitting a joint bid, each party shall submit a Designation of Principal State Wind Lessee and Operator Form with the joint bid.

D. The sealed bid packet may be hand-delivered or mailed to the Office of Mineral Resources. However, whether hand-delivered or mailed, the sealed bid packet shall be physically in the hands of appropriate Office of Mineral Resources personnel by the bid submission deadline (generally no later than 12 p.m. CT on the Tuesday immediately prior to the Wednesday lease sale at which the tracts are offered unless otherwise noticed). A receipt is generated in the name of and provided to the party

delivering the bid. Any bid received after the deadline shall not be accepted. Further, no bid, once submitted, shall be thereafter withdrawn or canceled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

#### **§1019. Examination and Evaluation of Bids for State Wind Lease**

A. Sealed bids for state wind lease shall be publicly opened and read aloud on the date advertised for the public opening of bids (generally the lease sale date at which the tract is offered) in the LaBelle Room, also known as the Conservation and Mineral Resources Hearing Room, located on the First Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA. The State Mineral Board shall defer action on the bids for state wind lease until at least the next regular board meeting, but no later than 100 days, pending examination and evaluation of the bids by its staff. The State Mineral Board staff shall examine and evaluate the bids to confirm compliance with legal, procedural and technical requirements, as well as with any current policies and practices, based on available data and analyses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

#### **§1021. Award of State Wind Lease**

A. At the next regular board meeting following conclusion of the staff's examination and evaluation of the bids for state wind lease, after the staff has technically briefed the board in executive session as to the merit of the bids, the State Mineral Board shall reconvene in open session at the lease sale (generally held the same day as the regular board meeting). The Office of Mineral Resources's designee shall publicly announce the staff's recommendations to the board as to which bids should be accepted and which bids should be rejected, providing the reasons for rejection. The State Mineral Board shall announce its state wind lease award decision at the lease sale.

B. Information as to bids on and awards of state wind leases shall be published in SONRIS, the Department of Natural Resources' Strategic Online Natural Resources Information System.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

#### **§1023. Issuance and Execution of State Wind Lease Contract**

A. The Office of Mineral Resources collects the entire dollar amount (bonus) and 10 percent administrative fee within 24 hours of state wind lease award, assigns a state wind lease number to each bid accepted by the State Mineral Board, prepares the state wind lease contract as awarded, and circulates the final contract of lease for execution, proper recordation in the appropriate parish public records, and timely return within 20 days for filing in the official state wind lease files.

B. Payment of the entire dollar amount (bonus) and 10 percent administrative fee shall be due within 24 hours of state wind lease award. Payment of both sums may be made



in one payment and shall be made to the Office of Mineral Resources via certified funds or wire transfer and all proceeds shall be negotiated and transmitted for processing in accordance with law. The lease contract shall not be mailed out to the wind lessee until the entire dollar amount (bonus) and 10 percent administrative fee are received by the Office of Mineral Resources.

C. After the Office of Mineral Resources receives the entire dollar amount (bonus) and 10 percent administrative fee, personnel shall mail at least three original state wind lease contracts, properly executed by the State Mineral Board, to the state wind lessee per the bidder name and contact information provided in the official bid form via certified USPS mail return receipt requested.

D. Upon receipt of the lease packet via certified mail, the state wind lessee has 20 days from the date on the certified mail receipt or, if no date is affixed thereon, from the date the Office of Mineral Resources receives the certified mail receipt, to return one fully executed original lease contract and the recordation information from each parish wherein it is recorded to the Office of Mineral Resources. Failure to return one fully executed original lease contract and the recordation information from each parish wherein it is recorded to the Office of Mineral Resources within 20 days may result in forfeiture of the lease including the dollar amount (bonus) and 10 percent administrative fee. Further, failure to follow the notarization requirements of R.S. 35:12 shall cause the lease to be rejected.

E. A party may request proof that a particular state wind lease granted by the State Mineral Board was timely executed by using the official form available from the Office of Mineral Resources. Proof of timely execution of lease consists of a certificate issued by the Office of Mineral Resources certifying that the lease was received in the Office of Mineral Resources, duly executed by the lessee, within the allotted 20 day period. There is a fee of \$5 for providing proof of timely execution of lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

#### **§1025. Transfer of Interest in or Assignment of a State Wind Lease**

A. Prior to execution and recordation of a transfer of interest in or assignment of a state wind lease, a prospective transferee or assignee of a state wind lease shall schedule a pre-transfer meeting with and submit a transfer packet to the Office of Mineral Resources no later than the State Mineral Board regular meeting for the month prior to the State Mineral Board regular meeting at which the item is to appear on the State Mineral Board docket for approval.

B. The transfer or assignment shall be docketed for State Mineral Board approval. No transfer or assignment in relation to any state wind lease shall be valid unless approved by the State Mineral Board. Failure to obtain State Mineral Board approval of any transfer or assignment of a state wind lease prior to transfer or assignment shall subject the transferor or assignor and the transferee or assignee, jointly, severally and in solido, to liquidated damages of \$100 per day beginning on the first day following the execution of the transfer or assignment.

C. All parties to transfers or assignments in relation to any state wind lease shall be registered prospective

leaseholders with the Office of Mineral Resources. Transfers or assignments shall not be granted to prospective leaseholders that are not currently registered with the Office of Mineral Resources as set forth under forth under §1007.B.

D. The transfer packet shall contain the following items:

1. two original, unexecuted, unrecorded transfer or assignment instruments:

a. provide the marital status of the assignor if the assignor is an individual and, if applicable, the spouse's name and space for the spouse's signature to be affixed thereon;

b. designate the operator and the party who shall be the principal state wind lessee authorized to act on behalf of all co-lessees and attach proof of such agency;

c. after State Mineral Board approval, the transfer or assignment instrument must be executed by both assignor and assignee (and spouse(s), if appropriate), with each signature duly witnessed and a notarized witness acknowledgement provided for each, or the assignee (and spouse, if appropriate) shall execute an Acceptance by Assignee Form, with the signature duly witnessed and notarized, and a copy attached to each of the transfer instruments;

2. a Designation of Principal State Wind Lessee and Operator Form completed by each prospective leaseholder;

3. a separate Statement of Conveyance—Wind Lease Form completed for each state wind lease impacted by the transfer and reflect only the gross working interest in the lease existing before and after the conveyance (no net revenue interests are to be considered or reported);

4. a proposed plan of operations that includes all the items set forth in §1017.C.3.a-i;

5. any environmental impact documentation supplementing and updating §1011.C.8;

6. a list of project participants who are or will be participating in the planning, predevelopment, construction, operation, maintenance, remediation, and/or decommission phases of the proposed project, and a brief description of their role. This list shall be supplemented for each new project participant;

7. a summary of project financing which shall include, at a minimum, identification of the sources of financing and a discussion of such financing;

8. a list of governmental entities including each federal, state, parish and local governmental entity that has jurisdiction in the nomination area and for each, the contact person name, title, office address, telephone and fax numbers, and email, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity;

9. if state wind lease operations have commenced, general liability insurance in a form acceptable to the State Mineral Board as set forth in §1029.A.2 and financial security in a form acceptable to the State Mineral Board as set forth in §1029.A.3;

10. a docket fee payment in the amount of \$100 made payable to the Office of Mineral Resources to cover the cost of preparing and docketing transfers or assignments of state wind leases. A personal or business check is acceptable;

11. any other information and documentation required by the Office of Mineral Resources.

E. After receiving State Mineral Board approval of the transfer or assignment, record the approved transfer instrument and the approval resolution in the appropriate parish(es) per the approval resolution and furnish the Office of Mineral Resources with the recordation information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

#### **§1027. Partial or Full Release of a State Wind Lease**

A. Upon expiration or termination of a state wind lease, in whole or in part, for any reason, the principle state wind lessee shall execute and record an appropriate instrument of release within 90 days of such expiration or termination in each parish wherein the leased premises are located and shall provide the State Mineral Board through the Office of Mineral Resources with a copy of the recorded instrument of release from each parish wherein it is recorded properly certified by the recorder for that parish. In the event the principle state wind lessee fails to comply, all the state wind lessees currently of record jointly, severally and in solido shall be subject to liquidated damages of \$100 per day beginning on the ninety-first day after expiration or termination, as well as reasonable attorney fees and costs incurred should suit be brought for lease cancellation.

B. The release instrument shall provide the state wind lease number and be signed by the principle state wind lessee, with the signature duly witnessed and notarized. Failure to follow the notarization requirements of R.S. 35:12 shall be grounds for the release instrument to be rejected.

C. If a party wants to release only a portion of the leased acreage, he shall contain the whole of the retained acreage, including the buffer acreage within the boundaries set forth in §1029.C.1.a-c, within a single contiguous block of acreage. For a partial release only, the party shall also provide the following items.

1. A written property description, fully justified, using Microsoft Word. The first part shall describe and provide the amount of state owned acreage released. The second part shall describe and provide the amount of state owned acreage retained. Use X-Y Coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), starting with an X-Y point of beginning and using distance and bearings to each X-Y corner or turning point. Use calculations, closures and ties to existing state wind leases that comply with generally accepted surveying standards. Provide one original paper copy and one electronic copy as a Word .doc file named "released.doc" on the release diskette.

2. A plat that clearly delineates the boundaries of and sets forth the state owned acreage amount released and the state owned acreage amount retained. Use an 8 1/2 x 11 copy of the most recent edition of the 7 1/2 minute USGS Quadrangle Map (scale 1" = 2000' or 1" = 3000'; or the block system of 1" = 4000', if applicable). Use X-Y Coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), starting with an X-Y point of beginning and using distance and bearings to each X-Y corner or turning point. Use calculations, closures and ties to existing state wind leases that comply with generally accepted surveying standards. Provide one original paper copy and one electronic copy included as a .pdf file named "released.pdf" on the release diskette.

3. A .dxf file that contains only the boundary of the acreage portion to be released, named "released.dxf" and provided on the release diskette. This boundary shall be a single line with no additional lines, labels, text, or graphics, and shall be constructed of individual line segments between vertices. The X-Y coordinates in the .dxf file must exactly match those in the written property description and the plat.

4. A release diskette clearly labeled "State Wind Lease Release Diskette" that shall have the principal state wind lessee and project names affixed thereon and contain the written property description as a Word .doc file, the plat as a .pdf file, and the .dxf file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

#### **§1029. State Wind Lease Operations**

A. The state wind lessee and state wind lease operator shall schedule a pre-operations meeting with and submit an operations packet to the Office of Mineral Resources at least 30 days prior to commencement of construction. The operations packet shall contain the following items:

1. notice of beginning of wind lease operations form;
2. proof of general liability insurance for the leased premises in the amount of at least \$1,000,000 issued by an insurer to whom A.M. Best Company has given not less than an A rating, specifically covering all damages, and name as insured the state of Louisiana and its departments, agencies and boards:

- a. subsequent to the commencement of construction, an updated proof of general liability insurance is required to be submitted by January 31 of each year. Failure to submit updated proof of general liability insurance may cause the Office of Mineral Resources to levy liquidated damages of \$100 per day until such proof is received;

3. financial security in a form acceptable to the State Mineral Board. The financial security amount for individual turbines shall be, at a minimum, \$150,000 per turbine for turbines in one location. Blanket financial security for lessees and operators with wind leases in more than one area shall be calculated at a minimum of \$150,000 per turbine divided by the number of different wind farm locations. Compliance with this financial security requirement shall be provided by any of the following or a combination thereof:

- a. a certificate of deposit issued in sole favor of the Louisiana Department of Natural Resources in a form prescribed by the board from a financial institution acceptable to the board; or

- b. a performance bond in sole favor of the Louisiana Department of Natural Resources in a form prescribed by the board issued by an appropriate institution authorized to do business in the state of Louisiana; or

- c. a letter of credit in sole favor of the Louisiana Department of Natural Resources in a form prescribed by the board issued by a financial institution acceptable to the board;

4. an updated plan of operations that includes all the items set forth in §1017.C.3.a-I;

5. any updated environmental impact documentation supporting §1011.D.8;

6. an updated list of project participants as set forth in §1017.C.5;

7. any other information and documentation required by the Office of Mineral Resources.

B. At the expiration of the primary term, production of wind generated electric power shall be required to maintain the lease in force. If the lessee is producing wind generated electric power, the lease shall continue in force so long as production of wind generated electric power continues without lapse of more than 180 days. Any lapse in production of wind generated electric power greater than 180 days shall result in automatic termination of the lease.

C. On or before five years after the lessee commences the production of wind generated electric power on the lease, or five years from the end of the primary term, whichever is sooner (said date being the "Undeveloped Acreage Release Date"), the lessee shall release undeveloped acreage pursuant to the requirements of this Subpart, as well as those set forth in §1027.

1. Lessee shall survey the exact locations of any physical improvements that it has made upon the property including, but not limited to, turbines, towers, controller boxes, foundations, guy wires, roads, overhead and underground electrical wires, communication lines, poles and cross members, and substations and transmission facilities, and shall further show on such survey the areas of land containing the improvements with the following boundaries:

a. approximately 50 feet from the closest point on which a meteorological tower, road, guy wire, or transmission line is located;

b. approximately 150 feet from the perimeter of any substation; and

c. approximately 400 feet from the axis of horizontal rotation of any turbine.

2. Lessee shall contain the whole of the retained acreage, including the buffer acreage within the boundaries set forth in Subparagraphs 1.a-c, within a single contiguous block of acreage.

D. Any and all wind data collected during the primary term of the lease by the state wind lessee shall be released to public record at the end of the primary term.

E. The Office of Mineral Resources may require periodic reporting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### **§1031. State Wind Lease Electric Power Production**

#### **Royalty Payment and Reporting**

A. A state wind lease shall contain a provision permitting the state, at its option, to take in kind all or any part of the portion due it as royalty of any wind generated electric power produced from the leased premises. Unless the state elects to exercise this in kind option, which option is expressly reserved by the state and which is to be exercised by written notice by the state to the state wind lessee ("lessee") at any time and from time to time while a state wind lease is in effect and either prior or subsequent to acceptance by the state of royalties other than in kind, it being understood that nothing contained in a state wind lease shall ever be interpreted as limiting or waiving this option,

the lessee shall pay to the state as electric power production royalty an amount that shall be no less than the minimum amount set by the State Mineral Board of the lessee's gross revenues. For the purposes of a state wind lease, *gross revenues* shall mean and include:

1. all gross receipts of lessee from the sale of electricity generated by lessee on the leased premises; provided, however, that if electricity is sold to a subsidiary or affiliate of lessee, then, and only then, the gross receipts from the sale of electricity under such contract shall be calculated using a sale price of not less than the arithmetical average of the prices paid by any purchaser or purchasers (including lessee or any subsidiary or affiliate of lessee) for electricity produced in Louisiana during the calendar year immediately preceding the year in which such electricity production from the leased premises occurs; plus

2. the greater of the gross proceeds received by either lessee or any subsidiary or affiliate of lessee from the sale of any credits, credit certificates or similar items such as those for greenhouse gas reduction, or the generation of green power, renewable energy or alternative energy, created by any governmental authority and generated by wind energy development on the lease; but specifically excluding any and all federal production tax credits, investment tax credits and any other tax credits which are or will be generated by wind energy development on the lease; plus

3. the greater of gross proceeds or other cash benefits received by either lessee or any subsidiary or affiliate of lessee in connection with or under or derived from any agreement, compromise, settlement, judgment or arrangement for or relating to the sale, use or other disposition of electricity generated or capable of being generated from the lease; plus

4. anything of value received by the state wind lessee in return for electricity.

B. All royalties accruing under a state wind lease (including those paid in kind) shall be without deduction for the cost of producing, interconnecting, transporting and otherwise making electric production available for sale or use at the delivery side of the substation.

C. Prior to the first royalty payment, lessee shall complete a Payor Notification Form available from the Office of Mineral Resources. If the payor attributable to a state wind lease changes between payment dates without notification to the Office of Mineral Resources of the change and without submission of the current mailing address, telephone number, and email address for the new payor prior to the next payment, the new payor shall be subject to liquidated damages of \$1,000. The State Mineral Board may waive all or any part of the liquidated damages based on a consideration of all factors bearing on the issue.

D. The first payment of royalty shall be made within 120 days following commencement of production of wind generated electric power from the leased premises. Thereafter, royalty shall be paid by the twenty-fifth of the second month following that in which wind generated electric power is produced. In the event any royalty payment is not correctly or timely made, lessee shall pay legal interest, until paid, on royalty owing under the terms of this lease commencing the date such royalty is due and payable,

along with damages, attorney fees, and costs. The state may also seek dissolution of the lease.

E. A state wind lessee shall report royalty payments on the official royalty reporting form available from the Office of Mineral Resources. Payment shall accompany the official royalty reporting form. Payments equal to or less than \$9,999 may be made by personal or business check. Payments greater than \$9,999 shall be made by electronic wire transfer. In all cases, the payee shall be the Office of Mineral Resources.

F. A state wind lessee shall keep true, accurate and complete books, records, accounts, contracts and data sufficient to support and verify the calculation of all amounts due under the lease. The state or any representative of the state shall have the right at all reasonable times and upon the provision of reasonable notice, to inspect the books, accounts, contracts, records, and any other relevant data, in possession or control of lessee and pertaining to the production, transportation or sale of electricity produced from the lease premises, including, without limitation, statements, documents, records or other data, from third parties which verify price, value or quantity of electricity generated on the lease premises. Any such inspection and review shall take place at the office of lessee, unless another location is otherwise agreed to by the state and lessee.

