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This public document was published at a total cost of \$3,345.00. Nine hundred, seventy-five copies of this public document were published in this monthly printing at a cost of \$5,345.00. The total cost of all printings of this document including reprints is \$3,345.00. This document was published by Bourque Printing, Inc., 13112 South Choctaw Drive, Baton Rouge, LA 70815, as service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 981-987. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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# Executive Orders

## EXECUTIVE ORDER MJF 97-22

### Bond Allocation—Lafayette Economic Development Authority

WHEREAS: pursuant to the Tax Reform Act of 1986 (hereafter "the act") and Act 51 of the 1986 Louisiana Legislature, Executive Order Number MJF 96-25 (hereafter "MJF 96-25") was issued on August 27, 1996 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 1997 (hereafter "the 1997 Ceiling"); (2) the procedure for obtaining an allocation of bonds under the 1997 Ceiling; and (3) a system of central record keeping for such allocations; and

WHEREAS: the Lafayette Economic Development Authority has requested an allocation from the 1997 Ceiling to be used in connection with the acquisition, construction, and installation of a manufacturing facility, the Loma Company LLC Project, in accordance with the provisions of Section 143 of the *Internal Revenue Code of 1986*, as amended;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., 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 bond issue, as described in this Section, shall be and is hereby granted an allocation from the 1997 Ceiling as follows:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
\$7,500,000	Lafayette Economic Development Authority	The Loma Company, LLC

SECTION 2: The granted allocation 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 Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 1997, provided that such bonds are delivered to the initial purchasers thereof on or before July 21, 1997.

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

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The

undersigned also certifies that the granted allocation meets the requirements of Section 146 of the *Internal Revenue Code of 1986*, as amended.

SECTION 6: 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 the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 21st day of May, 1997.

M.J. "Mike" Foster, Jr.  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9706#015

## EXECUTIVE ORDER MJF 97-23

### Mineral Board Signature Authorization

WHEREAS: the State Mineral Board, created by Act 93 of the 1936 Regular Session and continued through R.S. 30:121 et seq., is authorized through R.S. 30:124 to lease for development and production of minerals, oil, and gas the lands belonging to the state of Louisiana and the lands to which title is held in the public, including road beds, water bottoms and lands adjudicated to the state at tax sale;

WHEREAS: pursuant to R.S. 30:129, the State Mineral Board has full supervision of all mineral leases granted by the State of Louisiana, and the general authority to take any action for the protection of the interests of the state, institute actions to annul a lease upon any legal ground, and enter into agreements and amend leases;

WHEREAS: R.S. 30:128 expressly prohibits and provides penalties for the transfer or assignment of any lease of minerals or mineral rights owned by the State of Louisiana without State Mineral Board approval; and

WHEREAS: prior to the creation of the State Mineral Board, certain state leases and other agreements pertaining to the development and production of mineral, oil and gas were executed on behalf of the State of Louisiana by the governor and, therefore, those leases and agreements contain language which require the signature of the governor prior to any transfer of interests therein;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., 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: As to those documents presented to the State Mineral Board, pursuant to R.S. 30:128, for approval of the right to transfer or assign a lease of minerals or mineral rights owned by the State of Louisiana which require the signature of the governor prior to any transfer of interests therein, and which the State Mineral Board has approved the transfer or assignment, the chair of the State Mineral Board is authorized and directed to sign the document on behalf of the governor.

SECTION 2: The provisions of this order are 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 the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 29th day May, 1997.

M.J. "Mike" Foster, Jr.  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9706#016

**EXECUTIVE ORDER MJF 97-24**

**Bond Allocation—East Baton Rouge  
Mortgage Finance Authority**

WHEREAS: pursuant to the Tax Reform Act of 1986 (hereafter "the act") and Act 51 of the 1986 Louisiana Legislature, Executive Order Number MJF 96-25 (hereafter "MJF 96-25") was issued on August 27, 1996 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 1997 (hereafter "the 1997 Ceiling"); (2) the procedure for obtaining an allocation of bonds under the 1997 Ceiling; and (3) a system of central record keeping for such allocations; and

WHEREAS: the East Baton Rouge Mortgage Finance Authority has requested an allocation from the 1997 Ceiling to be used in connection with a program of financing mortgage loans for first time homebuyers throughout the Parish of East Baton Rouge in accordance with the provisions of Section 143 of the *Internal Revenue Code of 1986*, as amended;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., 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 bond issue, as described in this Section, shall be and is hereby granted an allocation from the 1997 Ceiling as follows:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
\$18,600,000	East Baton Rouge Mortgage Finance Authority	Single Family Mortgage Revenue Bond Program

SECTION 2: The granted allocation 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 Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 1997, provided that such bonds are delivered to the initial purchasers thereof on or before September 4, 1997.

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

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the *Internal Revenue Code of 1986*, as amended.

SECTION 6: 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 the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 6th day of June, 1997.

M.J. "Mike" Foster, Jr.  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9706#090

**EXECUTIVE ORDER MJF 97-25**

**Bond Allocation—New Orleans  
Home Mortgage Authority**

WHEREAS: pursuant to the Tax Reform Act of 1986 (hereafter "the act") and Act 51 of the 1986 Louisiana Legislature, Executive Order Number MJF 96-25 (hereafter "MJF 96-25") was issued on August 27, 1996 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 1997 (hereafter "the 1997 Ceiling"); (2) the procedure for obtaining an allocation of bonds under the 1997 Ceiling; and (3) a system of central record keeping for such allocations; and

WHEREAS: the New Orleans Home Mortgage Authority has requested an allocation from the 1997 Ceiling to be used in connection with a program of financing mortgage loans for first time homebuyers throughout the Parish of Orleans in accordance with the provisions of Section 143 of the *Internal Revenue Code of 1986*, as amended;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., 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 bond issue, as described in this Section, shall be and is hereby granted an allocation from the 1997 Ceiling as follows:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
\$15,664,475	New Orleans Home Mortgage Authority	Single Family Mortgage Revenue Bonds

SECTION 2: The granted allocation 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 Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 1997, provided that

such bonds are delivered to the initial purchasers thereof on or before September 4, 1997.

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

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the *Internal Revenue Code of 1986*, as amended.

SECTION 6: 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 the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 6th day of June, 1997.

M.J. "Mike" Foster, Jr.  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9706#091

# Emergency Rules

## DECLARATION OF EMERGENCY

**Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences  
Division of Pesticides and Environmental Programs**

Registration of Pesticides; Certification of Commercial  
Applicators; Licensing of Owner-Operators; and  
Restrictions on Applications in Schools  
(LAC 7:XXIII.13113)

In accordance with the Administrative Procedure Act, R.S. 49:953(B) and R.S. 3:3203(A), the commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act in adopting the following emergency rule for the implementation of regulations governing standard registrations of pesticides, certification of commercial applicators, licensing requirements of owner-operators, and special restrictions on pesticide applications in schools.

The commissioner has determined that an imminent peril to the public health, safety, or welfare of Louisiana citizens and school children, in particular, requires the implementation of emergency rules. These stringent regulations governing the qualifications required for pesticide registrations, certification of commercial applicators, licensing requirements of owner-operators, and special restrictions on pesticide applications in, on or around school buildings and grounds are necessary to protect individuals and the environment from illegal pesticides and to allow immediate response in the case of the improper or careless application of pesticides.

The effective date of these regulations is May 27, 1997. These regulations will remain in effect 120 days or until the final regulations take effect through the normal promulgation process, whichever occurs first.

### Title 7

## AGRICULTURE AND ANIMALS

### Part XXIII. Pesticides

#### Chapter 131. Louisiana Advisory Commission on Pesticides

##### Subchapter D. Registration of Pesticides

##### §13113. Standard Registrations

A. Application for registration shall consist of two types, namely initial registration and renewal registration. Initial registration application may be filed at any time of the year. Renewal registration application shall be filed by the first day of December each year. Application shall be made on forms or formats prescribed by the commissioner, or on forms or formats which have the prior, written approval of the commissioner.

1. Each application for the initial registration of a pesticide and for the re-registration of a pesticide for which

the label has been changed shall be accompanied by the following information:

- a. the brand of the pesticide;
- b. the name, address and contact person of the manufacturer of the pesticide;
- c. two complete copies of the labeling of the pesticide, containing:
  - i. the specific name of each active ingredient in the pesticide;
  - ii. the percentage of the active ingredients in the pesticide;
  - iii. the percentage of the inert ingredients in the pesticide;
  - iv. the net contents of each package in which the pesticide will be sold;
  - v. a statement of claims made for the pesticide;
  - vi. directions for the use of the pesticide, including warnings or caution statements.
- d. the material safety data sheet prepared in accordance with the requirements of the Environmental Protection Agency;
- e. such other information as the commissioner may require.

2. Application for re-registration of a pesticide for which the label has not been changed shall be accompanied by the following information:

- a. the brand of the pesticide;
- b. the name, address and contact person of the manufacturer of the pesticide;
- c. such other information as the commissioner may require.

3. The labeling requirements as described in LAC 7:XXIII.13113.A.1 shall be resubmitted for any pesticide for which the label has been changed within 60 days of the change.

B. Any registration may be denied by the commissioner if he determines that:

1. the composition of the pesticide is not sufficient to support the claims made for the pesticide;
2. the label on the pesticide does not comply with state and federal requirements;
3. use of the pesticide may produce unreasonable adverse effects on the environment;
4. information required in LAC 7:XXIII.13113.A has not been furnished to the commissioner by the manufacturer.

C. Any pesticide registered in Louisiana must comply with the following:

1. Any pesticide sold or offered for sale or distribution must bear a label consistent with the label submitted in the registration application.
2. Each shipping container must bear the lot or batch number of the pesticide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3221.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 15:76 (February 1989), LR 23:

Bob Odom  
Commissioner

9706#089

## DECLARATION OF EMERGENCY

### Department of Economic Development Boxing and Wrestling Commission

Deposits; Officials; Agents and  
Promotions (LAC 46:XI.Chapters 3 and 5)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), the Boxing and Wrestling Commission determined a condition of emergency exists regarding the scheduling (date and site selection) of "major events" and commission approval thereof, as provided by state statute, and full disclosure of all promoter and venue information is necessary for a commission decision.

The commission may find it necessary to demand all "monies" relative to boxing venues be placed in escrow in the commission treasury in order to ensure that ring officials are paid and fighters' purses to be placed in escrow, if required.

The commission, therefore, adopts the following emergency rule, effective May 30, 1997. This emergency rule is to remain in effect for a period of 120 days or until the final rule takes effect through the normal promulgation process, whichever occurs first.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XI. Boxing and Wrestling

#### Chapter 3. Professional Boxing

#### §304. Deposits: Closed Circuit and Pay-Per-View Television Rebroadcasting

All locations rebroadcasting television related events may be required to deposit a maximum of \$1,000, in advance, for expenses and taxes. *Location* in this particular rule means any casino, public auditorium, hotel or civic center. Money, less taxes and expenses, will be refunded by the commission to the producer if taxes collected do not equal amount deposited. If taxes exceed the deposit, then the commission will proceed with collecting taxes as outlined in R.S. 4:67. Sports bars with a 250-person capacity or less will be required to purchase a permit for \$100; sports bars with a 400-person capacity or less will be required to purchase a permit for \$200; over 400-person capacity requires a promoter's license. If sports bars are part of a location, as defined in this rule, then the same rule will apply as a location. Five percent taxes will apply as indicated in R.S. 4:67. Complimentary passes or tickets are taxable if ticket prices are outlined in the television contract or advertised and sold at a specified price. The capacity of a

location will be determined by the state/local fire marshal's office. Locations are required to obtain a promoter's license from the commission; sports bars with a capacity of less than 400 are exempt from purchasing a promoter's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:  
**§314. Prohibited Ring Official Assignments**

A ring official domiciled in the state of Louisiana shall not accept an assignment in the United States or its possessions that is not sponsored, sanctioned, approved or supervised by the commission, another official state commission, or a member of the Association of Boxing Commissions. *Official State Commission*, in this rule, means a commission domiciled and coming under the jurisdiction and regulatory powers of their state or United States' possession.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:  
**§316. Hold Harmless and Indemnity Agreement**

All individuals, except the members of the commission, acting in any official capacity for any event(s) sanctioned by the commission shall be required to execute the Hold Harmless and Indemnity Agreement of the commission, prior to receiving any assignment from the commission. This shall be in addition to the agreement as set forth in the license application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:79.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:  
**§328. Event Approval**

A. A member of the Louisiana Boxing and Wrestling Commission, including the chairman, may not legally and or officially authorize and or give approval to any television network, corporation, limited liability company, promoter, matchmaker or any other entity, private or corporate, for any major event date and site selection, without the prior approval of a majority of the commission members voting in favor. *Major event* in this rule means: any boxing, kick-boxing or wrestling (WCW, WWF, etc.) contests that the state of Louisiana authorizes this commission to sanction. Minor local wrestling shows may be excluded from this rule. (Local area commissioners should coordinate these shows through the deputy commissioners and chairman, once they are made aware of such events.)

B. Once a commissioner is contacted by a promoter, he must advise the promoter that a typewritten request on official letterhead must be submitted to the chairman by mail or facsimile. In the request, disclosure must be made regarding the venue (television contracts, promoter, matchmaker, number of bouts, bout contracts, arena contracts, sanctioning bodies, ticket information, etc.) After date and site selection are approved, full disclosure of all venue information must be submitted no later than two weeks prior to the event.

C. Once an official request is made, the chairman must call a meeting to approve or reject the request. A quorum, according to state statute, must be present to approve or reject

such requests. An emergency meeting will not be necessary, if the timetable is such, that the request may be discussed at the regular scheduled commission meeting.

D. The commission may demand that all monies relative to boxing venues be placed in escrow in the commission treasury. *Monies* in this rule is to mean fighters' purses and ring officials' (referees, timekeepers, inspectors, physicians, judges, etc.) expenses. All ring officials' pay will be predetermined and coordinated through the commission with the promoter. The ring officials will be paid by commission checks the same day or night before the start of the first bout. If the commission required fighters' purses to be placed in escrow then the fighters also will be paid by commission checks, less any expenses due the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61D and R.S.4:64

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:

### **§335. Compensation of Officials**

All officials, including ring doctors, who participate in an event sanctioned by the commission, shall be compensated by the promoters/producers. The amount compensated will be predetermined, prior to the event, between the commission and the promoter/producer. Officials, in this rule, do not include the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:

### **§353. Penalties and Sanctions**

Anyone licensed and/or subject to the authority of the commission who violates any of the rules and regulations of the commission as set forth in Title, Parts, and Chapters shall be subject to such sanctions as imposed by the commission which may result in fines, suspensions and revocations of licenses to be determined by the commission pursuant to the laws of the state of Louisiana and the authority of the commission vested to the commission by those laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:82.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:

### **§522. Wrestling Event Deposits**

Wrestling promoters/producers will be required to deposit, in advance with the commission, \$250 to secure a date for their scheduled event. This amount will be applied to taxes and deputy expenses. Any cancellation of the advanced booking will result in the loss of the deposit and will be deposited in the commission's treasury. If taxes and expenses do not exceed the \$250 deposit, the commission will refund the excess to the promoter/producer. If expenses and taxes exceed the \$250 deposit, the commission will then collect taxes as outlined in R.S. 4:67.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:

### **§523. Wrestling Booking Agent**

Repealed (Reserved).

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Boxing and Wrestling Commission, 1967, amended 1974, repealed by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:

### **§525. Wrestling Promoters**

Repealed (Reserved).

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Boxing and Wrestling Commission, 1967, amended 1974, repealed by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:

Mike Cusimano  
Chairman

9706#028

## **DECLARATION OF EMERGENCY**

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

#### **Bulletin 1706—Exceptional Children**

The Board of Elementary and Secondary Education has exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B) and readopted as an emergency rule, Bulletin 1706, regulations for implementation of the Exceptional Children's Act. Readoption of the emergency rule is necessary in order to continue the federally required changes until they are finalized as a rule. The effective date of this emergency rule is June 20, 1997. It will remain in effect for 120 days or until finalized as a rule, whichever occurs first.

Emergency adoption is necessary because the Office of Special Education Programs in the U.S. Department of Education has been assured that these regulations would be in effect and enforceable by July 1, 1994. This is required in order for the Louisiana State Plan for Special Education to be approved and Part B dollars to be released to Louisiana.

#### **Part 100. Responsibilities of the Board of Elementary and Secondary Education**

##### **§101. Free Appropriate Public Education**

A. The Louisiana State Board of Elementary and Secondary Education (the state board) shall be responsible for the assurance of a free appropriate public education to all exceptional students, ages 3 through 21 years, and at the discretion of the local education agency (LEA) and with parental approval to those students with disabilities who will turn 3 years old during the school year; and shall exercise supervision and control of public elementary and secondary education.

B. The state board shall be directly responsible for the provision of a free appropriate public education to exceptional students, ages 3 through 21 years, who are within the jurisdiction of Special School District Number 1, or in the state board special schools (Louisiana School for Visually Impaired, Louisiana School for the Deaf, or Louisiana Special Education Center).

### **§102. Issuance of Regulations**

The state board shall adopt, amend, or repeal rules, regulations, standards, and policies necessary or proper for the provision of a free appropriate public education developed pursuant to R.S. 17:1944(c).

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

The state board has the responsibility of complying with rules and regulations governing grants for educational purposes from the federal government or from any other person or agency, which are not in contravention to the Constitution and laws, and the authority to take all action necessary to achieve compliance.

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

The state board shall approve each participating nonpublic school that provides special education in accordance with standards established by the state board.

### **§105. Approval of IDEA - Part B State Plan**

The state board will review and approve the State Plan described in §330 of these regulations before its submission to the U.S. Department of Education.

### **§106. Opportunity of Hearing**

The state board shall provide an opportunity for a hearing according to procedures set out in Education Division General Administrative Regulations (EDGAR) at 45 CFR 100b.401d before the department disapproves any school system application for federal entitlement funds for special education under Chapter 1 S.O.P. or IDEA - Part B.

### **§107-129. Reserved**

### **§130. State Advisory Council**

A. The State Board of Elementary and Secondary Education and the department shall appoint a state advisory council for the education of exceptional students. The membership shall be 11. Procedures shall follow existing state board procedures for appointing such councils.

B. Membership of the council shall, at all times, include at least one person representing each of the following groups:

1. individuals with disabilities;
2. teachers of students with disabilities;
3. teachers of regular students;
4. parents of exceptional children;
5. state and local education officials;
6. special education program administrators;
7. representatives of recipients of special education and related services and their families;

8. representatives of advocate agencies for the disabled, for colleges and universities, and for vocational/technical schools.

C. The Advisory Council shall perform the following:

1. advise the state board of unmet needs in the education of exceptional students, including needs identified through study and analysis of the findings and decisions of the hearings;

2. comment publicly on the state annual program plan and rules or regulations proposed for issuance by the state regarding the education of exceptional students and the procedures for distribution of funds under IDEA - Part B;

3. assist the state in developing and reporting such information and evaluations as may assist the U.S.

commissioner of Education in the performance of responsibilities under Section 618 of IDEA - Part B.

### **D. The Procedures of the Advisory Council**

1. The advisory council shall meet as often as necessary to conduct its business.

2. By July 1 of each year, the advisory council shall submit an annual report of council activities and suggestions to the state board. This report must be made available to the public in a manner consistent with other public reporting requirements under this Part.

3. Official minutes must be kept on all council meetings and shall be made available to the public on request.

4. All Advisory Council meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

5. Interpreting and other necessary services must be provided at council meetings for council members or participants.

6. The Advisory Council shall serve without compensation, but the State Department of Education must reimburse the council for reasonable and necessary expenses for attending meetings and performing duties.

### **§131-199. Reserved**

### **Part 200. Responsibilities of the Superintendent of Public Elementary and Secondary Education and the Department of Education**

### **§201. General Responsibilities and Authorities**

The state superintendent of public Elementary and Secondary Education (the superintendent) and the State Department of Education (the department) shall administer those programs and policies necessary to implement R.S. 17:1941 et seq. Responsibilities of the state superintendent and the department include the following:

A. approving, in accordance with standards approved by the state board, each public school program that delivers special education;

B. recommending to the state board approval, in accordance with standards approved by the state board, of each participating nonpublic school program that delivers special education;

C. receiving, administering, and directing distribution of federal funds for education of exceptional students, except those received directly by school systems;

D. recovering any funds made available under IDEA-B for services to any student who was determined to be erroneously classified as eligible to be counted.

### **§202-204. Reserved**

### **§205. Preparation of Annual Budget**

The department shall prepare and submit to the state board for review and approval a comprehensive budget for the next fiscal year that at a minimum proposes the appropriations by the Louisiana Legislature of whatever state funds are needed by the department, Special School District Number 1, and city/parish school systems to comply fully with all of the requirements established by the regulations for the Implementation of the Exceptional Children's Act (with due regard to federal maintenance of effort, nonsupplanting, comparability, and excess cost requirements).

**§206-219. Reserved**

**§220. Certification of Personnel**

The department must develop as needed, Louisiana standards for state certification of school and other program personnel, subject to approval by BESE, for all public and participating nonpublic program staff who provide special education, administrative, ancillary, pupil appraisal and related services to exceptional students (birth through age 21) under Part B and Part H of IDEA.

**§221-229. Reserved**

**§230. Review of Enforcement Recommendations**

The state superintendent, after review of the recommendations from the office, submits to the state board at the next regularly scheduled meeting all recommendations of the department to withhold state or federal funds for special education or to take other necessary enforcement action in accordance with the procedures described in the *Louisiana Administrative Code*.

**§231-239. Reserved**

**§240. Hearing Officers**

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

**§241-250. Reserved**

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

**§252. Competency-Based Assessment Program**

A. No exceptional student shall be automatically excluded from participation in any educational assessment program. Individual exemption from any such assessment program requires formal parental approval and will be reflected in the student's IEP.

B. Individual exemption from any such assessment program will be appropriate for exceptional students who are not following a curriculum based on Louisiana's grade level standards for and who are not pursuing a regular high school diploma.

C. Exceptional students who take part in the testing program shall have available to them certain procedural modifications in the administration of the tests when indicated on the student's IEP.

**§253-259. Reserved**

**§260. Full Educational Opportunity**

The department must ensure that all public education programs of the state strive to meet the goal of providing full service to all exceptional students, ages birth through 21 years, by the year 2010.

**§261. Arts for Students with Disabilities**

The department shall encourage the use of the arts as a teaching tool and the recognition of the importance of artistic and cultural activities in the education of students with disabilities.

**§262-269. Reserved**

**§270. Interagency Agreements**

The department is authorized to enter into any agreement developed with another public or private agency, or agencies, which is:

- A. consistent with Part 800 of these regulations;
- B. essential to the achievement of full compliance with these regulations;
- C. designed to achieve or accelerate the achievement of the full educational goal for all exceptional students;
- D. necessary to provide maximum benefits appropriate in service, quality, and cost to meet the full educational opportunity goal in the state;
- E. necessary to promote the successful transition of youths with disabilities into adult services and agencies.

**§271. Approval of Out-of-District Placement**

The department shall approve or disapprove each request made by a school system to place an exceptional student outside the geographic boundaries of that school system unless the placement is in an approved cooperative operated by the school system.

**§272-274. Reserved**

**§275. Fiscal Agent**

The department shall act as the fiscal agent in disbursing funds under Chapter 1, State Operated Programs (SOP) for Students with Disabilities, including transfers of such funds to city/parish school systems. No provision of the Louisiana competency-based education program shall be construed to interfere with the provision of a free appropriate public education to exceptional students under these regulations [R.S. 17:24.4(D)]. from state-operated programs and state-supported programs.

**§276-289. Reserved**

**§290. Nondiscrimination**

The State Department shall comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on basis of race, color, or national origin	Title VI of the Civil Rights Act of 1964 (45 U.S.C. 2000d through 2000d-4)	45 CFR Part 80
Discrimination on basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683)	45 CFR Part 86
Discrimination on basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 974) Act 665 of the 1980 La. Legislature (R.S. 46:2251-2256)	45 CFR Part 84
Discrimination on basis of age	The Age Discrimination Act (42 U.S.C. 6101 et seq.)	45 CFR Part 90

**§291-299. Reserved**

**Part 300. Responsibilities and Activities of the Office of Special Educational Services**

**§301. General Supervision**

The Office of Special Educational Services is established within the department to provide general supervision of all

education programs for exceptional students within the state, including all participating nonpublic school programs and all education programs administered by other state or local agencies. *General Supervision* is defined as the responsibility to perform the following:

A. ensure that all necessary state standards for implementation of the act are established;

Comment: Any state standard affecting other state agencies and established under the general supervision requirement shall be developed in cooperation with such agencies.

B. disseminate such standards and revisions to all public and nonpublic agencies bound by them and provide parents and all citizens with information requested regarding implementation of such state standards;

C. provide technical assistance to all public and nonpublic agencies bound by such standards in their proper implementation;

D. monitor according to written procedures the implementation of state standards in each public and each participating nonpublic agency. Such monitoring shall include child identification and programmatic, administrative, and fiscal issues;

E. institute a system for complaint management and investigation regarding the implementation of state standards.

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

A. The office is authorized to implement the monitoring, complaint management and investigatory provisions of these regulations.

B. The office must monitor in accordance with the procedures established in the *SDE Monitoring Procedures*, Bulletin 1922, all public and participating nonpublic schools and other education agencies for compliance with these and other applicable federal regulations, state statutes and standards.

C. The office, through its complaint management procedures, shall:

1. investigate allegations of failure to comply with any provision of these regulations and other applicable state or federal laws, regulations or state standards;

2. conduct hearings when necessary; and

3. issue subpoenas on behalf of the department to require attendance, testimony by witnesses and the production of documentary evidence.

D. The office, in carrying out its investigatory responsibilities, may require school systems and participating nonpublic education agencies to keep certain records, and submit to the office complete and accurate reports at such time and in such form and containing such information as is determined necessary to enable the office to fulfill its responsibilities of ensuring compliance.

### **§303-328. Reserved**

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

The office shall prepare for submission to the state board the state plans required under IDEA according to applicable federal requirements for such plans.

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

A. In the preparation of the State Plan required under IDEA - Part B, the office must perform the following:

1. publish in newspapers of general circulation throughout the state, other media, or both, a summary of the proposed program plan indicating its purpose and scope, its public availability, the timetable for final approval, the procedures for submitting written comments, any policy changes from previous plans, and a list of the times and places of public meetings to be held. Such notice shall occur between 45 and 60 calendar days prior to submission of the program plan to the state board;

2. distribute to any parent organization, child and youth advocacy organization, school board, approved nonpublic school program, public college or university, or affected state agency, operating in Louisiana, which has previously registered with the office, a copy of the proposed plan and a list of the times and places of public meetings to be held. This distribution must occur no less than 30 calendar days prior to submission of the proposed plan to the state board;

3. publish on each of the three days preceding a public meeting a description of the time, place, and purpose of the meeting in newspaper(s) of general circulation in the area of the state in which the meeting will be held;

4. hold a series of open public meetings in which parents and other interested persons throughout the state are afforded a reasonable opportunity to comment on the proposed plan;

5. file in a publicly available location a written or electronic verbatim record of the public meetings and any written comments received;

6. review and consider all public comments which might warrant modification of the plan;

7. attach a summary of the comments made during the public meeting or received by the state board to the proposed final plan submitted to the state board;

8. publicize the approval by the state board of a final plan and the location at which copies of the plan can be obtained by the public;

9. publicize the approval or disapproval by the U.S. Department of Education of the annual plan and the location at which copies of the plan can be obtained by the public.