G. Should a state wind lessee contest royalty payment or any form of payment under a state wind lease, including requests for recoupment of any alleged overpayment of royalty, or present any claim, dispute or question pertaining to the terms, conditions, obligations, and duties expressed or implied in a state wind lease, the Office of Mineral Resources may collect a fee of \$35 per hour for each hour or portion thereof spent in verification of any such contest, claim, dispute, or question.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

**§1033. State Wind Lease Decommissioning**

A. Definitions to be used in this Section:

*Decommissioning*—ending wind energy operations and returning the lease to a condition that meets the requirements of the Minerals Management Service, U.S. Department of the Interior, as required by R.S. 41:1732.C, as well as the requirements of the Louisiana Department of Natural Resources, State Mineral Board and Office of Mineral Resources, and the requirements of any other agencies that have jurisdiction over decommissioning activities.

*Facility*—any installation used for wind energy activities that is permanently or temporarily attached to state lands or water bottoms. Facilities may include obstructions.

*Obstructions*—structures, equipment or objects that were used in wind energy operations that, if left in place, would hinder other users of the state lands or water bottoms. Obstructions may include, but are not limited to, wind turbines, towers, pads, platforms, templates, pilings, shell mounds, overhead and underground electrical transmission and communications lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities, roads, meteorological towers and wind measurement equipment, control buildings, maintenance yards, transmission towers, wires, cables, substations, and related facilities and equipment.

B. Lessees and owners of operating rights are jointly and severally responsible for meeting decommissioning obligations for facilities and obstructions on leases, as the obligations accrue and until each obligation is met. In this section, the terms *you* or *I* refer to lessees and owners of operating rights, as to facilities installed under the authority of a lease.

C. You accrue decommissioning obligations when you install a facility, create an obstruction to other users of the state lands and water bottoms, are or become a lessee or the owner of operating rights of a lease on which there is a facility or an obstruction, or re-enter a facility or an obstruction that was previously abandoned.

D. When your facilities are no longer useful for operations, you shall get approval from the Office of Mineral Resources before decommissioning facilities and then permanently remove all facilities and obstructions created by your lease operations in a manner that is safe, does not unreasonably interfere with other users of the state lands or water bottoms, and does not cause undue or serious harm or damage to the human, wildlife, aquatic, or coastal environment.

E. You shall submit decommissioning applications and receive approval and submit subsequent reports according to the table in this Subpart.

Decommissioning Applications and Reports Table		
Decommissioning Applications and Reports	When to Submit	Instructions
1. Final removal application for a facility	Before removing a facility	Include information required under Subpart G
2. Post-removal report for a facility	Within 30 days after you remove a facility	Include information required under Subpart I
3. Site clearance report for a facility	Within 30 days after you complete site clearance verification activities	Include information required under Subpart N

F. You shall remove all facilities within one year after the lease terminates unless you receive approval to maintain a facility to conduct other activities. Before you may remove a facility, you shall submit a final removal application to the Office of Mineral Resources for approval and include the information listed in Subsection G. You shall remove a facility according to the approved application. You shall notify the Office of Mineral Resources at least 48 hours before you begin the removal operations.

G. You shall submit a final removal application to remove a facility to the Office of Mineral Resources for approval. Provide one paper copy and one electronic copy of the final removal application. The final removal application shall include the following, as applicable:

1. applicant identification including lease operator, address, contact person and telephone number, and shore base;
2. facility identification including facility name/ID number, location (lease, area, X-Y coordinates based on the Louisiana Coordinate System of 1927, block name and number), year installed, proposed date of removal (month/year), and water depth;

3. description of the facility you are removing including configuration (attach a photograph or a diagram), size, brief description of soil composition and condition, the maximum removal lift weight and estimated number of main lifts to remove the facility, and any other pertinent information;

4. a description, including anchor pattern, of the vessel(s) you will use to remove any facility from state water bottoms;

5. identification of the purpose, including lease expiration date and reason for removing the facility;

6. a description of the removal method, including a brief description of the method you will use. If you are using explosives, the type of explosives, number and sizes of charges, whether you are using a single shot or multiple shots, if multiple shots, the sequence and timing of detonations, whether you are using a bulk or shaped charge, depth of detonation below ground level or mud line (as applicable), whether you are placing the explosives inside or outside of the facility, and a statement whether or not you will use transducers to measure the pressure and impulse of the detonations;

7. if removing a facility from state water bottoms, whether you will use divers or acoustic devices to conduct a pre-removal survey to detect the presence of aquatic life and a description of the proposed detection method;

8. your plans for transportation and disposal (including as an artificial reef) or salvage of the removed facility;

9. if available, the results of any recent biological surveys conducted in the vicinity of the structure and recent observations of wildlife or aquatic life at the facility site;

10. your plans to protect archaeological and sensitive biological features during removal operations, including a brief assessment of the environmental impacts of the removal operations and procedures and mitigation measures you will take to minimize such impacts;

11. your plans to return and restore the state lands or water bottoms to a condition as nearly equivalent to that which existed before said operations were conducted and/or facility was constructed;

12. if removing a facility from state water bottoms, a statement whether or not you will use divers to survey the area after removal to determine any effects on aquatic life;

H. Unless the Office of Mineral Resources approves an alternate depth under Paragraph 2 of this Subpart, you shall remove all facilities on state water bottoms to at least 15' below mud line and you shall remove all facilities on state lands to at least 2' below plow depth. The Office of Mineral Resources may approve an alternate removal depth if:

1. the remaining facility or part thereof would not become an obstruction to other users of the state lands and water bottoms, and geotechnical and other information you provide demonstrate that erosional processes capable of exposing the obstructions are not expected; or

2. if removing a facility from state water bottoms, you determine, and the Office of Mineral Resources concurs, that you must use divers and the seafloor sediment stability poses safety concerns.

I. Within 30 days after you remove a facility, you shall submit a Post-Removal Report to the Office of Mineral Resources that includes the following:

1. a summary of the removal operation including the date it was completed;

2. a description of any mitigation measures you took; and

3. a. statement signed by your authorized representative that certifies that the types and amount of explosives you used in removing the facility were consistent with those set forth in the approved Final Removal Application.

J. The Office of Mineral Resources may grant a departure from the requirement to remove a facility by approving partial facility removal or toppling in place for conversion to an artificial reef or other use if you meet the following conditions:

1. the structure becomes part of a state artificial reef program, and the responsible state agency acquires a permit from the U.S. Army Corps of Engineers and accepts title and liability for the facility; and

2. you satisfy any U.S. Coast Guard (USCG) navigational requirements for the facility.

K. Within 60 days after you remove a facility from state water bottoms, you shall verify that a site is clear of obstructions by using one of the following methods.

1. For a facility site in water depths less than 300 feet, you shall drag a trawl over the site.

2. For a facility site in water depths 300 feet or more, you shall drag a trawl over the site, scan across the site using sonar equipment or use another method approved by the Office of Mineral Resources if the particular site conditions warrant.

L. If you drag a trawl across the site, you shall comply with the following.

1. Drag the trawl in a grid-like pattern across a 1,320 foot radius circle centered on the location of the facility.

2. Trawl 100 percent of the limits, described in Subparagraph 1 above, in two directions.

3. Mark the area to be cleared as a hazard to navigation according to USCG requirements until you complete the site clearance procedures.

4. Use a trawling vessel equipped with a calibrated navigational positioning system capable of providing position accuracy of +/-30 feet.

5. Use a trawling net that is representative of those used in the commercial fishing industry (one that has a net strength equal or greater than that provided by No. 18 twine).

6. Ensure that you trawl no closer than 300 feet from a shipwreck, and 500 feet from a sensitive biological feature.

7. If you trawl near an active pipeline, you must meet the requirements in the following table.

For-	You Must Trawl-	And You Must-
1. Buried active pipelines		First contact the pipeline owner or operator to determine the condition of the pipeline before trawling over the buried pipeline.
2. Unburied active pipelines that are 8 inches in diameter or larger	no closer than 100 feet to the either side of the pipeline	Trawl parallel to the pipeline. Do not trawl across the pipeline.

3. Unburied smaller diameter active pipelines in the trawl area that have obstructions (e.g., pipeline valves) present	no closer than 100 feet to either side of the pipeline	Trawl parallel to the pipeline. Do not trawl across.
4. Unburied active pipelines in the trawl area that are smaller than 8 inches in diameter and have no obstructions present.	parallel to the pipeline	

8. Ensure that any trawling contractor you may use has no corporate or other financial ties to you and has a valid commercial trawling license for both the vessel and its captain.

M. If you do not trawl a state water bottom site, you can verify that the site is clear of obstructions by using any of the methods shown in the following table.

If You Use-	You Must-	And You Must-
1. Sonar	Cover 100 percent of the appropriate grid area.	Use a sonar signal with a frequency of at least 500 kHz.
2. A diver	Ensure that the diver visually inspects 100 percent of the appropriate grid area.	Ensure that the diver uses a search pattern of concentric circles or parallel lines spaced no more than 10 feet apart.
3. An ROV (remotely operated vehicle)	Ensure that the ROV camera records videotape over 100 percent of the appropriate grid area.	Ensure that the ROV uses a pattern of concentric circles or parallel lines spaced no more than 10 feet apart.

N. Within 60 days after you remove a facility from state lands other than water bottoms, you shall verify that you have returned and restored the state lands to a condition as nearly equivalent to that which existed before said operations were conducted and/or facility was constructed.

O. You shall submit a Site Clearance Report to the Office of Mineral Resources within 30 days after you complete the verification activities. The Site Clearance Report shall include the following:

1. a letter signed by an authorized company official certifying that the facility site area is cleared of all obstructions and that a company representative witnessed the verification activities;

2. a letter signed by an authorized official of the company that performed the verification work for you certifying that they cleared the facility site area of all obstructions;

3. the date the verification work was performed and if applicable, the vessel used;

4. the extent of the area surveyed;

5. the survey method used;

6. the results of the survey, including a list of any debris removed or, if applicable, a statement from the trawling contractor that no objects were recovered; and

7. a post-trawling job plot or map showing the trawled area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:

## Chapter 13. Bohemia Spillways

### §1301. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Act 233 of 1984.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 11:40 (January 1985), repealed by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### §1303. Notification, Application Forms

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Act 233 of 1984.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 11:40 (January 1985), repealed by the Department of Natural Resources, Office of Mineral Resources, LR 34:

### §1305. Application Processing and Certification

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Act 644 of 1987, Act 233 of 1984 and Act 819 of 1985.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 11:40 (January 1985), amended LR 13:583 (October 1987), LR 14:799 (November 1988), LR 16:414 (May 1990), repealed by the Department of Natural Resources, Office of Mineral Resources, LR 34:

## Part V. Office of Mineral Resources

### Chapter 1. Geophysical and Geological Surveys

#### §101. Non-Exclusive Geophysical and Geological Surveys

A. Permits for geophysical and geological surveys under Title 30, Chapter 3, Sections 211 through 216 of the Louisiana Revised Statutes of 1950 shall be obtained from the State Mineral Board (SMB) through the Office of Mineral Resources (OMR). A properly completed application for a permit for such exploration must be filed in duplicate, addressed to the Assistant Secretary of the Office of Mineral Resources, and should be received by OMR at least 15 days prior to the requested effective date of the permit. Each such completed application for a permit must be accompanied by supporting documents as described in the application, and listed as follows.

1. If the permittee is a shooting company, i.e., a company whose primary business enterprise is the physical, "on-ground" acquisition of seismic and geophysical data and the transferal of said acquired data, in either raw or processed form, exclusively to one or more cost underwriting parties or by sale or licensing agreements on the open market, it shall give the name of the client(s) for whom the seismic is being shot under the permit. If permittee is not a shooting company, it shall give the name, address, and telephone number of the shooting company which will do the physical, "on-ground" acquisition of the seismic or geophysical data under the permit. The name and relevant information of the applicant's Contact that can be reached at all times by the OMR must be included.

2. The type of work planned, such as 3-D, 2-D, reflection, refraction, geochemical, gravity meter, and/or any other recognized methods of acquiring seismic, geophysical or geological data should be indicated.

3. Information pertaining to the state lands and water bottoms, including the property under the jurisdiction of the Wildlife and Fisheries Commission / Department of Wildlife

and Fisheries (WFC/DWF), within the permit area must be supplied on the application.

4. Base maps, such as a Tobin or USGS quadrangle with the proposed survey area outlined, with X, Y's indicated for each corner of the outline, using State Plane Coordinate System / North American Datum 27, Louisiana North or South (SPCS/NAD 27, La. N. or S.). Maps must be properly labeled and exhibit sections, townships, and ranges. Active state lease boundaries should be clearly depicted with state lease numbers and acreage within the survey indicated. All state lands and water bottoms should be clearly outlined, with acreage depicted as well. For assistance with state lands or water bottoms within the survey outline contact the State Land Office (SLO). Property under the jurisdiction of the WFC/DWF should also be similarly depicted. For assistance with Wildlife and Fisheries questions contact the WFC/DWF.

5. Accompanying the hard copy base map(s) must be a computer disk/diskette containing a .dxf file that when constructed contains only the boundary of the proposed survey. X, Y's on the .dxf file should match the X, Y's from the hard copy map, and there should be no additional lines, labels, text or graphics included within the boundary.

6. A seismic permit will only be issued to an applicant upon the receipt and approval of a properly completed application. The applicant is requested not to include any payment when filing the application. The seismic permit fee will be calculated by the OMR staff, and an invoice will then be issued to the applicant. Once the applicant receives the invoice from the OMR, the applicant should then return the invoice along with payment for the seismic fee. Upon receipt of payment by the OMR, the application will then be fully processed for final approval, and a seismic permit will be issued to the applicant.

B. No permit issued hereunder shall cover, nor shall any project for which the permit is secured include acreage covered by a valid state mineral lease which is in full force and effect at the time the permit is secured. However, if the permit applicant secures the appropriate consent from the state mineral lessee to conduct the type of seismic operations contemplated under the permit application over the state mineral lease acreage included within the prospective project area, the permittee shall have the right under the applied-for permit to conduct the type of seismic operations set forth in the permit application over the state mineral lease acreage without the necessity of securing an addendum thereto or an additional permit. Upon the expiration, lapse, or termination of any state mineral leases, the acreage of which falls within a project area delineated in a seismic permit issued hereunder (during the term in which the said seismic permit is in full force and effect) permittee shall have the right to conduct operations on said acreage of the terminated prior agreement subject to the following:

1. if permittee has already entered into an agreement with the prior agreement party before termination and paid for the right to conduct operations across the acreage subject to the prior agreement, permittee shall not be required to pay permittor any further fee to conduct operations on said acreage once the prior agreement has terminated, either totally or in part: but

2. if the permittee has not entered into an agreement with the prior agreement party, then permittee shall pay

permittor an additional fee stipulated as the per acre seismic fee paid for in the permit, multiplied by the number of terminated acres of the prior agreement. Permits issued are limited to a term of one year from date of issuance, unless revoked for cause. The state may lease acreage within the seismic permitted area during the one year term of the non-exclusive seismic permit, however, the lessee shall allow the prior seismic permittee to conduct seismic operations over the leased area. Seismic permits may also be issued to other parties within the survey area during the same one year term of the non-exclusive. The permit is subject to any prior seismic permit or other agreement already in existence on the acreage at the time said non-exclusive seismic permit is issued.

C. A permit to conduct seismic, geophysical and/or geological surveying of any kind upon state of Louisiana lands or water bottoms over which the SMB through the OMR has jurisdiction shall be subject to the following terms.

1. The permit shall be valid for a period of one year from date of issuance.

2. The exercise of operations under the permit shall be limited only to the project area set forth in the application.

3. Any and all rights exercised under a valid seismic permit issued hereunder shall be exclusive only to the named permittee or, if the permittee is not a shooting company, the company named in the permit application as the entity to actually do the physical, "on ground" seismic project and the permit shall include location plat, written description, and total acreage of state owned land and/or water bottoms in the project area, covered by the permit, and the date of commencement of the permitted activity.

4. No permit issued hereunder shall be transferable.

5. The permittee shall pay a fee to the OMR for the seismic permit by a check, made payable to "Office of Mineral Resources." The fee shall be as determined by the SMB in its most recent resolution on seismic permit fees. If the area is surveyed using a technique other than 2D or 3D (e.g. refraction, geochemical, gravity or magnetics, etc.) then the fee will be determined by the SMB at the time of the application.

6. The permittee shall retain ownership of the seismic data gathered and shall not be required to submit a copy of the seismic data to the OMR. However, the SMB or its employees, OMR, shall be allowed to review any and all geophysical or geological data acquired under the permit, all in a format acceptable to the OMR, at a facility designated by OMR. Permittee may, but shall not be required to, voluntarily agree to make available to OMR the fully migrated and processed data derived from the seismic project under the issued permit. Except for information included in a seismic permit, including the plat showing the outline of the area in which the seismic is to be shot, all data secured or reviewed by OMR shall be deemed confidential and not subject to the public records doctrine; but shall be for the use of the OMR staff only.