B. The office must make all reasonable efforts to inform potentially interested parent and child advocacy organizations throughout the state, and all school boards, approved nonpublic school programs, public colleges and universities, and affected state agencies of the requirements of this Subpart and of §488.

C. The office shall maintain a list of each interested group identified as a result of Subsection B above.

### **§331-339. Reserved**

### **§340. Review and Approval of Annual Applications of School Systems**

A. The office must review each annual application for IDEA - Part B funds submitted by a school system, and:

1. provide written notice of whether an application is or is not in substantially approvable form (and if not, the reasons therefore) within 45 days from the receipt of the application;

2. provide formal written approval (or disapproval) within 10 operational days following receipt by the department of an approved grant award document for expenditure of IDEA - Part B funds from the U.S. Department of Education.



B. Applications for federal and/or state funds in periods during which they may be applied for shall be approved or disapproved by the office according to applicable federal or state procedures.

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

When the department does not distribute IDEA - Part B funds to a school system in accordance with §230 and §373.B, the office shall use those funds to ensure the provision of a free appropriate public education to students with disabilities residing in the area served by the school system either directly, by contract, or through other arrangements. The department may provide special education and related services in the manner and at the location the department considers appropriate, consistent with the requirements of these regulations.

**§342-354. Reserved**

**§355. Confidentiality of Records**

The office must comply with all of the requirements of §517 pertaining to confidentiality of personally identifiable education records.

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

Notice of the child identification effort regularly undertaken by the department and school systems must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state.

**§357-369. Reserved**

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

In planning, coordinating, implementing, and evaluating the comprehensive system of personnel development (CSPD) required under IDEA, the Office of Special Educational Services is responsible for the following tasks:

A. conduct a comprehensive needs assessment at least once every three years in conjunction with the development of the Special Education Annual Plan to determine supply/demand personnel projections for the subsequent five-year period for qualified special education instructional, leadership, pupil appraisal, related services, and support personnel required to assure a free appropriate public education for all exceptional students (birth through age 21). After the initial comprehensive needs assessment, follow-up assessment in targeted areas of need will be conducted during the ensuing two years to determine changes or corrections in the course of action for the three-year program plan. The comprehensive needs assessment may be conducted more often if deemed appropriate;

B. identify, on the basis of the comprehensive needs assessment, target populations for personnel preparation (preservice) and personnel development (continuing education), and describe procedures to ensure that activities are carried out and the program plan is on schedule;

C. coordinate and facilitate efforts among the department, LEAs, IHEs, professional associations, parent associations, and other support groups and councils, to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities through support of CSPD statewide committee activities, regional CSPD activities, and multi-agency and interdisciplinary collaborative planning;

D. establish, with the approval of BESE, a system for dissemination, statewide, of information on effective practices for the delivery of special educational services, and procedures for replication and/or adoption of effective practices and/or programs.

**§371. Preservice Training Agreements**

The Office of Special Educational Services shall develop, in concert with colleges and universities within the state, preservice training arrangements necessary to support approved local public and participating nonpublic school systems and service providers in complying with the requirements of IDEA in achieving the goal of full educational opportunity in the least restrictive environment for exceptional students in Louisiana.

**§372. Training of Personnel in Participating Nonpublic Schools**

The office, for the department, shall provide the opportunity for continuing education (inservice training) of personnel of participating nonpublic schools.

**§373. Administration of Funds**

A. The office shall ensure the proper receipt and disbursement of all state and federal funds administered by the department specifically for the provision of special education and related services for exceptional students.

B. The office shall not distribute funds to a school system in any fiscal year if the school system:

1. does not submit an annual application that meets the requirements of §487 of these regulations;
2. is unable or unwilling to establish and maintain programs of free appropriate public education;
3. is unable or unwilling to enter into a cooperative agreement with other school systems in order to establish and maintain those programs;
4. has not implemented the provisions of a hearing officer's decision which was adverse to the school system; or
5. has failed to comply with a corrective action plan developed to eliminate compliance deficiencies found through state monitoring, a complaint investigation, or a due process hearing order.

C. An on-site fiscal review and compliance monitoring will be conducted in accordance with the *SDE Monitoring Procedures*, Bulletin 1922.

D. The BESE establishes the policy to seek to recover any funds made available under IDEA-B for services to any student who is determined to be erroneously classified as eligible to be counted.

E. Determination of misclassified students shall be accomplished through the verification procedures of the SDE regarding the child count as detailed in §491. In order to verify the accuracy of each count submitted, the office will conduct the following activities:

1. The current child count from each school system will be compared with the previous count. Discrepancies of  $\pm 10$  percent in any disability category will be noted.
2. The current child count incidence figures from each school system will be compared with incidence figures from the previous state child count. Discrepancies of  $\pm 2$  percent in any disability category will be noted.

3. An on-site child count review will be conducted in accordance with the *SDE Monitoring Procedures*, Bulletin 1922. If necessary, each system can be monitored for previous years to verify the accuracy of the child count. During fiscal monitoring of each school system, the monitors will randomly select at least 10, but not more than 20, cells from the child count report. For each cell, the school system must provide the student name, date of birth, evaluation report, IEP, class rolls, and any other information that may be necessary to verify the accuracy of the count.

4. Administrative on-site reviews are conducted in accordance with the *SDE Monitoring Procedures*, Bulletin 1922. Any multidisciplinary evaluation reviewed which are not in compliance with state guidelines, to the extent that it cannot be determined that the student is disabled, will result in the exclusion of that student from the child count.

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

6. The school system will be afforded an opportunity to present supportive or explanatory documentation to refute OSES and must be formally accepted. If the evidence cannot justify the count, the count will be disallowed.

F. Recovery of Funds for a Misclassified Student. If the school system has received funds based on an erroneous count and the office has documented the extent of the error, the department will reduce the grant award if the error occurred in the current budget and all of the funds have not been expended or request that the school system return such funds. In the event the school system refuses to comply within 10 operational days, these procedures will be followed:

1. The Office of Special Educational Services will submit written documentation of the error in the count to the state superintendent of Education.

2. Within 10 days of this submission, the state superintendent will request the State Board of Elementary and Secondary Education (BESE) to require the school system to repay the funds.

3. BESE has the responsibility to offer an opportunity for a hearing to a school system prior to a determination to withhold funds.

4. Funds recovered by the department and BESE will be handled within the guidelines set forth by OSEP, U.S. Department of Education.

G. Comparison of State National Child Count Data. The office will compare the incidence figures for the state with national figures provided by Office of Special Education and Rehabilitative Services, U.S. Department of Education. Discrepancies of  $\pm 2$  percentage points will be analyzed to determine if changes are required in the statewide student evaluation procedures.

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

The office, on the behalf of the department, shall, with the approval of the state board, establish procedures to ensure that testing and evaluation materials used for evaluation and placement are free of racial, cultural, and/or sexual bias.

### **§375-399. Reserved**

#### **Part 400. Responsibilities of City and Parish School Boards, Special School District Number 1 and State Board Special Schools**

#### **§401. Responsibilities of Public School Systems**

A. Each school system shall identify, locate, and evaluate each student suspected to have disabilities (regardless of the severity of the disabilities), birth through 21 years of age, and each student suspected to be gifted or talented, 3 through 21 years of age, residing within its jurisdiction.

B. Each school system is responsible for providing, or causing to be provided, a free appropriate public education to each eligible exceptional student who resides within its jurisdiction except those voluntarily enrolled in a nonpublic school program.

#### **§402. Definitions**

##### **A. Free Appropriate Public Education (FAPE)**

1. *Appropriate Public Education*—all special education and related services provided each exceptional student which:

a. meet state board standards, including these regulations and all applicable bulletins approved by the state board (e.g., Bulletin 741, Bulletin 746, Bulletin 1508); and

b. are provided in conformity with an IEP at public expense, under public supervision and direction, and without charge, including preschool, elementary school, or secondary school education.

2. *Free*—without charge, including the following:

a. costs for all room, board, and nonmedical care provided when residential educational placement is necessary;

b. transportation costs provided in order to assure access of persons to services necessary to implement a student's IEP. Exceptional students shall be provided, on a comparable basis with that of students who are nonexceptional, an opportunity to receive transportation services funded out of state or local resources;

c. The term *free* does not preclude incidental fees normally charged to nondisabled students or their parents/guardians) as a part of the regular educational program.

3. Nothing in these regulations shall relieve in any way, an insurer, similar third party, or other public state or local agency from an otherwise valid obligation to provide or to pay for services to which an exceptional student is entitled as a client or beneficiary of such third party under state or federal entitlement or laws or under policies or contracts. This does not prohibit the use of insurance payments or private donations for use in the provision of a free appropriate public education.

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

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

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

2. For SSD#1, the geographic area is the boundary of the state-operated treatment and care residential facilities.

3. For a state board special school, the geographic area is the boundary of the educational facility.

Comment:

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

2. If there is a placement of a student in another school system or an approved nonpublic school, the student so placed remains within the jurisdiction of the placing school system. The responsibility for FAPE remains with the placing school system and, in the case of placement in an approved nonpublic facility, also with the state board.

#### C. Eligible Students

1. Free appropriate public education must be available to all exceptional students reaching the age of 3 years, regardless of when the birthday occurs during the school year. At the discretion of the LEA and with parental approval, FAPE may be provided to an eligible student with disabilities whose third birthday occurs during the school year.

2. An exceptional student remains eligible until reaching age 22 unless such student was terminated to participate in elementary or secondary education as indicated by a state diploma or Certificate of Achievement. An exceptional student whose twenty-second birthday occurs during the course of the regular school year (as defined by the school system), shall be regarded as eligible for the entire school year.

#### §403. Reserved

#### §404. Day Care and Adult Services

A. School systems which operate a day care program or activity for nondisabled students may not exclude any person with disabilities and must take into account the need(s) of these persons in determining services to be provided.

B. School systems which operate an adult education program or activity for nondisabled adults may not exclude disabled or other exceptional persons and must take into account the need(s) of these persons in determining services to be provided.

#### §405. Special Education and Early Intervention Services for Infants and Toddlers with Disabilities Less Than 3 Years of Age

School systems may provide special education and early intervention services to infants and toddlers with disabilities who are from birth to 3 years of age. The ratios established in Appendix I, Part B shall be used for those programs serving infants and toddlers with disabilities.

#### §406 - 409. Reserved

#### §410. Child Search Definitions

A. *Identified*—a student is suspected of being exceptional and in need of special education and related services as a result of:

1. child search activities as defined in §411;
2. school building level identification activities as defined in §413.

B. *Locate*—determining where an identified student is residing and whether the person with whom the student is residing is one of the following:

1. a natural parent,
2. the legal guardian of the student, or
3. a parent as defined in §959.

Comment: If neither a natural parent nor a legal guardian is located, the school system shall refer to §516.

#### §411. Child Search Activities

A. Each school system, in accordance with the requirements of this Subpart, shall document that the effort of ongoing identification activities are conducted to identify and locate each student who is under its jurisdiction, suspected of being exceptional, in need of special education and related services, and is one of the following:

1. enrolled in an educational program operated by a school system;
2. enrolled in a nonpublic school program;
3. enrolled in a public or nonpublic preschool or day care program;
4. is out of school, except for students who have graduated or otherwise successfully completed a program as documented by a state diploma or Certificate of Achievement.

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

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

Each school system shall designate a child search coordinator who shall be responsible for:

1. tracking the progress of referral and evaluation activities required by §411, §413-414, and §430-436 for each student suspected of being exceptional;
2. ensuring that the parent of each student initially identified as suspected of being exceptional and in need of special educational services is provided a copy of all safeguards available to the parents on rights of parents and students at the time of referral for an individual evaluation;
3. activities assigned under IDEA - Part H.

#### §413. Students in a Regular Education Program

A. A school system shall identify a student as suspected of being exceptional by the School Building Level Committee (SBLC) conducting and documenting results of educational screening, sensory screening, speech and language screening, motor screening, and results of the intervention efforts as defined in the *Pupil Appraisal Handbook*, Bulletin 1508.

B. The SBLC referral to pupil appraisal for an evaluation which determines eligibility for services under IDEA shall be made through the principal or designee for pupil appraisal services and shall include documentation of all screening activities.

C. An immediate referral may be made to pupil appraisal services for an individual evaluation of any student suspected of a severe or low-incidence impairment, or who is of danger to himself or others. Screening activities, such as educational, sensory, and motor screenings, should be completed as part of the evaluation for these students.

D. Pre-evaluation activities as listed in Bulletin 1508, under "Initial Responsibilities" of the evaluation coordinator, must be conducted within 10 days after receipt of the referral by the pupil appraisal office for an individual evaluation.

#### **§414. Students in Nonpublic School Programs**

Students enrolled in nonpublic school programs shall be identified according to the procedures noted in §413.A and shall be referred to the school system's child search coordinator.

#### **§415. Students Out of School**

Students out of school, including students ages birth through 5 years and students who have left school without completing their public education by obtaining a state diploma or Certificate of Achievement shall be referred to the school system's child search coordinator, who shall locate and offer enrollment in the appropriate public school program and refer them for an individual evaluation, if needed. Students may be enrolled with the development of an interim IEP during the evaluation process if they meet the criteria in §416 below. If the Louisiana evaluation is current, students may be enrolled with the development of a review IEP within five operational days.

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

Students who possess a severe or low-incidence impairment documented by a qualified professional; and who may have been receiving special education in another state shall be initially enrolled special education program concurrent with the conduct of the evaluation according to the requirements of Bulletin 1508. Students with other documented impairments; and who may have been receiving special education in another state may be initially enrolled in a special education program concurrent with the conduct of the evaluation according to the requirements of Bulletin 1508. This enrollment process, from the initial entry into the school system to placement, shall occur within 10 calendar days and will include the following steps:

1. approval by the city/parish school system's supervisor of special education;
2. a review of all available evaluation information by pupil appraisal personnel;
3. the development of an interim IEP in accordance with §440-446; and
4. obtaining formal parental approval for the temporary placement.

The duration of the completion of the evaluation and the interim placement shall not exceed the evaluation time lines specified in §436, with the initial IEP/Placement document developed within 30 calendar days from the date of dissemination of the written evaluation report to the city/parish school system's supervisor of special education.

Any infant or toddler moving to Louisiana who has an Individualized Family Service Plan (IFSP) will be referred to the child search coordinator who will assist the family in accessing family service coordination. The student will be evaluated to determine eligibility for Part H services in Louisiana.

#### **§417. Exceptional Students Transferring from one LEA to Another LEA Within Louisiana**

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

Infants and toddlers with disabilities who have an Individualized Family Service Plan (IFSP) and who receive services from a LEA and transfer to another LEA must receive those services from the LEA in which the student resides.

#### **§418. Formal Parental Approval**

A. Initial Evaluation. For an initial evaluation the school system must obtain formal parental approval. If the parent denies or fails to give formal approval for the individual evaluation, the school system may seek appropriate legal action.

B. Re-evaluation. Formal parental approval is not required for the re-evaluation of a student currently enrolled in a special education program, but full and effective notice, including a copy of the parents' rights, must be provided to the parents prior to the re-evaluation.

#### **§419-429. Reserved**

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

School systems shall regularly employ pupil appraisal personnel to conduct individual evaluations and may, when necessary:

A. use qualified examiners who are available from the Department of Health and Hospitals, the Department of Public Safety and Corrections, the state board special schools, or other public agencies;

B. contract with individuals or organizations to provide specialized assessments needed to provide a comprehensive individual evaluation of an identified student;

C. use a combination of the approaches listed above;

D. regardless of the approach used for conducting individual evaluations, school systems retain full responsibility. Any failure by an employee or contractor to meet any requirements of this Part constitutes a failure by the school system to comply with these regulations.

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

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

1. formal parental approval for the initial evaluation has been requested and received by the school system;

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

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

4. a written request for an individual evaluation has been issued by a hearing officer or the Office of Special Education appeals panel.

B. An individual re-evaluation shall be conducted every three years, or more frequently if conditions warrant, whenever the student is enrolled in special education and one of the following occurs:

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

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

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

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

C. A school system is not required to conduct a re-evaluation of exceptional students who transfer with a current evaluation into its jurisdiction from another jurisdiction in Louisiana.

D. In the event a parent has privately obtained an individual evaluation, the school system must consider the individual evaluation in accordance with §504 of these regulations.

E. Transitional needs must be addressed as part of all evaluations occurring after the fourteenth birthday of a student with disabilities.

#### §432. Reserved

#### §433. Evaluation Coordination

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

B. The evaluation coordinator shall ensure that the evaluation is conducted in accordance with all requirements in Bulletin 1508, including the following:

1. initial responsibilities following receipt of referral;
2. selection of participating disciplines;
3. procedural responsibilities; and
4. mandated time lines.

#### §434. Evaluation Process

A. Individual evaluations shall be conducted according to the "Procedures for Evaluation" for each exceptionality as listed in the *Pupil Appraisal Handbook*, Bulletin 1508.

B. The determination of an exceptionality must be based upon the "Criteria For Eligibility" established in Bulletin 1508.

C. All evaluations shall be conducted according to the following standards:

1. No single procedure may be used as the sole criterion for determining an appropriate educational program for the student. A variety of instruments, procedures, and sources of information shall be used.

2. Tests and other evaluation procedures and materials shall be administered by trained personnel in conformance with the instructions provided by their producer and are as follows:

a. tailored to assess specific areas of educational need;

b. recommended by their producer and validated adequately for the specific purpose(s) for which they are used;

c. appropriate for the age and stage of development of each person to whom they are administered;

d. free of racial, cultural, language, or sex bias. In no event shall IQ scores be reported or recorded in any individual student's evaluation report or cumulative folder;

e. written and administered in the native language or conducted in the mode of communication most familiar to the person being assessed (i.e., nonverbal intellectual assessment of deaf students) unless it can be demonstrated that it is infeasible to do so;

f. selected to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the factor(s) the test purports to measure rather than reflecting the student's impaired sensory, manual, or speaking skills (except in those cases in which those skills are the factors the test purports to measure);

g. selected to ensure that intellectual assessment instruments were standardized using samples which included representatives of the socioeconomic and social heritage of the student being tested, when possible and not merely those which are designed to provide a single general intelligence quotient.

#### §435. Evaluation Report

A. The written report must be an integrated compilation of the data collected during the evaluation process and include all components stated in Bulletin 1508.

B. The final signed report must accurately represent the conclusion of the members of the multidisciplinary evaluation team. If a participating appraisal person disagrees with the conclusion(s) in the integrated report, that person may submit a separate signed dissenting opinion stating the disagreement, giving supporting data and conclusions prior to the IEP meeting.

C. The report must be written in language that is clear to the individuals who will use it.

D. Any extensions of the individual evaluation time lines must be explained and documented in the evaluation report.

E. The written report must be disseminated to the student's parent with an opportunity for an oral interpretation prior to the initial IEP placement meeting.

#### §436. Time Lines

A. There shall be no more than 10 operational days from the date of receipt of the referral for an individual evaluation of an identified student by pupil appraisal to the date when the request is made for parental approval to conduct the individual evaluation.

B. Each individual evaluation must be completed and the evaluation report disseminated, within 60 operational days of receipt of parental approval.

C. Extensions of evaluation time lines must be justified as defined in Bulletin 1508.

D. The required triennial re-evaluation must be completed on or before the third-year anniversary date and must include, at a minimum, the core elements as listed in Bulletin 1508.

**§437 - 439. Reserved**

**Individualized Education Program**

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

A. Each student initially determined to be exceptional and in need of special education and related services shall be provided these services in accordance with an IEP. Before any action is taken for each student initially determined to be exceptional and in need of special education and related services, school systems shall conduct a meeting or meetings to carefully consider the multisource data collected on the exceptional student in the individual evaluation process which included a full and individual evaluation of the student's educational needs; and must develop the initial written individualized education program (IEP) including the educational placement which meets all the requirements of this Subpart and Bulletin 1530, *The IEP Handbook* and Bulletin 1891, *The Gifted/Talented IEP Handbook*.

B. School systems shall include on each IEP all special educational and related services necessary to accomplish comparability of educational opportunity between exceptional students and students who are not exceptional.

C. Each initial IEP/Placement document must be completed within 30 calendar days from the date of dissemination of the written evaluation report to the special education supervisor.

D. Responsibility for the development and implementation of each initial IEP rests with the school system's special education supervisor.

E. School systems shall prepare a progress report related to the short-term objectives in the IEP for each exceptional student and must provide it to the parent at the same time as report cards are provided to all students.

F. The IEP shall be developed on the form issued or approved by the department.

G. The school system shall provide a copy of each completed IEP/Placement document to the student's parent(s) signed by the officially designated representative of the school system.

H. At the beginning of each school year, each school system shall have in effect an IEP for every exceptional student who is receiving special education in that school system.

**§441. IEP Meeting Participants**

For an exceptional student who has been evaluated for the first time, the school system shall ensure that each IEP/Placement meeting includes the following participants:

A. an officially designated representative of the school system, other than the student's teacher, who is qualified to provide or supervise the provision of special education. This person shall also be knowledgeable about the placement options and shall have the authority to commit the school system's resources to implement the IEP;

B. the student's teacher;

C. one or both of the student's parents, subject to §442 and §959;

D. the student, unless deemed otherwise by the parent. If the student does not attend a meeting involving transition planning, the school system shall take other steps to ensure that the student's preferences and interests are considered.

Comment: The school system, following prior notice guidelines in §504 of these regulations, is required to invite each student to participate in his or her IEP meeting if the purpose of the meeting is the consideration of transition services. For all students who are 16 years of age or older, one of the purposes of the meeting will be the planning of transition services, since transition services are a required component of the IEP for these students.

For a student younger than age 16, if transition services are initially discussed at the meeting that does not include the student, the school system must ensure that before a decision about transition services for the student is made, another IEP meeting is conducted for that purpose, and the student is invited to attend, again following prior notice guidelines in §504 of these regulations;

E. other individuals at the discretion of the parent or school system;

F. the evaluation coordinator, or a member of the evaluation team which evaluated the student, unless some other person is present at the meeting who is knowledgeable about the evaluation procedures used with that student and is familiar with the results of that particular evaluation;

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

Comment:

1. In deciding which teacher will participate in meetings on a student's individualized education program, the school system may wish to consider the following possibilities:

a. For an exceptional student who is receiving special education, the "teacher" could be the student's special education teacher. If the student's exceptionality is a speech impairment, the "teacher" could be the speech-hearing/language specialist.

b. For an exceptional student who is being considered for placement in special education, the "teacher" could be the student's regular teacher, a teacher qualified to provide education in the type of program in which the student may be placed, or both.

c. If the student is not in school or has more than one teacher, the school system shall designate which teacher(s) will participate in the meeting.

2. Either the teacher or the school system's representative should be qualified in the area of the student's exceptionality.

**§442. Parent Participation**

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

This written contact must indicate the purpose, time, and location of the meeting, and who will be in attendance.

Comment: If a purpose of the meeting is the consideration of transition services for a student the notice must also: 1) indicate this purpose; 2) indicate that the school system will invite the student; and 3) identify any other agency that will be invited to send a representative.

B. If parent(s) do not attend a scheduled IEP/Placement meeting for which arrangements have been made in accordance with these regulations, other methods shall be used by the school system to ensure parental participation. These other methods include making individual or conference telephone calls, rescheduling the meeting, sending

correspondence summarizing the meeting, and requesting parental suggestions.

C. When the parent does not attend the IEP/Placement meeting, the meeting may be conducted without the parent in attendance providing that:

1. another method for parental participation is used and documented;
2. the school system has documented attempts to arrange a mutually agreed on time and place, such as:
  - a. detailed records of telephone calls made or attempted and the results of those calls;
  - b. copies of correspondence sent to the parents and any responses received;
  - c. detailed records of visits to the parents' home or place of employment and the results of those visits.

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

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

A. Each school system shall obtain formal parental approval of the educational placement decisions prior to providing initial special education and related services. The IEP will be considered in effect after the parent(s) indicate formal written approval by signing the IEP/Placement document.

B. Implementation of educational placement shall begin as soon as possible but no later than 10 calendar days following receipt by the school system of formal parental approval.

C. If the parent(s) withhold formal written approval of the educational placement, the school system parish supervisor shall within 10 calendar days either:

1. recommend a modified educational placement to which the parent(s) will provide approval; or
2. indicate to the parent(s) in writing that no placement modification will be made (in which case the student shall be maintained in the present placement or be offered placement in the school system with approval of parent(s) until the matter is resolved).

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

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

#### **§444. IEP/Placement Content and Format**

A. Each completed IEP shall contain the following instructional components:

1. a general overview of the student's needs; and specific current performance in the curriculum areas in which special education is recommended;

*Comment:* Beginning no later than age 16 (and at a younger age, if determined appropriate) the IEP must include a statement of needed transition services which are instruction, community experiences, development of employment and other post school adult living objectives, and if appropriate, acquisition of daily living skills and functional vocational evaluation; and each participating agency's responsibilities and/or linkages before the student leaves the school

setting. If the IEP Committee determines that services are not needed in one or more of the above noted areas, the IEP must include a statement to that effect and the basis upon which the determination was made. When determining if transition services should begin at a younger age, the LEA must consider students at risk for dropping out, students with severe disabilities, and students who may need more than one or two years of transition services.

2. annual educational performance goals for the student;
3. short-term objectives that describe either measurable sequential steps or major component parts of the goals;
4. appropriate objective criteria and evaluation procedures and schedules for determining whether the short-term objectives and annual goals are being achieved;
5. the identification of those types of persons/agencies responsible for the implementation of the IEP/Placement.

B. Each completed IEP shall contain the following program/services components:

1. the identification of the IEP/Placement participants as required in §441;
2. the long-term educational goal and description of the educational program, indicating whether the student shall address the regular education competencies or an approved alternative curriculum;
3. the extent to which the student will be able to participate in regular education classes and activities;
4. the screening date(s) and criterion/criteria by which the student will be screened to determine extended school year program (ESYP) eligibility;
5. the type of physical education program to be provided as indicated in §445.C;
6. a description of special education and related services needs and the date for initiation of each type of service and the anticipated duration of each. When a related service is included, the frequency (range of time per session and the number of sessions per week) and whether the service will be individual or group shall be indicated;
7. assistive technology devices or assistive technology services, or both, as those terms are defined in the 900 Subsection of these regulations are made available to a student with a disability if required as a part of the student's special education, related service needs, or needs under supplementary aids and services.

*Comment:* Items 2-5 of Part B not applicable for gifted and talented.

#### **§445. Least Restrictive Environment Assurances and Considerations**

A. Each completed IEP shall contain the following placement components:

1. a description of the specific educational environment in which the student is to be placed for the first year (or partial year) of the IEP and the reasons that it is the least restrictive environment possible. In considering the educational placement of each exceptional student, the least restrictive educational environment will be a placement, whether in existence or not which can appropriately meet the student's individual educational needs, including necessary resources.

2. If the placement decision is not instruction in regular class/setting, a description must be provided which includes evidence of specific constraints that prohibit accomplishment of IEP goals and objectives in the regular classroom. This evidence should document that:

- a. the student did/will not benefit from being in a regular class/setting;



b. removing the student from regular class/setting results in improved educational opportunities; or

c. necessary services provided in a separate class/setting cannot be provided in a less restrictive environment.

3. In addition, the following noted assurances must be provided:

a. the placement is in the school which the student would attend if not exceptional unless the IEP of the student requires some other arrangement. If the placement is not in the school the student would normally attend, the placement is as close as possible to the student's home.

b. the school and the class are chronologically age appropriate for the student. No student shall be placed in a setting which violates the maximal pupil/teacher ratio or the three-year chronological age span.

c. the school/setting selected is accessible to the student for all school activities.

d. the classroom is comparable to and integrated with regular classes.

Comment: Any deviation from these assurances must be documented and justified on the IEP.

In selecting an alternative setting, the school system shall consider any potential harmful effect on the exceptional student or the quality of services needed.

4. The educational placement of deaf and (hard-of-hearing) students will be determined primarily by the provision of a free appropriate public education (FAPE) and the consideration of the Least Restrictive Environment (LRE) will be of secondary consideration.

a. Full consideration of the unique needs of a deaf and hard-of-hearing student will ensure an appropriate education as required by the Individuals with Disabilities Education Act (IDEA) are met.

b. Factors that will be considered in developing an IEP for a deaf or hard-of-hearing student are:

i. communication needs and the student's and family's preferred mode of communication;

ii. linguistic needs;

iii. severity of hearing loss and potential for using residual hearing;

iv. academic level;

v. social, emotional, and cultural needs including opportunities for peer interaction and communication;

vi. consideration of curriculum content and method of curriculum delivery.

B. For each educational placement, the school system shall ensure that:

1. it is determined at least annually;

2. it is based on an IEP/Placement document;

3. exceptional students are educated with students who are not exceptional including students in public and private institutions or other care facilities served with IDEA funds, to the maximum extent appropriate. In making this decision, the following four areas must be considered:

a. physical integration—the student will share the same facilities with nondisabled students;

b. social integration—the student will participate in co-curricular and extra-curricular activities with nondisabled students;

c. academic integration—the student will participate in regular classroom activities; and

d. community integration—the student will participate in activities out in the community;

Comment: Communication and related needs of a student with disabilities must be considered when determining the LRE for that student.

4. special class, separate schooling, or other removal of exceptional students from the regular educational environment occurs only when the nature or intensity of the individual's needs are such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;

Comment: Reasons for selecting a more restrictive environment may not include administrative convenience, availability of related services, or special equipment.

5. the special education program in which each educational placement is made, including day or residential nonpublic schools, meets the standards of the state board.

C. Physical education services in accordance with the IEP/Placement document, must be provided to students with disabilities in the regular physical education program or the adapted physical education program as specified in §904.

D. A continuum of alternative educational settings shall be available to the extent necessary to implement the IEP/Placement document for each student with disabilities. At a minimum, this continuum shall include (in order of restrictiveness as it applies to each student):

1. instruction in regular classes, including:

a. supplemental aides and services to the student; and/or

b. special education instruction;

2. instruction in special classes, all or part of the day;

3. special school, all or part of the day;

4. homebound;

5. instruction in hospitals and institutions.

Comment: Instruction may take place in other settings such as the community and job sites.

E. A continuum of alternative educational settings shall be available to the extent necessary to implement the IEP/Placement document for each student with disabilities (birth through age 5). At a minimum, this continuum shall include (not in order of restrictiveness as it applies to each student):

settings for students 3 through 5, including but not limited to:

1. school/center—head start, high risk 4-year-old programs, private child care, public preschool classroom, Chapter I classroom, and kindergarten;

2. itinerant/homebased—child's home, caregiver's home, itinerant to head start, child care settings, kindergarten, high risk 4-year-old programs, and Chapter I classrooms;

3. combination parent/child intervention—any intervention with the parent may be combined with any of the above in 1 and 2 and will be considered a parent/child intervention setting.

Comment:

1. Students who are 3 through 5 years of age or are eligible for Part B services according to the LEA's policy on age of eligibility and who identified with speech impairments only are entitled to be served in any of the above preschool settings. The setting for a student with



speech impairments only must be determined by the needs of the student; the student may need communication intervention in settings with other students to meet his or her needs.

2. The school system must make available center-based settings comparable in time to that of kindergarten age students if the student with a disability is kindergarten age. The pupil/teacher ratio established in Appendix I, Part B is used. The teacher providing the service must be certified in noncategorical preschool or in the area of exceptionality served if the class is categorical. The frequency and intensity of services is flexible and dependent upon the needs of the individual student and family.

Settings for infants and toddlers birth to 3 years old include:

1. school/center settings—private child care, public and private early intervention programs, and hospital;
2. itinerant/homebased training—child's home, child care (itinerant to any setting not considered the child's residence);
3. combination parent/child intervention—any intervention with the parent may be combined with any of the above in Paragraphs 1 and 2 and will be considered a parent/child setting. For infants and toddlers, it is expected that most interventions will involve the family directly or indirectly.

Comment: Services to infants and toddlers with disabilities must be provided in the natural environments in which the child would be if he/she did not have a disability. The persons providing the service must be certified, licensed or credentialed in the area of the service being delivered.

F. A continuum of alternative educational settings shall be available to the extent necessary to implement the IEP for each student who is gifted or talented. At a minimum, this continuum shall include (not in order of restrictiveness as it applies to each student):

1. regular classroom with supplemental aids/services;
2. resource with regular classroom;
3. self-contained; and
4. preschool.

G. A continuum of alternative educational settings shall be available to the extent necessary to implement the IEP for each student who is deaf or hard of hearing. At a minimum, this continuum shall include (not in order of restrictiveness as it applies to each student):

1. homebound or hospital instruction;
2. special school, all or part of the day;
3. instruction in special classes, all or part of the day;
4. special education instruction in regular classes

including:

- a. service to or consultation with the regular classroom teacher; and/or
- b. services to exceptional students within the regular classroom.

H. The least restrictive environment rules may not be waived by any party, including the parent(s).

I. If there is evidence that a school system or any participating agency makes placements that are not consistent with these regulations, the office shall:

1. review the school system's or participating agency's justification for its action; and
2. shall assist in developing and implementing the required corrective action.

#### **§446. Nonacademic Setting Requirements**

A. Nonacademic and extracurricular services and activities (including counseling, recreational athletics, intramural and interscholastic athletics, transportation, health services, and clubs sponsored by the school system) must be offered in a way that allows equal opportunity for each exceptional student to participate in services and activities.

B. Nonacademic and extracurricular services, meals, and recess periods must be provided in the most inclusive setting appropriate to the needs of the student.

#### **§447. Duration of Educational Placement Rules**

A. School systems shall provide special education and related services to students with disabilities in accordance with an IEP for no less than the normal 180-day school cycle. Extended school year programming (ESYP) is the provision of educational and related services to students with disabilities in excess of the 180-day school year.

B. School systems shall provide educational and related services in excess of 180 school days to students with disabilities when these students are determined to be in need of or eligible for such services. Student eligibility is to be determined in accordance with extended school year program eligibility criteria requirements in Bulletin 1870, Determining Eligibility for Extended School Year Programs.

C. The student's extended school year program is to be designed according to the standards in Bulletin 1871, Program Standards for Extended School Year Services. ESY IEP participants, in determining the length and type of an extended school year program, shall not be bound or limited by any predetermined program or length. The type and length of the extended school year program shall be determined on an individual basis for each student. A program ranging anywhere from 181 up to 240 days shall be available when appropriate.

#### **§448. Hospital/Homebound Placement Rules**

The placement of an exceptional student, excluding students whose only exceptionality is hospital/homebound, by a school system in a program of homebound or hospital instruction may be proposed only if one of the following exists:

A. The exceptional student possesses a physical impairment or illness which directly (or because of treatment required) precludes the student's movement from a hospital or home environment to the general educational environment.

B. Consistent with the requirements of these regulations, the student has been determined to be emotionally/behavior disordered and either:

1. a psychologist or psychiatrist who is licensed to practice in Louisiana has certified in a signed written report filed with the office that the student is admitted to a full-time inpatient program of care and treatment in a hospital certified or licensed by the state of Louisiana and that continued participation in the inpatient program is necessary to the proper care and treatment of the student; or

2. a psychologist or psychiatrist who is licensed to practice in Louisiana has certified in a signed written report submitted to the school system and filed with the office that the student's current educational placement is not appropriate and that there is a need for the student to be placed at home

where he will be provided a program of continuous care and treatment. Upon the receipt of this report the school system shall:

- a. conduct a formal re-evaluation which specifically addresses the behavior exhibited by the student;
- b. conduct a review IEP/Placement meeting;
- c. write and implement a behavior plan which addresses the specific behaviors preventing the student from attending school;
- d. establish an approximate date for the student to return to school and measurable criteria which when achieved would allow the student to return to school on or before the established date;
- e. student progress towards meeting the behavior goals and objectives will be maintained by the teacher through data checklists and progress reports;
- f. the behavior goals and objectives will be reviewed during each grading period to determine if they are still appropriate and attainable by the student.

C. A student who is awaiting approval for placement in a residential facility and for whom a school-based interim program has been unsuccessfully implemented because of the severity of the disability or threat of danger to self or others.

D. An exceptional student is detained by court order in a juvenile detention facility.

E. An exceptional student is undergoing disciplinary action. Time limits are subject to the provisions of §459.

#### **§449. IEP/Placement Meeting(s) for Exceptional Students in Other School Systems or in Participating Nonpublic Schools**

A. Before a school system places, refers, or provides services to an exceptional student in another school system or in a participating nonpublic school, the school system shall initiate and conduct a meeting to develop an IEP for the student in accordance with these regulations. In preparation for this IEP/Placement meeting, the school system shall perform the following:

1. apply to SSD#1 for approval of placement out of the geographic attendance area of the school system or for a transfer of jurisdiction in accordance with §451.B unless the placement is in an approved cooperative operated by the school system;
2. discuss with an authorized representative of the receiving school system or the approved nonpublic school:
  - a. the student's eligibility for admission;
  - b. the education records necessary to determine eligibility for admission;
  - c. the availability of services; and
  - d. the likelihood of the student being accepted by the system if the IEP/Placement meeting resulted in such a recommendation;
3. for placement consideration at or referral to a state board special school, the proposed educational placement and supporting information must be forwarded to both SSD#1 for its review and approval in accordance with §271 and to the appropriate state board special school for its review and agreement.

B. The school system shall ensure that a representative of the participating nonpublic school or the other school system attends the IEP/Placement meeting. If the representative cannot attend, the school system shall use other methods to ensure participation by the nonpublic school or other school system, including individual or conference telephone calls.

#### **§450. Direct Service Rules**

School systems must provide direct services themselves or through approved cooperatives in the alternative setting needed by an exceptional student if:

1. there are sufficient numbers of such exceptional students who need similar alternative special educational settings, who are within a three-year chronological age span, and who are under the jurisdiction of the school system;
2. such direct services are consistent with these regulations which have given particular attention to LRE rules.

#### **§451. Alternative to Direct Services**

A. An exceptional student may be placed in an approved public or nonpublic day or residential school program within the geographic area of the school system only if the direct service provisions of §450 do not require the establishment of instructional programs by the school system directly or through approved cooperatives with other school systems.

B. School systems must apply to the department when a student is referred to or is to be placed in an approved public or nonpublic day or residential school outside the geographic area of the school system, unless the placement is in an approved cooperative operated by school systems.

1. In determining whether to approve a request for referral or placement in an approved public or nonpublic day or residential school program located outside the geographic area of the school system but within the state, the department will consider the following:

- a. the short-term and long-term educational needs of the student;
- b. the alternative educational placements available within the school system or through a cooperative agreement;
- c. the potential for creating a new alternative educational placement within the school system or by cooperative agreement which would be less restrictive than the proposed placement; and
- d. the proximity of the proposed placement to the residence of the student (e.g., greater metropolitan area).

2. In determining whether to approve a request for referral or for placement in an approved public or nonpublic day or residential school program located outside the state, the department, in addition to considerations listed above, must also consider the ability of the proposed educational program and facility to meet the minimum standards for special schools of Louisiana. In this determination:

- a. the nonpublic school must be approved by the SEA of the state in which it is located;
- b. an on-site visit by department personnel must be conducted prior to placement;
- c. the state in which the facility is located must have an approved annual plan for implementation of IDEA - Part B;

d. the public or nonpublic school must provide necessary data to establish comparability of educational programs to similar programs operated in Louisiana.

Comment:

1. The provisions of R.S. 17:1946 (Act 728 of 1979) shall be adhered to in regard to day placements made by DHH prior to July 1, 1979. Nothing in this Subpart shall be construed to limit or restrict the obligation of school systems under IDEA - Part B of this Part to provide services to voluntarily enrolled students with disabilities in approved nonpublic schools. School systems which place an exceptional student in an approved nonpublic school program must provide the approved nonpublic school whatever resources are necessary to provide the student and the student's parents all of the rights, privileges, and services established by these regulations.

2. Exceptional students placed in approved nonpublic schools by a school system remain within the jurisdiction of that school system regardless of the geographic location of that approved nonpublic school.

3. School systems remain fully and directly responsible for the complete compliance of the educational program being provided with the requirements of these regulations.

4. City/parish school system referral of an exceptional student to a state board special school is always an out of district placement unless a cooperative agreement exists with the city/parish school system; and if the student is admitted to such a school, the student is transferred to the state board special school's jurisdiction.

#### **§452. IEP/Placement Review Procedures**

A. Each school system shall ensure that each IEP/Placement review meeting is conducted at least annually in accordance with §442, §443, §444, §445, §449; the IEP is reviewed and revised if appropriate, and includes at least the following participants:

1. an officially designated representative of the school system, other than the student's teacher, who is qualified to provide, or supervise the provision of, special education. This person shall also be knowledgeable about the placement options and shall have the authority to commit school system resources to implement the IEP/Placement document;

2. the student's teacher;

3. one or both of the student's parents;

4. student, unless deemed otherwise by the parent. If the student does not attend a meeting involving transition planning, the school system shall take other steps to ensure that the student's preferences and interests are considered.

Comment: The school system, following prior notice guidelines in §504 of these regulations, is required to invite each student to participate in his or her IEP meeting if the purpose of the meeting is the consideration of transition services. For all students who are 16 years of age or older, one of the purposes of the annual meeting will be the planning of transition services, since transition services are a required component of the IEP for these students.

For a student younger than age 16, if transition services are discussed at the annual meeting that does not include the student, the school system must ensure that before a decision about transition services for the student is made, another IEP meeting is conducted for that purpose, and the student is invited to attend, again following prior notice guidelines in §504 of these regulations;

5. other individuals at the discretion of the parent(s) or school system;

6. for school systems planning transition services, a representative of any other agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the school system shall take other steps to obtain

the participation of the other agency in the planning of any transition services.

B. One IEP/Placement review meeting must be conducted annually. More than one IEP/Placement review meeting may be conducted at the discretion of the school system. If a parent makes a written request for a IEP/Placement review meeting, the school system must respond within 10 days in writing to that request. Other IEP/Placement review meetings that must be conducted in addition to the required annual meeting are listed in Bulletin 1530.

C. School systems shall include on each IEP/Placement document all special education and related services necessary to accomplish comparability of educational opportunity between exceptional students and students who are not exceptional.

D. School systems shall prepare a progress report related to the short-term objectives in the IEP/Placement document for each exceptional student and must provide it to the parent at the same time as report cards are provided to all students.

E. If a participating agency fails to provide agreed upon transition services contained in the IEP, the school system or public agency responsible for the student's education shall initiate a meeting, as soon as possible, for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

#### **§453. Change to Less Restrictive Environment**

A. During each IEP review or revision, the educational placement of the exceptional student must be changed to a less restrictive environment, unless the school system documents that the educational needs indicated on the updated IEP/Placement document indicate that a change in educational placement would cause a reduction in quality of services needed or have a potentially harmful effect on the student.

B. Significant change in educational placement is defined as moving a student from one alternative setting to another which is more restrictive or which transfers jurisdiction; such a change requires a re-evaluation. A re-evaluation is not required to precede a placement change to a less restrictive environment occurring as a result of an annual IEP/Placement document update.

#### **§454. Approved Nonpublic Schools—Review of IEP**

A. Participation of Exceptional Students in Nonpublic Schools Placed or Referred by Public School Systems

1. After an exceptional student who was referred or placed by a school system enters a participating nonpublic school, any meetings to review and revise the student's IEP/Placement document may be initiated and conducted by the participating nonpublic school or facility at the discretion of the school system.

2. If the participating nonpublic school initiates and conducts these meetings, the school system shall ensure that the parents and a representative of that school system are involved in any decision about the student's IEP/Placement document and agree to any proposed changes in the program before those changes are implemented.

B. Participation of Exceptional Students Voluntarily Enrolled in Nonpublic Schools

1. After an exceptional student enters a participating nonpublic school and receives special education and related

services from the public school system, any meetings to review or revise the student's IEP/Placement document must be initiated and conducted by the public school system.

2. The school system must ensure that a representative of the participating nonpublic school attends the IEP/Placement meeting. If the representative cannot attend, the school system shall use other methods to ensure participation by the nonpublic school, including individual or conference telephone calls.

**§455. Special School District #1 and State Board Special School - Review of IEP**

If, during the review or revision of an IEP of a student in the jurisdiction of Special School District #1 or a state board special school, a change in placement in or a referral to a city/parish school system is considered, a representative of that school system, in addition to other meeting participants required by §454, must be involved in any decision about the student's IEP/Placement.

**§456. IEP Declassification Placement**

When a re-evaluation indicates that an exceptional student currently enrolled in special education no longer meets all the criteria in Bulletin 1508 for classification as an exceptional student, the school system shall either:

A. place the student in regular education if the student is still eligible for regular education; or

B. recommend that the student be placed in an appropriate alternative setting for up to a one-year period of special education programming. The declassification program shall be provided in accordance with an IEP/Placement document and shall include a regular education membership using resource or itinerant services if needed.

Comment: The student will be referred to the School Building Level Committee for appropriate accommodations or modifications as a handicapped student still eligible under Section 504 of the Rehabilitation Act of 1973.

**§457. Reserved**

**§458. IEP Interim Placement**

Refer to §416.

**§459. Review of Placement Resulting from Disciplinary Action**

**A. Definitions**

1. *Suspension*—

a. in-school cessation of educational services for one day or longer; and/or

b. removal from school for not more than nine school days.

2. *Expulsion*—removal of a student from school for 10 or more consecutive days.

3. In-school alternative discipline program which includes educational services shall not be considered a suspension.

4. Re-evaluation due to disciplinary action must be specific to the referral questions and would, generally, include the same components as specified in Bulletin 1508 under Re-evaluation and should address the specific behaviors exhibited by the student.

5. *Determination*—assessing of the student's behavior as it relates or is influenced by his/her disability. This documented determination must be made by at least one

person knowledgeable about the student (e.g., a teacher) and one person knowledgeable about the disabling condition of concern (e.g., a teacher certified in the disability, a pupil appraisal staff member).

B. Prior to administering any form of discipline that may result in the cessation of the educational program of a student with disabilities, a determination (§459.A.5) must be made and documented as to whether the behavior is related to the student's disabling condition. The Special Education administrator or designee shall immediately (within one day) be notified of the determination decision regarding the behavior, and whether disciplinary action is taken.

During any suspension, removal or temporary placement of the student, the school system shall provide continued appropriate educational services and planning.

C. If the determination is made and documented that the behavior is related to the student's disability, then the student shall neither be suspended or expelled.

1. The student may remain in his/her current educational setting; or

2. The student's IEP Committee may be convened to consider modifications to the student's program/placement (i.e., additional related services, counseling, changes in his/her behavior management plan, increased time in the current Special Education program, change of class schedule, teacher, etc.).

D. If the determination is made and documented that the behavior is not related to the student's disability the student may be suspended in accordance with discipline policies for nondisabled students. The school system must notify the parents regarding the relatedness determination if it involves a change in placement. This notice shall also provide them with all procedural safeguards including the right to appeal or challenge the decision in accordance with §443 and §507 of these regulations.

E. If the determination is made that the behavior is not related to the student's disability and an expulsion is being considered, prior to the expulsion:

1. The IEP committee must be convened to:

a. familiarize the IEP committee with the determination decision;

b. review the student's IEP/Placement; and

c. plan for services to be provided to the student if he/she is to be out of school. Components of the plan must include follow procedures in §448.B.2.a-f;

2. If expulsion is recommended at the expulsion hearing:

a. a re-evaluation must be conducted;

b. the IEP committee must be convened to develop an alternative education program that shall be provided to the student during the period of expulsion following procedures in §448.B.2.a-f; and

c. the school system must notify the parents regarding the relatedness determination if it involves a change in placement. This notice shall also provide them with all procedural safeguards including the right to appeal or challenge the decision in accordance with §443 and §507 of these regulations.

F. The IEP shall be convened to review the behavior plan, the program and/or placement of a student classified as disabled within three days following:

1. nine school days in, or repetitive assignments to a structured in-school alternative discipline program;
2. the third occurrence of a suspend able infraction; or
3. cessation of educational services for nine cumulative school days due to one or more suspensions.

G. At each IEP meeting there must be a discussion of the behavioral needs of the student. This should include the following:

1. addressing any behavioral problem(s) of the student that are related to the disabling condition;
2. developing a structured program of behavior management (including goals and objectives) for dealing with the behavior; and
3. a review and determination of the effectiveness of any prior plan of behavior management.

Note: Any structured program of behavior management which is included in a student's IEP shall not be considered disciplinary action.

H. When the student poses an immediate danger to self or others or is significantly destructive to property, the student may be removed from the school immediately. A determination decision and other due process procedures must be carried out within three school days from the day of the incident.

#### **Services to Voluntarily Enrolled**

##### **Students in Participating Nonpublic Schools**

#### **§460. Services to Exceptional Students in Nonpublic Schools**

A. Participation of Exceptional Students in Nonpublic Schools Placed or Referred by Public Agencies

1. City/parish school systems placing or referring exceptional students to a nonpublic school or facility as a means of providing special education and related services must ensure that these services are provided:

- a. in conformance with an Individualized Education Program that meets the requirement of 34 CFR §300.340-300.350;
- b. at no cost to the parent;
- c. at an approved nonpublic school or facility that meets the education standards that apply to public schools and/or facilities including personnel standards; and
- d. the student has all rights of an exceptional student served by a public agency.

2. City/parish school systems and the state education agency must monitor compliance of these agencies, provide them with information on applicable standards and allow them an opportunity to submit revisions in the development of such standards.

B. Participation of Exceptional Students Voluntarily Enrolled in Nonpublic Schools. School systems must also operate programs and services assisted or carried out under funds received from the Individuals with Disabilities Act in order that exceptional students voluntarily enrolled in nonpublic schools have a genuine opportunity to participate equitably in such programs and services consistent with their number and their need. To meet this requirement, school systems must comply with 34 CFR 76.651-76.662 (EDGAR),

34 CFR 300.450-300.452 and the Louisiana Special Education State Plan.

1. If an exceptional student has a free and appropriate public education available and the parent chooses to place the student in a nonpublic school or facility, the city/parish school system is not required by this Part to pay for the student's education at the nonpublic school or facility. However, the public agency shall make services available to the student as provided under 34 C.F. 300.450-300.452.

2. The types of services in addition to student identification and evaluation service mandated at §414 of these regulations, to be provided to a student with a disability enrolled in nonpublic schools by their parents must be determined through the process of consultation with private school representatives (34 CFR Part 76) and through the IEP process. Which services will be provided and where such services are provided must be also be addressed in consultation with nonpublic school personnel.

3. Consideration must be given to the Establishment Clause of the United States Constitution, which mandates the separation of church and state, and all applicable state statutes when providing services at nonpublic schools.

#### **§461. Training of Personnel in Participating Nonpublic Schools**

The department must provide the opportunity for continuing education (inservice training) of personnel in participating nonpublic schools.

#### **Accessibility**

#### **§462. Facility Accessibility**

A. Facilities used by school systems, directly or through contractual arrangement, must be accessible to and usable by exceptional persons. Architectural barriers shall not prevent an exceptional student from being educated in the least restrictive educational environment as defined in §445 of this Part.

B. New facilities or new parts of facilities:

1. may not be approved for construction unless and until the department and the state board give express written approval on the basis of a satisfactory showing by a school system that adequate provision has been made for the necessary access of the exceptional students;
2. must be designed and constructed in a manner which results in their being readily accessible to and usable by exceptional persons;
3. must be constructed to at least meet the current level of accessibility provided by the Americans with Disabilities Act (ADA) Accessibility Guidelines for Building and Facilities.

C. Facilities which are altered for the use of school systems must be altered to the maximum extent feasible in a manner which results in the altered portion of the facility being readily accessible to and usable by exceptional persons.

#### **§463. Program Accessibility**

Program accessibility must be ensured within existing facilities.

A. Program accessibility may be accomplished through one of the following:

1. alteration of existing facilities; or

2. nonstructural changes: redesign of equipment; assignment of communicative aids; reassignment of classes or other services to accessible buildings; assignment of aides to students; home visits; and delivery of health, welfare, or other social services at alternative accessible sites.

B. In choosing among available methods for meeting the program availability requirement, a school system shall give priority to those methods that offer programs and activities to persons with disabilities in integrated settings.

C. Structural changes in facilities do not need to be made where other methods effectively ensure program accessibility; where structural changes are necessary, they must be made as expeditiously as possible.

D. All nonstructural changes necessary to ensure program accessibility must be made immediately.

#### **§464. Facility Comparability**

Facilities identifiable as being for exceptional students and the services and activities provided therein must meet the same standards and level of quality as do facilities, services, and activities provided to other students.

#### **§465-469. Reserved**

##### **Local Advisory Council**

#### **§470. Membership**

Each city/parish school board shall establish a local advisory council which shall consist of at least 10 and no more than 20 persons. The city/parish school board shall ensure that the membership of the advisory council shall consist of a representative of each of the following groups with at least 50 percent of the membership consisting of consumers and/or families of exceptional students. (Each council member can represent only one of the groups.) The local council's membership should match the cultural/ethnic ratio of the community:

- A. individuals with disabilities;
- B. teachers of students in special educational services;
- C. teachers of non-disabled students;
- D. parents of exceptional children;
- E. parents of regular classroom children;
- F. state and local education officials;
- G. special education program administrators;
- H. representatives of consumers, colleges and universities, or vocational-technical schools.

#### **§471. Appointment Procedures**

The membership of the advisory council by the city/parish school board shall be appointed according to the following procedures:

A. Each of the parent organizations and/or youth advocacy organizations registered with the school system pursuant to §488 shall nominate no more than two persons for appointment to the advisory council by the city/parish school board.