D. In order to accommodate proper administration of seismic permits issued hereunder and orderly operations conducted under said permits, the applicant shall submit to the OMR notice of the date of commencement of any seismic operations authorized by the permit, and a map acceptable to the staff of the OMR reasonably identifying the particular geophysical layout for the area in which

operations are to be conducted. For purposes of this Section, date of commencement of operations is defined as the date upon which surveying crews and equipment are moved into the area to be worked for purposes of preliminary line placement surveying prior to the beginning of acquisition of data.

E. Violation by the permittee of any of the terms specified in this schedule as promulgated, or which may be written on the permit form, shall be deemed to be a permit violation by the OMR which may, at the sole discretion of the OMR, subject permittee to the cancellation of his permit and forfeiture of his permit fee.

F. Pursuant to R.S. 30:214 any and all rights exercised by any permittee pursuant to a permit issued hereunder shall be in compliance with any and all applicable rules and regulations which have been promulgated, and which may be further promulgated from time to time, by the Department of Wildlife and Fisheries governing the conduct of seismic exploration on land and/or water for the protection of oysters, fish, and wildlife. Further, all wildlife and waterfowl refuges, game and fish preserves, or oyster seed ground reservations, the mineral rights over which the Department of Wildlife and Fisheries exercises direct control, shall not be included in any project area covered by any permit issued hereunder unless written permission is secured from said agency.

G. The approval of the State Mineral Board is granted subject to the rules which may be adopted by the State Mineral Board from time to time.

AUTHORITY NOTE: Promulgated in accordance with Act 13, First Extraordinary Session, 1988, R.S. 30:136(A)(2) and 30:142(A), as amended by Acts 1017 and 1018 of 1990, R.S. 30:209 and 209.1, as amended by Acts 530 and 531 of 1997, and R.S. 30:211 through 216.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 26:1060 (May 2000), amended LR 34:

### **§103. Exclusive Geophysical Agreements**

A. Exclusive geophysical agreements authorized under Title 30, Chapter 3, Sections 208 through 216 of the Louisiana Revised Statutes of 1950 may be obtained from the State Mineral Board (SMB), through the Office of Mineral Resources (OMR).

B. There are three types of Exclusive Geophysical Agreements (EGA) which may be secured from the OMR, namely: EGA Type I, EGA Type II, and EGA Type III. The following shall apply to all EGA's secured hereunder.

1. A party desiring to apply for an EGA must first meet with the OMR staff to review the applicant's objectives. The purpose of this meeting with the OMR staff is so that the applicant can present the area of interest and the type of EGA being requested to the staff for review. The staff will determine if an EGA should be granted in the area of interest and will also decide under what special conditions, if any, the EGA should be considered. The applicant should present at this meeting an acceptable base map, such as a Tobin or USGS quadrangle with the proposed survey area outlined, with the description set forth in X/Y Lambert coordinates using State Plane Coordinate System/ North American Datum 27, Louisiana North or South (SPCS/NAD 27, La. N. or S.). Active state leases boundaries should be clearly depicted with state lease numbers and acreage within the survey indicated. State lands and water

bottoms should be clearly outlined, with acreage depicted as well. Property under the jurisdiction of the Wildlife and Fisheries Commission/Department of Wildlife and Fisheries (WFC/DWF) should also be depicted.

2. After the area of interest and the type of EGA has been presented to the OMR staff for review, the area will be evaluated in order to set the minimum terms. The interested party will then be provided with this information. If accepted by the party, then these minimums will be recommended to the SMB for its approval.

3. Upon SMB approval, the area to be covered by the exclusive geophysical agreement shall be nominated just as a lease. The applicant should then apply to the OMR Leasing Section to nominate the area for the designated monthly mineral lease sale. A nomination letter, including plat and legal description of the area, with an application fee of \$400 must be submitted according to the date schedule set by the OMR Leasing Section.

4. The nominated acreage will then be advertised on the same delay basis and in the same manner as lease nominations; which advertisement will state a property description of the geographical area over which the EGA is to be awarded, the type of EGA sought and the minimum per acre seismic fee acceptable to the SMB as a bid, and the day, date, time, place of the next State Mineral Lease Sale at which bids will be accepted.

5. The term of the EGA shall be 18 months with an option for an additional six months, which option period shall be granted only upon written request by the bid winner made prior to the end of the original 18 month term and upon payment to the Office of Mineral Resources in the manner set forth as acceptable herein above of a sum of money equal to one-half of the original total fee bid and paid for the seismic agreement.

6. EGA agreements are awarded by public bid.

7. The EGA awarded shall be subject to, and shall not supersede, any existing seismic permits, leases, or other agreements of any kind with the state of Louisiana in the nominated area at the time awarded, of which all parties are hereby deemed to have notice.

8. The staff of the OMR will be provided access to any and all geophysical or geological data including, but not limited to, 2-D, 3D seismic, gravity (air or surface), and magnetic (air or surface) acquired under the EGA, in a format acceptable to the OMR at the facilities of the entity conducting the seismic operations under the EGA or at facilities designated by the OMR, during all phases of the seismic operations.

9. The EGA shall be available for the purpose of conducting geophysical or geological surveys of any kind for the term and area specified in the permit. In the case of 3D seismic, all EGA's require full fold 3D coverage over the entirety of the nominated state acreage to the fullest extent possible.

10. It shall be the responsibility of the grantee to keep OMR informed, in a timely manner, of all phases of ongoing operations, including the commencement and completion of data acquisition, processing, reprocessing, and other schedules of activity affecting the final processed seismic data.

11. Should any said prior agreement terminate as to all depths, either fully or partially, before the end of the primary



term, or the option term, grantee shall have the right to conduct 3D geophysical operations on said acreage of the terminated Prior Agreement subject to the following:

a. if grantee has already entered into an agreement with the prior agreement party before termination and paid for the right to conduct geophysical surveying across the acreage subject to the prior agreement, grantee shall not be required to pay grantor any further fee to conduct geophysical surveying on said acreage once Prior Agreement has terminated, either totally or in part; but

b. if grantee has not entered into an agreement with the prior agreement party, then grantee shall pay grantor an additional fee stipulated as the per acre seismic fee at the rate bid for in the EGA.

C. In addition to §103.B above, the following shall apply to the Exclusive Geophysical Agreement (EGA) Type I:

1. The SMB shall not grant any new seismic agreements or permits in the nominated area during the primary term of the EGA, or the option term if activated, but does reserve the right to accept nominations for and grant new mineral leases within the nominated area of the exclusive geophysical agreement. Any new mineral leases granted within the nominated area of the EGA during its primary term, or option term if activated, shall be subject to the rights granted under the EGA and the grantee shall not be required to deal with the state mineral lessee in order to conduct seismic operations over the new lease acreage.

D. In addition to §103.B above, the following shall apply to the Exclusive Geophysical Agreement (EGA) Type II.

1. The SMB shall not grant any new seismic agreements or permits, or any new leases in the EGA area from the time it is nominated, during the primary term of the EGA, or the option term if activated. However, a buffer zone of 1/2 mile will be established around existing leases or operating agreements within the area of the EGA. Only the grantee of the EGA and lessee of any existing lease or operating agreement shall have the right, concurrent with, but separate from the right of the other, to nominate acreage for a state mineral lease within that buffer zone during the primary term of the EGA, or the option term if activated. The leases may then go up for public bid at the regular monthly state mineral lease sale.

2. The EGA grantee only shall have the right to nominate acreage within the EGA area for a state mineral lease during the primary term of the EGA, or the option term if activated, except as to the buffer zone around existing leases, which lease nominations shall not exceed 1,500 acres each and shall not in aggregate amount exceed one-third of the entire acreage of the EGA, unless agreed to by the SMB.

E. In addition to §103.B. above, the following shall apply to the Exclusive Geophysical Agreement (EGA) Type III.

1. The state will not grant any new seismic permits or agreements on, or lease the nominated acreage, or any part thereof, during the primary term of the EGA, or the option term if activated, except that a buffer zone of 1/2 mile will be established around existing leases or operating agreements within the nominated area of the EGA. Only the grantee of the EGA and lessee of the existing lease or operating agreement shall have the right, concurrent with, but separate from the right of the other, to nominate acreage for a state mineral lease within that buffer zone during the

primary term of the EGA, or the option term if activated. The leases may then go up for public bid at the regular monthly state mineral lease sale.

2. The EGA III grantee shall have the exclusive right, within the primary term of the EGA, or the option term if activated, to select for mineral leases tracts within the EGA area, not to exceed 1500 acres each or one third in the aggregate of the entire state acreage within the nominated EGA area unless agreed to by the SMB.

3. The grantee of an EGA III shall have the exclusive right to enter into lease agreement with the state on each tract for the consideration originally bid and under the terms of the Louisiana State Lease Form, Revised 1981, as amended. Each selection made, thereby creating a state lease, will incur, in addition to the per acre bonus and royalty as advertised and bid during the acquisition of the EGA, a 10 percent administrative fee. Also, a \$15 per acre fee shall be collected from the mineral lessees and deposited into the Louisiana Wildlife and Fisheries Conservation Fund, as well as, an additional \$5 per acre fee shall be collected from the mineral lessees and deposited into the Oil and Gas Regulatory Fund.

F. The State Mineral Board, through the Office of Mineral Resources, agrees, except for the information included in a seismic permit to hold all information, maps, data of any and all kinds provided to the state under R.S. 30:213 or as a result of the terms of the exclusive geophysical agreements confidential and same shall not be available for view or use except by certain members of the staff of the Office of Mineral Resources in connection with the administration of state owned lands and water bottoms, and the state mineral leases thereon unless ordered by a court of proper jurisdiction to do so, or with the granted written permission of, and under the strict limitations imposed by, the owner having authority to license said data. Said information shall be kept under lock and key, except during the course of actual examination by the staff of the Office of Mineral Resources. Any violation of these requirements is hereby declared cause for preemptory removal from office or discharge from employment in addition to the penalties provided under R.S. 30:213.

AUTHORITY NOTE: Promulgated in accordance with Act 13, First Extraordinary Session, 1988, R.S. 30:136(A)(2) and 30:142(A), as amended by Acts 1017 and 1018 of 1990, R.S. 30:209 and 209.1, as amended by Acts 530 and 531 of 1997, and R.S. 30:211 through 216.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 26:1061 (May 2000), amended LR 34:

### **Chapter 3. Fees and Other Charges**

#### **§301. Fees and Other Charges**

A. The Department of Natural Resources, Office of Mineral Resources, pursuant to the authority of Act 106 of the 2002 First Extraordinary Session of the Louisiana Legislature authorizing and setting fees and charges, has adopted the following fees and charges commensurate with costs incurred in the application for and administration of state oil, gas and mineral leases and operating agreements on state-owned lands and water bottoms. These fees and charges shall be periodically reviewed under applicable statutory authority and may be increased, subject to caps and guidelines within that authority, to maintain fiscal parity with economic conditions on an ongoing basis. The fees

currently being charged and the amount thereof are as follows.

1. Pursuant to R.S. 30:124, a fee from the successful bidder for obtaining a new mineral lease equal to 10 percent of the total cash bonus amount bid, in additions to the cash bonus paid, and paid by the successful bidder for the lease to cover the cost of the bid awarding process. A check or money order for this fee shall be contained in the sealed bid packet accompanying the cash bonus and bid form.

2. Pursuant to R.S. 30:125, a non-refundable fee, presently in the amount of \$400, submitted as a check or money order by the party nominating state owned lands and water bottoms accompanying said nominating application to cover the cost of processing and advertising the nomination.

3. Pursuant to R.S. 30:126(A), a fee, presently in the amount of \$20, to cover costs of providing on request a certified proof of publication showing that nominated tracts have been properly advertised.

4. Pursuant to R.S. 30:126(B), fees in the present amount shown below for hard copies of items listed below:

- a. yearly subscription for notice of publication—\$120 per year;
- b. copies of tract maps north of the thirty-first parallel—\$10 per month;
- c. copies of tract maps south of the thirty-first parallel—\$20 per month;
- d. certified proofs of no conflict or overlap—\$5 each;
- e. certified proofs of tracts within three mile limit of Louisiana coastline—\$5 each.

5. If any item is requested in electronic form the fee shall be a yearly subscription payment presently in the amount of \$200.

6. Pursuant to R.S. 30:127(C), fee, presently in the amount of \$5 each, to cover the cost of furnishing certified proof of the existence of a particular lease.

7. Pursuant to R.S. 30:128(A), fee, presently in the amount of \$100 each, to cover the cost of preparing and docketing transfers or assignments of leases or other mineral rights.

8. Pursuant to R.S. 30:129(A), following fees, presently in the amounts listed below, for particular administration of leases:

- a. fee of \$500 to cover the cost of advertising and docketing of each instrument related to the administration of leases having to do with pooling and unitization;
- b. fee of \$50 per hour for each hour or portion thereof spent by staff to verify claims, disputes, or questions pertaining to the terms, conditions, obligations and duties expressed or implied in the state mineral leases.

9. Pursuant to R.S. 30:130, fee, presently in the amount of \$1 per copy, to cover the cost of certification of records.

10. Pursuant to R.S. 30:143(C), fee, presently in the amount of \$100, collected together with a bond for applications to transfer interest in a solid mineral lease to cover investigation by the state of the transfer.

11. Pursuant to R.S. 30:148.3, fee deducted from \$50 advance payment for application to secure a lease to erect transportation and/or storage facilities (including underground storage facilities) to cover cost of advertising for the said lease.

12. Pursuant to R.S. 30:126(B)(2)(g), a fee, presently in the amount of \$1 per page, to transmit by facsimile mail or in any other electronic form any documents when requested to do so to cover the cost of such facsimile transmittal.

13. Pursuant to R.S. 30:126(B)(2)(g), a fee presently in the amount of \$0.25 per page, to physically copy or print any document which it oversees upon request to cover the actual cost of copying same, as well as a fee, presently in the amount of \$5, to copy any map or plat in a form no larger than 11 1/2' x 17' at customer request.

14. Pursuant to R.S. 30:215(A), fee for obtaining a non-exclusive geophysical permit on state owned lands and water bottoms as authorized between a maximum of \$30 per acre and a minimum of \$5 per acre, and set by the most recent resolution of the State Mineral Board of record and on file in the office of mineral resources, multiplied times the number of state owned land and/or water bottom acres located within the geographic boundary of the permitted area.

15. Pursuant to R.S. 30:216, fee for exclusive geophysical agreements over state owned lands and water bottoms comprised of the per acre bid price, over the minimum per acre acceptable price set by the State Mineral Board, made by the successful bidder for the geophysical agreement multiplied times the number of state owned acres.

B. Other charges in the form of liquidated damages or penalties assessed pursuant to contractual or applicable statutory authority.

1. Pursuant to R.S. 30:125(B), liquidated damage penalty of \$100 per day levied against each current record lease holder of state mineral lease who does not maintain as current his authorization to do business in the state of Louisiana as evidenced by receipt in the office of mineral resources of a copy of the renewed authorization to do business in the state of Louisiana. This liquidated damage penalty shall accrue until receipt by the office of mineral resources of the appropriate copy of the said certificate of renewal of authorization. The State Mineral Board may waive all or any portion of this liquidated damage penalty.

2. Pursuant to contractual agreement in the state mineral lease form document, liquidated damage assessed jointly and severally against state lessees of a terminated state mineral lease in the amount of \$100 per day beginning on the ninety-first day following lease termination for failure to execute and record an appropriate release of the state mineral lease. This liquidated damage shall continue to accrue until the appropriately executed release is recorded in the proper parish(s) in which the terminated lease is located. The State Mineral Board may waive all or any portion of this liquidated damage.

3. Pursuant to R.S. 30:128(B)(1), penalty of \$100 per day, up to a maximum of \$1,000, accruing on a daily basis from the sixty-first day following execution of the transfer or assignment of an interest in a state mineral lease for failure to obtain State Mineral Board approval within 60 days of execution.

4. Pursuant to R.S. 30:136(A)(1)(c), liquidated damage penalty of \$1,000 assessed against new payor for failure to notify the office of mineral resources of payor change to new payor for a lease unit well code (LUW) and provide necessary information on new payor prior to date new payor makes payment due.

5. Pursuant to R.S. 30:136(B)(1), liquidated damage penalty of 5 percent of total sum due or paid, not to exceed \$500, for incorrectly completing any part of any form required by the Department of Natural Resources or the office of mineral resources to be filed in conjunction with payments of any sum, other than bonuses, rentals or shut-in payments, owing to the state from the day after due date of payment made, unless corrected prior to due date. The State Mineral Board may waive all or any portion of this liquidated damage penalty.

6. Pursuant to R.S. 30:136(B)(1), liquidated damage specified as such in any contract entered into by the state of Louisiana, through the State Mineral Board, including, but not limited to, mineral leases, operating agreements, etc., the purpose of which is to facilitate the exploration, drilling, development and production of minerals from state owned lands and water bottoms which shall, as between the contracting parties, specify the agreed upon amount of damage, including cost of recovery, which would be incurred by the state as a result of a violation of the terms of the contractual agreement.

7. Pursuant to R.S. 30:136(B)(2), liquidated damage penalty of 10 percent of total of any sum due, not to exceed \$1,000, for underpayment of that said sum due, other than bonus, rentals or shut-in payments, collectable on the day after the sum was due. The State Mineral Board may waive all or any portion of this liquidated damage penalty.

8. Pursuant to R.S. 30:136(B)(3), penalty of additional 2 percent of total sum due if incorrectly completed form which necessarily accompanies a payment due, is not corrected within 60 days following payment due date, or sum due—other than cash bonus, rental or shut-in payment—is either not paid or underpaid by due date; penalty begins accruing on sixty-first day following failure to correct an incorrectly completed form or day following due date on failed payment or under payment of sum due and accrues on each 30 day period thereafter, or fraction thereof, up to a maximum of 24 percent. Penalty shall be levied on principal and accrued interest each 30 day period. The State Mineral Board may waive all or any portion of this penalty.

9. Pursuant to R.S. 30:209(2), monetary revenues derived from the sale of production, less reasonable costs of drilling, equipping and operating wells, from or allocated to state owned lands and water bottoms which are not under a state mineral lease.

10. Pursuant to R.S. 30:209(4)(b), monetary revenues equal to 25 percent of the value of production payments derived from operating agreements entered into by the state of Louisiana after August 15, 1997.

**AUTHORITY NOTE:** Promulgated in accordance with Act No. 106 of the first Extraordinary Session of the 2002 Louisiana Legislature.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 26:1063 (May 2000), amended LR 34:

#### **Family Impact Statement**

The proposed amendments of LAC 43:V.Chapter 1, geophysical and geological surveys; LAC 43:V.Chapter 3, fees and other charges; LAC 43:I.Chapter 9, minerals leasing policy and royalty crude oil; the adoption of LAC 43:X.1001 et seq., regarding the lease of state water bottoms for the exploration, development and production of wind energy;

and the repeal of LAC 43:I.Chapter 13 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. The implementation of this proposed Rule will have 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 budgets;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Interested parties may submit written comments relative to the proposed Rules until 4 p.m., December 21, 2007, to Marjorie McKeithen, Assistant Secretary, Office of Mineral Resources, 617 North Third Street, LaSalle Building, Eighth Floor, Post Office Box 2827, Baton Rouge, LA 70821-2827.

Marjorie A. McKeithen  
Assistant Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Mineral Resources, Wind Energy Leasing, and Bohemia Spillways**

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

Most of the proposed changes are needed to make the administrative code consistent with current statutory provisions. The only proposed changes that will have implementation costs are the wind energy leasing rules.

The Department of Natural Resources anticipates that wind leasing activity will be minimal over the next five years. There are insufficient wind resources to develop wind power in Louisiana onshore except in a few remote locations, such as along the lower extension of the Mississippi River close to the mouth of the River. Otherwise, offshore waters are the only feasible siting locations in Louisiana for wind power.

Since the Office of Mineral Resources has an ongoing mineral leasing operation for state onshore and offshore lands and water bottoms, it is anticipated that what little wind leasing activity may arise, can be easily absorbed in the existing resources. The review and certification process will have negligible expenditure impact to the Office of State Lands and the Department of Wildlife and Fisheries, as existing resources will be utilized.

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

The Department of Natural Resources anticipates that wind leasing activity will be minimal over the next five years. What activity there is will likely be limited to "first of its kind" demonstration or proof of concept projects and possibly a single commercial wind farm. The economics of offshore wind power are marginal at this point. Therefore, revenue in the early years of implementation of this developing resource base will be small. Twenty-five percent of all revenues will be deposited into the Wetlands Conservation & Restoration Fund and the remaining 75 percent into the State General Fund.

Revenues in FY 2007-08 may be \$200, assuming the following: a single 10 MW demonstration project will be in operation, electric power production royalties will be suspended for demonstration projects less than or equal to 10 MW and the minimum state land lease rate of \$0.02 per square

foot per year for structure foot print area. The estimated structure foot print area for 10 MW demonstration project is 10,000 square feet (\$0.02 per sq ft x 10,000 sq ft = \$200).

Estimated revenues in 2009-12 may be \$196,000 assuming the following: a single 50 MW wind farm in operation, annual wind farm revenue of \$6.5 million (wind farm revenue calculation is based on an assumed class 3 wind resource, and an assumed electricity selling price of \$0.06 per kWh.) annual electric power production royalty of 3 percent of wind farm revenue and minimum state land lease rate of \$0.02 per square foot per year for structure foot print area. The estimated structure foot print area for 50 MW wind farm is 50,000 square feet.

\$0.02 per sq ft x 50,000 sq ft = \$1,000

\$6.5 million x 3 percent = \$195,000

Total = \$196,000

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

The costs and/or economic benefits to others cannot be quantified. The program should have a positive effect on wind energy exploration activity.

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

The effect on competition and employment cannot be quantified. If the program is successful in encouraging exploration, increased employment in the wind energy sector will occur.

Robert D. Harper  
Undersecretary  
0710#031

Robert E. Hosse  
Staff Director  
Legislative Fiscal Officer

## NOTICE OF INTENT

### Department of Public Safety and Corrections Office of Management and Finance Uniform Construction Code Council

Louisiana State Uniform Construction Code  
(LAC 55:VI.101, 301, 703 and 905)

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730:22(C) and (D), R.S. 40:1730.34(B), R.S. 40:1730.37 and R.S. 40:1730.38 relative to the authority of the Louisiana State Uniform Construction Code Council to promulgate and enforce rules, the Louisiana State Uniform Construction Code Council hereby proposes to amend Rules under §101.A, to change the mailing address for the Uniform Construction Code Council; under §301.A.3, to extend the date of the use of the 2003 windzones; to allow local jurisdictions to adopt Appendix J of the Residential Code, under §703.B, to amend the definition of third party providers in adding homeowners to the list of those people who can contract with third party providers; under §905, to allow architects and engineers to register as third party providers after January 1, 2008.

#### Title 55

#### PUBLIC SAFETY

#### Part VI. Uniform Construction Code

#### Chapter 1. Preliminary Provisions

#### §101. Request for Rule Change

A. Anyone petitioning the Undersecretary, Department of Public Safety, for the adoption of, or change of, any rule shall submit in writing to the Council Administrator at 7979 Independence Boulevard, Suite 106, Baton Rouge, LA

70806, an application containing the following basic information organized and captioned:

A.1. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 33:290 (February 2007), amended LR 34:

### Chapter 3. Adoption of the Louisiana State Uniform Construction Code

#### §301. Louisiana State Uniform Construction Code

A. - A.2. ...

3. International Residential Code, 2006 Edition, not including Parts I-Administrative, V-Mechanical, VII-Plumbing and VIII-Electrical. The applicable standards referenced in that code are included for regulation of construction within this state. The enforcement of such standards shall be mandatory only with respect to new construction, reconstruction, additions to homes previously built to the International Residential Code, and extensive alterations. Appendix J, Existing Buildings and Structures, may be adopted and enforced only at the option of a parish, municipality, or regional planning commission. For purposes of this Part, Section R301.2.1.1 of the 2003 edition of the International Residential Code is hereby specifically adopted in lieu of the 2006 edition and shall remain in effect until the 2009 edition of the International Residential Code is published. Part IV-Energy Conservation of the latest edition of the International Residential Code is hereby amended to require that supply and return ducts be insulated to a minimum of R-6. Furthermore, IRC R301.2.1.1 (Design Criteria) shall be amended as follows and shall only apply to the International Residential Code:

a. amendment of R301.2.1.1 (Design Criteria);

b. Item 6, the American Concrete Institute, *Guide to Concrete Masonry Residential Construction in High Winds Areas*, shall be added;

c. Item 7, Institute for Business & Home Safety, *Optional Code-plus Fortified for Safer Living*, shall be added;

d. Item 8, Federal Alliance for Safe Homes, *Optional Code-plus Blueprint for Safety*, shall be added.

4. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:

### Chapter 7. Certificates of Registration

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

A. - A.1. ...

B. Definitions

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*Third-Party Provider* (TPP)—any individual, entity, or an individual employed by an entity, contracted to act in the capacity of a BCEO by an authority having jurisdiction, a licensed contractor, or a homeowner who is exempted from the contractor licensing law under R.S. 37:2170.

\*\*\*

C. - C.2.c.v. ...

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

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 33:292 (February 2007), amended LR 34:

**Chapter 9. Temporary Exemption to Certification Requirement**

**§905. Third Party Providers**

A. Third party providers who are Louisiana licensed architects or engineers and who obtain a certificate of registration after January 1, 2007, shall be granted a provisional certificate of registration without certification by a recognized code organization. This provisional certificate shall expire on December 31, 2007. However, beginning January 1, 2008, upon application and fulfillment of all other requirements necessary to obtain a certificate of registration, a third-party provider who is a Louisiana licensed architect or engineer shall be granted a certificate of registration without certification by a recognized code organization for their specialty work only.

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

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 34:

**Family Impact Statement**

1. The Effect of This Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of This Rule on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of This Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of This Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

5. The Effect of This Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of This Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments or requests for public hearing on this proposed Rule change to Paeton Burkett, Attorney, Louisiana State Uniform Construction Code Council, 7979 Independence Boulevard, Suite 307Q, Baton Rouge, LA 70806. Comments will be accepted through close of business November 10, 2007

Jill Boudreaux  
Acting Undersecretary

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

**RULE TITLE: Louisiana State Uniform  
Construction Code**

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

These proposed rules will not result in an increase in implementation costs or savings to state or local governmental units. The change in Chapter 1 is strictly an address change due to the Council's office having relocated. The other changes were necessary in order to make the rules compatible with the changes made in state law pursuant to Act 335 of the 2007 Regular Legislative Session and are technical changes that should not have a cost impact upon state or local governmental units.

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

The proposed rule will have no effect on revenue collections of state or local governmental units since these rules only mirror state law as enacted in Act 335 of the 2007 Regular Legislative Session.

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

The proposed rules will provide no cost nor economic benefit to directly affected persons or non-governmental groups since these rules are being amended to mirror state law as enacted in Act 335 of the 2007 Regular Legislative Session.

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

There will be no effect on competition and employment as the proposed rule applies to all code enforcement officers and to all persons and authorities having jurisdiction.

Jill Boudreaux  
Acting Undersecretary  
0710#042

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Policy Services Division**

**Wind or Solar Energy Systems Tax Credits  
(LAC 61:I.1907)**

Under the authority of R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6030, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1907 relative to income tax credits for wind or solar energy systems.

Act 371 of the 2007 Regular Session of the Louisiana Legislature enacted R.S. 47:6026 to allow an income tax credit for the purchase and installation of a wind or solar energy system by a Louisiana homeowner or the owner of a residential rental apartment project located in the state. The Section was redesignated as R.S. 47:6030 pursuant to the statutory revision authority of the Louisiana State Law

Institute. This proposed Rule will clarify the application of the credits for those taxpayers who purchase and install wind or solar energy systems.

**Title 61**

**REVENUE AND TAXATION**

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

**Chapter 19. Miscellaneous Tax Exemptions**

**§1907. Income Tax Credits for Wind or Solar Energy Systems**

A. Revised Statute 47:6030 provides an income tax credit for the purchase and installation of a wind or solar energy system by a Louisiana homeowner or the owner of a residential rental apartment project located in the state. In order for costs associated with the purchase and installation of a wind or solar energy system to qualify for this credit, the expenditure must be made on or after January 1, 2008.

**B. Definitions**

*Charge Controller*—an apparatus designed to control the state of charge of a bank of batteries.

*Grid-Connected, Net Metering System*—a wind or solar electric system interconnected with the utility grid in which the customer only pays the utility for the net energy used from the utility minus the energy fed into the grid by the customer. All interconnections must be in accordance with the capacity, safety and performance interconnection standards adopted as part of the Louisiana Public Service Commission's and the New Orleans City Council's, as appropriate, established net metering rules and procedures.

*Inverter*—an apparatus designed to convert direct current (DC) electrical current to alternating current (AC) electrical energy. Modern inverters also perform a variety of safety and power conditioning functions that allow them to safely interconnect with the electrical grid.

*Photovoltaic Panel*—a panel consisting of a collection of solar cells capable of producing direct current (DC) electrical energy when exposed to sunlight.

*Residence*—a single family dwelling, one dwelling unit of a multi-family owner occupied complex, or one residential dwelling unit of a rental apartment complex. All eligible residences must be located in Louisiana.

*Solar Electric System*—a system consisting of photovoltaic panels with the primary purpose of converting sunlight to electrical energy and all equipment and apparatus necessary to connect, store and process the electrical energy for connection to and use by an electrical load.

*Solar Thermal System*—a system consisting of a solar energy collector with the primary purpose of converting sunlight to thermal energy and all devices and apparatus necessary to transfer and store the collected thermal energy for the purposes of heating water, space heating, or space cooling.

*Supplemental Heating Equipment*—a device or apparatus installed in a solar thermal system that utilizes energy sources other than wind or sunlight to add heat to the system, with the exception of factory installed auxiliary heat strips that are an integral component of a specifically engineered solar hot water storage tank.

*Wind Energy System*—a system of apparatus and equipment with the primary purpose of intercepting and converting wind energy into mechanical or electrical energy

and transferring this form of energy by a separate apparatus to the point of use or storage.

**C. Household Eligibility for Wind and/or Solar Energy Systems Tax Credits**

1. Each residence in the state is eligible for tax credits for the number of separate complete wind, solar electric, and solar thermal energy systems necessary to ensure that the residence is supplied with all of its energy needs.

2. The credit for the purchase and installation of a wind energy system or solar energy system by a resident individual at his residence shall be claimed by the resident individual on his Louisiana individual income tax return.

3. The credit for the purchase and installation of a wind energy system or solar energy system by the owner of a residential rental apartment project shall be claimed by the owner on his Louisiana individual, corporate or fiduciary income tax return.

4. All wind or solar energy systems must be installed in the immediate vicinity of the residence claiming the credit such that the electrical, mechanical or thermal energy is delivered directly to the residence.

5. In order to claim a tax credit(s) for a wind energy system, solar electric energy system, or solar thermal energy system the components for each system must be purchased and installed at the same time as a system. Eligible components of systems are defined in Paragraphs D.1-3 below.

**D. Wind and Solar Energy Systems Eligible for the Tax Credit**

1. The credit provided by R.S. 47:6030 is only allowed for complete and functioning wind energy systems or solar energy systems.

2. Wind Energy Systems. Eligible wind energy systems under the tax credit include systems designed to produce electrical energy and systems designed to produce mechanical energy through blades, sails, or turbines and may include the following.

<b>System Type</b>	<b>Eligible System Components</b>
DC Wind Electric Generation Systems	DC output wind turbine, controllers, towers & supports, charge controllers, inverters, batteries, battery boxes, DC & AC disconnects, junction boxes, monitors, display meters, lightning and ground fault protection, and wiring and related electrical devices and supplies from generator to residence or electrical load
AC Wind Electric Generation Systems	AC output wind turbine, controllers, towers & supports, charge controllers, power conditioners/grid interconnection devices, batteries, battery boxes, AC disconnects, junction boxes, monitors, display meters, lightning and ground fault protection, and wiring and related electrical devices and supplies from generator to residence or electrical load
Mechanical Wind Systems	Mechanical output wind turbine, towers & supports, mechanical interconnection between turbine and mechanical load

3. Solar Electric Systems. Eligible solar electric systems under the tax credit include grid-connected net metering systems, grid-connected net metering systems with battery backup, stand alone alternating current (AC) systems and stand alone direct current (DC) systems, designed to produce electrical energy and may include the following.

System Type	Eligible System Components
Grid-Connected, Net Metering Solar Electric Systems	Photovoltaic panels, mounting systems, inverters, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Grid-Connected, Net Metering Solar Electric Systems with Battery Backup	Photovoltaic panels, mounting systems, inverters, charge controllers, batteries, battery cases, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Stand Alone Solar Electric AC Systems	Photovoltaic panels, mounting systems, inverters, charge controllers, batteries, battery cases, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Stand Alone Solar Electric DC Systems	Photovoltaic panels, mounting systems, charge controllers, batteries, battery cases, DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load

4. Solar Thermal Systems. Solar thermal systems eligible under the tax credit include systems designed to produce domestic hot water, systems designed to produce thermal energy for use in heating and cooling systems and solar pool heating systems and may include the following.

System Type	Eligible System Components
Domestic Solar Hot Water Systems	Solar thermal collectors, mounting systems, solar hot water storage tanks, pumps, heat exchangers, drain back tanks, expansion tanks, controllers, sensors, valves, freeze protection devices, air elimination devices, photovoltaic panels for PV systems, piping and other related materials from the solar thermal collectors to the solar hot water storage tanks
Heating and Cooling Thermal Energy Systems	Solar thermal collectors, mounting systems, solar hot water storage tanks, pumps, heat exchangers, drain back tanks, expansion tanks, controllers, sensors, valves, freeze protection devices, air elimination devices, photovoltaic panels for PV systems, piping and other related materials from the solar thermal collectors to the solar hot water storage tanks
Pool Solar Heating System	Solar pool heating collectors, mounting systems and devices, controllers, actuators, valves, pool covers, air elimination devices, sensors, piping and other related materials from solar pool heating collectors to interconnection with pool filtration system

5. All wind and solar energy systems for which a tax credit is claimed shall include an operations and maintenance manual containing a working diagram of the system, explanations of the operations and functions of the component parts of the system and general maintenance procedures.

6. All photovoltaic panels, wind turbines, inverters and other electrical apparatus claiming the tax credit must be UL listed and installed in compliance with all applicable building and electrical codes.