B. The city/parish school board shall appoint at least four persons from nominations submitted in accordance with Subsection A above.

C. If the nomination list described above consists of fewer than four nominations, the city/parish board shall select the balance without such nomination.

D. The balance of the membership shall be appointed by the city/parish school board.

#### **§472. Terms of Office**

Council members shall serve for three years. Initially, one-third of the members of the council shall serve for a term of one year, one-third for a term of two years, and one-third for three years. One person shall be elected chairman; subsequently a chairman shall be elected each year. Upon the expiration of any term of office of a member of the advisory council, the city/parish school system shall reappoint a person eligible in the same manner as the person being replaced.

#### **§473. Functions**

A. The local advisory council shall assist the city/parish school board in the development of local plans for the provision of special education and related services to exceptional students by reviewing, prior to adoption, all policy and budgetary matters included in each such plan.

B. The local advisory council shall transmit to the superintendent and the president of the board, in writing, the results of its review and any recommendations.

C. The advisory council shall meet as often as necessary to fulfill its responsibilities.

D. Agenda items must be publicly announced prior to meetings in accordance with school system policies on such announcements.

E. The advisory council shall send the name and address of its chairman to the office annually.

#### **§474. Responsibilities of City/Parish School Systems**

A. The city/parish school system shall provide as necessary:

1. interpreters at the local advisory council meetings;
2. supportive services necessary for the council to fulfill its responsibilities, consistent with city/parish school board policy.

B. Advisory council members shall serve without compensation.

#### **§475-479. Reserved**

##### **Administrative Matters of School Systems**

#### **§480. Nondiscrimination in Employment**

A. Each school system must comply with all of the federal and state requirements governing nondiscrimination in employment.

B. Each school system must extend grievance procedures now in effect pursuant to the regulation issued by the U.S. Department of Education implementing Title IX of the Education Amendments of 1972 (45 CFR 86.8) to include any grievance of employees with disabilities.

#### **§481. Appointment of a Supervisor/Director of Special Education**

Each school system must employ a certified supervisor/director of special education on a full- or part-time basis.

#### **§482. Certification of Personnel**

Personnel of local school systems and other local agency providers who deliver special educational services (including instructional, appraisal, related, administrative, and support services) to exceptional students (birth through age 21) must currently meet all applicable Louisiana Standards for State Certification of School Personnel or, as specified under Part H requirements for IDEA and stipulated in the approved

Louisiana State Plan for Infant and Toddlers with Disabilities and Their Families (Component IX, Personnel Standards.)

**§483. Continuing Education (Inservice Training)**

Each local school system and other agency providers must participate fully in the preparation and implementation of the statewide Comprehensive System of Personnel Development. Each local entity participating in the Louisiana special education service delivery system must provide continuing education (inservice training) to personnel who identify, evaluate, place, and provide special education or related services to exceptional students (birth through age 21). Continuing education activities must be coordinated with the continuing education efforts of other local entities to support collaboration among programs, reduce overlapping service delivery, and improve outcomes for exceptional students and their families.

**§484. Reserved**

**§485. Assurance of Compliance**

A. In connection with each annual application for state and federal financial assistance, each school system must sign a written assurance that the preschool, elementary, and secondary program operated by the school board is currently in compliance and will, in the future, be operated in compliance with these regulations and any applicable federal regulations.

B. Each school system shall permit access by the staff of the office during regular business hours to any sources of information necessary to ascertain compliance with these regulations.

**§486. Procedure for Application for State or Federal Funds**

Each school system requesting state or federal funds administered by the department shall do so according to the procedures established by the department.

**§487. Annual Application for IDEA - Part B Funds**

On or before June 1 of each year, each school system must submit an application to the office which sets forth a request for IDEA - Part B funds sought by the school system to provide a free appropriate public education to exceptional students.

A. The annual application must be submitted on forms issued by the department and must contain any request which the school system intends to make for federal funds.

B. The annual application must be approved by the school system governing authority before the submission to the office.

C. The annual application must include all state and federal procedures and assurances necessary to receive such federal funds.

**§488. Preparation of Application**

A. In the preparation of the application required under IDEA - Part B, the school system must:

1. publish a summary of the application for IDEA - Part B flow-through funds (the application) indicating its purpose and scope, its public availability, the timetable for final approval, the procedures for submitting written comments, any policy changes from previous applications, and a list of the time and place of the public meeting to be held. Such notice shall occur between 45 and 60 calendar

days prior to submission of the program plan to the governing authority of this school system;

2. distribute to any parent organization, child and youth advocacy organization, approved nonpublic school program, public college or university, or other affected agency operating in the jurisdiction of the school system which has previously registered with the school system, a copy of the proposed application and a list of the times and places of the public meeting to be held. This distribution must occur no less than 30 calendar days prior to submission to the governing authority of the school system of the proposed application;

3. publish within the week preceding the public meeting a description of the time, place, and purpose of the meeting in newspaper(s) of general circulation in the jurisdiction of the school system;

4. hold the public meeting in which parents and other interested persons throughout the geographic area of the school systems are afforded a reasonable opportunity to comment on the application;

5. file in a publicly available location a written or electronic verbatim record of the public meeting and any written comments received;

6. review and consider all public comments which might warrant modification of the application;

7. attach a summary of the comments made during the public meeting or received by the governing authority of the school system to the proposed final application submitted to the governing authority of the school system;

8. publicize the approval by the governing authority of the school system of the final application and the location where copies of the plan can be obtained by the public;

9. publicize the approval or disapproval by the department of the application and the location where copies of the final application can be obtained by the public;

10. inform potentially interested parent and child advocacy organizations, approved nonpublic school programs, public colleges and universities, and other affected agencies in the jurisdiction of the school system of the requirements of this Subpart.

B. The school system shall provide a list of the organizations to which a distribution of the application is made upon submission of the application to the Office of Special Educational Services.

**§489. Reserved**

**§490. Maintenance of Special Education Enrollment**

Each school system shall maintain and assure the accuracy of the required elements for each student record on the Louisiana Network of Special Education Records (LANSER), the automated special education tracking system.

**§491. Child Counting**

A. Each school system shall use LANSER for the purpose of tracking students with disabilities. Data from this system shall be used to produce the annual child count, as of December 1, for the purpose of generating grant awards under IDEA-B, Section 619 Preschool and Chapter 1 S.O.P.

B. Each school system/state agency must determine the eligibility of each student for inclusion in the December 1 Child Count, which will generate funds under IDEA-B, and



Chapter 1 S.O.P. It is the responsibility of the school system/state agency to verify that each eligible student is receiving the special education and related services stated on the Individualized Education Program or early intervention services, as stated on the Individualized Family Service Plan. Eligibility requirements for IDEA - Part B and H and Chapter 1 S.O.P. must be determined as specified in the *SDE Monitoring Procedures*, Bulletin 1922.

**§492. Dissemination of Student and Parent Rights**

Each school system shall reprint and provide to each parent of a student who is currently receiving special education or who is identified as suspected of being exceptional, a written explanation of all the procedural safeguards available to the parents and shall refer any request for a copy of these regulations to the office.

**§493. Use of IDEA - Part B Flow-through Funds**

A. A school system may only use IDEA - Part B funds for the excess cost of providing special education and related services for students with disabilities. Costs must be directly attributable to the education of a student with disabilities. IDEA - Part B funds received must not be commingled with State funds.

B. The school system meets the excess cost requirement if it has on the average spent at least the amount determined under 34 CFR 300.184 for the education of each of its students with disabilities. This amount may not include capital outlay or debt service. The excess cost requirement prevents a school system from using funds provided under IDEA - Part B to pay for all of the costs directly attributable to the education of a student with disabilities. However, the excess cost requirement does not prevent a school system from using IDEA - Part B funds to pay for all of the cost directly attributable to the education of a student with disabilities in any of the ages of 3, 4, 5, 18, 19, 20, or 21 years, if no local or state funds are available for nondisabled students in that age range. However, the local educational agency must comply with the nonsupplanting and other requirements of this Part, providing the education and services.

C. School systems may not replace state and local funds with IDEA - Part B funds. To determine that requirement is met, school systems must be able to demonstrate that the total amount, or average per capita amount, of state and local school funds budgeted for expenditures in the current fiscal year for the education of students with disabilities is at least equal to the total amount, or average per capita amount, of state and local school funds actually expended for the education of students with disabilities in the most recent preceding fiscal year for which the information is available. Allowance may be made for decreases in enrollment of students with disabilities and expenditures of unusually large amounts of funds for such long-term purposes as the acquisition of equipment and the construction of school facilities.

D. School systems must use state and local funds to provide services to students with disabilities receiving IDEA - Part B funds which, taken as a whole, are at least comparable with services provided to other students without disabilities.

E. School systems must maintain records which demonstrate compliance with the excess cost, nonsupplanting, and comparability requirements.

**§494. Use of Chapter 1 S.O.P. Funds**

A. If more than one state agency is directly responsible for providing a free appropriate public education to a student with a disability, or early intervention services to a infant or toddler with a disability, the state agency that is primarily responsible for the provision of education to that or early intervention services to that infant or toddler, as determined by the state educational agency, is the only state agency that must count that infant, toddler, or student with a disability.

B. A state agency or a local educational agency may use Chapter 1 S.O.P. funds only for programs and projects that are designed to supplement the provision of special education and related services or early intervention services to infants, toddlers, and students with disabilities who are eligible to be served.

C. The application for Chapter 1 S.O.P. funds must be submitted on forms issued by the department and must contain a narrative description of activities, a budget reflecting the use of funds, and procedures and assurances necessary for receipt of such federal funds for the provision of special education and related services.

**§495. Interagency Coordination**

A. Each school system shall, upon request, assist the department in the development and implementation of any interagency agreements designed to improve the delivery of special education and related services to exceptional students.

B. Each school system shall enter into interagency agreements in §830 to the extent necessary to comply with all provisions of these regulations.

C. Each agreement shall be consistent with §800 of these regulations.

**§496. Responsibilities for Placed Students**

City/parish school systems shall enroll exceptional students currently enrolled in SSD#1 or state board special schools for provision of special education in the least restrictive environment when the student is placed by SSD#1 or state board special schools. Such an exceptional student remains in the jurisdiction of SSD#1 or the state board special schools, which shall reimburse the city/parish school system for any costs for providing such services based on an interagency agreement. A city/parish system or SSD#1 which places students with severe or low-incidence disabilities in state board special schools must reimburse state board special schools for any costs for providing such services based on an interagency agreement. The school system which retains jurisdiction retains fiscal responsibility for funds not available to the other system from the state. A city/parish school system that disagrees with such a placement may, on an individual basis, apply to the state board for exemption from the state board from this obligation.

**§497. Reserved**

**§498. Discharge from Treatment Care and Habilitation**

Upon receipt of notification from the appropriate agency, a city/parish school system shall conduct an IEP/Placement meeting according to §400 for exceptional students who were



discharged from state-operated residential facilities and are still eligible exceptional students.

**§499. Reserved**

**Part 500. Procedural Safeguards**

**§501. General Responsibility**

Each school system shall establish and implement procedural safeguards which meet the requirements of these regulations.

**§502. Opportunity to Examine Records**

The parents of an exceptional student have a right to inspect and review educational records with respect to the identification, evaluation and placement of the student and the provision of a free appropriate public education as described in §517.C.

**§503. Independent Educational Evaluation**

The parents of an exceptional student have a right to obtain an independent educational evaluation of the student. The school system must provide on request, information to the parent about where an independent educational evaluation may be obtained. For the purpose of this Part:

*Independent Educational Evaluation (IEE)*—an evaluation conducted by a qualified examiner who is not employed by the school system responsible for the education of the student in question.

*Public Expense*—that the school system either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

Comment: If a school system must pay for an IEE, the cost shall not exceed the average cost of such an evaluation conducted within the state of Louisiana and within a 75-mile radius of the school system.

A. An independent educational evaluation is provided at public expense and at no cost to the parents, if:

1. the parent disagrees with an evaluation provided by the school system; and/or
2. a hearing officer requests an IEE as part of a due process hearing.

B. When a school system is notified in writing by the parent that the parent disagrees with the school systems' education evaluation, the school system has 10 operational days of receipt of the notice to initiate a due process hearing to show that its evaluation is appropriate. If the hearing decision is that the evaluation is appropriate, the parent still has the right to an independent evaluation but not at public expense. If the school system does not initiate a due process hearing when the parent disagrees with an evaluation, then the IEE must be at public expense.

Comment: Failure of a parent to provide a school system with written notice of a disagreement with the school system's evaluation does not release the school system of its responsibility to pay for an independent educational evaluation that meets the other requirements as stated above.

C. An IEE obtained at public expense must meet the same criteria established by these regulations and Bulletin 1508, including the location of the evaluation and qualifications of the examiner.

D. If the parents obtain an independent educational evaluation at their own expense, the results of the evaluation:

1. must be considered by the school system in any decision made with respect to the provision of a free appropriate public education to the student. The school

system is not required to use the IEE obtained at the parents' expense as its only criteria for deciding the content of the student's special education program; and

2. may be presented as evidence at a due process hearing.

**§504. Prior Notice**

A. Written notice must be given to the parents of an exceptional student a reasonable time before the school system:

1. proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student, or

2. refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

B. The prior notice must include:

1. a full explanation of all the procedural safeguards available to the parents, including confidentiality requirements;

2. a description of the action proposed (or refused) by the school, an explanation of why the school system proposes or refuses to take the action and a description of any options the school system considered and reasons why those options were rejected;

3. a description of each evaluation procedure, test, record or report the school system uses as a basis for the proposal or refusal; and

4. a description of any other factors that are relevant to the school system's proposal or refusal.

C. The notice must be:

1. written in language understandable to the general public; and

2. provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so; and

3. if the native language or other mode of communication of the parent is not a written language, the local agency must take steps to insure that:

- a. the notice is translated orally or by other means to the parent in his or her native language or other mode of communication, if the native language or other mode of communication is not written language;

- b. notices scheduling Individualized Education Program (IEP) meetings shall contain a description of the purpose of the meeting, date, time, location of the meeting and a list of who will be in attendance; and

- c. the school system must maintain written evidence that the requirements of Paragraph 3 (a) and (b) of this Section have been met, and that the parent(s) understands the content of the notice.

**§505. Consent**

*Consent* means that:

A. the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

B. the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

C. the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

D. parental consent must be obtained before:

1. conducting a pre-placement or initial evaluation; and
2. initial placement of an exceptional student in a program providing special education and related services.

Comment:

1. If the parent's decision is to withhold formal written approval for the initial evaluation or placement of the student in special education, the school system may appeal to the appropriate state court within the time prescribed by state law.

2. A school system may not require parental consent as a condition of any benefit to the parent or student except for the services or activity for which consent is required under this Part.

3. Each school system in the state must establish and implement effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the student with FAPE.

### **§506. Conciliation and Mediation**

A. School systems shall make all reasonable efforts consistent with their obligations under these regulations to resolve informally any ongoing dispute between the parent and the school system. Parents may file a complaint with the SDE at any time.

B. Mediation is an optional process which may be used by the school system and the parent to reach an agreement concerning an education decision proposed or refused by the school system or the parent, and to which either the school system or parent disagrees. The parties have a right to:

1. a mediation conducted by a mediator who is not an employee of the school system responsible for providing special education and related services to the student;
2. a mediator trained in mediation with a knowledge of special education and special education services to mediate the disagreement;
3. a written copy of the agreement if an agreement is achieved.

C. Any mediation conducted between the school system and the parent does not result in a delay or denial of a parent's right to a due process hearing. Mediation is not required before a request for a due process hearing is made.

### **§507. Impartial Due Process Hearing**

A parent or school system may initiate a hearing on any of the matters described in §504 A.1 and 2 of these regulations. A parent initiates a hearing by sending written notice to the LEA. The LEA initiates a hearing by sending written notice to the parent and the SDE.

A. Any party to a hearing has the right to:

1. have the hearing conducted at a time and place convenient to the parent, student and school system;
2. be accompanied and advised by counsel or by an individual with special knowledge or training with respect to the problems of exceptional students;
3. present evidence and confront, cross-examine, and compel the attendance of witnesses;
4. prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five operational days before the hearing; and
5. obtain a written or electronic verbatim record of the hearing;

6. obtain written findings of fact and decisions. The SDE, after deleting any personally identifiable information, shall:

- a. transmit those findings and decisions to the State Advisory Council established under these regulations; and
  - b. make those findings and decisions available to the public;
7. a statement of the qualifications and the hearing record of the proposed hearing officers, upon request from the SDE.

B. A parent involved in a hearing has the right to:

1. have the student who is the subject of the hearing present;
2. open the hearing to the public;
3. be informed, upon request, of any free or low-cost legal and other relevant services when either the parent or school system initiates a due process hearing; and
4. be informed that if the parent prevails in a due process hearing, the parent may be able to recover attorney fees.

C. If the hearing procedure, review, or judicial proceeding involves an application for initial admission to any school system, the student with formal parental approval must be placed in the public school program of the school system responsible for the placement until the completion of all the proceedings.

### **§508. Hearing Officer Appointment and Hearing Procedures**

A. Hearing Officer Appointment

1. Hearing officers must be impartial persons knowledgeable about the legal and educational issues involved in assessing compliance with these regulations.

a. A hearing officer may not be a person who is an employee of a public agency that is involved in the education or care of the student.

b. No person who has a personal or professional interest which would conflict with his or her objectivity may be appointed to serve as hearing officer.

2. The SDE and each school system will maintain a list of qualified hearing officers. The list will include a statement of the qualifications of each of those persons and, to the extent possible, include representation from all regions of the state. The department ensures that these hearing officers have successfully completed an inservice training program approved by the department. Additional inservice training shall be provided whenever warranted by changes in applicable legal standards or educational practices.

3. Appointments will be for a period of three years and may be renewed. The department must annually review the activities of persons on the list and must remove persons from the list if they leave the state, decline to participate actively in the hearing process, cease to be impartial, or do not carry out their responsibilities in a satisfactory fashion.

Comment: A person who otherwise qualifies to conduct a hearing under this Section is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer.

B. Hearing Procedures

1. Hearing Officer Designation

a. The local supervisor must notify the SDE of the need to assign a hearing officer within one day of receipt of a request for a hearing. The hearing officer will be assigned within two operational days by the SDE on a rotational basis from the State Department of Education's approved list. Consideration will be given to the location of the hearing when making the assignment.

b. After a hearing officer has been assigned by the SDE, the local supervisor must, within five operational days, give the parent(s) written notice of the name of the proposed hearing officer.

c. The parent and the school system, upon receiving notice of the assigned hearing officer, may disqualify (available only once) the person assigned. The parent must notify the parish supervisor of such a decision within three operational days after receiving notice. The school system must notify the SDE of their decision or the parents' decision to disqualify the hearing officer within three operational days after receiving notice.

d. If the parent or school system has reasonable doubt regarding the impartiality of a hearing officer, they must submit written information to the SDE within three operational days of receipt of the notice of the assigned hearing officer. The SDE shall review any written challenge and:

(1) provide a written decision and notice to the parent and parish supervisor within five operational days after receipt of the written challenge;

(2) if the SDE determines that doubt exists as to whether the proposed hearing officer is truly impartial, an alternate hearing officer must be immediately assigned from the approved list.

e. Final designation of a hearing officer occurs when a proposed hearing officer is assigned by the SDE and there is no challenge by the parent or school system.

## 2. Conduct of Hearing

a. The school system must notify the parent of the date, time and place of the hearing following the requirements in §504 of these regulations.

b. A hearing shall be conducted in accordance with guidelines developed by the State Department of Education with approval of the Board of Elementary and Secondary Education.

c. The final hearing decision must be reached and a copy of the decision mailed to each party and the department not later than 45 operational days after the receipt of the request for the hearing.

d. A hearing officer may grant specific extensions of time beyond the prescribed time requirements at the request of either party. When an extension is granted, the hearing officer shall reach a decision and mail copies to the parties and the department not later than 10 operational days from the termination of the hearing.

e. A decision made in the hearing is final unless an appeal is taken by either party.

f. At the request of either party, the hearing officer has the right to subpoena persons to appear at the hearing.

## §509. Review of Hearing Decisions

A. Any party aggrieved by the findings and decisions of the hearing may appeal the hearing decision.

B. A written request to review the hearing decision must be sent by certified mail to the SDE within 15 operational days of receipt of the hearing decision. The request must state the basis upon which the review is requested.

C. The SDE must send copies of the request to all parties and notify the State Level Review Panel.

## §510. Appointment of Review Panel

A. The state level review panel is composed of three hearing officers and one alternate trained by the State Department of Education in special education law and issues who are not employed by the school system responsible for the education of the student and who did not participate in the due process hearing being appealed.

B. No person may serve on the panel reviewing an appeal if the person has a personal or professional interest that would conflict with his objectivity. A review officer shall not serve on the panel reviewing an appeal that involves a local school system by which the officer is employed.

## §511. Conduct of Review

A. Upon receiving a formal written request for a review, the SDE shall within 10 operational days notify the Review Panel to evaluate the hearing decisions, the hearing record, and other appropriate information.

B. A review must be conducted at a time and place that is reasonably convenient to the parents, the student and the school system.

C. In conducting the review, the panel shall within 30 operational days from receipt of the request for a review:

Comment: The review panel is allowed to grant specific extensions of time beyond the 30 calendar days at the request of either party.

1. examine the entire hearing record;

2. ensure that procedures were consistent with the requirements of due process;

3. seek additional evidence if necessary;

Comment: If a hearing is held to receive additional evidence, hearing rights stated in §507 (A and B) of these regulations are applicable.

4. afford all parties an opportunity for oral or written, or both, argument by the parties at the discretion of the reviewing panel;

Comment: any written argument(s) shall be submitted to all parties.

5. make a final decision on completion of the review;

6. give or mail a copy of its written findings and decision to all parties;

7. the SDE, after deleting any personally identifiable information, shall:

a. transmit those findings and decisions to the State Advisory Council established under these regulations; and

b. make those findings and decisions available to the public.

D. An agreement by two review officers on the panel constitutes the decision.

E. All parties have the right to continue to be represented by counsel at the state review level, whether or not the reviewing panel determines that a further hearing is necessary.

**§512. Reserved**

**§513. Appeal**

Any party aggrieved by the decision and the finding of the State Level Review Panel has the right to bring a civil action in state or federal court. The civil action must be filed in state court within 30 operational days of the decision. This time line does not apply to federal court.

**§514. Student Status During Proceedings**

A. During the pendency of any administrative hearing or judicial proceeding pursuant to the Section, the student involved must remain in the present educational placement unless the parent and the school system agree otherwise.

Comment: While the placement may not be changed during an administrative or judicial proceeding, unless the school system and parents agree otherwise, this does not preclude the school system from using its normal procedures for dealing with students who are endangering themselves or others.

B. If the hearing involves an application for initial admission to a public school the student with the consent of the parents, must be placed in the public school program of the school district until the completion of all the school proceedings.

**§515. Costs**

A. School systems shall be responsible for paying administrative costs or reasonable expenses related to participation of school system personnel in a hearing or appeal. The necessary expenses of the hearing officers, the review panel, and any stenographic services are paid by the SDE in accordance with department policies and procedures.

B. Each school system shall inform parents that any action or proceeding under Section 615 of IDEA, courts may award parents reasonable attorneys' fees under the circumstance described in Section 615 (E)(4) of IDEA.

**§516. Surrogate Parents**

A. A school system shall ensure that the rights of a child are protected when no parent (as defined in §959) can be identified and shall assign a surrogate parent whenever it determines that one of the following situations exists:

1. that the student is a ward of the state (including a ward of the court or of a state agency);
2. that it is unable to locate a natural parent or legal guardian by calls, visits, and by sending a letter by certified mail (return receipt requested) to the last known address of the natural parent or the legal guardian and allowing 20 operational days for a response of the intention to appoint a surrogate parent.

B. In all cases where the legal custody of the student is undetermined but an individual is raising the student at home; the individual is considered to be a person acting as the parent of the student and has complete authority over all educational decision-making on behalf of that student. In this instance a surrogate parent is not needed. At least three documented reasonable efforts must be made to notify the parents or guardians at their last known address.

C. A surrogate parent shall represent the student in all matters relating to the identification, individual evaluation, and educational placement of the student and the provision of a free appropriate public education including being present at an individual evaluation interpretation meeting,

IEP/Placement meeting and annual review meetings, and at any hearing concerning the student.

D. A method for determining whether a student needs a surrogate parent and for assigning a surrogate parent must be developed and implemented by each school system in a manner which ensures that:

1. a person assigned as a surrogate parent has no interest that conflicts with the interests of the student and is not a present employee of any state or state-supported agency involved in the education or care of the student;
2. the person assigned has knowledge and skills that insure adequate representation of the student;
3. all surrogate parents who cease to carry out the responsibilities or no longer meet the criteria of eligibility specified in B above are removed from eligibility.

E. Payment of fees for service as a surrogate parent does not, in and of itself, render a person an employee of the school system.

F. Any person appointed as a surrogate parent is protected by the "limited liability" of R.S. 17:1958.

G. Disagreement about the choice of a surrogate parent may be the subject of a due process hearing as described in this Part.

**§517. Confidentiality of Information**

The SDE has established policies and procedures for the implementation of the confidentiality requirements under IDEA - B and the regulations for Implementing the Family Educational Rights and Privacy Act (FERPA) of 1974.

A. Definitions. As used in these regulations:

*Destruction*—physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

*Education Records*—the type of records covered under the definition of education records in FERPA.

*Participating Agency*—any school system or agency or state-operated program that collects, maintains, or uses personally identifiable information, or from which information is obtained under these regulations.

B. Notice

1. The SDE shall give notice which is adequate to fully inform parents about the requirements under identification, location and evaluation of exceptional students, including:

- a. a description of the extent to which the notice is given in the native languages of the various population groups in the state;
- b. a description of the students on whom personally identifiable information is maintained, the types of information sought, the method the state intends to use in gathering the information (including the sources from whom information is gathered) and the uses to be made of the information;
- c. a summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
- d. a description of all of the rights of parents and students regarding this information, including the rights under the Family Education Rights and Privacy Act of 1974.

2. Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers, or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

#### C. Access Rights

1. Each school system shall permit parents to inspect and review educational records relating to their students which are collected, maintained or used by the agency under this Part. The school system shall comply with the request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the student, and in no case shall the time exceed 45 calendar days after the request has been made.

2. The right to inspect and review educational records under this Subpart includes the following:

a. the right to a response from the school system to reasonable request for explanations and interpretations of the records;

b. the right to request that the school system provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records;

c. the right to have a representative of the parent inspect and review the records when written permission by the parent is presented.

3. The school system may presume that a parent has authority to inspect and review records relating to his or her student unless the school system has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation and divorce.

D. Record of Parties Obtaining Access. Each school system shall keep a record of parties attaining access to education records collected, maintained or used under this Part (except access by parents or authorized parties of the school system), including the name of the party, the date access was given and the purpose for which the party is authorized to use the record.