7. All solar thermal apparatus claiming the tax credit must be certified by the Solar Rating and Certification Corporation (SRCC) and installed in compliance with all applicable building and plumbing codes.

8. Applicants applying for the tax credit on any system(s) must provide proof of purchase to the Louisiana Department of Revenue detailing the following:

- a. type of system applying for the tax credit;
- b. output capacity of the system:
  - i. solar electric systems—total nameplate listed kw of all installed panels;
  - ii. solar thermal systems—listed SRCC annual BTU output;
  - iii. wind electric systems—total rated kW of all alternators and generators;
  - iv. wind mechanical systems—shaft horsepower as rated by manufacturer, licensed contractor or licensed professional engineer;
- c. physical address where the system is installed in the state;
- d. total cost of the system as applied towards the tax credit separated by:
  - i. equipment costs;
  - ii. installation costs;
- e. make and model number of generators, alternators, turbines, photovoltaic panels, inverters, and solar thermal collectors applied for in the tax credit.

E. Tax Exemption Eligibility of Certain Costs

1. Eligible Costs. Eligible costs that can be included under the tax credit are reasonable and prudent costs for equipment and installation of the wind and solar energy systems defined in Subsection B and described in Subsection D above. All installation must be performed by a contractor duly licensed by and in good standing with the Louisiana State Contractors Licensing Board, the owner of the residence, or by a person who has received certification by a technical college in the installation of such systems. Equipment costs must be in accordance with Paragraph D.4, 5, 6 and 7 above.

2. Ineligible Costs. Labor costs for individuals performing their own installations are not eligible for inclusion under the tax credit. Supplemental heating equipment costs used with solar collectors are not eligible for inclusion under the tax credit.

3. Whenever, in return for the purchase price or as an inducement to make a purchase, marketing rebates or incentives are offered, the eligible cost shall be reduced by the fair market value of the marketing rebate or incentive received. Such marketing rebates or incentives include, but are not limited to, cash rebates, prizes, gift certificates, trips or any other thing of value given by the installer to the customer as an inducement to purchase an eligible wind or solar energy system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6030 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 34:

### Family Impact Statement

The proposed adoption of LAC 61:I.1907, regarding income tax credits for wind or solar energy systems 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. The implementation of this proposed Rule will have no known or foreseeable effect on:

1. the effect on the stability of the family. Implementation of this proposed Rule will have no effect on the stability of the family;

2. the effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed Rule will have no 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. Implementation of this proposed Rule will have no effect on the functioning of the family;

4. the effect on family earnings and family budget. Implementation of this proposed Rule will have no effect on family earnings and family budgets;

5. the effect on the behavior and personal responsibility of children. Implementation of this proposed Rule will have no 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. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments, or comments regarding this proposed Rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs, by mail to P.O. Box 66258, Baton Rouge, LA 70896. All comments must be submitted no later than 4:30 p.m., November 26, 2007. A public hearing will be held on November 27, 2007, at 10 a.m. in the Calcasieu Room located on the second floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Cynthia Bridges  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Wind or Solar Energy Systems Tax Credits

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

Implementation costs to the Department of Revenue for the proposed rules include computer system modifications (\$72,900), coding for the Revenue Processing Center (\$2,500), and forms and instruction changes (\$2,500). The Legislature did not specifically appropriate funding to the Department of Revenue to administer these proposed credits. As such, the Department of Revenue will administer these tax credits within existing resources. Implementation of the proposed rules will have no costs or savings to local governmental units.

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

State general fund revenues will decline by unknown amounts in Fiscal Year 2007-2008 and thereafter due to the proposed rules. There is no way to estimate how many individuals and companies might seek tax credits for wind or solar energy systems. Although there is a similar credit at the federal level, it was not effective until the 2006 tax year and no federal statistics are available. However, typical solar energy systems range in costs from \$10,000 to \$40,000, and typical wind energy systems range in cost from \$25,000 to \$35,000. Based on these amounts and the regulation's limitation to the first \$25,000 of costs, the credit provided by this regulation would be \$5,000 to \$12,500 per system. The credit is refundable; so all credits earned each year will be realized against state tax liabilities in the year of purchase or installation. There should be no effect on revenue collections of local governmental units as a result of this proposed regulation.

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

The proposed tax credits will effectively reduce the cost of wind or solar energy systems up to \$25,000 in cost by fifty percent; and will in aggregate increase receipts of sellers, distributors, and sellers of these systems proportional to the rate of tax credits granted.

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

This proposed regulation should have minimal effect on competition or employment in Louisiana because wind and solar energy systems are not currently manufactured in the state. Sellers, distributors, and installers of such wind and solar systems will likely see an increase in their receipts and possibly their employment due to the effective price reduction offered by the proposed credits.

Cynthia Bridges  
Secretary  
0710#032

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Social Services Office of Family Support

Louisiana Pathways Child Care Career Development System  
(LAC 67:III.5125 and 5127)

In accordance with R.S. 36:474 and R.S. 47:6103, which allows the department to make reasonable rules and regulations, the Secretary of the Department of Social Services proposes to adopt LAC 67:III, Subpart 12, Chapter 51, Subchapter D, Louisiana Pathways Child Care Career Development System (LA Pathways).

The purpose of this regulation is to give the LA Pathways Child Care Career Development System the authority to act as the state practitioner registry that is maintained by the Department of Social Services. LA Pathways offers a formal mechanism to track training and educational attainment for staff in the field of early child care and education.

This procedure will be employed for the administration of the school readiness tax credits and the documentation that will be required to claim one of the school readiness tax credits as set out in R.S. 47:6101 through 6109 as enacted by Act 394 of the 2007 Regular Session of the Louisiana Legislature.



**Title 67  
SOCIAL SERVICES**

**Part III. Office of Family Support  
Subpart 12. Child Care Assistance**

**Chapter 51. Child Care Assistance Program  
Subchapter D. Louisiana Pathways Child Care Career  
Development System (LA Pathways)**

**§5125. Authority**

A. The Louisiana Pathways Child Care Career Development System (LA Pathways) is the state practitioner registry maintained by the Department of Social Services. LA Pathways offers child care staff, including directors, teachers, assistant teachers and other classroom staff, a formal mechanism to track their training and educational attainment, experience and professional affiliation in the field of early care and education.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474 and R.S. 47:6101 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 34:

**§5127. Participation in LA Pathways**

A. Any individual working or planning to work in the child care industry is eligible to enroll in LA Pathways by completing an application and forwarding the required documents. An application for enrollment and information about enrollment is available at <http://pathways.louisiana.gov/> or by phoning the Division of Child Care and Early Childhood Education at (225) 342-0694.

1. LA Pathways will register child care directors and staff according to requirements based on training and education, experience and professional activities, as approved by the Department of Social Services. Participation is voluntary.

B. Requirement for the Administrator Track for LA Pathways.

<b>Child Care Career Ladder Titles</b>	<b>Training and Education Requirements</b>	<b>Experience Requirements</b>	<b>Professional Activity Requirements</b>
Assistant Director I	Annual training as required by Licensing Minimum Standard	None	Encourage to participate in an early childhood professional organization
Assistant Director II	60 clock hours in approved core knowledge (CDA) subject areas including 6 hours in regulations	Minimum 6 months	Encourage to participate in an early childhood professional organization
Assistant Director III	90 clock hours in approved core knowledge (CDA) subject areas including 15 hours in approved Administrative Training Categories	Minimum 1 year	Encourage to participate in an early childhood professional organization
Director	As required by Licensing Minimum Standards	As required by licensing	Encourage to participate in an early childhood professional organization
Director I	CDA Credential or approved early childhood diploma and 30 clock hrs. in approved Administrative Training Categories or related associate degree or 30 hours toward associate degree with 4 college courses in early childhood or child development	Minimum 1 year	Membership in an early childhood professional organization.
Director II	CDA Credential or approved early childhood diploma and 45 clock hrs. in approved Administrative Training Categories or National Administrative Credential or associate degree in early childhood or child development or related associate degree with 4 college courses in early childhood or child development or related bachelor degree with 3 college courses in early childhood or child development	Minimum 18 months	Membership in an early childhood professional organization and service to the profession such as: serving on a board or committee, presenting at a conference, participating as a CDA advisor or mentor, attendance at a conference or professional event
Director III Administrator Certificate To receive an Administrator Certificate you must have 75 clock hours of instruction in approved Administrative Training Categories 2 college courses in approved administration can be substituted for the Administrator Certificate	CDA Credential or approved early childhood diploma and Administrator Certificate or associate degree in child development or early childhood and Administrator Certificate or bachelor degree in early childhood or child development of which 3 college courses focus on infants and toddlers and Administrator Certificate or related bachelor degree with 6 college courses in early childhood or child development of which 3 courses focus on infants and toddlers and Administrator Certificate	Minimum 2 years	Membership in an early childhood professional organization and service to the profession such as: serving on a board or committee, presenting at a conference, participating as a CDA mentor or advisor, attendance at a conference or professional event
Level VIII Director IV	Master degree in early childhood, child development or early childhood administration of which 3 courses focus on infants and toddlers and Administrator Certificate or related masters degree with 8 college courses in early childhood or child development of which 3 courses focus on infants and toddlers and Administrator Certificate	Minimum 2 years	Membership in an early childhood professional organization and service to the profession such as: serving on a board or committee, presenting at a conference, participating as a CDA mentor or advisor, attendance at a conference or professional event

C. Requirements for the Classroom Track for LA Pathways

<b>Child Care Career Ladder Titles</b>	<b>Training and Education Requirements</b>	<b>Experience Requirements</b>	<b>Professional Activity Requirements</b>
Child Care Staff I	As required by licensing regulations	None	Encouraged to participate in an early childhood professional organization
Child Care Staff II	12 clock hours of instruction in approved core knowledge (CDA) subject areas	Minimum 6 months	Encouraged to participate in an early childhood professional organization
Child Care Staff III	30 clock hours of instruction in approved core knowledge (CDA) subject areas	Minimum 1 year	Encouraged to participate in an early childhood professional organization
Child Care Staff IV	60 clock hours of instruction in approved core knowledge (CDA) subject areas	Minimum 1 year	Encouraged to participate in an early childhood professional organization
Child Care Assistant Teacher I	90 clock hours of instruction in approved core knowledge (CDA) subject areas	Minimum 1 year	Encouraged to participate in an early childhood professional organization
Child Care Assistant Teacher II	120 clock hours of instruction in approved core knowledge (CDA) subject areas	Minimum 1 year	Encouraged to participate in an early childhood professional organization
Child Care Teacher I	CDA credential In preschool or infant/toddler specialization or approved early childhood diploma	Minimum 1 year	Encouraged to participate in an early childhood professional organization
Child Care Teacher II	CDA credential or approved early childhood diploma and 9 CEU's or 2 early childhood college courses or 30 hours toward associate degree with 4 college courses in early childhood or child development or related associate degree	Minimum 2 years	Membership in an early childhood professional organization and service to the profession such as: committee or board membership, service as a CDA advisor or mentor, attendance at a professional conference or event, conference presentation, advocacy and leadership activities
Child Care Teacher III	Associate degree in early childhood or child development or related associate degree with 4 college courses in early childhood or child development or bachelor degree in early childhood or child development or related bachelor degree with 3 college courses in early childhood or child development	Minimum 2 years	Membership in an early childhood professional organization and service to the profession such as: committee or board membership, service as a CDA advisor or mentor, attendance at a professional conference or event, conference presentation, advocacy and leadership activities
Child Care Teacher IV	Bachelor degree in early childhood or child development of which 3 college courses focus on infants and toddlers or related bachelor degree with 6 early childhood or child development college courses of which 3 focus on infants and toddlers	Minimum 2 years	Membership in an early childhood professional organization and service to the profession such as: committee or board membership, service as a CDA advisor or mentor, attendance at a professional conference or event, conference presentation, advocacy and leadership activities
Child Care Master Teacher	Graduate degree in early childhood or child development or unrelated graduate degree with 4 early childhood or child development college courses	Minimum 2 years	Membership in an early childhood professional organization and service to the profession such as: committee or board membership, service as a CDA advisor or mentor, attendance at a professional conference or event, conference presentation, advocacy and leadership activities

D. Qualification for the School Readiness Tax Credit for child care directors and staff.

1. The Department of Social Services shall provide information necessary for the Secretary of the Department of Revenue to determine and/or verify the director and staff levels for earning the credit.

2. Child Care Director Levels

a. Directors who are classified as Director I by LA Pathways are classified as meeting Level I qualifications for purposes of this credit.

b. Directors who are classified as Director II by LA Pathways classified as meeting Level II qualifications for purposes of this credit.

c. Directors who are classified as Director III by LA Pathways are classified as meeting Level III qualifications for purposes of this credit.

d. Directors who are classified as Director IV by LA Pathways are classified as meeting Level IV qualifications for purposes of this credit.

3. Child Care Staff Levels

a. Staff members who are classified as Child Care Teacher I by LA Pathways are classified as meeting Level I requirements for purposes of this credit.

b. Staff members who are classified as Child Care Teacher II by LA Pathways are classified as meeting Level II requirements for purposes of this credit.

c. Staff members who are classified as Child Care Teacher III by LA Pathways are classified as meeting Level III requirements for purposes of this credit.

d. Staff members who are classified as Child Care Teacher IV or Child Care Master Teacher by LA Pathways are classified as meeting Level IV requirements for purposes of this credit.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474 and R.S. 47:6101 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 34:

**Family Impact Statement**

1. What effect will this Rule have on the stability of the family? This Rule establishes a system to encourage the professional career development of individuals employed in child care centers. Having better qualified teachers employed in child care centers is recognized as a key factor in providing higher quality of care. High quality early care and education supports strong families and successful children.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? Increasing the educational attainment of child care directors and teachers has been shown to result in better outcomes for children participating in child care. Having access to quality child care allows parents to enter the workforce and become successful and productive employees. Quality child care helps parents maintain the dual role of strong parents and productive employees.

4. What effect will this have on family earnings and family budget? High quality and stable child care help parents work and is essential for workforce stability.

5. What effect will this have on the behavior and personal responsibility of children? Research conducted at the National Center for Early Development and Learning at the Frank Porter Graham Child Development Institute at the University of North Carolina shows that the quality of child care is related to both the formal education levels and the specialized early childhood training of the classroom teachers. Further, studies showed that children who attended higher quality child care centers performed better in math and language skills, in social skills such as interactions with peers, and in transitioning into school from child care.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

All interested persons may submit written comments through, November 27, 2007, to Adren O. Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA, 70804-9065.

A public hearing on the proposed Rule will be held on Tuesday, November 27, 2007, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-129, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Ann S. Williamson  
Secretary

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

**RULE TITLE: Louisiana Pathways Child Care  
Career Development System**

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

The purpose of this proposed rule is to codify the existing educational and training criteria for childcare directors and staff, which will be used to administer the school readiness tax credit that was established in Act 394 of the 2007 Regular Legislative Session. Louisiana Pathways will continue to serve as the state practitioner registry and will provide the documentation required to claim the tax credit once the eligibility criteria has been met.

This rule only provides for the eligibility requirements to receive the tax credit but does not create the tax credit, therefore the only costs associated with this rule is \$160 for publishing the Notice of Intent and Final Rule in the Louisiana Register. The agency has sufficient funds to cover this cost.

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

This rule will have no affect on revenue collections of state or local governmental units.

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

This rule does not result in any costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Child care staff receiving higher levels of education or training may be able to obtain better employment opportunities within the child care industry.

Adren O. Wilson  
Assistant Secretary  
0710#046

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Treasury  
Board of Trustees of the Louisiana  
State Employees' Retirement System**

Election to Participate (LAC 58:I.3505)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") proposes to repeal LAC 58:I.3505, which would require eligible members to elect to participate in the Optional Retirement Plan within 90 days after being appointed. The repeal is being proposed because the Rule conflicts with R.S. 11:502.2. The proposed Rule repeal complies with and is enabled by R.S. 11:515. No preamble for this proposed Rule amendment has been prepared.

**Title 58  
RETIREMENT**

**Part I. Louisiana State Employees' Retirement System  
Chapter 35. Optional Retirement Plan  
§3505. Election to Participate**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1491 (July 2000), amended LR 29:1121 (July 2003), repealed LR 34:

**Family Impact Statement**

This proposed repeal 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.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., November 20, 2007, to Steve Stark, Board of Trustees for the Louisiana State

Employees' Retirement System, P.O. Box 44213, Baton Rouge, LA 70804.

Cindy Rougeou  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Election to Participate**

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

No implementation costs to state or local governmental units are anticipated to result from the implementation of this rule change.

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 to result from the implementation of this rule change.

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

No calculable effect on costs or benefits to non-governmental groups or persons is anticipated to result from the amendment of this rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment in the public or private sectors is anticipated to result from the proposed rule change.

Cindy Rougeou  
Executive Director  
0710#037

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Treasury  
Board of Trustees of the Louisiana  
State Employees' Retirement System**

Rollover of Refunds (LAC 58:I.113)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") proposes to adopt LAC 58:I.113, which would allow LASERS to require a minimum deposit amount for member contribution refunds rolled over to two different accounts. The proposed Rule adoption complies with and is enabled by R.S. 11:515. No preamble for this proposed Rule amendment has been prepared.

**Title 58  
RETIREMENT**

**Part I. Louisiana State Employees' Retirement System  
Chapter 1. General Provisions  
§113. Rollover of Refunds**

A. Qualified rollovers of accumulated employee contributions to be refunded may be made to two different accounts with a minimum of \$500 to each account. Refunds of funds totaling less than \$500 shall be limited to a single account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 34:

### **Family Impact Statement**

This proposed Rule 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.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., November 20, 2007, to Steve Stark, Board of Trustees for the Louisiana State Employees' Retirement System, P.O. Box 44213, Baton Rouge, LA 70804.

Cindy Rougeou  
Executive Director

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Rollover of Refunds**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
No implementation costs to state or local governmental units are anticipated to result from the implementation of this rule change.
- 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 to result from the implementation of this rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
No calculable effect on costs or benefits to non-governmental groups or persons is anticipated to result from the amendment of this rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No effect on competition or employment in the public or private sectors is anticipated to result from the proposed rule change.

Cindy Rougeou  
Executive Director  
0710#036

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

# Administrative Code Update

CUMULATIVE: JANUARY – SEPTEMBER 2007

LAC Title	Part.Section	Effect	Location LR 33 Month Page	LAC Title	Part.Section	Effect	Location LR 33 Month Page
4	V.Chapter 15	Amended	July 1314	28	CXXXI.225,231	Amended	May 821
	IX.303	Amended	May 844		CXXXI.240	Adopted	May 817
7	V.Chapter 23	Adopted	Mar. 422	CXXXI.305,309	Amended	Mar. 433	
	XIII.105, 207	Amended	Aug. 1609	CXXXI.311	Amended	Aug. 1618	
	XIII.Chapter 3	Adopted	June 990	CXXXI.314	Adopted	July 1338	
	XV.132	Adopted	Jan. 34	CXXXI.403	Amended	Feb. 280	
	XXIII.143	Amended	Sept. 1855	CXXXI.407, 409	Amended	Aug. 1616	
	XXV.101,105	Amended	Jan. 39	CXXXI.408	Adopted	Aug. 1616	
	XXIX.102, 117	Amended	Sept. 1854	CXXXI.408	Adopted	Feb. 281	
	XXIX.123	Repealed	Sept. 1854	CXXXI.410	Repromulgated	Aug. 1616	
	XXXV.501,503,505	Adopted	Jan. 34	CXXXI.659	Amended	Aug. 1617	
	XXXV.511	Adopted	Jan. 37	CXXXI.673	Amended	Aug. 1618	
10	XXXIX.1111,1113	Adopted	Feb. 249	CXXXI.703,705,707	Amended	May 817	
	III.1101, 1103	Adopted	Aug. 1628	CXXXI.703,705,707	Adopted	Jan. 44	
13	IX.Chapter 5	Adopted	Aug. 1629	CXXXIII.Chapters 1-31	Adopted	Jan. 44	
	III.303,311	Amended	Jan. 44	CXXXVII.Chapters 1-5	Adopted	July 1334	
16	III.Chapter 17	Adopted	Jan. 41	31	I.Chapter 5	Adopted	Sept. 1881
	III.701	Adopted	Mar. 466		I.Chapter 7	Adopted	Sept. 1880
22	I.313	Amended	May 851	32	III.701	Amended	Apr. 644
	I.340	Adopted	Apr. 665		III.701	Amended	June 1122
	I.1101	Adopted	May 855		V.701	Amended	Apr. 644
	I.Chapter 13	Adopted	Apr. 666		V.701	Amended	June 1122
	III.4771	Amended	Aug. 1627		IX.701	Amended	Apr. 644
25	XI.Chapter 5	Adopted	Feb. 249	IX.701	Amended	June 1122	
	28	III.Chapters 1-21	Adopted	Sept. 1856	33	I.Chapter 12	Adopted
IV.101,301,503		Amended	Mar. 439	I.1501,1503,1505		Amended	July 1341
IV.301,1103		Amended	Jan. 86	I.Chapter 18		Adopted	June 1013
IV.301,1903		Amended	July 1339	I.2001,2305		Amended	Jan. 88
IV.505		Amended	Jan. 83	I.3931		Amended	Apr. 640
IV.703,705,803,805		Amended	Mar. 435	III.506		Amended	Aug. 1621
IV.1301,2103,2105,2109,2303		Amended	Mar. 439	III.507, 2160, 3003		Amended	Aug. 1619
V.101,103		Amended	Mar. 435	III.Chapter 13		Adopted	May 821
V.221		Amended	July 1338	III.1502		Adopted	June 1010
VI.107,301,309,311		Amended	Mar. 443	III.1503,1507,1511,1513		Amended	June 1010
VII.101,103,113		Amended	Mar. 444	III.2103		Amended	Mar. 446
XXXIII.301,303,319,503,723		Amended	Apr. 636	III.2805-2813		Amended	Apr. 642
XXXIII.2001		Adopted	Apr. 636	III.5116, 5122, 5311, 5901		Amended	Aug. 1619
XLL.1301		Adopted	Mar. 434	V.105		Amended	Mar. 449
LXXIX.2301		Amended	May 817	V.106,199		Adopted	Mar. 449
LXXXIII.301,603,708		Amended	Mar. 423	V.109, 305, 323, 517, 2309, 3013		Amended	Aug. 1624
LXXXIII.307,409,515,703-707		Amended	Feb. 252	V.1107		Amended	Jan. 88
LXXXIII.1301,4313		Amended	July 1334	V.1107		Repromulgated	Feb. 281
LXXXIII.3905,4001,4527		Amended	Feb. 252	V.3099		Amended	Apr. 640
LXXXIII.4302		Adopted	Apr. 634	V.3719, 4339, 4357, 4501, 4901		Amended	Aug. 1624
LXXXIII.4302, 4313		Amended	Aug. 1611	V.4999		Amended	Mar. 445
LXXXIII.4310,4311,4315,4503		Amended	Apr. 634	V.4999		Amended	May 824
LXXXIII.4903,4905		Repealed	July 1334	V.4999		Amended	June 1015
XCVII.905		Amended	Mar. 434	V.5136		Repealed	Jan. 88
CXI.105-109,305-311,312		Amended	Feb. 255	V.5147		Adopted	Mar. 449
CXI.111,1801,2303-2323		Adopted	Feb. 255	V.11101,11103,11105		Adopted	May 859
CXI.305,1901		Amended	Mar. 424	V.Chapters 301-313		Amended	Mar. 466
CXI.313-315,501,511,2301		Amended	Feb. 255	V.30588		Adopted	Mar. 466
CXI.1701,2001		Amended	Feb. 265	VII.Chapters 1,3,5,7,9,11,30		Amended	June 1017
CXI.1703-1717,2003-2027		Adopted	Feb. 265	VII.105,313		Repealed	June 1017
CXI.1709-1719		Adopted	June 991	VII.109,110,114,505,520		Repromulgated	June 1017
CXI.1721-1729		Repromulgated	June 991	VII.112,117,401,403,405,407		Adopted	June 1017
CXI.1903-1917		Adopted	Mar. 424	VII.501,503,507,508,509,522		Adopted	June 1017
CXI.2701,3305,3307,3501		Amended	Feb. 255	VII.801,803,805,1301,1303,1305		Adopted	June 1017
CXI.3306,3509		Adopted	Feb. 255	VII.901,903,905,907,1401,1403		Repromulgated	June 1017
CXI.3306,3307		Amended	June 991	VII.1007,1009,3003,3013		Repealed	June 1017
CXV.337,1121		Amended	Mar. 429	VII.1399,3009,3017		Adopted	June 1017
CXV.349		Adopted	Aug. 1613	VII.1405,1501,1503,1505,3011		Repromulgated	June 1017
CXV.501		Amended	Mar. 431	VII.10505,10519,10521,10533		Amended	Jan. 89
CXV.2301,2319,2321,2357,2363		Amended	Mar. 429	IX.Chapter 11		Amended	May 826
CXV.2319		Amended	Mar. 432	IX.1105,1109,1113		Amended	Mar. 455
CXV.2347		Amended	May 817	IX.2301,4901,4903		Amended	Apr. 640
CXV.2373-2385,3113		Amended	Feb. 277	XI.401, 403		Adopted	Sept. 1866
CXV.2375		Amended	Feb. 276	XV.102,361,399		Amended	June 1016
CXV.2375, 2381, 2383, 2387		Amended	Aug. 1614	XV.322,399,607		Amended	Mar. 448
CXXXI.219,221,223	Amended	Mar. 432	XV.1517	Amended	Apr. 640		
				35	I.309	Amended	May 844
					I.1733	Amended	May 845
					I.1791	Amended	May 845
					I.1720	Amended	May 845

LAC Title	Part.Section	Effect	Location LR 33 Month Page	LAC Title	Part.Section	Effect	Location LR 33 Month Page
	XIII.11515,11517	Amended	Feb. 282		XV.6905	Adopted	June 1138
37	XIII.9511, 9519	Amended	Aug. 1661		XV.7701,7703,7707	Amended	Apr. 651
	XIII.Chapter 101	Amended	Jan. 101		XXI.11303, 11527, 12101	Amended	Sept. 1871
37	XIII.Chapter 115	Adopted	Aug. 1662	50	XXI.13701, 13931, 13933, 13935	Repealed	Aug. 1647
	XIII.Chapter 119	Adopted	Mar. 464		XXI.14301	Adopted	Aug. 1647
	XIII.Chapter 121	Adopted	Sept. 1872		XXVII.571	Adopted	Mar. 462
					XXIX.971,981	Repealed	Jan. 100
40	I.Chapters 55 and 57	Amended	Apr. 652	51	II.503,505	Amended	Jan. 93
	I.5809-5813,5817-5819	Amended	Apr. 652		III.101-111,303	Amended	Apr. 650
	I.5815,5824,5927	Adopted	Apr. 652		IX.305,323	Amended	May 849
	I.5831,5835,5901,5905,5909	Amended	Apr. 652		XXIII.305,1307,1311	Amended	May 848
	I.5933,5955,5961,5963	Amended	Apr. 652		XXIII.501,505,1301	Amended	May 850
	I.6001-6007,6209-6211	Amended	Apr. 652		XXIII.1901,1911,3505	Amended	May 848
	I.6009,6201	Repealed	Apr. 652				
	I.Chapters 61,63,65,66	Amended	Apr. 652	55	V.103,303	Amended	Apr. 671
					V.519	Adopted	Apr. 645
42	VII.2325,2927	Amended	May 856		V.Chapter 30	Amended	Aug. 1665
	VII.4203	Amended	Mar. 488		V.3021, 3031	Adopted	Aug. 1665
	IX.2919,4103	Amended	May 856		V.Chapter 50	Adopted	July 1350
	XI.2407	Amended	May 856		VI.Chapters 1-11	Adopted	Feb. 290
	XIII.2325,2927	Amended	May 856		VI.505	Adopted	Aug. 1683
					VI.703	Amended	Aug. 1683
					VI.905	Adopted	July 1369
43	XIII.Chapters 3-5,9-15,2103	Amended	Mar. 473		VII.324	Adopted	Aug. 1685
	XIII.2142	Adopted	Mar. 473		VII.327	Adopted	Aug. 1684
	XIII.Chapters 27-33,51,61-63	Amended	Mar. 473		IX.Chapters 1 and 15	Amended	June 1139
	XIX.Chapter 3	Amended	Aug. 1653		XXI.Chapters 1 and 3	Adopted	Apr. 645
	XIX.Chapter 6	Adopted	Apr. 660	56	III.901	Adopted	Mar. 535
46	V.Chapters 27-36, 44, 47, 48	Amended	Aug. 1632	58	I.301,501	Amended	June 1151
	V.2801, 4710	Adopted	Aug. 1632		I.1101,1103	Amended	Apr. 676
	V.3301-3305	Repealed	Aug. 1632		I.2301	Amended	Jan. 112
	XXXI.309, 321, 701	Amended	Aug. 1628		I.3519	Repealed	Apr. 676
	XXXIII.306,415,419,706,710	Amended	May 846		I.4131	Amended	June 1150
	XXXIII.1506	Amended	May 846		XXIII.4501,4503	Adopted	Jan. 113
	XXXVII.1109	Adopted	Feb. 283		III.101	Amended	June 1151
	XLI.531	Amended	Feb. 283		V.1305	Amended	July 1343
	XLV.402,403,405	Amended	July 1343	61	I.1122	Amended	Feb. 295
	XLV.412	Adopted	Jan. 91		I.1140	Amended	May 860
	XLV.Chapter 74	Adopted	Aug. 1638		I.1401	Amended	May 861
	XLVII.901	Amended	Sept. 1869		I.2903	Repromulgated	Sept. 1876
	XLVII.927, 929, 931, 933	Amended	Sept. 1868		I.4351	Amended	Sept. 1877
	XLVII.1705	Amended	Jan. 92		I.5302	Amended	May 860
	XLVII.3328	Adopted	Mar. 460		III.2115	Adopted	Jan. 111
	XLVII.3329	Amended	Mar. 460		V.101,307,309,703,901,907,1103	Amended	Mar. 489
	XLVII.3515	Amended	June 1123		V.705	Adopted	Mar. 489
	XLVII.4513	Amended	Sept. 1870		V.1307,1503,2501,2503	Amended	Mar. 489
	LIII.343,351,505,507,519,705	Amended	June 1124		V.2907	Repealed	Mar. 489
	LIII.361,514,523,707	Adopted	June 1124		V.3101,3103,3105	Amended	Mar. 489
	LIII.1101,1115,1135,1503,1505	Amended	June 1124		V.3106,3107	Adopted	Mar. 489
	LIII.1117	Repealed	June 1124		V.Chapter 35	Amended	Mar. 489
	LIII.1139,1141,1525	Adopted	June 1124		V.3701,3702	Adopted	Mar. 489
	LIII.1707,1907,2307	Amended	June 1124	67	III.401-409	Amended	Sept. 1878
	LIII.2519,2523,2543,2549	Amended	June 1124		III.901	Adopted	Sept. 1878
	LIII.Chapter 29	Adopted	July 1345		III.1227, 1247, 5727	Amended	Aug. 1686
	LIII.3301	Repromulgated	July 1345		III.2303	Amended	Mar. 508
	LVII.517	Amended	Apr. 665		III.2512	Amended	Sept. 1879
	LXIII.403	Amended	Mar. 458		III.2523	Adopted	Mar. 508
	LXIII.Chapter 6	Adopted	Apr. 647		III.2547	Adopted	Apr. 675
	LXIII.900	Adopted	Apr. 648		III.5103,5107,5109	Amended	Mar. 506
	LXIII.901	Amended	Apr. 648		III.5581	Amended	Apr. 675
	LXIII.Chapter 10	Adopted	Mar. 459		III.5589	Adopted	Apr. 674
	LXXX.501	Adopted	Apr. 648		III.5801-5805	Adopted	Apr. 674
	LXXXV.Chapter 4	Amended	Apr. 648		V.2301	Adopted	Aug. 1685
	LXXXV.Chapter 4	Repromulgated	May 847		VII.Chapter 11	Amended	June 1145
48	I.4001	Amended	Jan. 100	70	I.1101	Adopted	Mar. 533
	I.Chapter 92	Amended	Jan. 95		III.127,134,135,139,141,143	Amended	Mar. 530
	I.9469,9515	Amended	Feb. 284		IX.101	Amended	Mar. 510
	I.9517-9521	Repealed	Feb. 284		IX.301-317,501-599,601-705	Repealed	Mar. 510
	I.9734	Adopted	July 1350		IX.901-909,911-937,1101-1111	Amended	Mar. 510
	I.16101	Repromulgated	June 1135		IX.911-917	Repealed	Mar. 510
	I.16103-16121	Amended	June 1135		XVII.501,505,513,525-533	Adopted	July 1370
50	I.2915	Adopted	June 1139		XVII.503,507-511,515-523	Amended	July 1370
	I.8341-8349	Adopted	Mar. 463		XVII.535-537,541-549,557-553	Amended	July 1370
	VII.1310	Adopted	Aug. 1646		XVII.539,551-555,561-565	Adopted	July 1370
	VII.1312	Adopted	July 1349		XVII.567,579	Amended	July 1370
	VII.32901,32903	Amended	Mar. 461	72	I.Chapter 3	Adopted	Mar. 509
	IX.305	Adopted	Mar. 462		I.Chapter 5	Adopted	Mar. 510
	XV.6901	Adopted	June 1138				
	XV.6903	Amended	June 1138				

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73	I.1201,1216	Amended	May	863
76	I.312	Adopted	July	1396
	III.335	Adopted	Mar.	538
	III.335	Amended	Sept.	1882
	V.115	Amended	June	1152
	V.123	Amended	Feb.	297
	V.129	Adopted	Sept.	1882
	V.321	Amended	June	1151
	V.323	Adopted	Aug.	1687
	V.701	Amended	Apr.	677
	V.701	Amended	Apr.	677
	VII.137	Amended	May	865

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	VII.329	Amended	May	864
	VII.335	Amended	June	1156
76	VII.335	Repromulgated	July	1397
	VII.367	Amended	Jan.	113
	VII.505	Amended	July	1397
	VII.521	Adopted	Feb.	297
	VII.1101	Adopted	Mar.	536
	XI.103	Amended	Mar.	537
	XI.303	Adopted	Jan.	114
	XIX.101,103	Amended	July	1399
	XIX.103	Amended	Jan.	115
	XIX.111	Amended	July	1382



# Potpourri

## POTPOURRI

### Department of Economic Development Office of Business Development Office of Entertainment Industry Development

Public Hearing—Substantive Changes  
Motion Picture Production and Infrastructure  
Tax Credit Programs  
(LAC 61:I.Chapter 16)

The Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, pursuant to the authority of R.S. 47:6007 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., published a Notice of Intent on pages 681-687 of the April 2007 *Louisiana Register* to establish standards for Louisiana Entertainment Industry Tax Credit Programs, specifically the Motion Picture Production and Infrastructure Tax Credit Programs. After considering all comments and requests, the Office of Entertainment Industry Development subsequently published a substantive hearing notice on pages 1562-1567 of the July 2007 *Louisiana Register*, and now due to comments from that hearing proposes the following revisions.