E. Records on More than One Student. If any education record includes information on more than one student, the parents of those students shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

F. List of Types and Locations of Information. Each school system shall provide parents on request a list of the types and locations of education records collected, maintained or used by the school system.

#### G. Fees

1. Each school system may charge a fee for copies of records that are made for parents under this Part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

2. A school system may not charge a fee to search or to retrieve information under this Part.

#### H. Amendments of Records at Parent's Request

1. The parent has a right to have the child's records amended when the parent believes that the information

contained in the records is inaccurate, misleading or otherwise in violation of the parent's and child's privacy or other rights.

2. After the receipt of a request by a parent of a special education student to amend the student's record, the school system must decide whether to amend within a reasonable time.

3. If the school system refuses to amend the records as requested by the parent, the school system must inform the parent of the right to request a hearing as stated below.

#### I. Opportunity for a Hearing

1. The school system shall on request provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student.

2. A hearing held this Part must be conducted according to the procedures under the Family Educational Rights and Privacy Act (FERPA).

#### J. Results of a Hearing

1. If, as a result of a hearing, the school system decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights or other rights of the student, it shall amend the information accordingly and so inform the parents in writing.

2. If, as a result of a hearing, the school system decides that the information is not inaccurate, misleading or otherwise in violation of privacy rights, the parents must be afforded a right to place in the record comments they may have on the records or comments setting forth any reasons for disagreeing with the decision of the agency.

3. Any explanation placed in the record must:

a. be maintained by the school system as part of the records of the student as long as the record or contested portion is maintained by the school system; and

b. if the records of the student or the contested portion is disclosed by the school system to any party, the explanation must also be disclosed to the party.

#### K. Consent

1. Parental consent must be obtained before personally identifiable information is:

a. disclosed to anyone other than officials of the school system collecting or using the information under this Part subject to Number 2 below of this Section; or

b. used for any purpose other than meeting a requirement of the Part.

2. A school system or institution subject to FERPA may not release information from education records to school system without parental consent unless authorized to do so under FERPA.

3. If a parent refuses to provide consent under the Section, the requesting agency may file a written complaint with the SDE. Such a complaint will be investigated by the office according to the Board of Elementary and Secondary Education adopted procedures for the complaint management system required by IDEA

#### L. Safeguards

1. Each school system shall protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.

2. One official at each school system shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

3. Any persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures.

4. Each school system shall maintain for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

#### M. Destruction of Information

1. The school system shall inform parents when personally identifiable information collected, maintained or used is no longer needed to provide educational services to the student.

2. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance records, classes attended, grade level completed and year completed may be maintained without time limitation.

N. Students' Rights. Each school system shall ensure when a student attains the age of 18 years, unless such student has been interdicted or determined to be in continuing minority by a court order of the state of Louisiana, the student is afforded the rights of privacy similar to those afforded to parents, taking into consideration the student's type and severity of disability.

O. Enforcement. The SDE Monitoring Procedures, Bulletin 1922, includes the policies, procedures and sanctions which the state uses to ensure that the requirements of IDEA - Part B and these regulations are met.

#### §520-599. Reserved

### Part 600. Establishment and Operation of Special School District Number 1

#### §601. Establishment of Special School District Number 1

Special school District Number 1 (SSD#1) is an intermediate educational unit administered by the Louisiana Department of Education with the approval of its governing authority.

#### §602. Program Approval

Each educational program operated by SSD#1 shall meet the Standards for Approval of special schools.

#### §603. Purpose

The purpose of SSD#1 is to provide a free appropriate public education for eligible exceptional students, ages 3 through 21 years, who have been admitted to state-operated programs for treatment, habilitation, and care or who have been placed by court order. During this period SSD#1 assumes responsibility for special education on an individual basis for each student and assures that the student receives an uninterrupted program of special education and related services from admission to discharge. As a result the city/parish school system of the domicile of the student is relieved of its direct service responsibilities while the student is enrolled in SSD#1.

#### §604-629. Reserved

#### §630. General Responsibilities

A. Whenever an exceptional student enters the jurisdiction of SSD#1 consistent with the requirements of these regulations, SSD#1 shall be responsible for either providing or causing to be provided, all needed special education and related services to each such exceptional student in full compliance with all provisions of Part 400 of these regulations, including:

1. the necessary certified personnel to ensure the conduct of an Individual Evaluation for each student within its jurisdiction in accordance with all requirements of §430-436 of these regulations;

2. the development and implementation of an IEP for each student within its jurisdiction in accordance with §440-459 of these regulations;

3. adequate personnel to establish and maintain the appropriate relationships with each affected city/parish school system to provide for a smooth transition of educational services for each student discharged from an SSD#1 school;

4. the transmission of all educational records on a student discharged from an SSD#1 school to the city/parish school system in which the exceptional student will be residing to assist in the IEP/Placement meeting;

5. approval of each out-of-district educational placement not covered by an interagency agreement; and

6. the adherence to all procedural safeguards of Part 500.

B. The assumption of this responsibility by SSD#1 shall not relieve in any way an insurer, similar third party, or state or local public agency, e.g., Department of Health and Hospitals (DHH), Department of Public Safety and Corrections (DPS&C), from an otherwise valid obligation to provide or to pay for services to which exceptional students are entitled as clients or beneficiaries of such third parties under state or federal entitlement or laws, or under policies or contracts.

#### §631. Jurisdiction

SSD#1 has jurisdiction over all exceptional students admitted to state-operated residential facilities and each student placed by SSD#1 in another school system. When a student is no longer residing within a state-operated facility, jurisdiction is transferred from SSD#1 to the school system of current residence of the student.

#### §632. Enrollment

A. An exceptional student shall be enrolled in an SSD#1 school after admission to a state-operated residential facility. This enrollment process shall not exceed 30 calendar days.

B. If a student admitted to a state-operated residential facility has not been identified as being exceptional, enrollment in SSD#1 will occur upon completion of an individual evaluation and the development of an IEP in accordance with the requirements and time lines in §430-436 and 440-459 of these regulations.

C. SSD#1 shall develop with each affected agency an interagency agreement for the purpose of implementing the above enrollment requirements which shall include

procedures for the joint development of each IEP, and treatment, care, or habilitation plan.

D. Placement in a state-operated residential facility does not require that all educational services described in the IEP of the student must be provided within the facility.

Wherever possible, consistent with the rules for the least restrictive environment, students enrolled in SSD#1 must participate in educational programs operated by city/parish school systems serving the geographic attendance area in which the facility is located.

**§633. Discharge from Treatment, Care, and Habilitation**

If an exceptional student is being considered for discharge from a state-operated residential facility, SSD#1 shall notify the city/parish school system in which the eligible exceptional student will be residing, of the return of the student. Before the exceptional student is discharged, SSD#1 shall provide educational records to the affected city/parish school system.

**§634. Emergency and Respite Care Program**

The admission of an exceptional student by the state of Louisiana for a temporary program of respite care shall not automatically require enrollment in SSD#1 for purposes of these regulations. The admission of an exceptional student on an emergency basis shall not constitute enrollment in SSD#1. However, if such admission continues on a nonemergency basis after a decision by the legally constituted agency (e.g., DHH or DPS&C) or by court of the state of Louisiana to place the student in a state-operated residential facility, the student must be admitted and enrolled in SSD#1 in accordance with §632 of these regulations.

**§635-649. Reserved**

**§650. Financing**

A. The department shall provide to SSD#1 whatever financial resources are necessary to support the educational programs of SSD#1.

B. Services provided to exceptional students enrolled in SSD#1 from sources other than school systems or the department are presumed to be for related services (including those described in the IEP, if an interagency agreement so provides) and treatment aspects of the total residential care program of the facility in which the education program is conducted.

C. The cost of special education teachers, teacher aides, principals, speech therapists, pupil appraisal personnel, and other instructional support staff for the educational programs operated by SSD#1 shall be included in the operating budget prepared by the department. SSD#1 may from time-to-time enter into contracts for the delivery of educational services with school systems in whose jurisdiction residential facilities are located. School systems must participate in such contractual arrangements unless the state board approves the request by a school system for exemption from this obligation.

**§651-684. Reserved**

**§685. Use of Chapter 1 S.O.P. Funds**

A. If more than one state agency is directly responsible for providing a free appropriate public education to a student with a disability, or early intervention services to an infant or toddler with a disability, the state agency that is primarily responsible for the provision of education to that student or early intervention services to that infant or toddler, as

determined by the state educational agency, is the only state agency that must count that infant, toddler, or student with a disability.

B. A state agency or a local educational agency may use Chapter 1 S.O.P. funds only for programs and projects that are designed to supplement the provision of special education and related services or early intervention services to infants, toddlers, and students with disabilities who are eligible to be served.

C. The application for Chapter 1 S.O.P. funds must be submitted on forms issued by the department and must contain a narrative description of activities, a budget reflecting the use of funds, and procedures and assurances necessary for receipt of such federal funds for the provision of special education and related services.

**§686-689. Reserved**

**§690. Instruction for Child Count**

A student with disabilities who is counted for the purpose of computing a grant under IDEA - Part B Flow-Through funds may not be counted in computing a grant under Chapter 1 S.O.P. funds.

**§691. Individual Evaluation**

Individual evaluations in SSD#1 schools shall be conducted to comply with all requirements of §430-436 of these regulations.

**§692. IEP and Placement Development and Review**

IEP and placement of students enrolled in SSD#1 schools shall be developed and implemented in accordance with §440-446 of these regulations.

**§693. Procedural Safeguards**

Students and parents of exceptional students enrolled in SSD#1 shall be provided the procedural safeguards in accordance with Part 500 of these regulations.

**§694. Reserved**

**§695. Monitoring and Complaint Management**

Special school District Number 1 shall develop an internal monitoring and complaint management system.

**§696-699. Reserved**

**Part 700. Responsibilities of State Board Special Schools**

**§701. Establishment**

The state board special schools (Louisiana School for the Deaf, Louisiana School for the Visually Impaired, and Louisiana Special Education Center) are state-operated schools providing educational programs and services for students with disabilities. These schools are administered by the department.

**§702. School Approval**

Each state board special school shall meet the Standards for School Approval of the state board.

**§703. Purpose**

State board special schools are designated to provide a free appropriate public education for students with low incidence impairments who meet the criteria for admission (e.g., deafness, blindness, orthopedic disabilities) for each such special school and are enrolled in such special school on a residential basis. The quality of education shall be equal to that received by any other similarly student with disabilities in the city/parish school systems of the state of Louisiana.



#### **§704. Administrative Organization**

The state board is the governing board of the state board special schools. The department administers such special schools through the schools' appointed superintendents. The superintendent of each special school shall administer the special school for which he/she is responsible in compliance with approved state board policies and procedures, these regulations, and other applicable Bulletins.

#### **§705. General Responsibilities**

A. Whenever a student with disabilities enters the state board special school in compliance with the requirements of these regulations, the state board special school shall be responsible for either providing, or causing to be provided, a free appropriate public education.

B. State board special schools shall, upon admitting a student with disabilities, assume the responsibility for providing each student a free appropriate public education in full compliance with all provisions of Part 400 of these regulations, including those related to child search, evaluation, IEP development and implementation, and placement of exceptional students; the provision of special education and related services; adherence to procedural safeguards; and certification of staff.

#### **§706. Jurisdiction**

All students with disabilities admitted into and residing in state board special schools shall be under the jurisdiction of the state board special school. Students with disabilities referred by a school system and admitted as full-time students to participate in the academic and nonacademic programs to the extent necessary to meet the individual needs of the student with the exception of residential services because of the proximity of residence of parents and/or other residential arrangements shall also be under the jurisdiction of state board special schools. Each student with disabilities, under the jurisdiction of the state board special school, but placed in an educational program or receiving services in a city/parish school system, remains under the jurisdiction of the state board special school. The school system which retains jurisdiction retains the fiscal responsibility for funds or resources not available to the other system from the state or through an interagency agreement or cooperative program.

#### **§707. Enrollment (Admission and Release)**

##### **A. Admission**

1. Eligible students with disabilities shall be admitted to state board special schools according to admission procedures established by the state board special school, approved by the state board, and in compliance with these regulations.

2. Students with disabilities shall not be admitted to a state board special school unless such students with disabilities are referred by a city/parish school system in compliance with the provisions of §440 and §446.D or in compliance with the provision of §716.

##### **B. Release**

1. Students with disabilities admitted to state board special schools shall be released from enrollment according to procedures established by the state board special school, approved by the state board, in compliance with these regulations.

2. Students with disabilities currently enrolled in state board special schools shall not be referred to a city/parish school system without a review of the current IEP/Placement (in compliance with §452) being conducted by the state board special school.

C. State board special schools may enter into interagency agreements with special school District Number 1 for cooperative supportive efforts in the provision of services, such as child search, evaluation and coordination.

D. Admission to a state board special school does not necessarily mean that all educational services described in the IEP of the student must be provided within such facility. Wherever appropriate, consistent with the rules for a least restrictive environment in §445, students admitted to state board special school programs must participate in educational programs operated by city/parish school systems serving the geographic attendance area in which the facility is located.

E. Admission to a state board special school shall not relieve in any way an insurer, similar third party, or other state or local public agency (e.g., DHH, DPS&C, DSS) from an otherwise valid obligation either to provide or to pay for services to which students with disabilities are entitled as clients or beneficiaries of such third parties under state or federal entitlement or laws, or under policies or contracts.

#### **§708. Financing**

State board special schools apply for state funds by submitting annual budgets approved by the state board to the Louisiana Legislature. Such budgets indicate federal and state sources of revenue. Each state board special school has its own schedule number in the annual appropriation bill.

#### **§709. Child Search Activities**

State board special schools shall cooperate with each school system in which the parents of a student with a disability enrolled in the state board special school are domiciled to permit the school system to carry out its ongoing responsibility with respect to student search when a student is in a state board special school.

#### **§710. Use of Chapter 1 S.O.P. Funds**

A. If more than one state agency is directly responsible for providing a free appropriate public education to a student with a disability, or early intervention services to an infant or toddler with a disability, the state agency that is primarily responsible for the provision of education to that student or early intervention services to that infant or toddler, as determined by the state educational agency, is the only state agency that must count that infant, toddler, or student with a disability.

B. A state agency or a local educational agency may use Chapter 1 S.O.P. funds only for programs and projects that are designed to supplement the provision of special education and related services or early intervention services to infants, toddlers, and students with disabilities who are eligible to be served.

C. The application for Chapter 1 S.O.P. funds must be submitted on forms issued by the department and must contain a narrative description of activities, a budget reflecting the use of funds, and procedures and assurances necessary for receipt of such federal funds for the provision of special education and related services.



### **§711. Instructions for Child Count**

A. A student with disabilities who is counted for the purpose of computing a grant under IDEA - Part B Flow-Through funds may not be counted in computing a grant under Chapter 1 S.O.P.

B. A student with disabilities who is counted in computing a grant under Chapter 1 S.O.P. funds shall not be counted for the purpose of computing a grant under IDEA - Part B.

### **§712. Individual Evaluation**

Individual evaluations in state board special schools shall be conducted in compliance with all requirements of §430-436 of these regulations.

### **§713. IEP/Placement**

IEP/Placement of students enrolled in a state boards special school shall be reviewed or revised and implemented in accordance with §440-459 of these regulations.

### **§714. Procedural Safeguards**

Students with disabilities and parents of students with disabilities enrolled in a state board special school shall be afforded all the procedural safeguards provided by Part 500 of these regulations.

### **§715. Monitoring and Complaint Management**

The state board special schools shall develop an internal monitoring and complaint management system.

### **§716. Louisiana School for the Deaf Alternative Placement**

A. In compliance with Acts 433 and 911 of the 1992 Regular Session of the Louisiana Legislature, the Louisiana School for the Deaf (LSD) shall:

1. determine, not later than the second Monday in September of each year, the number of additional students who may be admitted under this placement option;

2. base the determination on the availability of all necessary resources required to provide a free appropriate public education.

B. Upon receipt from a parent (as defined in Part 900 of this Bulletin) of an application for admission of their child, LSD shall:

1. require, at a minimum, an individual evaluation which meets the requirements in Bulletin 1508 for classification as hearing impaired (deaf/hard of hearing) as a part of the application;

2. notify the school system of parent/student domicile that application has been made, in order to fulfill the provisions established in §709 of this Bulletin.

C. Within 45 operational days, LSD shall: process the application; make a determination of eligibility for admission; and develop an Individualized Education Program (IEP). In the development of the IEP, the parent shall be informed of all placement options available to meet the student's educational needs.

D. LSD shall notify the school system of parent/student domicile that a student has been admitted or rejected under the provisions of this Subsection.

E. The applicable procedural safeguards established in Part 500 of this Bulletin shall be followed.

### **§717-799. Reserved**

## **Part 800. Interagency Agreements**

### **§801. General Statement**

The BESE has authorized the SDE, Office of Special Educational Services under R.S. 17:1941-1958 et seq., to

enter into any agreement developed with another public or private agency, or agencies, where such an agreement is consistent with the regulations; is essential to the achievement of full compliance with the regulations; is designed to achieve or accelerate the achievement of the full educational goal for all exceptional students; and is necessary to provide maximum benefits appropriate in service, quality, and cost to meet the full educational opportunity goal in the state. Each school system and the SDE shall enter into all interagency agreements specified in the regulations by following all the requirements in this Part and Guide for Developing Interagency Agreements, Bulletin 1930.

As used in this part, "interagency agreement" means an operational statement between two or more parties or agencies that describes a course of action to which the agencies are committed.

### **§802-809. Reserved**

### **§810. Relationship Between School Systems and the Department**

The relationship between the department and the school systems is defined by these regulations in regard to providing a free appropriate public education to exceptional students. Interagency agreements are not necessary to define such relationships.

### **§811-819. Reserved**

### **§820. Purpose of Interagency Agreements**

A. The purpose of interagency agreements is to assure that the standards established by BESE to ensure a free appropriate, public education for exceptional students are upheld when they are implemented by an approved public or nonpublic agency not within the governance of the BESE.

B. The agreements are mandated to provide maximum use of both human and fiscal resources in the delivery of special education and related services, and to coordinate and clarify "first dollar" responsibilities.

C. Agreements may be entered into with parties both inside and outside the state of Louisiana with special consideration being given to abide by the rules for least restrictive environment. Nothing in any agreement may be construed to reduce assistance available or to alter eligibility.

### **§821-829. Reserved**

### **§830. Types of Interagency Agreements**

SDE and SSD#1 shall have agreements with the subdivisions and the Department of Health and Hospitals (DHH), Social Services (DSS), and the Department of Public Safety and Corrections (DPS&C). Local Educational Agencies shall have those agreements whenever necessary for the provision of a free appropriate public education with mental health centers, public health units, maternal and child health and Handicapped Children Services, Early Periodic Screening, Diagnosis, and Treatment programs, SSD#1, intermediate and long-term care facilities, approved nonpublic agencies, other local educational agencies, and Title XX providers. State Special School for the Deaf, State School for the Visually Impaired and the State Special Education Center now under the auspices of SSD#1 shall have interagency agreements with:

1. the LEA in whose geographic area they are located;
2. each LEA that places a student in the day programs of that facility;

3. regional state agencies;
4. approved and licensed nonpublic education; and
5. habilitation agency(ies) with whom they share students.

**§831-839. Reserved**

**§840. Mandatory Content of Interagency Agreements**

- A. Each agreement shall contain in writing:
1. a statement describing the disparate governances being dealt with by the parties of the agreement;
  2. the reason for writing the agreement;
  3. the responsibilities of each party of the agreement for providing FAPE, including the funding and the methods for accomplishing those responsibilities;
  4. all applicable state and federal standards that will apply to the agreement being developed;
  5. the data to be exchanged and the methods for exchanging it;
  6. statements with respect to Child Search and Confidentiality;
  7. the monitoring schedule and the procedures for same;
  8. the duration of the agreement;
  9. the process for amending the agreement, to include the statement to the effect that the contract may be terminated upon 30 days written notice and the disposition of data/materials collected to that point;
  10. any information specific to an agency which is necessary for approval of the agreement by SDE; and
  11. the titles and signatures of individuals authorized to enter into such agreements.

B. In addition, the agreements must contain the following three statements for conformance to Division of Administration requirements:

1. The contractor shall not assign any interest in this contract and shall not transfer any interest in same (whether by assignment or novation), without prior written consent of the state, provided however, that claims for money due or to become due to the contractor from the state may be assigned to a bank, trust company, or other financial institution without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the state.

2. The contractor hereby agrees to abide by all of the provisions of Louisiana Revised Statutes 43:31 in regard to printing of public documents. Contractor hereby agrees that prior to the final publication of any reports, documents, or publications of whatever nature for delivery to or used by the state, that the final proofs will be proofread by personnel of the SDE and that no final printing will occur until the contractor has been advised by the SDE in writing that the text of materials to be printed has been proofread and approved.

3. It is hereby agreed that the Legislative Auditor of the state of Louisiana and/or the Office of the Governor, Division of Administration auditors shall have the option of auditing all accounts of contractor which relate to this contract.

Comment: Interagency agreements must be reviewed annually. It is not necessary to write a new agreement if there is documentation between parties that the existing signed agreement is still agreeable to all parties.

**§841-859. Reserved**

**§860. Resolving Interagency Disputes**

The steps to be followed to resolve interagency disputes, to include funding, in an expeditious manner are:

A. For agency disputes between educational agencies over which BESE has control, regular complaint procedures will be followed.

B. For agency disputes at the local level, the first step will be recourse to the Section for Complaint Management in the SDE. Upon receipt of a complaint, the complaint manager will log the dispute and attempt to mediate/resolve the dispute at the local level. If the dispute cannot be resolved, the steps for a dispute at the state agency level will be followed, to include securing reimbursement from agencies that are parties to the agreement or otherwise implement the provisions of the agreement.

C. For disputes at the state level, the first step will be review by a Committee on Dispute Resolution established for that purpose by SDE, OSES. The committee will be comprised of two classified employees appointed by their division/agency head from each involved agency and will be mediated/chaired by a trained mediator. Minutes will be kept of the proceedings, including the suggested resolution(s) of the issue. The Dispute Resolution Committee is not empowered to impose binding decisions, but serves to avoid litigation where possible. Division heads approve resolutions of dispute.

D. If a dispute continues beyond these interventions, either party of the dispute may seek resolution from a court of competent authority.

**§861-899. Reserved**

**Part 900. Definitions**

**§901. General**

The terms defined in §902-999 of this Part are used throughout these regulations. Unless expressly provided to the contrary, each term used in these regulations shall have the meaning established by this Part.

**§902. Abbreviations/Acronyms used in these Regulations**

A. *BESE*—State Board of Elementary and Secondary Education.

B. *Chapter 1 S.O.P. - P.L. 89-313*—Section 121 of Title I of the Elementary and Secondary Education Act of 1965 which provides for financial assistance for state-operated and state-supported programs for students with disabilities.

C. *DHH*—Department of Health and Hospitals.

D. *DPS&C*—Department of Public Safety and Corrections.

E. *FAPE*—Free Appropriate Public Education.

F. *IDEA*—Part B of the Individuals with Disabilities Education Act amends the Education for All Handicapped Children Act of 1975 formerly known as EHA (P.L. 94-142).

G. *IEP*—The Individualized Education Program required by §440 of these regulations.

H. *LEA*—Local Education Agency.

I. *LRE*—Least Restrictive Environment.

J. *OSSES*—Office of Special Educational Services.

K. *SDE*—State Department of Education.

L. *Section 504*—Section 504 of the Rehabilitation Act of 1973, 29 USC 706 and the regulation issued by the U.S. Department of Education at 45 CFR 84.

M. *SSD#1*—Special School District Number One

### §903. Abbreviated Terms

*The Act*—Sections 1941 through 1958 of Chapter 8 of Title 17 of Louisiana Statutes of 1950, as amended.

*The Department*—the Louisiana Department of Education

*The Office*—the Office of Special Educational Services of the Louisiana Department of Education.

*The State*—the state of Louisiana.

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

*The State Board Special Schools*—the Louisiana Special Education Center; The Louisiana School for the Deaf; The Louisiana School for the Visually Impaired.

*The Superintendent*—the Superintendent of Public Elementary and Secondary Education of the state of Louisiana.

### §904. Adapted Physical Education

*Adapted Physical Education* is alternative physical education for students with disabilities who may not safely or successfully engage in unrestricted participation in the vigorous activities of the regular physical education program on a full-time basis and for students with disabilities ages 3 through 5, who meet the criteria specified in Bulletin 1508. The delivery of adapted physical education required by an IEP must meet the following conditions:

1. evaluation and instruction is provided by a certified adapted physical education teacher;
2. only students with disabilities whose need is documented in accordance with criteria for eligibility as identified in Bulletin 1508 are enrolled;
3. enrollment is in accordance with the pupil/teacher ratios listed in Appendix I, Part B.

### §905. Affected School Personnel

*Affected School Personnel* means individuals who are involved in the delivery of services relevant to the specific disagreement(s) which are the subject of the hearing. Such individuals may be called by parties to the hearing, the hearing officer, or they may exercise their rights under §511.E.

### §906. Assistive Technology Device

*Assistive Technology Device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

### §907. Assistive Technology Service

*Assistive Technology Service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes:

1. the evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;
2. purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;
3. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

4. coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5. training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and

6. training or technical assistance for professional (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

### §908. Audiological Services

*Audiological Services* means:

1. the identification of students with hearing loss;
2. the determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
3. the provision of habilitative activities such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation;
4. the creation and administration of programs for prevention of hearing loss;
5. the counseling and guidance of pupils, parents, and teachers regarding hearing loss;
6. the determination of the student's needs for group and individual amplification, monitoring hearing aids and auditory training units, and evaluation of the effectiveness of amplification.

### §909. Autism

*Autism* is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is adversely affected primarily because the student has a serious emotional disturbance.

### §910. Calendar Days

*Calendar Days* means all days of the week, including weekends and holidays.

### §911. Certificate of Achievement

*Certificate of Achievement* is an exit document issued to an exceptional student who has achieved certain competencies and meeting specified conditions as listed below:

1. the student is exceptional under the criteria in Bulletin 1508;
2. the student has been enrolled in an Alternative to Regular Education Program as documented in the IEP;
3. the student has completed at least 12 years of school or has reached the age of 22 (not to include students younger than 16);
4. the student has met attendance requirements according to Bulletin 741;
5. the student has addressed a state-approved alternative curriculum as reflected on the IEP as goals and objectives;

6. the student has successfully completed his/her alternative program with at least 70 percent completion of annual goals listed on the IEP;

7. transition planning has been completed and documented;

8. the program is provided by personnel certified in appropriate areas.

#### **§912. Certified IEP Time Unit**

*Certified IEP Time Unit* means that specific period of time set aside for special education and related services under an approved individualized education program.

#### **§913. Child Search Coordinator**

*Child Search Coordinator* means the school system employee meeting the certification requirements who is responsible for the child search and child identification activities including that of locating the student.

#### **§914. Reserved**

#### **§915. Combination Self-contained and Resource Classroom**

*Combination Self-contained and Resource Classroom* is an alternative education setting in which the same teacher provides special education instruction for students receiving self-contained services (more than three hours per day) and for students receiving resource services (three hours or less per day).

1. Instruction must be provided by a teacher certified in accordance with Bulletin 746 and/or other department policy interpretation regarding certification.

2. The pupil/teacher ratio is bound by the ratios specified in Appendix I, Part B.

3. Instruction is provided for not more than 12 students whose exceptionalities are not severe or low incidence impairments for any one hour of certified IEP time units.

#### **§916. Community-Based Instruction**

*Community Based Instruction* is teaching and learning functional skills and activities in the community setting in which these activities would typically occur.

#### **§917. Community-Based Vocational Training**

*Community Based Vocational Training* is job training for high school students conducted in real work sites/local businesses, without pay, with training/support/supervision and/or follow along provided by trained personnel from the school system.

#### **§918. Consent**

*Consent* means that:

1. the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

2. the parent understands and agrees in writing to carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. the parent understands that granting of consent is voluntary on the part of the parent and may be revoked at any time.

#### **§919. Counseling Services**

*Counseling Services* means services provided by qualified social workers, psychologists, guidance counselors, or otherwise qualified personnel.

#### **§920. Deaf-blindness**

*Deaf-blindness* is concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that such students require specific special education services to meet the needs resulting from both impairments.

#### **§921. Education Records**

*Education Records* means those records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include those educational records listed in 45 CFR 99.3. of IDEA. The definition at 99.3 of IDEA has an extensive list of what is not included in educational records. The reader is referred to 45 CFR 99.3 for the full text.

#### **§922. Educational Assessment Services**

*Educational Assessment Services* include:

1. identifying special needs of students by providing: consultation and collaboration with teachers, school administrators, students and parents, classroom, observations and academic support services;

2. preventing educational problems through early identification of at risk students;

3. consulting with teachers and other school staff members in planning, implementing and evaluating school programs and strategies to meet the educational needs of individuals and groups of students;

4. designing interventions which address academic needs of specific students which will increase success in the academic setting;

5. administering, analyzing and interpreting informal and formal tests which will assist in identifying educational strengths and/or weaknesses in students who may need special services;

6. working as part of a multidisciplinary team to assess the educational, psychological, social and medical needs of individual students;

7. when necessary, providing supervision to new educational assessment teachers. Specific requirements must be met to be eligible as a supervisor.

#### **§923. Educationally Handicapped**

*Educationally Handicapped* is a rate of acquisition and/or degree of retention of information or educational skills significantly slower than the rate expected for students of the same age. This definition applies only to those students classified as educationally handicapped/slow learner prior to July 28, 1983.

#### **§924. Emotional/Behavioral Disorder**

*Emotional/Behavioral Disorder* means a disability characterized by behavioral or emotional responses so different from appropriate age, cultural, or ethnic norms that they adversely affect performance. Performance includes academic, social, vocational or personal skills. Such a disability is more than a temporary, expected response to stressful events in the environment; is consistently exhibited in two different settings; and persists despite individualized intervention within general education and other settings. Emotional and behavioral disorders can co-exist with other disorders.

### §925. Evaluation

*Evaluation* means procedures used in accordance with Bulletin 1508, The Pupil Appraisal Handbook to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

### §926. Evaluation Coordinator

*Evaluation Coordinator* is the pupil appraisal person who, in addition to serving as an examiner in the individual evaluation, is assigned the responsibilities described in §433 for a particular student.

### §927. Exceptional Student

*Exceptional Student* is a student who is evaluated in accordance with §430-436 of these regulations and is determined according to Bulletin 1508 to have an exceptionality which significantly affects educational performance to the extent that special education is needed. This definition also includes an infant or toddler with disabilities birth to 3 years of age who is evaluated in accordance with Bulletin 1508.

### §928. Exceptionality

*Exceptionality* is any one of the characteristic impairments or conditions, as defined in Bulletin 1508, which significantly affect the student's educational performance to the extent that the student needs special education.

### §929. Extended School Year Programming (ESYP)

*Extended School Year Programming (ESYP)* is the provision of educational and related services to students with disabilities in excess of the 180-day school year. All students, ages 3-21 by the ESYP screening date, classified as disabled according to Bulletin 1508, with a current evaluation and IEP, are to be screened annually to determine eligibility for ESYP.

### §930. Free Appropriate Public Education (FAPE)

*Free Appropriate Public Education (FAPE)* means special education and related services that (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the SEA; (c) include preschool, elementary school, or secondary school education in the state involved; and (d) are provided in conformity with an IEP.

### §931. Generic Class

*Generic Class* is an instructional setting (self-contained/resource) in which:

1. in accordance with the level of support needed, students with disabilities may be placed as follows:
  - a. mild/moderate class;
  - b. severe/profound class;
2. the instruction is provided by a special education teacher with appropriate certification as specified in Bulletin 746;
3. the pupil/teacher ratios established in Appendix I, Part B, A or B are used;
4. the generic class meets the other requirements of the categorical self-contained, resource, or itinerant class.

### §932. Gifted

*Gifted* is demonstrated abilities that give evidence of high performance in academic and intellectual aptitudes.

### §933. Hearing Impairment

*Hearing Impairment* is a hearing loss that significantly interferes with educational performance. It includes students who are deaf or hard of hearing or who have unilateral hearing loss or high frequency hearing loss.

### §934. Homebound or Hospital Instruction (Settings)

*Homebound or Hospital Instruction (Settings)* are alternative education settings for the provision of special education according to an IEP by a certified teacher in the student's home environment or in a hospital in which both of the following conditions exist: 1) the student must be enrolled in special education, and 2) the student is not able to be moved from the hospital or home environment as a result of physical illness, accident or emotional crisis or the treatment thereof, or as a result of disciplinary action taken consistent with §459.

### §935. Hospital/Homebound

*Hospital/Homebound* is an exceptionality for a student enrolled in regular education who, as a result of physical illness, accident, emotional crisis or the treatment thereof, is not able to be moved from the hospital or home environment for the provision of regular educational services for at least 15 operational days.

### §936. Include

*Include* means that the items named are not all of the possible items that are covered, whether like or unlike the one named.

### §937. Inclusive Education

*Inclusive Education* is the education of all students in regular education and community settings to ensure full and valued membership in society. Special education and related services needed by exceptional students are provided in the most integrated environment appropriate.

### §938. Independent Educational Evaluation

*Independent Educational Evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question.

### §939. Individualized Education Program

*Individualized Education Program* means a written statement for each student with an exceptionality developed at a meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with exceptionalities, the teacher, the parents or guardian of such student, and, whenever appropriate, such student, which shall include:

1. a statement of the present levels of educational performance of such student;
2. a statement of annual goals, including short-term instructional objectives;
3. a statement of the specific educational services to be provided to such student, and the extent to which such student will be able to participate in regular educational programs;

4. a statement of the needed transition services for students with disabilities beginning no later than age 16 and annually thereafter (and, when determined appropriate for the individual, beginning at age 14 or younger), including, when appropriate, a statement of the interagency responsibilities or linkages (or both) before the student leaves the school setting;

5. the projected date for initiation and anticipated duration of such services; and

6. appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

In the case where a participating agency, other than the educational agency, fails to provide agreed upon services, the educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives.

#### **§940. Individual Transition Plan (ITP)**

*Individual Transition Plan (ITP)* is a written plan which lists the action steps that a person will need to have accomplished in order to live, work, and recreate as an adult as normally and independently as possible. It must be written by age 16, or earlier if appropriate, and revised annually until the student exits the school system.

#### **§941. Infants and Toddlers with Disabilities**

*Infants and Toddlers with Disabilities* are students between the ages of birth and 3 years of age who have been determined eligible for early intervention services according to Bulletin 1508.

#### **§942. Instruction in Regular Class**

*Instruction in Regular Class* is an alternative education setting for eligible exceptional students in which instruction is provided in the regular classroom including:

1. supplemental aides and services to exceptional students, and/or

2. special education instruction to exceptional students which is provided by a special education teacher certified generically or in the area of exceptionality for which special education is provided.

3. The pupil/teacher ratios established in Appendix I, Part B, are used.

#### **§943. Interagency Agreement**

*Interagency Agreement* means an operational statement between two or more parties or agencies that describes a course of action to which the agencies are committed. The statement is drawn up to be consistent with the mandatory provision of Part 800 of these regulations.

#### **§944. Interpreter Services**

*Interpreter Services* means the facilitation of communication within an instructional environment via an enhanced visual and/or tactile mode between and among hearing impaired and hearing individuals in situations in which those individuals are unable to communicate with one another using a speech and hearing mode.

#### **§945. Itinerant Resource Room Program**

*Itinerant Resource Room Program* is a type of alternative education setting for the provision of special education and related services for no less than two and one-half hours per week, not less frequently than twice a week, in which all of the following exist:

1. special education and related services are provided at more than one approved preschool, elementary, or secondary school. One school must be designated as the homebase school for the teacher;

2. the pupil/teacher ratios established in Appendix I, Part B, are used;

3. instruction is provided for not more than 12 students whose exceptionalities are not severe or low incidence impairments for any one hour of certified IEP time units;

4. special education is provided by a special education teacher certified generically or in the area of exceptionality for which special education is provided.

#### **§946. Learning Disabilities**

*Learning Disabilities* are severe and unique learning problems as a result of significant difficulties in the acquisition, organization, or expression of specific academic skills or concepts. These learning problems are typically manifested in school functioning as significantly poor performance in such areas as reading, writing, spelling, arithmetic reasoning or calculation, oral expression or comprehension, or the acquisition of basic concepts. The term includes such conditions as attention deficit, perceptual handicaps or process disorders, minimal brain dysfunction, dyslexia, developmental aphasia, or sensorimotor dysfunction, when consistent with these criteria. The term does not include students who have learning problems which are primarily the result of visual, hearing, or motor impairments; of mental disabilities; of a behavior disorder; or of environmental, cultural, educational, or economic disadvantage.

#### **§947. Least Restrictive Environment**

*Least Restrictive Environment* means the educational placement of an exceptional student in a manner consistent with the *Least Restrictive Environment* rules in §445.

#### **§948. Mental Disabilities**

*Mental Disabilities* is significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

#### **§949. Multiple Disabilities**

*Multiple Disabilities* is concomitant impairments (such as mental disabilities-blind; mental disabilities-orthopedic impairment), the combination of which causes such severe educational problems that these pupils cannot be accommodated in special education programs solely for one of the impairments. The term does not include students with deaf-blindness nor may noncategorical preschool be used as one of the two impairments to classify for multiple disabilities.

#### **§950. Native Language When Used with Reference to a Person of Limited English-Speaking Ability**

*Native Language When Used with Reference to a Person of Limited English-Speaking Ability* means the language normally used by that person, or in the case of a student, the language normally used by parents of the student.

#### **§951. Noncategorical Preschool**

*Noncategorical Preschool* is an exceptionality in which students 3 years through age 5, but not enrolled in a state-approved kindergarten, are identified as having a disabling condition which is described, according to functional or

developmental levels. Students with disabilities who will turn three during the school year may also be identified as *noncategorical preschool*.

*Comment:* Students who exhibit a severe sensorial impairment, severe physical impairment, speech impairment, severe language disorder, or who are suspected of having autism, or being gifted or talented shall be identified categorically.

#### **§952. Occupational Therapy as a Related Service**

*Occupational Therapy as a Related Service* means:

1. improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
2. improving ability to perform tasks for independent functioning when functions are impaired or lost;
3. preventing, through early intervention, initial or further impairment or loss of function.

#### **§953. Operational Day**

*Operational Day* means any day on which the Louisiana Department of Education is open for the conduct of public business. However, if the central office of the school system is officially closed and the department is open, that day does not count in the calculation of the timelines for that particular school system as mandated in these regulations. Operational days as used in Bulletin 1508 are identified by the LANSER calendar, which is distributed annually.

#### **§954. Orientation and Mobility Training**

*Orientation and Mobility Training* means a program for students with a visual impairment for the purpose of using the senses in determining position in relationship to surroundings and moving from a fixed position to a desired position within the environment.

#### **§955. Other Health Impairment**

*Other Health Impairment* means limited strength, vitality, or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, ventilator assistance, traumatic head injury or attention deficit disorder.

#### **§956. Orthopedic Impairment**

*Orthopedic Impairment* is a severe orthopedic impairment which adversely affects a student's educational performance. The term includes disabilities caused by congenital anomaly (i.e., clubfoot, absence of some member); impairments caused by disease (e.g., poliomyelitis, bone tuberculosis); and disabilities from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

#### **§957. Paraprofessional**

*Paraprofessional* is a person who assists in the delivery of special educational services under the supervision of a special education teacher or other professional who has the responsibility for the delivery of special education services to exceptional students and who has all of the following qualifications of a teacher aide: 1) is at least 20 years of age; 2) possesses a high school diploma or its equivalent; and 3) has taken a nationally validated achievement test and scored such as to demonstrate a level of achievement equivalent to the normal achievement level of a tenth grade student.

#### **§958. Paraprofessional Training Unit**

*Paraprofessional Training Unit* is a setting that may be used for the self-help training (toilet training, dressing skills,

grooming skills, feeding skills, and pre-academic readiness activities) students with severe or low incidence disabilities or preschool students. A school-aged unit may be made up of no more than six paraprofessionals. A preschool unit may be made up of no more than four paraprofessionals. All units must be supervised directly by a certified special education teacher.

#### **§959. Parent**

*Parent* means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with 34 CFR §300.514. The term does not include the state if the student is a ward of the state. The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a student lives, as well as persons who are legally responsible for a student's welfare. Louisiana Law requires that the rights and responsibilities of a parent established by these regulations shall be exercised by the exceptional student who attains the age of 18 years unless such student has been interdicted or determined to be in continuing minority by a court order of the state of Louisiana and taking into consideration the student's type and severity of disability.

#### **§960. Parent Counseling and Training**

*Parent Counseling and Training* means assisting parents in understanding the special needs of their child and providing parents with information about child development.

#### **§961. Participating Agency for Transition Purposes**

*Participating Agency for Transition Purposes* is a state or local agency (school system), other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

#### **§962. Personally Identifiable**

*Personally Identifiable* means that information includes (1) the name of the student, the student's parent, or other family member; (2) the address of the student; (3) a personal identifier, such as the student's social security number or student number; or (4) a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

#### **§963. Physical Education**

*Physical Education* means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual or group games or sports. The term physical education includes regular physical education, modification in the regular program to accommodate the LRE needs and adapted physical education for students with disabilities identified as being in need of such according to Bulletin 1508. Physical education other than adapted physical education shall be provided by a special education teacher, a regular education teacher, or a physical education teacher, consistent with the school system policy for providing physical education to nonexceptional students.

#### **§964. Physical Therapy**

*Physical Therapy* as a related service includes:

1. evaluating students with disabilities by performing and interpreting tests and measurements of neuromuscular, musculoskeletal, cardiovascular, respiratory, and sensorimotor functions;



2. planning and implementing treatment strategies for students based on evaluation findings;

3. maintaining the motor functions of a student to enable him to function in his educational environment; and

4. administering and supervising therapeutic management of students with disabilities and providing inservice education to parents and educational personnel.

#### **§965. Psychological Services**

*Psychological Services* means:

1. administering psychological and educational tests and other assessment procedures;

2. interpreting assessment results;

3. obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

4. consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests, interviews, and behavioral evaluations; and

5. planning and managing a program of psychological services, including psychological counseling for students and parents.

#### **§966. Public Agency**

*Public Agency* includes the SEA, LEAs, IEUs, and any other political subdivisions of the state that are responsible for providing education to students with disabilities.

#### **§967. Pupil Appraisal Personnel**

*Pupil Appraisal Personnel* means 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 in these regulations.

#### **§968. Reasonable**

*Reasonable* when used in regard to time, means a period not to exceed 30 to 45 operational days unless specifically indicated otherwise in these regulations.

#### **§969. Rehabilitation Counselor**

*Rehabilitation Counselor* is an individual who provides services in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. It also includes vocational rehabilitation services.

#### **§970. Related Services**

*Related Services* means transportation and such developmental, corrective, and other supportive services as are required to assist an exceptional student to benefit from special education. Related services include speech/hearing/language services and audiological services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in students, counseling services including rehabilitation counseling, interpreter services, orientation and mobility training, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training. For infants and toddlers with disabilities, all services are considered direct services with the exception of health services which are considered a related service.

#### **§971. Resource Center for Gifted or Talented**

*Resource Center for Gifted or Talented* is a type of instructional setting, designed or located at one school, that provides instructional services to students who are gifted or talented from two or more schools and in which:

1. special education is provided by an individual certified in accordance with Bulletin 746;

2. the pupil/teacher ratios established in Appendix I, Part B, are used; and

3. instructional time is not less than two and one-half hours per week.

#### **§972. Resource Room**

*Resource Room* is a type of alternative education setting for special education and related services designed or adapted as a location where exceptional students may receive all or a part of the special education required by their IEP, and in which all of the following exist:

1. the pupil/teacher ratios established in Appendix I, Part B, are used;

2. no student who is not an exceptional student is enrolled;

3. instruction is provided for not more than 12 students whose exceptionalities are not severe or low incidence impairments for any one hour of certified IEP time units;

4. special education is provided by a teacher certified generically or in the area of exceptionality for which special education is provided;

5. no student shall be enrolled for more than 180 minutes of certified IEP time units per day.

#### **§973. School Building Level Committee**

*School Building Level Committee* is a committee of at least three school level staff members which may be identified as an SBLC, SAT, STAT, etc. at the discretion of the LEA. The committee must be comprised of at least the principal/designee, a classroom teacher, and the referring teacher. It is suggested that other persons be included, such as the guidance counselor, reading specialist, master teacher, nurse, parents, etc. This committee is a problem solving, decision making group who meet on a scheduled basis to receive referrals from teachers, parents, or other professionals on individual students who are experiencing difficulty in school due to academic and/or behavior problems. In most instances, for enrolled students, it is only through the SBLC that a referral can be made to pupil appraisal for an individual evaluation.

#### **§974. School Health Services**

*School Health Services* means services provided by a qualified school nurse or other qualified person including:

1. identification of students with health impairments through:

a. health screening and health assessments;

b. the review and interpretation of medical records and medical diagnoses;

2. determination and provision of the nursing diagnoses, treatments and interventions of real or potential health problems;

3. referral and follow-up for medical or other professional attention for the habilitation of health problems;

4. provision of medically prescribed, and nursing procedures;

5. health education, counseling and guidance of parents, students, teachers, and other school personnel to promote, maintain or restore the health of a student.

#### **§975. School System**

*School System* means:

1. city/parish school system;
2. SSD#1;
3. a state board special school.

#### **§976. Self-Contained Departmentalized**

*Self-Contained Departmentalized* is a special education class which meets the definition of self-contained with the exclusion of the single teacher requirement. The total number of exceptional students for whom a teacher provides instruction is limited to five times the midpoint of the range for that exceptionality and is not to exceed the maximum for that exceptionality at any given period.

#### **§977. Self-Contained Special Education Class**

*Self-Contained Special Education Class* is a type of alternative education setting in which the same teacher provides special education instruction for an approved group (the size of which must be consistent with the pupil/teacher ratio listed in Part B of these regulations:

1. in which instruction is provided for each exceptional student for more than 180 minutes per day when the balance of the school day is in regular class placement;
2. a student may be released during the school day to receive related services, adapted physical education, or speech therapy consistent with the student's IEP; and
3. special education is provided by a teacher certified generically or in the area of exceptionality served.

#### **§978. Severe Language Disorder**

*Severe Language Disorder* is a type of communication impairment resulting from any physical or psychological condition which seriously interferes with the development, formation, and expression of language and which adversely affects the educational performance of the student. This category does not include students whose communication impairment is primarily due to mental disability, autism, or a hearing impairment.

#### **§979. Severe or Low Incidence Impairments**

*Severe or Low Incidence Impairments* may include moderate, severe and profound mental disabilities, multiple disabilities, autism, blindness, deafness, deaf/blindness, emotional/behavioral disorders, severe language disorders, orthopedic impairments, and traumatic brain injury dependent upon the intensity of the student's individual needs.

#### **§980. Social Work Services in Schools**

*Social Work Services in Schools* means preparing a social or developmental history on an exceptional student; group and individual counseling with the student and family; working with those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school; and mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program.

#### **§981. Special Education**

*Special Education* shall be any program of instruction within the preschool, elementary, and secondary school structure of the state, specifically designed by providing for

different learning styles of exceptional students. This instruction shall be in alternative educational settings (§445) which meet the standards of the state board, are approved by the department, and implemented according to an individualized education program.

#### **§982. Speech/Hearing/Language Services**

*Speech/Hearing/Language Services* means identification of students with speech or language disorders; diagnosis and appraisal of specific speech or language disorders; referral for medical or other professional attention necessary for the habilitation of speech or language disorders; provisions of speech and language services for the habilitation of communication or prevention of communication disorders; and counseling and guidance of parents, students, and teachers regarding speech and language disorders.

#### **§983. Speech Impairment**

*Speech Impairment* is a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment which adversely affects a student's educational performance.

#### **§984. Speech Therapy Program**

*Speech Therapy Program* is a service delivery pattern in which exceptional students receive speech/hearing/language intervention services as specified on the IEP when the speech disorder is identified according to Bulletin 1508.

#### **§985. Student Specific Aide**

*Student Specific Aide* criteria are:

1. The need for a student specific special education teacher aide must be based on educational need, such that the student could not receive FAPE without the specific individual assistance of an aide.
2. The student must be medically fragile or otherwise seriously physically involved.
3. The requirement for the student specific aide must be documented in the student's IEP.
4. The school system must certify that it is unable through other adaptations, such as scheduling or reorganization, to provide the required services in any manner.
5. IEP goals must address progress towards student independence.
6. Under these criteria, an aide is required for more than one student in the system.

#### **§986. Student with Disabilities**

*Student with Disabilities* means an exceptional student whose only exceptionality is not gifted or talented.

#### **§987. Supervisor**

*Supervisor* means the supervisor/director of special education employed by every city/parish school system as required by §481 of these regulations. In addition, it includes the superintendent of a state board school and the superintendent of SSD#1.

#### **§988. Support Services**

*Support Services* are those services that are provided to regular education students who are experiencing difficulty in their educational performance. These services may be as follows:

1. *Direct Support Services*—those services provided directly to a regular education student which may include but

are not limited to, individualized interventions, curriculum-based assessment, task analysis, etc.

2. *Indirect Support Services*—those services provided to the classroom teacher, a student's family, or to a whole class. These services could include but are not limited to home/school behavior modification program, discipline techniques, teaching strategies, etc.

#### **§989. Talented**

*Talented* is possession of measurable abilities that give evidence of unique talent in visual or performing arts, or both.

#### **§990. Transition**

*Transition* is a period of time, initiated by age 16, earlier if appropriate, which includes planning for the future and is accompanied by steps to assist in securing an independent and typical adult life. It includes vocational training, formal planning for the future, and identification of meaningful future options. Transition is a bridge between the adolescent school years and young adult life and is characterized by transition services. The objective of transition is to arrange for those opportunities and services that will promote successful adult living and prevent interruption of needed services.

#### **§991. Transition Services**

*Transition Services* are a coordinated set of activities for a student, designed within an outcome oriented process, which promotes movement from school to post school activities, including post secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation.

#### **§992. Transitional Assessment**

*Transitional Assessment* consists of gathering information, both formally and informally, which provides programming information in the targeted areas for transition planning as follows: post secondary education; employment; living arrangements; homemaking needs; financial/income needs; community resources; recreation and leisure; transportation needs; medical needs; relationships; advocacy/legal needs; and any other information pertinent to lifestyle planning.

#### **§993. Transportation**

*Transportation* is all travel necessary to implement each service written in the IEP of an exceptional student and includes:

1. travel to and from school; between schools and sites;
2. travel in and around school buildings; and
3. specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with disabilities.

#### **§994. Traumatic Brain Injury**

*Traumatic Brain Injury* is an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational

performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition, language, memory, attention, reasoning, abstract thinking, judgement, problem solving, sensory, perceptual, or motor abilities, information processing and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

#### **§995. Visual Impairment**

*Visual Impairment* is an impairment which, even with correction, adversely affects a student's educational performance. The term visual impairment includes students who have blindness and partial seeing.

#### **§996. Vocational Education**

*Vocational Education* means organized educational programs directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

#### **§997. Voluntarily Enrolled Nonpublic School Student**

*Voluntarily Enrolled Nonpublic School Student* means an exceptional student, or a student suspected of being an exceptional student, who is enrolled in a participating nonpublic school program at the choice of his or her parent(s) after the parent(s) have been provided full and effective notice by a school board of its obligation and willingness to provide a free appropriate public education.

#### **§998-999. Reserved**

##### **Part A. State Funding and Program Rules for Special Education**

##### **1. Cost of Regular Education Personnel**

a. In administering the State Program for Public Education, the department shall permit the inclusion of an exceptional student in the population used to determine the number of regular classroom teachers pursuant to pupil/teacher ratios established by the department if the exceptional student is receiving not less than one hour per day of instruction in the regular classroom as indicated on the IEP.

b. Inclusion of an exceptional student in the regular classroom membership as described in A above shall not limit the ability of a city/parish school system also to include the same student in the population used to calculate the costs of special education personnel providing special education services to the student.

##### **2. Cost of Special Education Personnel**

a. In administering the State Program for Public Education, the department, in accordance with Louisiana Teacher's Minimum Salary Schedule for teachers and therapists, salary schedules for pupil appraisal personnel, and per individual amounts for special education personnel such as teacher aides or bus attendants, shall only include in the cost program of a city/parish school system requesting funds under the program of:

i. the salary of a certified special education teacher, speech therapist, or teacher aide who is engaged exclusively in the teaching of exceptional students in eligible membership (as defined in Subpart 3 of this Part) consistent with the bona fide multiple enrollment requirements of Subpart 4 of this Part or in a program approved by the State Board of Elementary and Secondary Education;

ii. the salary of certified pupil appraisal personnel who are engaged exclusively in pupil appraisal activities pursuant to Part 400 of these regulations;

iii. the salary of a bus attendant.

b. Reserved.

c. Use of Pupil/Teacher Ratio

i. The number of positions A and B of this Subpart shall be determined on the basis of pupil/teacher, pupil/teacher aide, and pupil/therapist ratios (Part B of the Appendix establishes such ratios). For pupil appraisal personnel the number of positions allotted and employed under A and B of this Subpart shall be determined on the basis of the approved allotment schedules for assessment teachers and pupil appraisal personnel.

ii. In calculating the pupil enrollment for pupil/speech therapist ratios the weighted caseload approach set forth in Part B herein shall be used.

iii. When there are fewer than the minimal number of pupils per teacher, therapist, or aide specified by the ratios set forth in Part B of this Appendix, the state pupil/teacher ratio allotment for the approved teacher, therapist, or aide shall be reduced one-tenth for each pupil less than the specified minimum. The amount due after the reduced state allotment shall be paid to the teacher, therapist, or aide from the school system's funds, if the personnel are employed. This reduction shall not be the cause or excuse for not providing a free appropriate public education.

d. The total number of students used by city/parish school systems for purposes of calculating the number of salaries to be claimed in Subsection C of this Subpart shall not exceed 17 percent of the total school aged (e.g., 3 through 21 years) population of the city/parish school system as determined by the department.