In accordance with R.S. 49:968(H)(2), a meeting for the purpose of receiving the presentation of oral comments will be held on November 28, 2007 at the Department of Economic Development, 1051 N. Third St., Baton Rouge, LA.

Interested persons should submit written comments on the proposed changes to Christopher Stelly through the close of business on November 9, 2007, at Post Office Box 94185, Baton Rouge, LA 70804-9185 or 1051 North Third Street, Baton Rouge, LA 70802. Comments may also be submitted by email to [cstelly@la.gov](mailto:cstelly@la.gov) or by fax to (225) 342-5554.

#### Title 61

#### REVENUE AND TAXATION

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

#### Chapter 16. Louisiana Entertainment Industry Tax Credit Programs

#### Subchapter A. Louisiana Motion Picture Investor Tax Credit Program

#### §1601. Purpose and Description of Louisiana Motion Picture Investor Tax Credit Program

A. The purpose of this program is to encourage the development in Louisiana of a strong capital and infrastructure base for motion picture film, videotape, digital, and television program productions, in order to achieve an independent, self-supporting industry in this state, and to encourage development of a Louisiana film, video, television and digital production and post-production infrastructure with state-of-the-art facilities.

B. Approvals of applications shall not result in a duplication of tax credits for the same assets. The tax credit granted for qualified expenditures on tangible assets shall

not, in the aggregate, exceed the maximum applicable tax credit rate multiplied by the acquisition cost of the asset, as reflected in the first approved application for an investor tax credit.

#### C. General Description of the Louisiana Motion Picture Investment Tax Credit

1. Louisiana Motion Picture Investment Tax Credit. The Louisiana Motion Picture Investment Tax Credit is comprised of a percentage of an investor's base investment made and expended in the state in either a state-certified production or, for applications received prior to August 1, 2007, a state-certified infrastructure project.

2. Infrastructure Portion of the Investment Tax Credit. Additionally, for applications received prior to August 1, 2007, each taxpayer whose base investment totals greater than \$300,000 will be allowed an additional credit of 15 percent of the base investment, for an overall total of 40 percent, made by that taxpayer that is expended on a state-certified infrastructure project.

3. Infrastructure Portion of the Investment Tax Credit. For applications received after August 1, 2007, and until January 1, 2009, each taxpayer whose base investment totals greater than \$300,000 will be allowed a credit of 40 percent of the base investment made by that taxpayer that is expended on a state-certified infrastructure project.

4. Payroll Portion of the Investment Tax Credit. Finally, each investor whose base investment includes expenditures on payroll for Louisiana residents employed in connection with a state-certified production shall be allowed an additional credit of 10 percent of such payroll.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue, the Department of Economic Development, Office of Business Development, and the Office of Entertainment Industry Development, LR 33:

#### §1602. Definitions

A. The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

*Allocatee*—an individual or entity that received an allocation of investment tax credits.

*Allocator*—an individual or entity that makes an allocation of investment tax credits.

*Base Investment*—the actual investment made and expended by:

a. a state-certified production in the state as production expenditures incurred in this state that are directly used in state-certified production or productions;

b. a person in the development of a state-certified infrastructure project. Infrastructure expenditures shall include, but are not limited to, expenditures for infrastructure project development, film and television production spaces, post-production equipment, facilities, equipment for distribution companies domiciled within Louisiana, transportation equipment, land acquisition and closing costs, construction costs, design and professional

consulting fees associated with the state-certified infrastructure project, furniture, fixtures, equipment, and financing costs. Infrastructure expenditures shall not include indirect costs, any amounts that are later reimbursed by a third party, any costs related to the allocation or transfer of tax credits, or any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the state-certified infrastructure project.

*Commissioner*—the Commissioner of the Division of Administration.

*Department*—the Louisiana Department of Economic Development, or its successor.

*Developer*—a person in the development of a state-certification infrastructure project.

*Director*—the director of the Louisiana Office of Entertainment Industry Development (the Office).

*Division*—the Division of Administration. Expended by a state-certified production in the state, for purposes of R.S. 47:6007(B)(1), shall mean:

- a. in the case of tangible property, property which is acquired from a source within the state;
- b. and in the case of services, shall mean procured from within the state and performed in the state;
- c. that are provided by an individual or entity duly qualified to do business in Louisiana and offering such goods or services for sale or lease.

*Louisiana Resident*—residency shall be established if in exchange for employment with a motion picture production company the individual agrees in writing to file a Form IT 540, as a full year Louisiana resident, or Form IT 540B, as a part year resident, for his taxable year employed by the motion picture production company and to pay the Louisiana income tax shown thereon. *Resident* or *resident of Louisiana*—a natural person and, for the purpose of determining eligibility for the tax incentives, any person domiciled in the state of Louisiana and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than six months of each year within the state.

*Non-Allowable Production Expenditures*—the following expenses are not eligible to earn tax credits:

- a. overhead and similar expenses, do not qualify as production expenditures unless the expenditures were incurred in Louisiana and directly used in a state-certified production;
- b. the costs of the independent audit as required by law is not an allowable expense;
- c. the application fee as required by law is not an allowable expense;
- d. post production expenditures for marketing and distribution are not allowable expenses;
- e. any indirect costs are not allowable expenses;
- f. any amounts that are later reimbursed are not allowable expenses;
- g. any costs related to the transfer of tax credits are not allowable expenses;
- h. any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production are not allowable expenses.

*Office*—the Office of Entertainment Industry Development.

*Payroll*—shall include all salary, wages, and other compensation, including related benefits sourced or apportioned to Louisiana.

*Payroll Expended on Louisiana Residents*—for the purposes of the additional 10 percent tax credit, shall mean the gross amount of wages and salaries as reflected on Form W-2 (the amount listed on Item 1 of Form W-2—wages, tips and other compensation) and the amount listed on Form 1099 that is actually paid to a Louisiana resident for services performed in Louisiana.

*Primary Investments*—for infrastructure projects, shall mean investments in facilities or equipment acquired or constructed for complete and exclusive use in the production or postproduction activities associated with the making of films, videos, television or video productions.

*Production Expenditures*—preproduction, production and postproduction expenditures directly incurred in this state that are directly used in a state-certified production, including without limitation the following:

- a. set construction and operation;
- b. wardrobes, make-up, accessories, and related services;
- c. costs associated with photography and sound synchronization, lighting, and related services and materials;
- d. editing and related services;
- e. rental of facilities and equipment;
- f. leasing of vehicles;
- g. costs of food and lodging;
- h. digital or tape editing, film processing, transfer of film to tape or digital format, sound mixing, special and visual effects (if services are performed in Louisiana);
- i. total aggregate payroll (limited to the amount of total payroll expended in Louisiana and which is taxable to the recipient in Louisiana. A Louisiana tax return is required to be filed reflecting the amount of compensation paid while the recipient is located in Louisiana. If the recipient is not a Louisiana resident, then a non-resident income tax return should be filed);
- j. music, if performed, composed or recorded by a Louisiana musician, or released or published by a Louisiana-domiciled and headquartered company;
- k. airfare, if purchased through a Louisiana-based travel agency or travel company;
- l. insurance costs or bonding, if purchased through a Louisiana-based agency;
- m. payments to a loan-out or personal services corporation for the services of an out-of-state hire are allowed if the employer deducts and withholds Louisiana income taxes on the taxable wage payments made to the employee;

*Production Facility*—a physical facility that provides the goods and services necessary for completing the major activities of motion picture production.

*Secondary Investments*—for infrastructure projects, shall mean any assets that are not primary investments and shall include all assets having uses other than supporting a state of the art production facility.

*Secretary*—the Secretary of the Department of Economic Development.

*State-Certified Infrastructure Project*—an infrastructure project that meets the definition of a production facility and is approved by the Office of Entertainment Industry Development, the Department of Economic Development and the Division of Administration. The term *infrastructure project* shall not include movie theaters or other commercial exhibition facilities.

*State-Certified Production*—production approved by the Office of Entertainment Industry Development and the Department of Economic Development produced by a motion picture production company domiciled and headquartered in Louisiana which has a viable multi-market commercial distribution plan.

*Transferee*—an individual or entity that receives a transfer of investor tax credits.

*Transferor*—an individual or entity that makes a transfer of an investor tax credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue, the Department of Economic Development, Office of Business Development, and the Office of Entertainment Industry Development, LR 33:

#### **§1603. Application for the Motion Picture Investor Tax Credit**

A. An applicant for the motion picture investor tax credit shall submit an application for initial certification to the Office of Entertainment Industry Development that includes all of the information required by R.S. 47:6007(D)(2)(a); and an application fee payable to the Department of Economic Development or the state of Louisiana shall be submitted with the application determined as provided in R.S. 47:6007(D)(2)(b).

B. Rules of Application. The investor tax credit authorized by R.S. 47:6007(C)(1) may be earned, transferred, allocated, and claimed as follows.

1. Individuals or entities (other than motion picture production companies) may earn investor tax credits pursuant to R.S. 47:6007(C)(1).

2. The tax credits cannot be applied against a tax or transferred until the expenditures have been audited by an independent Louisiana licensed certified public accountant and certified by the department, office and, in the case of infrastructure projects, the division.

3. Once investor tax credits are earned by an individual or entity, such individual or entity and any subsequent transferee may transfer or allocate the investor tax credits in one or more of the following ways:

a. transfer—by transferring or selling all or a portion of the investor tax credits to any individual or entity; or

b. allocation—if the investor tax credits are earned by, or allocated or transferred to, an entity not taxed as a corporation, the entity may allocate the credit by issuing ownership interests to any individuals or other entities on such terms that are agreed to by the relevant parties and in accordance with the terms of the allocating entity's operating agreement or partnership agreement. These terms may result in the allocation of up to 100 percent of the investor tax

credits to any individual or entity regardless of the federal tax treatment of the allocation.

i. The allocating entity:

(a) may be treated as a "partnership" for federal or state tax purposes; or

(b) may be treated as an entity that is disregarded as an entity separate from its owners for federal or state tax purposes, and in which case, each holder may agree that it will not treat the allocating entity as a "partnership" or itself as a "partner" or the ownership interest in the allocating entity as a "partnership interest" for federal tax or state tax purposes.

4. A state-certified production or a state-certified infrastructure project earns tax credits at the time the qualifying expenditures are made pursuant to these rules. However, credits can not be applied against a tax or transferred until the expenditures are certified by the Department of Economic Development, the Office of Entertainment Industry Development and in the case of infrastructure tax credits, also by the Division of Administration.

5.a. An owner of tax credits may apply the credits to offset an outstanding Louisiana income tax liability for any tax year beginning in the year that the investor initially earned the tax credit or in any year thereafter within the 10-year carryforward period.

b. In the case of tax credits owned (held) by an entity not taxed as a corporation, the credits shall be deemed to flow through or be allocated to partners or members at the end of the tax year in which the entity acquired the credits unless the partnership or membership agreement provides specifically for an earlier distribution during the tax year.

6. Any individual or entity shall be allowed to claim the investor tax credit authorized by R.S. 47:6007(C)(1) against its Louisiana income tax liability:

a. whether or not any such individual is a Louisiana resident; and

b. whether or not any such entity is domiciled in Louisiana, organized under Louisiana law, or headquartered in Louisiana.

7. An investor tax credit, in the hands of the taxpayer that earned the credit or received it by flow-through, cannot be used to eliminate any penalties and interest on overdue income taxes from prior tax years. However, an investor tax credit that is purchased is treated as property and can be applied to penalties and interest on overdue income taxes from prior tax years pursuant to R.S. 47:1675(H)(1)(c). Penalties and interest will continue to accrue until the taxes on which such penalties and interest are accruing are paid. The date of payment is the date that the Louisiana Department of Revenue receives a return from a taxpayer on which the investor tax credits are claimed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue, the Department of Economic Development, Office of Business Development, and the Office of Entertainment Industry Development, LR 33:

#### **§1604. Certification of Investor Tax Credits**

A. Preliminary Certification. The office and the department shall issue preliminary certifications of productions and the office, department and the division shall

issue preliminary certifications for infrastructure projects. A preliminary certification shall be issued as follows.

1. State-Certified Production. To obtain the preliminary certification from the office and the department for a "state-certified production" as required by R.S. 47:6007(B)(9) and (10), the applicant must submit a written request to the director and the secretary of the department requesting approval of the production as a "state-certified production" and setting forth the following information:

a. working title of the production which approval is requested. Should the title change, the state-certified production needs to inform the office as soon as that change is made;

b. name of the requesting production company;

c. name, telephone number, e-mail address and attesting signature of the requesting production company's contact person;

d. approximate beginning and ending date of production in Louisiana;

e. Louisiana office address;

f. telephone number of requesting company's Louisiana office address;

g. estimated total production-related costs of production for which approval is requested;

h. estimated total amount of production-related costs to be expended in Louisiana in connection with the production for which approval is requested;

i. estimated percentage of each of pre-production, production, and post-production work to be performed in Louisiana in connection with the production for which approval is requested;

j. estimated total payroll to be paid by the requesting production company to Louisiana residents employed by the requesting production company in connection with the production for which approval is requested, excluding any employee to be paid in excess of \$1,000,000;

k. a preliminary budget including the estimated Louisiana payroll and estimated in-state investment;

l. for production seeking approval, a copy of script (including synopsis) will be made available to OEID and subsequently returned to the applicant;

m. list of principal creative elements such as principal cast, producer, director, and music supervisor; and

n. facts sufficient for the office and the department to determine each of the following:

i. that the requesting production company is a motion picture production company as defined in R.S. 47:6007(B)(5);

ii. that the requesting production company is domiciled and headquartered in Louisiana; and

iii. that the requesting production company has either a viable multi market distribution plan or a signed distribution agreement with either a major theatrical exhibitor, television network or cable television programmer for distribution of the production for which approval is requested.

2. State-Certified Infrastructure Project. To obtain the preliminary certification from the office, the department and

the division for a "state-certified infrastructure project" as required by R.S. 47:6007(B)(9) and (10), the applicant must submit a written request to the director, the secretary of the department and the commissioner of the division requesting approval of the project as a "state-certified infrastructure project" and setting forth the following information:

a. working title of the infrastructure project for which approval is requested;

b. name of the requesting infrastructure company;

c. name, telephone number, e-mail address and attesting signature of the requesting infrastructure company's contact person;

d. approximate beginning and ending date of construction in Louisiana;

e. Louisiana office address;

f. telephone number of requesting company's Louisiana office address;

g. estimated total project-related costs or total costs associated with the infrastructure project for which approval is requested;

k. a preliminary operating budget including the estimated Louisiana payroll and estimated in-state investment;

l. a detailed business plan outlining the exact costs of what is proposed for the project;

m. total number of jobs to be created by the infrastructure project.

3. Any applicant requesting certification of a production or an infrastructure project is required to reimburse the Office of Entertainment Industry Development and the Department of Economic Development for any additional audits required in relation to granting the credit.

4. The office and the department shall issue their written approval of a project as a "state-certified infrastructure project" or of a production as a "state-certified production" after receiving a complete application, all supporting documents necessary to make a determination and the application fee with respect to such project or production that complies with these Rules. In the alternative, if the office and the department determine that a request for approval of a project as a "state-certified infrastructure project" or of a production as a "state-certified production" received from a developer or production company is not in compliance with these rules, after receiving such request, the office and the department shall request in writing from the requesting developer or production company any information necessary in their determination for such request to comply with these rules. Upon receiving all of the requested additional information in writing from the developer or production company, and if the office and the department determine that the request for approval with respect to such project or production complies with these rules, the office and the department shall issue to the requesting developer or production company their written approval of the project as a "state-certified infrastructure project" or of a production as a "state-certified production."

5. For state-certified productions, the initial certification shall be effective for a period 12 months prior to and 12 months after the date of initial certification, unless

the production has commenced, in which case the initial certification shall be valid until the production is completed.