3. Eligible Membership. Subject to the limitation of Subpart 4 of this Part, an exceptional student enrolled in any of the following programs may be counted within each program as part of the pupil population used under 2.c of this Part to calculate the number of certified special education teachers, therapists, and teacher aides employed under the program.

a. a self-contained special education class as defined in §976 of these regulations;

b. a resource room as defined in §972 of these regulations;

c. an itinerant resource room program as defined in §945 of these regulation;

d. an instruction in regular class program as defined in §942 of these regulations;

e. a paraprofessional training unit as defined in §958 of these regulations;

f. a speech therapy program as defined in §984 of these regulations;

g. an approved program of hospital or homebound instruction as defined in §934 of these regulations;

h. an approved program of adapted physical education instruction as defined in §904 of these regulations.

4. Bona Fide Multiple Enrollments

a. An exceptional student must be enrolled in a school program that consists of a regular classroom enrollment and

eligible special education membership(s) as defined in Subpart 3 and not prohibited by b below or in a combination of eligible special education membership(s) as defined in Subpart 3 and not prohibited in b below.

b. For the purposes of Subparts 2 and 3 of this Part, exceptional students may not be included concurrently in the pupil population of any combination listed below:

i. a self-contained special education class of either type and a resource room;

ii. a self-contained special education class of either type and an itinerant special education program;

iii. a resource room program and an itinerant special education program.

5. Use of Special Education Personnel

a. The certified special education teacher, speech therapist, teacher's aide, and special education supervisor whose salaries are included in the costs under Subpart 2 of this Part shall be used to provide services only to those exceptional students needing special education and related services for whose benefit the state authorization was made or in a program approved by the State Board of Elementary and Secondary Education.

b. The certified pupil appraisal personnel whose salaries are included in the cost under Subpart 2 of this Part shall be used only for the purpose of providing pupil appraisal services provided in accordance with Part 400 of these regulations.

6. Certification Requirements

a. Staff or school systems who provide special education and related services to exceptional students must currently meet all applicable Louisiana Standards for State Certification of School Personnel (Bulletin 746).

b. Teacher aides meeting qualifications shall be assigned only to special teachers or regular education teachers providing special education services to exceptional students according to the IEPs of the students.

7. Travel and Preparation Time

a. Each teacher providing instruction in an itinerant special education program shall be afforded adequate travel time and one instructional period per day for preparation and consultation with the student's regular teacher and other applicable school personnel.

b. Each teacher providing instruction in a resource room shall be afforded one instructional period per day for preparation and consultation with the student's regular teacher and other applicable school personnel.

**Part B. Pupil/Teacher, Pupil/Speech Therapist, Teacher/Teacher Aide, and Pupil Appraisal Ratios for Public Education**

I. Numbers of pupils enrolled in an eligible membership which justify the inclusion of the salary of a teacher providing instructional services.

A. Self-contained Classroom

	Pre-School	Elem.	Sec.
1. Autism	2-4	2-4	2-4
2. Behavioral Disorders		4-9	4-9

3. Blindness	4-7	4-9	4-9
4. Deafness	4-7	4-9	4-9
5. Deaf-Blindness	2-4	2-4	2-4
6. Educationally Handicapped/Slow Learner		12-25	12-25
7. Emotional Disorders		4-7	4-7
8. Gifted a. Full day b. Half day	10-19 12-23	12-25	12-27
9. Hard-of-Hearing	6-11	8-15	8-17
10. Learning Disabilities		7-13	8-15
11. Mental Disabilities a. Mild b. Moderate c. Severe d. Profound		8-17 6-11 4-9 4-9	8-17 8-17 4-9 4-9
12. Mild/Moderate (Generic)		7-16	7-16
13. Multiple Disabilities	4-7	4-9	4-9
14. Noncategorical Preschool a. Mild/Moderate Functioning 1. Full day 2. Half day b. Severe/Profound Functioning 1. Full day 2. Half day	6-11 8-16 4-7 8-14		
15. Other Health Impairments		8-17	8-17
16. Orthopedic Impairments	4-7	6-11	7-13
17. Partial Seeing	6-11	8-15	8-17
18. Severe Language Disorders	4-7	4-9	4-9
19. Severe/Profound (Generic)		4-9	4-9
20. Talented		12-25	12-27
21. Traumatic Brain Injury	4-7	4-9	4-9
* Half-day Categorical Preschool Class: The pupil/teacher ratio for all half-day categorical preschool classes, excluding gifted, is 8-16.			

**B. Paraprofessional Training Units**

**Preschool-Aged Students:** One teacher and two paraprofessionals for the initial six preschool students. For students functioning within the severe/profound range, there shall be one additional paraprofessional for any additional group of three not to exceed two additional groups of such students (maximum of four paraprofessionals per unit). For students functioning within the mild/moderate range, the additional paraprofessionals shall be added for each additional group of four. The maximum number of students may not exceed 12.

**School-Aged Students:** One teacher and two paraprofessionals for the initial six students with severe/profound or low incidence disabilities, provided that after the initial six there shall be one additional paraprofessional for any additional group of three, not to

exceed four additional groups of such students (maximum of six paraprofessionals per unit).

**C. Resource Room (Generic or Categorical) and Itinerant Instruction Programs (per teacher)**

1. Students with severe or low incidence impairments/disabilities 5-10
2. All other students with disabilities 12-27
3. Gifted or talented pupils 12-30

Comment: Because of the travel requirements of the program, this range may be reduced by the school system to 10-19 when instruction is provided to "all other students with disabilities" and "gifted or talented pupils" in at least two different schools.

**D. Combination Self-contained and Resource Classrooms**

1. Students with severe/low incidence impairments/disabilities 4-12
2. All other students with disabilities 8-20
3. Gifted 12-22

**E. Gifted or Talented Resource Center 24-55**

**F. Hospital/Homebound Instruction (per teacher)**

1. Itinerant 5-10
2. One Site 8-17

**G. Preschool Intervention Settings (Parent/Child Training)**

1. Intervention in the Home 5-15
2. Intervention in a School or Center 10-19

**H. Adapted Physical Education Instruction (per teacher) 10-60**

1. In cases of caseloads exceeding 35 students, the total number of students identified as having a severe motor deficit shall not exceed 17.

2. Itinerant Instruction (two or more schools) 10-40

**I. Instruction in Regular Classes**

1. Students with severe or low incidence impairments/disabilities 5-10
2. All other students with disabilities 12-27

Comment: Because of the travel requirements of the program, this range may be reduced by the school system to 10-19 when instruction is provided to "all other students with disabilities" in at least two different schools.

**II. Teacher Aides**

**A.** One teacher aide may be hired for each teacher hired under I-A above.

**B.** One teacher aide may be hired for each teacher hired under I-D.1 and 2 above, provided there is a minimum of eight students receiving self-contained services in D.2 above in the combination class or a minimum of four students receiving self-contained services in D.1 above in the combination class.

**C.** One teacher aide may be hired providing all criteria for a special education student specific aide in §985 is met.

**III.** Speech therapists in school systems shall be employed at the rate of one for each 30 (or major fraction thereof) students receiving speech therapy. In determining the number of pupils that justify the salary of a speech therapist for Public Education, the criteria specified in Bulletin 1508 shall be used.

Each student shall receive speech therapy as specified in §988.

Each speech therapist shall be assigned a minimum of one student in speech therapy and shall not be assigned more than 79 points.

Each hour per week of pupil appraisal assessment services and/or supervision of speech therapists who hold restricted license shall equal one point for the purpose of determining the caseload. Assignment of these activities shall be made by the parish supervisor.

The caseload shall be determined according to the following:

Service Type	Number of points Determining Caseload
Each hour of assessment	1
Each hour of supervision	1
Each hour of consultation	1
Each student receiving speech therapy	1

IV. Pupil appraisal members shall be employed by school systems at the following rate:

	Public School	Nonpublic School
Educational Diagnosticians	Ratios based on teachers 1:160 or major fraction thereof	Based on membership 1:3500 or major fraction thereof
School Psychologists	1:160 or major fraction thereof	1:3500 or major fraction thereof
Social Workers	1:210 or major fraction thereof	1:4500 or major fraction thereof

Pupil appraisal operating expenses are \$7,500 plus \$2.50 times the prior year's student membership. These funds are to be used exclusively for the support of the operation of the pupil appraisal program which may include such expenditures as clerical, materials and supplies, test equipment and travel for pupil appraisal staff. It is not for the hiring of personnel other than pupil appraisal clerical staff.

Comment: School systems may substitute one pupil appraisal discipline for another provided that all pupil appraisal services are provided in accordance with these regulations and Bulletin 1508; and that there is documentation on file that the appropriate discipline can not be employed.

Weegie Peabody  
Executive Director

9706#036

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

#### Bulletin 1868—Personnel Manual (LAC 28:I.922)

The Board of Elementary and Secondary Education has exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B) and readopted as an

emergency rule, Revised Bulletin 1868, BESE Personnel Manual. Revisions to the manual were developed as a result of federal and state mandates, board action, or reworded for clarification as a result of using the manual. Bulletin 1868 is being readopted as an emergency rule, effective June 20, 1997, in order to continue the policies until finalized as a Rule.

Copies of this bulletin have been provided to all entities under the jurisdiction of the Board of Elementary and Secondary Education and listed below:

1. each technical institute;
2. BESE's special schools - Louisiana School for the Deaf, Louisiana School for the Visually Impaired, Louisiana Special Education Center;
3. each site operated by Special School District Number 1;
4. Louisiana Association of Educators and Louisiana Federation of Teachers.

Bulletin 1868, BESE Personnel Manual, may be seen in its entirety in the Office of the State Register located on the Fifth Floor of the Capitol Annex; in the Office of the State Board of Elementary and Secondary Education, located in the Education Building in Baton Rouge; or in the Office of Vocational Education or the Office of Special School District Number 1, both located in the State Department of Education.

Bulletin 1868 is referenced in LAC 28:I.922 and amended as stated below:

## Title 28 EDUCATION

### Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans §922. Personnel Policies

#### A. Bulletin 1868

1. Revised Bulletin 1868, Personnel Manual of the State Board of Elementary and Secondary Education, is adopted by the Board. Policies in this bulletin apply to personnel under the jurisdiction of the state board in the Board Special Schools; in the entities comprising Special School District Number 1; and in entities in the vocational-technical system, exclusive of the assistant superintendent for Vocational Education and related state department staff.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6, R.S. 17:7(10), R.S. 17:81.4, R.S. 17:1941-1956; R.S. 17:1993.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 16:297 (April 1990), amended LR 16:957 (November 1990), LR 23:

*(It should be noted that the clause "exclusive of the central office staff" which appeared after Special School District Number 1 has been eliminated from the bulletin. The salary schedule for technical institutes has been deleted from the bulletin.)*

Weegie Peabody  
Executive Director

9706#035

## DECLARATION OF EMERGENCY

### Department of Environmental Quality Office of Solid and Hazardous Waste Solid Waste Division

Waste Tire Remediation Agreements  
(LAC 33:VII.10536)(SW023E2)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 30:2011, the secretary of the Department of Environmental Quality (DEQ) declares that an emergency action is necessary in order to facilitate the clean-up of promiscuous/unauthorized tire piles in parishes where the local government has not actively pursued any agreements with the Department.

Waste tires that are not processed in accordance with LAC 33:VII.Chapter 105 create environmental and health-related problems and pose a significant threat to the safety of the community should a fire occur. The elimination of breeding areas for mosquitoes caused by waste tire piles will reduce the exposure to these insects and the serious health problems associated therewith.

The DEQ will propose a rule which reflects the provisions of this emergency rule. This emergency rule is effective on June 15, 1997 and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. This is a renewal of emergency rule SW023E1 published in the *Louisiana Register* on February 20, 1997. The text is unchanged. For more information concerning SW023E2, contact DEQ's Investigations and Regulations Development Division at (504) 765-0399.

### Title 33

## ENVIRONMENTAL QUALITY

### Part VII. Solid Waste

#### Subpart 2. Recycling

#### Chapter 105. Waste Tires

#### §10536. Cleanup of Promiscuous Unauthorized Tire Piles

\* \* \*

[See Prior Text in A-F]

G. The department may enter into agreements with processors holding either a standard waste tire processing permit or a mobile processor authorization certificate for the remediation of promiscuous/unauthorized waste tire sites.

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), LR 23:

J. Dale Givens  
Secretary

9706#044

## DECLARATION OF EMERGENCY

### Department of Environmental Quality Office of Water Resources

Produced Water Discharge Extension  
(LAC 33:IX.708) (WP023E-B1)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality (department) to use emergency procedures to establish rules, and of R.S. 30:2011 and R.S. 30:2074, 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 made a finding that imminent peril to the public welfare exists. The department adopts Emergency Rule WP023E-B1 effective June 26, 1997, for 120 days, or until promulgation of the final rule, whichever occurs first.

This is a renewal of Emergency Rule WP023E-B published in the *Louisiana Register* on March 20, 1997. The rule text is unchanged.

This declaration of emergency provides the reasons for the secretary's finding and includes specific reasons why the failure to adopt the rule on an emergency basis would result in imminent peril to the public welfare.

#### Regulatory History of Produced Water

The secretary hereby finds the following to be the history of produced water and its regulation in the state of Louisiana:

1. Discharges of produced water have existed since the 1940's.
2. A 1953 rule allowed produced water discharges to any stream not used for drinking water purposes.
3. By 1968, discharge to most freshwater areas was banned.
4. Many LWDPs permits have prohibited discharges of produced water beginning in 1988.
5. In March of 1991, state regulations were promulgated concerning produced water. DEQ's 1991 regulations required a phase-out of coastal produced water discharges by 1997.
  - a. Continued produced water discharges to major deltaic passes of the Mississippi and Atchafalaya Rivers could be authorized in a valid LWDPs permit.
  - b. DEQ regulations provided for extensions of time to discharge produced water in coastal regions up to January 1, 1997.
  - c. All discharges of produced water (except for those to Mississippi and Atchafalaya River areas) had to cease by January 1, 1997.
6. EPA Region 6 issued NPDES general permits effective February 1995.
  - a. The general permits prohibit discharge of produced water to Louisiana and Texas coastal waters.
  - b. Although the general permits absolutely prohibit any discharge of produced water of coastal origin, exceptions to



that prohibition are found in an EPA administrative order, effective February 1995. That order allowed extensions of time to comply with the prohibition until January 1997.

c. The general permit effective in Louisiana did not cover discharges of produced water from the offshore subcategory to the Mississippi River and the Atchafalaya River (below Morgan City).

7. EPA guidelines and standards for coastal waters were promulgated in December 1996 and effective on January 14, 1997 (the guidelines).

a. The guidelines banned *all* discharges to the coastal area.

b. The guidelines required all remaining Mississippi and Atchafalaya River discharges to cease.

c. The federal guidelines note at page 66122-23 the following:

"EPA received numerous comments from operators in the Gulf of Mexico coastal region claiming that they would need additional time to comply with the rule's zero discharge requirement for produced water. EPA recognizes that it may take some time for operators to determine the best and most cost effective mechanism of compliance and to implement that mechanism. EPA also recognizes that the NPDES permit issuing authority has discretion to use administrative orders to provide the requisite additional time to meet zero discharge."

d. The department's Office of Water Resources became the NPDES permit issuing authority for the state of Louisiana on August 27, 1996.

e. Consistent with the guidelines, EPA has recognized the need to allow additional time for facilities to come into compliance with the ban.

f. EPA issued administrative orders in the state of Texas that document continued produced water discharges after the January 14, 1997 deadline and which set forth compliance schedules for the termination of such discharges over a period of two years.

8. On December 30, 1996, the department issued Emergency Rule WP023E to prevent imminent peril to the public welfare, specifically to prevent the loss of employment, taxes, and royalties that would result if all remaining produced water discharges were eliminated on January 1, 1997.

a. The emergency rule allowed additional time for a limited number of facilities to cease produced water discharges.

b. Emergency Rule WP023E-A was issued on January 6, 1997, to correct an omission in the original emergency rule.

c. Emergency Rule WP023E-B, which repealed and replaced Emergency Rules WP023E and WP023E-A, was issued on February 26, 1997.

d. These same provisions have been addressed in Proposed Rule WP023, which was published as a notice of intent in the *Louisiana Register* on March 20, 1997. A public hearing was held on April 24, 1997. Public comments are currently being reviewed.

### Additional Findings

The secretary also finds the following:

1. Facilities were still discharging produced water on January 1, 1997.

2. Facilities still discharging produced water after January 1, 1997 are subject to enforcement action by both DEQ and EPA.

3. Produced water is a commonly produced byproduct of oil and gas production.

4. To continue operating, an oil and gas production facility for which produced water is a natural byproduct must either discharge the produced water or inject it into an injection well approved by the Department of Natural Resources.

5. For various reasons, certain facilities would not be able to cease all discharges by January 1, 1997:

a. The Department of Natural Resources experienced a personnel shortage, which prevented it from processing before January 1, 1997, all of the applications for injection wells on file in December 1996.

b. Some Mississippi and Atchafalaya River dischargers had valid state permits allowing continued discharge (in conflict with the December 1996 federal guidelines and standards).

c. Some bay dischargers had relied on Department of Energy study results to allow continued discharge by state permit.

6. The federal guidelines at page 66087 note the reliance of bay dischargers on the DOE study:

"The United States Department of Energy (DOE) has provided the State of Louisiana with comments and analyses suggesting a change to the Louisiana state law requiring zero discharge of produced waters to open bays by January 1997. Promulgation of [these December 16, 1996 federal guidelines] would generally preclude issuance of permits allowing discharges."

7. The department accepted information that was part of the DOE study referenced in LAC 33:IX.708.C.2.b.iv.(e), as documented at 61 Federal Regulation 66087.

8. The DOE study results focus on minimal water quality impact to urge discharges be allowed.

9. The EPA guidelines use Best Available Technology (BAT) to require all discharges to cease.

### Findings and Considerations Regarding Environmental and Economic Costs and Benefits

The secretary is the primary public trustee of the environment. He has a duty to provide environmental protection insofar as possible and consistent with the health, safety, and welfare of the people of the state of Louisiana. In fulfillment of that duty, the secretary finds that the adverse environmental impacts resulting from issuance of Emergency Rule WP023E-B1 have been minimized or avoided as much as possible consistent with the public welfare, as detailed below.

### Environmental Costs and Benefits

Environmental costs and benefits were considered. During the 1953 to 1997 time frame, produced water discharges to

areas of greatest environmental impact were limited or eliminated. Of the coastal area discharges which now remain, the majority of discharges are to major passes of the Mississippi River or to bay areas. These areas have less potential for environmental damage than locations such as dead end canals, due to greater water circulation.

As part of the development and consideration for the March 1991 regulations that prohibited produced water discharges, DEQ, in cooperation with the Louisiana State University Institute for Environmental Studies, performed a comprehensive study resulting in a report entitled "An Assessment of Produced Water Impacts to Low-Energy, Brackish Water Systems in Southeast Louisiana." This study details environmental impacts associated with the discharge of produced water in low energy systems.

Later studies conducted for the U.S. Department of Energy (DOE studies) also document environmental impact of produced water discharges, but show that areas impacted by the discharge of produced water in coastal waters can begin to show recovery and can recover within six months of the termination of the discharge. Additionally, the DOE studies show minimal risk to human health from bay discharges.

It is found that discharges of produced water have occurred for over 50 years in various locations in the coastal zone in Louisiana. In its March 1991 rule, the department allowed up to almost six additional years for such discharges to continue. That allowance was based upon the department's earlier finding that there was no acute or imminent threat to the environment, and more specifically that there was no acute or imminent threat to water quality, from the continuation of produced water discharges for a limited period of time.

This emergency rule allows a maximum extension of time of only 24 to 36 months to discharge produced water. This additional time, compared to the total time produced water discharges have existed since the 1940s, represents an incremental increase of approximately 4 percent, and the number of discharges is now significantly lower than in previous years. A condition of any approval to extend the discharge period for a produced water discharge will be that water quality standards will not be violated.

Accordingly, it is found that any potential harm to the environment or to water quality from issuance of this emergency rule would be minimal.

#### **Economic Costs and Benefits**

Economic costs and benefits were considered. It was found in December 1996 that the economic costs resulting from a failure to issue the original emergency rule included the loss of jobs, taxes, revenues, and shut in of oil reserves. Specifically, losses for failure to adopt the original emergency rule were projected as follows:

1. 309 jobs in the oil and gas production industry would be lost;
  2. \$13 million in state and local taxes, revenues, and royalties would be lost;
  3. \$178 million in oil and gas reserves would be lost.
- These losses were projected by the LSU Center for Energy Studies in July 1996.

Subsequent to issuance of the original emergency rule in December 1996, and based upon information supplied to the department in accordance with the original emergency rule, the projections were adjusted as follows:

1. 189 jobs in the oil and gas production industry would be lost;
2. \$7.5 million in state and local taxes, revenues, and royalties would be lost;
3. \$109 million in oil and gas reserves would be lost.

Conversely, the economic benefits resulting from issuance of the emergency rule are the savings represented by averting the projected losses.

After consideration of the environmental and economic costs and benefits, it has been determined that the short-term and long-term economic benefits outweigh the minimal short-term environmental costs.

#### **Consultations with the United States Environmental Protection Agency (EPA)**

The secretary conferred with the director of the Water Quality Management Division, the director of the Compliance Assurance Division, a staff attorney, and the state NPDES program coordinator, all at EPA Region 6, in December 1996 prior to the issuance of the original emergency rule.

In October 1996, the secretary met with the assistant administrator for the Office of Water and the director of the Effluent Guidelines Division, both with EPA headquarters in Washington, D.C.

Dialog and correspondence with EPA Region 6 subsequent to issuance of the original emergency rule, resulted in changes incorporated in Emergency Rule WP023E-B; EPA's concerns were satisfied as of February 26, 1997.

#### **Additional Information Considered before Issuance of this Emergency Rule**

The DEQ secretary was present for the House and Senate committee hearings on the original emergency rule. He heard and considered the testimony of those in support and those in opposition to the rule prior to adoption of Emergency Rule WP023E-B.

#### **Conclusion**

Based on the findings recited herein, the secretary hereby concludes that the failure to implement this emergency rule will result in economic losses which constitute imminent peril to the public welfare. The loss of employment, taxes, and royalties that would otherwise result in imminent peril to the public welfare if this emergency rule is not implemented, can be avoided by allowing, on a case-by-case basis, a limited amount of additional time for certain operators to arrange for the injection of their produced water. This extension of time shall not extend the produced water discharge beyond January 1, 1999, except that an additional one-year extension may be granted to those facilities that discharge produced water generated in outer continental shelf waters into a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet, below Morgan City. In no instance shall the department approve a produced water discharge that would extend beyond January 1, 2000.

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part IX. Water Quality Regulations**  
**Chapter 7. Effluent Standards**  
**§708. Exploration for and Production of Oil and**  
**Natural Gas**

\* \* \*

[See Prior Text in A-C.2.a.iii]

iv. There shall be no discharge of produced water to freshwater swamp or freshwater marsh areas or to natural or manmade water bodies bounded by freshwater swamp or freshwater marsh vegetation unless the discharge has been specifically identified in an approved schedule for discharge termination, and the discharge complies with all applicable portions of Subsection C.2.e of this Section.

\* \* \*

[See Prior Text in C.2.a.v]

b. Intermediate, Brackish, and Saline Water Areas Inland of the Territorial Seas

i. All produced water discharges must be specifically identified in a valid individual or general permit or order and must comply with all applicable portions of Subsection C.2.f of this Section.

\* \* \*

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

e. Discharge of Produced Water into Freshwater Areas after January 1, 1997

i. In light of LPDES general permit LAG290000 and the "Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category," published December 16, 1996, and effective January 14, 1997 (the federal guidelines), facilities that discharge produced water as authorized in a valid LWDPs permit as of July 1, 1996, shall cease the discharge of produced water by July 1, 1997, unless the continued discharge is specifically identified in an order.

ii. Each facility desiring to continue to discharge produced water after July 1, 1997, shall submit to the department, no later than May 1, 1997, a schedule to:

(a). accomplish re-injection of the produced water as expeditiously as possible, or

(b). return their produced water which originated seaward of the coastal areas identified in Subsection C.2.e.iv.(a) of this Section to those areas of origin.

iii. In addition to the schedule required in Subsection C.2.e.ii of this Section, the submittal shall include, at a minimum, a certification by the facility operator of all of the following:

(a). surface discharge of produced water is the only immediately available alternative;

(b). the produced water discharge elimination schedule is limited in term to the period necessary to provide an alternate waste-handling method;

(c). the discharge of produced water has not been eliminated pending the installation of injection systems or returning it to its area of origin (seaward of the coastal areas identified in Subsection C.2.e.iv.(a) of this Section);

(d). the discharge will not cause a violation of water quality standards in the receiving waters; and

(e). the discharge was previously permitted.

iv. Discharges of produced water pursuant to this rule shall not extend beyond the date upon which the produced water discharge can reasonably be eliminated. In no event shall a discharge of produced water to a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet, below Morgan City, continue:

(a). beyond January 1, 1999, for produced water generated in coastal areas as defined in 40 CFR part 435.41(e);

(b). beyond January 1, 2000, for produced water generated seaward of coastal areas identified in Subsection C.2.e.iv.(a) of this Section; or

(c). beyond January 1, 2000, for facilities that discharge produced water generated in any combination of areas described in Subsection C.2.e.iv.(a) and (b) of this Section.

v. There shall be no discharge of produced water to a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet, below Morgan City, after January 1, 2000.

f. Discharge of Produced Water into Intermediate, Brackish, and Saline Water Areas Inland of the Territorial Seas after January 1, 1997

i. Notwithstanding the absolute deadline of Subsection C.2.b.v.(b) of this Section and in light of the federal guidelines, facilities previously authorized by valid LWDPs permits as of July 1, 1996, to discharge produced water under Subsection C.2.b.iv of this Section, pursuant to an approved compliance schedule shall:

(a). cease the discharge of produced water by February 14, 1997; or

(b). submit a revised schedule to accomplish injection of the produced water as expeditiously as possible. This schedule shall be received by the department on or before February 14, 1997. Submission of a schedule is not a defense to an enforcement action for a facility's failure to adhere to the terms and conditions of its permit or prior compliance schedule. In addition to the schedule submission, a certification must be submitted by the facility operator which includes the requirements of Subsection C.2.e.iii of this Section. No compliance schedules in an enforcement order shall extend beyond the minimum time demonstrated necessary for elimination of the discharge and in no case beyond January 1, 1999.

ii. All terms, conditions, limitations, and requirements of the most recent LPDES permit or compliance schedule or order identifying a produced water discharge shall continue in full force and effect unless the department provides otherwise in writing. A schedule to discharge produced water after July 1, 1997 is solely within the department's enforcement discretion and shall be granted only through a compliance order.

iii. There shall be no discharge of produced water to natural or man-made water bodies located in intermediate, brackish, or saline marsh areas after January 1, 1999.