**B. Certification of Expenditures and Audit Requirements**

1. Prior to any certification of the expenditures of a state-certified production or state-certified infrastructure project and the issuance of any investor tax credits, the motion picture production company, with respect to state-certified productions, and the developer, with respect to state-certified infrastructure projects, shall submit to the Office of Entertainment Industry Development a cost report of production expenditures or infrastructure expenditures audited and certified by an independent certified public accountant as determined this rule. Either the Department of Economic Development or the Department of Revenue may audit the cost report submitted by the motion picture production company or developer. The following procedures set forth minimum standards for acceptability of the audit to be performed by a certified public accountant. The certified public accountant's report shall at a minimum, meet the following requirements.

a. The auditor auditing the report shall be a Certified Public Accountant licensed in the State of Louisiana and shall be an independent third party, not related to the producer or developer or any known potential investor eligible for tax credits nor shall the CPA be engaged in the active role of obtaining the credits for themselves or their clients from any production they are auditing.

b. The auditor's opinion must be addressed to the party who has engaged the auditor (e.g., Directors of the production company or developer, or the producer of the production).

c. The auditor's name, address, and telephone number must be evident on the report.

d. The auditor's opinion must be dated as at the completion of the audit fieldwork.

e. The audit shall be performed in accordance with auditing standards generally accepted in the United States of America.

f. The auditor shall have demonstrated sufficient knowledge of accounting principles and practices generally recognized in the motion picture industry.

2. After receiving a written request from an investor for certification of expenses and upon certification of the expenditures by the Office of Entertainment Industry Development, the Department of Economic Development and the Division of Administration (for infrastructure tax credits), the office shall issue one original tax credit certification letter of such investor signed by the director reflecting the investor's name, the dollar amount of investor tax credits earned by the investor pursuant to R.S. 47:6007(C) through the date of such request, the calendar or fiscal year in which the investor tax credits were earned by the investor, the state-certified infrastructure project or the state-certified production with respect to which the investor earned the investor tax credits, and the identifying number assigned to such state-certified infrastructure project, or state-certified production.

3. If the investor tax credits evidenced by a tax credit certification letter are allocated, sold or transferred or allocated as provided herein, then concurrently with the submission of the notification required by R.S.

47:6007(C)(4), the transferor shall submit to the office the original certificate of ownership evidencing the investor tax credits being transferred or allocated. After receiving the original certificate of ownership evidencing the investor tax credits being transferred or allocated, the office shall issue to each transferee or allocatee indicated in the transferor's or allocator's notification a certificate of ownership signed by the director reflecting such transferee's or allocatee's name, the dollar amount of investor tax credits transferred or allocated to the transferee or allocatee, the calendar year in which the investor tax credits were originally earned by an investor pursuant to R.S. 47:6007(C), the state-certified infrastructure project or the state-certified production with respect to which such investor earned the investor tax credits, and the identifying number assigned to such state-certified infrastructure project or state-certified production. If the certificate of ownership that the transferor or allocator submits with its notification of transfer or allocation evidences more investor tax credits than actually transferred or allocated by the transferor or allocator, then the office shall also issue a certificate of ownership to the transferor or allocator signed by the director reflecting the transferor's or allocator's name, the transferor's or allocator's remaining investor tax credit balance, the calendar or fiscal year in which the investor tax credits were originally earned by an investor pursuant to R.S. 47:6007(C), the state-certified production with respect to which such investor earned the investor tax credits, and the identifying number assigned to such state-certified production. Any person or entity engaged in the business of buying and reselling tax credits may elect to maintain its certificate of ownership on file with the office, such that it need not surrender, and have reissued, its certificate of ownership each time it sells a tax credit. In such cases, the office will issue comportsing certificates of ownership to transferees or allocates designated by the transferor or allocator in writing until such time as the tax credits represented in the transferor's or allocator's original certificate have been exhausted.

4. Any taxpayer claiming investor tax credits against its Louisiana income tax liability shall submit to the Louisiana Department of Revenue with its Louisiana income tax return for the year in which the taxpayer is claiming the investor tax credits, an original certificate of ownership issued by the office pursuant to this rule evidencing the dollar amount of the investor tax credits being claimed; provided, however, if a taxpayer is claiming an amount of investor tax credits less than that evidenced by the certificate of ownership, then, concurrently with filing its Louisiana tax return, such taxpayer shall request that the office issue to it a certificate of ownership evidencing the amount of investor tax credits to be claimed and a certificate of ownership evidencing the balance of such taxpayer's investor tax credits. After receipt of such request, the office shall issue the certificates of ownership signed by the director reflecting, in addition to the amount of investor tax credits, the taxpayer's name, the calendar or fiscal year in which the investor tax credits were originally earned by an investor pursuant to R.S. 47:6007(C), the state-certified production with respect to which such investor earned the investor tax credits, and the identifying number assigned to such state-certified production.

5. The failure of the office to issue a timely certificate of ownership in accordance with this rule shall not:

a. void or otherwise affect, in any way, the legality or validity of any transfer of investor tax credits;

b. prohibit any Louisiana taxpayer from claiming investor tax credits against its Louisiana income tax liability if the investor tax credits are otherwise transferred or claimed in accordance with R.S. 47: 6007 and these Rules; or

c. result in any recapture, forfeiture or other disallowance of investor tax credits under R.S. 47:6007(E) or (F) or otherwise.

6. Beginning January 1, 2006, for state-certified productions, expenditures shall be certified no more than twice during the duration of a state-certified production unless the motion picture production company submits a fee of \$250 per additional certification to the office of Entertainment Industry Development and the Department of Economic Development for the costs of any additional certifications.

C. In the event that an application for initial certification or request for certification of the credits is denied:

1. the department, office and, in the case of infrastructure projects, the division shall promptly provide written notice of such denial to the Senate Committee on Revenue and Fiscal Affairs and the House Committee on Ways and Means;

2. whereupon an application or certification is denied, an applicant may appeal that decision to the Administrative Law Judge in accordance with R.S. 49:992 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue, the Department of Economic Development, Office of Business Development, and the Office of Entertainment Industry Development, LR 33:

#### **§1605. Base Investment Calculation**

A. For purposes of R.S. 47:6007(C)(1), the total base investment shall be calculated by including all amounts expended in the state constituting base investment.

B. For state certified productions, if each such investment constituting a base investment is made within the period beginning 12 calendar months before and ending 12 calendar months after the date as of which the state-certified production for which base investment is being calculated was approved as a state-certified production, unless the production has commenced, in which case the initial certification shall be valid until the production is complete. However, no state-certified production expenditure shall be attributed to more than one production (or in the case of tangible assets built exclusively for a single production, the asset shall only be allowed as an expenditure once regardless of if it is obtained by a company in the development of an infrastructure project.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue, the Department of Economic Development, Office of Business Development, and the Office of Entertainment Industry Development, LR 33:

#### **§1606. Infrastructure Portion of the Investor Tax Credit**

A. For infrastructure projects, the department, office and division may grant Investor tax credits for multiple purpose immovable and moveable assets as provided by this Section.

1. As stated in Subsection A of §1601 and with the intent of Act 456 of the 2007 regular session as expressed in R.S. 6007(D)(1), infrastructure project tax credits are granted to encourage development of a strong industry base for motion picture production. Consistent with this intent and purpose stated in Section 4 of Act 456 of the 2007 regular session, the department, the office and the division may grant tax credits only for infrastructure projects directly related to the acquisition and construction of a film, video, television or video production or postproduction facility and shall not grant credits for any infrastructure project or investment in assets such as a hotel or lodging facility, golf course, or retail shopping facility or other facility which the division of Administration and the Department of Economic Development deems unrelated to the acquisition and construction of a film, video, television, or video production or postproduction facility. However, for any applicant requesting approval as a state-certified infrastructure project that includes secondary investments, the certification shall include and shall state terms and conditions as provided by Paragraphs 2 and 3 of this Subsection.

2. The department, office and division may determine that real property or fixed assets having uses other than supporting a state of the art production facility may be a necessary component of a state-certified infrastructure project. In instances where applications include such multiple purpose real property or other fixed assets, the department, office and division shall require the applicant to provide assurances that such assets will exclusively support the approved film infrastructure project and that the applicant will not divert the use of the assets to purposes that do not promote or provide for the productions within the state of Louisiana. Such assurances shall be secured by appropriate agreements, including, but not limited to, a requirement of approval prior to sale of such assets; a requirement for a minimum number of years before such assets may be transferred to a different owner; limitations on transferability of the tax credits for current or future holders, a reserve fund that may be re-captured by the state; and/or a structured release of tax credits.

3. The department, office and division may require assurances of the applicant for a state-certified infrastructure project that moveable assets shall remain in Louisiana and be used in the production of motion pictures or other visual media productions within the state of Louisiana for not less than 80 percent of the asset's useful life. Such assurances shall be secured by appropriate agreements, including, but not limited to, a requirement of approval prior to sale of such assets; a requirement for a minimum number of years before such assets may be transferred to a different owner; limitations on transferability of the tax credits for current or future holders, a reserve fund that may be re-captured by the state; and/or a structured release of tax credits.

4. Secondary investments shall be deemed unrelated to the acquisition or construction of a production or post production facility. If any of these four criteria are met, the entire amount addressed by that criterion shall be deemed an unrelated investment and shall not be eligible for tax credit.

a. The total value of the secondary assets, excluding land and general infrastructure improvements, comprises 10 percent or more of total investment in project's total value;

b. The total value of any secondary assets designated as a single functional component exceeds 3 percent of the project. For purposes of this criterion, a single functional component is any set of assets that can function as a business enterprise independently of the project's production or postproduction facilities. Examples of a single functional component include, but are not limited to hotels, lodging facilities including residential housing, or general purpose office buildings, including supporting facilities, such as parking lots.

c. General infrastructure improvements (drainage, roads, sewer, utilities or other basic improvements) comprise 15 percent or more of a project's total value that are primary investments.

d. Land that exceeds more than 15 percent of a project's total value.

5. Golf courses are not eligible.

6. Retail shopping facilities are not eligible.

7. Any conditions to meet the requirements to this sub-section shall be explicitly stated in the certification issued for the project.

B. For infrastructure applications received prior to August 1, 2007.

1. The applicant shall have 24 months from the date of approval of the rules or January 1, 2008, whichever is earlier, in which to qualify for the 40 percent tax credits earned on expenditures.

2. Tax credits on infrastructure projects shall be considered earned in the year in which expenditures were made, provided that a minimum of 20 percent or \$10,000,000 of the total base investment provided for in the initial certification that is unique to film production infrastructure shall be expended before infrastructure tax credits can be earned on expenditures.

3. The payment of tax credits may extend beyond or be made after the year expenditures are made.

C. For infrastructure applications received after August 1, 2007, and before January 1, 2009:

1. the tax credit shall be equal to 40 percent of the base investment expended in this state on projects, which are in excess of \$300,000;

2. the total tax credit allowed shall not exceed \$25,000,000;

3. an infrastructure project shall be approved if it is a film, video, television, or digital production or postproduction facility;

4. if all or portion of an infrastructure project is a facility which may be used for other purposes unrelated to production or postproduction activities, then the project shall be approved only if a determination is made that the multiple-use facility will support and will be necessary to secure production or postproduction activity for the production and postproduction facility and the applicant provides sufficient contractual assurances that:

a. the facility will be used as a production or postproduction facility, or as a support and component thereof, for the useful life of the facility;

b. no tax credits shall be earned on such multiple-use facilities until the production or postproduction facility is complete;

5. construction of the infrastructure project shall begin within six months of the initial certification;

6. twenty-five percent of the total base investment provided for in the initial certification of an infrastructure project shall be certified as expended before any credits may be earned;

7. no tax credit shall be allowed for expenditures made for any infrastructure project after December 31, 2008, unless 50 percent of the total base investment provided for in the initial certification of the project has been expended prior to that date. The expenditures may be finally certified at a later date;

8. expenditures shall be certified by the department, office and division and credits are not earned until such certification:

a. for purposes of allowing tax credits against state income tax liability and transferability of the tax credits, the tax credits shall be deemed earned at the time expenditures are made, provided that all requirements of this subsection have been met and after the tax credits have been certified;

b. the department, office and division may require the tax credits to be taken and/or transferred in the period in which the credit is earned or may structure the tax credit in the initial certification of the project to provide that only a portion of the tax credit be taken over the course of two or more tax years;

c. the credit shall be allowed against the income tax for the taxable period in which the credit is earned or for the taxable period in which initial certification authorizes the credit to be taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue, the Department of Economic Development, Office of Business Development, and the Office of Entertainment Industry Development, LR 33:

#### **§1607. Payroll Portion of the Investor Tax Credit**

A. To the extent base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production, each investor shall be allowed an additional tax credit of 10 percent of such payroll. However, if the payroll to any one person exceeds \$1,000,000, this additional credit shall exclude any salary for that person that exceeds \$1,000,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue, the Department of Economic Development, Office of Business Development, and the Office of Entertainment Industry Development, LR 33:

Sherri McConnell  
Director

0710#041

**POTPOURRI**  
**Office of the Governor**  
**Oil Spill Coordinator's Office**

Equinox Oil Company Crude Oil Discharge

**Action:** Notice of availability of a Draft Addendum to the Final Damage Assessment and Restoration Plan and Environmental Assessment (Draft Addendum) with a 30-day public review and comment period.

Agencies: Louisiana Oil Spill Coordinator's Office, Office of the Governor (LOSCO); Louisiana Department of Environmental Quality (LDEQ); Louisiana Department of Natural Resources (LDNR); Louisiana Department of Wildlife and Fisheries (LDWF); National Oceanic and Atmospheric Administration (NOAA); and United States Department of the Interior (USDO), which is represented by the U.S. Fish and Wildlife Service (USFWS).

**Authorities:** The Oil Pollution Act of 1990 (OPA) (33 USC 2701 et seq.) and the Louisiana Oil Spill Prevention and Response Act of 1991 (OSPRA) (La. Rev. Stat. 30:2451 et seq.) are the principal federal and state statutes, respectively, authorizing federal and state agencies and tribal officials to act as natural resource trustees for the recovery of damages for injuries to trust resources and services resulting from oil-spill incidents in Louisiana. In accordance with OPA and OSPRA, the agencies listed above (hereafter referred to as the "trustees") have conducted a Natural Resource Damage Assessment (NRDA) for the unauthorized discharge of crude oil into the waters of Lake Grande Ecaille, in Plaquemines Parish, Louisiana, on September 22, 1998 (hereafter referred to as "the incident"), in which Equinox Oil Company (Equinox) was identified by the trustees as the responsible party.

**Summary:** Pursuant to 15 C.F.R. §990.23 and 15 C.F.R. §990.55(c) and La. Admin. Code 43:XXIX, Chapter 1, notice is hereby given that a document entitled, "Draft Addendum to the Final Damage Assessment and Restoration Plan and Environmental Assessment, Equinox Oil Company Crude Oil Discharge, Lake Grande Ecaille, Louisiana, September 22, 1998" will become available for public review and comment on or about October 20, 2007. The Draft Addendum to the Final DARP/EA was prepared by the trustees to notify the public of a proposed change to the preferred compensatory restoration project to be implemented for the incident and to provide an opportunity to the public to comment on the proposed change. On November 20, 2005, the trustees published a Notice of Availability (NOA) in the *Louisiana Register* (Vol. 31, No. 11, pp. 2999) of a Final Damage Assessment and Restoration Plan/Environmental Assessment (Final DARP/EA). The final DARP/EA presented the trustees' assessment of injuries to natural resources and services attributable to the incident, and their proposed plan to restore, replace, or acquire resources or services equivalent to those lost as a basis for providing compensation for the injuries to natural resources and services resulting from the incident. In this draft addendum, the trustees propose to change the selected restoration alternative. The trustees will consider comments received during the public comment period before finalizing

this Draft DARP/EA Addendum. Public review of this Draft DARP/EA Addendum is consistent with all state and federal laws and regulations that apply to the NRDA process, including Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. §2706; the regulations for NRDA under OPA, 15 C.F.R. Part 990; Section 2480 of the Louisiana Oil Spill Prevention and Response Act (OSPRA), La. Rev. Stat. 30:2480; and the regulations for NRDA under OSPRA, La. Admin. Code 43:XXIX, Chapter 1.

Interested members of the public are invited to view the Draft DARP/EA Addendum via the internet at <http://www.losco.state.la.us> (look under News Flash for Equinox Oil Spill) or by requesting a copy of the document from Gina Muhs Saizan at the address provided below:

Gina Muhs Saizan  
Louisiana Oil Spill Coordinator's Office  
Office of the Governor  
150 Third Street, Suite 405  
Baton Rouge, LA 70801  
gina.saizan@la.gov

Comments must be submitted in writing, or digitally to Gina Muhs Saizan on or before the end of the 30-day comment period.

For further information contact Gina Muhs Saizan at (225) 219-5800 or by email at [gina.saizan@la.gov](mailto:gina.saizan@la.gov).

Roland Guidry  
Oil Spill Coordinator

0710#039

**POTPOURRI**  
**Department of Natural Resources**  
**Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Howard M. Jones, Trustee	Wildcat	S	A N Sample	1	15772
Oleum Incorporated	St. Martinville	L	Disc Su M; A.L. Durand	1	70402 (30)
Tri-State Pipe & Equipment Inc.	Logansport	S	Pet Suw; N T Powell	1	38897

James H. Welsh  
Commissioner

0710#029



**POTPOURRI**  
**Department of Natural Resources**  
**Office of the Secretary**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that seven claims in the amount of \$27,349.89 were received for payment during the period September 1, 2007 - September 30, 2007.

There were seven claims paid and zero claims denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2907.558	9032.463	Terrebonne
2912.076	8959.919	Jefferson
2912.145	9002.382	Jefferson
2928.969	9000.682	Jefferson
2942.456	8943.906	St. Bernard
2947.960	8921.250	St. Bernard
2949.012	8939.022	St. Bernard

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-0122.

Scott A. Angelle  
Secretary

0710#026

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