\* \* \*

[See Prior Text in C.3-5.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:

J. Dale Givens  
Secretary

9706#043

## DECLARATION OF EMERGENCY

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

Case Management Services Reimbursement  
Infants and Toddlers with Special Needs

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in accordance with the Administrative Procedure Act, R.S. 49:953(B) et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing currently provides reimbursement for optional targeted case management services to infants and toddlers who are categorized as developmentally disabled under the ChildNet Program.

An emergency rule was adopted on September 24, 1996, limiting case management services to those infants and toddlers who either receive services under the MR/DD waiver or who receive two or more specified Medicaid services (*Louisiana Register*, Volume 22, Number 9). The department subsequently repealed the September 24, 1996 emergency rule and reduced the reimbursement rate for these services, effective December 1, 1996, in a subsequent emergency rule (*Louisiana Register*, Volume 22, Number 11).

After consultation with the Department of Education regarding ChildNet Services, the bureau has now determined it is necessary to increase the reimbursement for case management services for infants and toddlers. This action is necessary to maintain the health and welfare of these children by assuring continued access to case management services to assist their families in obtaining necessary medical, social and educational services. A previous emergency rule established these current provisions, effective March 13, 1997 (*Louisiana Register*, Volume 23, Number 3).

### Emergency Rule

Effective for dates of service on or after July 11, 1997, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases reimbursement for case management services for infants and toddlers with special needs to \$115.

Bobby P. Jindal  
Secretary

9706#047

## DECLARATION OF EMERGENCY

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

Disproportionate Share Hospital Payment Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following emergency rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq. and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the Administrative Procedure Act R.S. 49:953(B) et seq.

Hospital Disproportionate Share (DSH) payment limits were established by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) which amended Section 1923 of the Social Security Act. In order to comply with the budgetary limitations imposed by that federal regulation and to avoid a budget deficit in the medical assistance programs, the bureau amended the payment methodologies for public state-operated hospitals, private hospitals, and public nonstate hospitals effective July 1, 1995. Under that methodology, public state-operated hospitals receive DSH payments equal to 100 percent of the hospital's net uncompensated costs, and private hospitals and public nonstate hospitals received DSH payments according to a formula based on an eight-pool methodology.

In order to assure continued fiscal viability of community hospitals, Act Number 17 (House Bill Number 1) of the 1996 Legislative Session provides for separate treatment of disproportionate share funds for uncompensated costs in small (60 beds or less) nonstate-operated local government hospitals and small (60 beds or less) private rural hospitals. To accommodate this proviso, this emergency rule provides that all hospitals other than public state-operated hospitals are separated into two groups: the first is composed of small (60 beds or less) nonstate-operated local government hospitals and small (60 beds or less) private rural hospitals, and the second contains all other hospitals. The latter group is composed of two pools, acute care hospitals and psychiatric hospitals. Previous provisions concerning DSH methodology for public state-operated hospitals continues unchanged. There is no increase or decrease in DSH funds as the result of this emergency rule, therefore there is no fiscal impact to the state or federal government.

Failure to adopt this emergency rule on an emergency basis could result in unavailability of local hospital services for Medicaid recipients in areas served by these hospitals, and would cause imminent peril to the public health, safety, or welfare of affected Medicaid recipients. Effective March 20, 1997, a previous emergency rule governing disproportionate share hospital payments (*Louisiana Register*, Volume 23, Number 3) was adopted.

### Emergency Rule

Effective for dates of service July 18, 1997 and after, the Department of Health and Hospitals, Office of the Secretary,

Bureau of Health Services Financing replaces prior regulations governing disproportionate share hospital payment methodologies excluding disproportionate share qualification criteria and establishes the following regulations to govern the disproportionate share hospital payment methodologies for public state-operated, private hospitals and public nonstate hospitals.

## **I. General Provisions**

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

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

C. Appropriate action shall be taken to recover any overpayments resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

D. DSH payments to a hospital determined under any of the methodologies below shall not exceed the hospital's uncompensated cost for the state fiscal year to which the payment is applicable.

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

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

G. Net Uncompensated Cost—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 payor payments, and all other inpatient and outpatient payments received from patients. It is mandatory that qualifying hospitals seek all third-party payments including Medicare, Medicaid, and other third-party carriers. Hospitals not in compliance with free care criteria will be subject to recoupment.

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

## **II. Reimbursement Methodologies**

### **A. Public State-Operated Hospitals**

#### **1. Definitions:**

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

2. Payment Methodology. DSH payments to individual public state-owned or operated hospitals are equal to 100 percent of the hospital's net uncompensated costs subject to

the adjustment provision in II.A.3 below. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

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

### **B. Small Nonstate-Operated Local Government Hospitals and Small Private Rural Hospitals**

1. Criteria for hospitals to be included in this group are as follows:

Qualifying hospitals must be 1) small and 2) either a nonstate public-owned and operated or a private rural hospital as defined below. Hospitals/beds located outside the service district area or rural area may not be included in this pool, but will be included in the all other hospitals pools. Beds located outside the service district will be used by DHH to determine qualification, but costs associated with these beds will not be used to determine reimbursement. Free-Standing psychiatric hospitals are not included.

#### **2. Definitions**

*Public Local Government Acute Hospitals*—local government-owned acute care general, rehabilitation, and long-term care hospitals including distinct part psychiatric units are qualified for this designation. Only uncompensated costs attributable to beds/units located within the service district area qualify for inclusion.

*Private Rural Hospitals*—privately owned acute care general, rehabilitation and long-term care hospitals designated as rural hospitals by Medicare, including distinct part psychiatric units are qualified for this designation. Only uncompensated cost attributable to beds/units located within the rural area qualify for inclusion.

*Small*—having 60 or less licensed beds as of July 1 of the state fiscal year to which the payment is applicable. The number of beds includes distinct part psychiatric beds, and excludes nursery and skilled nursing beds.

*Rural*—rural area as it applies to small private rural hospitals is considered rural areas of the parish in which the facility is domiciled.

3. Payment is based on each qualifying hospital's pro rata share of uncompensated cost for the previous state fiscal year for all hospitals meeting these criteria multiplied by the amount set for these facilities.

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

C. All Other Hospitals (Private Rural Hospitals over 60 Beds, All Private Urban Hospitals, Public Nonstate Hospitals over 60 Beds, and All Free-Standing Psychiatric Hospitals Exclusive of State Hospitals)

1. Annualization of days for the purposes of the Medicaid days pools is not permitted. Payment is based on actual paid Medicaid days for a six-month period ending on the last day of the latest month at least 30 days preceding the date of payment which will be obtained by DHH from a report of paid Medicaid days by service date.

2. Payment is based on Medicaid days provided by hospitals in the following two pools:

a. Acute Care Hospital—acute care, rehabilitation, and long-term care hospitals not described in II above (excluding distinct part psychiatric units) are qualified for this designation. Acute care, rehabilitation, and long-term care hospitals/beds of small nonstate-operated local government hospitals (defined in II above) located outside the service district area are included in this pool. Acute care, rehabilitation, and long-term care hospitals/beds of small private rural hospitals (defined in II above) located outside the rural area are included in this pool.

b. Psychiatric Hospital—Free-Standing psychiatric hospitals and distinct part psychiatric units not included in II above are qualified for this designation. Psychiatric hospitals/beds of small nonstate-operated local government hospitals (defined in II above) located outside the service district area are included in this pool. Psychiatric hospitals/beds of small private rural hospitals (defined in II above) located outside the rural area are included in this pool.

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

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

5. A pro rata decrease necessitated by conditions specified in I.B above for hospitals described in this Section will be calculated based on the ratio determined by dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in this Section, then multiplying by the amount of disproportionate share payments calculated in

excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

Bobby P. Jindal  
Secretary

9706#046

## DECLARATION OF EMERGENCY

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

### Nursing Homes—Emergency Preparedness Plan

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

The department maintains minimum licensing requirements for the operation of all nursing homes in the state (*Louisiana Register*, Volume 13, Number 4). The purpose of the nursing home licensing law and requirements is to provide for the development, establishment, and enforcement of standards of care for individuals in nursing homes and for the construction, maintenance, and operation of nursing homes which will promote safe and adequate treatment of nursing home residents. The department has now determined that it is necessary to amend the minimum licensure standards to require nursing homes to maintain a written emergency preparedness plan that describes the procedures to be followed in the event of an emergency such as a hurricane or flood. The emergency preparedness plan shall include the following procedures for:

- (1) the evacuation of residents to a safe place either within the nursing home or to another location;
- (2) the delivery of essential care and services whether residents are housed off-site or when additional residents are brought into a nursing home during an emergency;
- (3) the provisions for the management of staff, including distribution and assignment of responsibilities and functions either within the nursing home or at another location;
- (4) a plan for coordinating transportation services required for evacuating residents to another location; and
- (5) assurance that the resident's family or sponsor is notified if the resident is evacuated to another location.

The plan shall be developed in coordination with the local/parish Office of Emergency Preparedness utilizing community-wide resources.

This action is necessary to protect Louisiana nursing home residents from imminent peril to their health and welfare that would result if a natural disaster or other emergency occurs that either disrupts the nursing home's ability to provide care

and treatment or threatens the lives or safety of the nursing home residents.

#### **Emergency Rule**

Effective June 9, 1997, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following regulations to require all licensed nursing homes to have a written emergency preparedness plan designed to manage the consequences of a natural disaster or other emergency that disrupts the home's ability to provide care and treatment or threatens the lives or safety of the residents. The nursing home's emergency preparedness plan must conform to the Office of Emergency Preparedness' Model Plan.

#### **Emergency Preparedness Plan**

A. As a minimum, written emergency preparedness plan shall address the following:

1. the evacuation of residents to a safe place either within the nursing home or to another location;
2. the delivery of essential care and services to when either residents are evacuated off-site or additional residents are evacuated to the nursing home during an emergency;
3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the nursing home or at another location;
4. a plan for coordinating transportation services required for evacuating residents to another location; and
5. a method to assure that the resident's family or sponsor is notified if the resident is evacuated to another location.

B. The nursing home's plan shall be implemented at least annually, either in response to an emergency or in a planned drill. The nursing home's performance during implementations of the plan shall be evaluated, documented, and the plan changed where indicated.

C. The nursing home's plan shall be developed in coordination with the local/parish office of emergency preparedness, utilizing community-wide resources.

D. The plan shall be available to representatives of the Office of State Fire Marshal as well as DHH personnel.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this emergency rule.

Bobby P. Jindal  
Secretary

9706#048

#### **DECLARATION OF EMERGENCY**

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

**Portable X-Ray Crossover Claims**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the

following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Bureau of Health Services Financing provides reimbursement to providers enrolled in the Medicaid and the Medicare Part B Programs for professional services furnished to dually eligible Medicare/Medicaid recipients. Our reimbursement methodology for professional services has been revised effective July 1, 1997 to reimburse the full co-insurance and deductible on Medicare Part B crossover claims for services rendered to Medicare/Medicaid recipients. The department has determined that it is necessary to revise the reimbursement methodology for portable x-ray services to also pay full co-insurance and deductible in order to be consistent with our reimbursement methodology for other professional services. This action is necessary to assure the health and welfare of these recipients by assuring continued access to portable x-ray services. It is estimated that this emergency rule will increase expenditures by approximately \$261,216 for state fiscal year 1997-98.

#### **Emergency Rule**

Effective for dates of service on or after July 1, 1997, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing shall reimburse the full co-insurance and deductible on Medicare Part B Portable X-Ray crossover claims for services rendered to dually eligible Medicare/Medicaid recipients.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this emergency rule.

Bobby P. Jindal  
Secretary

9706#049

#### **DECLARATION OF EMERGENCY**

**Department of Natural Resources  
Office of the Secretary**

**State Lands—Reclamation  
(LAC 43:XXVII.Chapters 23 and 24)**

In accordance with the emergency provisions of R.S. 49:953(B), R.S. 39:1598, the Administrative Procedure Act, and under the authority of R.S. 49:214.4, the Secretary of the Department of Natural Resources hereby declares that the conservation and restoration efforts authorized in accordance with R.S. 49:213.6 for the Isles Dernieres and Timbalier Barrier Islands shall proceed on an emergency basis.

In conjunction with this, pursuant to R.S. 41:1702, which allows reclamation of lands lost through erosion, compaction, subsidence, or sea level rise and further provides for wetlands



conservation and restoration projects, regulations governing same are hereby adopted on an emergency basis.

These regulations are made effective June 20, 1997 and expire October 18, 1997.

This determination is made in view of the fact the land mass of these islands has eroded to such a critically small and fragile extent that additional losses stemming from further delays may render their currently mandated conservation projects ineffective. In addition, reclamation efforts by owners of land contiguous to and abutting navigable waters, bays, arms of the sea, the Gulf of Mexico and navigable lakes are hindered by the lack of regulations governing these efforts. Finally, this emergency rule is necessary because the Office of the Secretary is awaiting final approval of the Fiscal and Economic Impact Statement in order to proceed with the notice of intent of final rulemaking. Therefore, these emergency rules must be adopted and the proposed work must be expedited to the extent provided by law in order to prevent an imminent and irretrievable destruction of property. These projects have been deemed to provide extensive public benefits and enhancement of the public welfare.

#### **Title 43**

### **NATURAL RESOURCES**

#### **Part XXVII. State Lands**

### **Chapter 23. Reclamation Projects**

#### **§2301. Definitions**

As used in these regulations, unless the context requires otherwise, the terms set forth below shall have the following meanings:

*Emergent Land*—land that emerges from a public waterbottom to an elevation sufficient to support emergent vegetation except that in the case of the seaward side of a barrier island the minimum elevation required shall be the lowest elevation sufficient to support emergent vegetation on the landward side of such island. No land which lies below the elevation of ordinary low water shall be considered emergent land.

*Owner*—an owner or owners of land contiguous to and abutting navigable waters, bays, arms of the sea, Gulf of Mexico, and navigable lakes belonging to the state.

*Secretary*—the secretary of the Department of Natural Resources.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 41:1702.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of the Secretary, LR 23:

#### **§2303. Implementation by Owner**

**A. Right to Reclaim.** An owner shall have the right to reclaim land lost through erosion, compaction, subsidence, or sea level rise occurring on and after July 1, 1921, in the manner hereinafter provided.

##### **B. Processing of Application for Work Permit**

1. An application for a work permit for the reclamation or recovery of land lost through erosion, compaction, subsidence, or sea level rise may be made by the owner to the secretary on forms provided by the Department of Natural Resources and accompanied by the following:

a. a certified map or plat of survey prepared by a professional land surveyor qualified and currently registered by the State Board of Registration for Professional Engineers

and Land Surveyors in accordance with R.S. 37:681 et seq, showing the following:

i. the land-water boundary between land belonging to the state and those of applicant;

ii. the exact extent of land claimed to be lost through erosion, compaction, subsidence, or sea level rise on and after July 1, 1921 (and prior to July 1, 1921, if applicable);

iii. location of the activity site including section, township, and range;

iv. Louisiana grid coordinates of all corners and angle points;

v. name of waterway;

vi. all applicable political (parish, town, city, etc.) boundary lines;

vii. name of and distance of local town, community or other identifying location;

viii. names of all roads in the vicinity of the site;

ix. graphic scale;

x. north arrow;

b. a written title opinion prepared in accordance with the title standards of the Department of Natural Resources, signed by an attorney licensed to practice law in the State of Louisiana, showing ownership by applicant of the riparian lands in question, together with documentary or other evidence supporting the claimed extent of land lost through erosion, compaction, subsidence, or sea level rise.

2. The application shall be accompanied by a refundable administrative and processing fee of \$500, payable to the Department of Natural Resources.

3. Applicant and the secretary shall endeavor to agree in writing on a delineation of the area subject to reclamation by applicant. If agreement cannot be reached, differences in question shall be submitted to commissioners for resolution in accordance with the procedures established in Chapter 8 of Title 41 of the Louisiana Revised Statutes.

4. Upon delineation of the area subject to reclamation by applicant, either by agreement or findings of the commission, the secretary shall prescribe the height to which the surface of the theretofore submerged land is to be raised through filling or other physical works to be conducted by applicant at his sole risk and expense. Such height shall be adopted to insure reasonably permanent existence of the reclaimed lands, and shall be presumed to exceed the level of ordinary low water in the case of rivers or streams and exceed the level of ordinary high water in the case of bodies of water other than rivers and streams.

5. Within one year after the action of the secretary, applicant may submit to the secretary for approval plans and specifications for the work necessary to implement the recovery of the land lost. The secretary shall submit such plans or specifications for review and comment to the following:

a. the governing authority of the parish in which the proposed project is located;

b. the Attorney General;

c. the Department of Transportation and Development;

d. the Department of Wildlife and Fisheries;

- e. Office of Mineral Resources; and
- f. State Land Office.

C. **Work Permit.** Not less than 60 days following such submission for the review and comment the secretary may approve or modify the plans and specifications and may issue a permit for the carrying out of the work necessary to implement the recovery of the land lost.

D. **Other Permits.** Prior to commencing work, applicant shall obtain all other permits required by law.

E. **Boundary Map.** Within 60 days of the completion of the reclamation project, the applicant shall submit to the secretary a map or plat certified as aforesaid delineating the extent of the land area actually reclaimed, and upon approval of such map by the secretary, the boundary between lands belonging to the state and those of applicant shall become fixed and definitive.

F. **Special Work.** In the event special work in the field on the part of the Department of Natural Resources is required in order to properly evaluate applicant's submissions, the cost of such special work shall be fixed by the secretary based on his estimate of the cost of such work to the state, and shall be paid in advance by applicant.

G. **Effective period of work permit.** Permits issued as hereinabove provided shall be effective for a period not to exceed two years from the date of issuance and shall thereupon expire. All work remaining or additional work may be completed only by application in the manner provided hereinabove.

H. **Substantial Compliance.** Any reclamation not in substantial compliance with the procedure described above shall be an absolute nullity and no private rights of ownership shall vest or be acquired by prescription.

I. **Limitation on Reclamation.** Reclamation by an owner shall not be permitted if in the determination of the secretary or the Attorney General such activity would unreasonably obstruct or hinder the navigability of any waters of the state or impose undue or unreasonable restraints on the state rights which have vested in such areas pursuant to Louisiana law, and to that extent the land area sought to be reclaimed may be limited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 23:

## **Chapter 24. Reclamation—Coastal Restoration Projects**

### **§2401. Implementation by Coastal Restoration Projects**

A. **Establishment of Existing Coast or Shoreline.** To facilitate the development, design, and implementation of coastal restoration projects pursuant to R.S. 49:214.1 et seq., the secretary may enter into agreements with an owner to establish in such owner the perpetual transferable ownership of all subsurface mineral rights to the then existing coast or shoreline.

B. **Provision for Emergent Lands.** Such agreements may also provide for a limited or perpetual alienation or transfer, in whole or in part, to such owner of subsurface mineral rights owned by the state relating to the emergent lands that emerge from waterbottoms that are subject to such owner's right of reclamation in exchange for the owner's compromise of his

ownership and reclamation rights within such area and for such time as the secretary deems appropriate and in further exchange for the owner's agreement to allow his existing property to be utilized in connection with the project to the extent deemed necessary by the secretary.

C. **Application.** An owner seeking to establish ownership of such mineral rights shall file an application with the secretary on a form to be provided, accompanied by a map, title opinion and other evidence as hereinabove provided in § 2303.

D. **Barrier Islands.** In addition to the provisions of Subsections A and B of this Section, in the case of a project involving a barrier island, the secretary may also require the owner to transfer title to all or a portion of the island in exchange for any subsurface mineral rights acquired by said owner.

E. **Servitude.** An owner granted a perpetual, transferrable ownership of subsurface mineral rights as a result of an agreement entered into pursuant to the provisions of this Section shall have a perpetual transferrable servitude to use the surface of any such land for the purposes of locating, accessing, extracting and transporting those subsurface minerals with the same freedom, and subject to the same restrictions, as an owner of the surface.

F. **Approval and Publication.** When the secretary proposes to execute an agreement by which an election pursuant to this Section is effected, the secretary shall first submit the agreement for review and approval to the House and the Senate committees on natural resources, after publishing the agreement as provided in the Administrative Procedure Act.

G. **Recordable Evidence.** The secretary shall provide an owner granted subsurface mineral rights pursuant to this Section, recordable evidence of the rights transferred, which documents shall include an adequate legal description of the area subject to such owners' rights and a plat thereof. The owner shall be responsible for filing any such document in the conveyance records of the parish in which such property is located, which filing shall be public notice thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 23:

### **§2403. Bulkheading and Flood Protection**

A. **Bulkheading.** Permits may be granted by the secretary for bulkheads generally parallel to the shore which do not interfere with navigation on any inland navigable water body whether or not the area to be bulkheaded eroded before July 1, 1921, if on the basis of evidence furnished the secretary, such bulkheading will aid in reclaiming submerged land or preventing erosion, compaction, or subsidence, provided, however, that such permits shall not vest any title in any private owner other than as to lands eroded after July 1, 1921.

B. **Procedure.** An owner seeking reclamation of lands by bulkheading shall submit an application to the secretary on a form provided by the Department of Natural Resources, accompanied by a map, title opinion and other evidence as hereinabove provided in §2303. In addition to other information, the map shall show the location of the proposed

bulkhead and related fill, and specifications for the constructions thereof shall be submitted with the application. Upon approval of the application by the secretary, a permit for construction may be issued, and upon completion of the work by applicant and approval by the secretary, a boundary shall be fixed and determined in the same manner as hereinabove provided in §2303.

C. Flood Protection. In like manner, permits may be granted by the secretary to provide adequate foundation of flood protection for presently existing structures in proximity to the eroded banks.

D. Permit Fee. An application for a permit under this Section shall be accompanied by a refundable administrative and processing fee of \$200, payable to the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 23:

#### **§2405. Miscellaneous**

A. Hold Harmless. All permits approved and issued hereunder shall be conditioned upon applicant's agreement to hold the State of Louisiana and her agencies and subdivisions harmless for any damages resulting from applicant's acts or omissions in reclaiming and maintaining lands and constructing or maintaining any structures and bulkheads, though the permit for the same subsequently expires or is revoked.

B. Encumbrances. A permit will be issued subject to and encumbered with any right-of-way or servitude, or any mineral, geothermal, geopressure, or any other lease acquired or granted by the state for a lawful purpose prior to the reclamation of such lands. Nothing in these regulations shall prevent the leasing of state lands or waterbottoms for minerals or other purposes.

C. Vested Rights. No permit shall be construed to vest any proprietary rights or title in any private owner except as to lands actually reclaimed and maintained, pursuant to Act 55 of 1996.

D. Reclamation to Coastline. Eroded lands contiguous to the coast of the Gulf of Mexico as defined in the Decree of the United States Supreme Court dated July 16, 1975, in *United States vs. Louisiana*, Number 9 Original, may be reclaimed under reclamation permits, out to the coastline.

E. Judicial Review. Any person aggrieved either by a substantive agency decision made pursuant to the provisions of this Section, including interlocutory decisions relating to boundaries and determinations of areas reclaimed, or by a failure of the agency to render such decisions be instituted by filing a petition in the Nineteenth Judicial District Court within 30 days after mailing of notice of the final decision by the secretary. Any party may request and be granted a trial de novo.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 23:

Jack C. Caldwell  
Secretary

9706#079

## **DECLARATION OF EMERGENCY**

### **Department of Public Safety and Corrections Office of Motor Vehicles**

#### **Vehicle Registration License Tax (LAC 55:III.351-363)**

In accordance with R.S. 47:463(A)(2), the Department of Public Safety and Corrections, Office of Motor Vehicles, is exercising the provisions of the Administrative Procedure Act, R.S. 49:953(B), to adopt an emergency rule pertaining to the implementation of the annual registration license tax for motor vehicles. This emergency rule is effective June 3, 1997 and shall remain in effect for 120 days.

Currently, every vehicle registered in this state that is intended to be operated on the public highways is required to be registered and is subject to the vehicle registration license tax. The emergency adoption of these rules is required to avoid the interruption of the collection of these taxes and to avoid the adverse impact on the state and its citizens that would result from the loss of this revenue. In the fiscal year 1995-1996, the state collected \$32,069,240 as a result of the vehicle registration license tax. During the current fiscal year, the state has collected \$26,815,913. The loss of this revenue would have a dramatic adverse impact on the state fiscal condition and as a result would adversely affect the services rendered to the citizens of this state.

Any unnecessary delay in the promulgation of these rules would interrupt the collection of these taxes, and thereby postpone the collection of revenue for the state.

As a result of the above finding, the Department of Public Safety and Corrections, Office of Motor Vehicles, hereby adopts the following emergency rule.

#### **Title 55**

#### **PUBLIC SAFETY**

#### **Part III. Motor Vehicles**

#### **Chapter 3. License Plates**

#### **Subchapter B. Vehicle Registration License Tax**

#### **§351. Definitions**

As used in this Subchapter, the following terms have the meanings described below:

*Acquired*—any transfer of full ownership from one juridical person to another including but not limited to sales, donations, exchanges, or inheritances.

*Assistant Secretary*—the assistant secretary of the Department of Public Safety and Corrections, Office of Motor Vehicles.

*Department*—the Department of Public Safety and Corrections.

*Motor Vehicle*—each passenger-carrying automobile, van, or other motor vehicle carrying only passengers and their personal effects exclusively, not meeting the requirements of R.S. 47:463.5 or using or operating on rails or upon permanent tracks and operated only for personal use.

*N.A.D.A. Official Older Used Car Guide*—periodical published by the National Appraisal Guide, Inc., which contains value projections of used motor vehicles for years not

covered by the *N.A.D.A. Official Used Car Guide, South-Western Edition*.

*N.A.D.A. Official Used Car Guide, South-Western Edition*—periodical published by N.A.D.A. Official Used Car Guide Company which contains value projections of used motor vehicles.

*Value Guide to CARS of Particular Interest*—periodical published by CPI, Ltd. which contains value projections of domestic and imported collectible cars produced since 1946.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:463(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 23:

**§353. Vehicle Registration License Tax Due on Vehicles Registered Prior to January 1, 1990**

For all Louisiana motor vehicle registrations that were issued prior to and expire on or after January 1, 1990, the renewal tax shall be assessed and collected as provided in §§ 355 and 357 of this Subchapter, except that the value of the motor vehicle for purposes of the vehicle registration license tax shall be the value of the vehicle at the time of the first renewal of the registration after January 1, 1990.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:463(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 23:

**§355. Valuation of Vehicles Under the Vehicle Registration License Tax Registered on or After January 1, 1990**

A. For the purpose of assessing and collecting the vehicle registration license tax, the value of the motor vehicle shall be determined as follows:

1. For each motor vehicle acquired on or after January 1, 1990, the value of the motor vehicle for first and subsequent renewals shall remain the same as was determined at the initial registration and will remain the same in the future until ownership changes.

2. For motor vehicles acquired prior to January 1, 1990, and initially registered pursuant to the emergency rule promulgated in the November 20, 1989 *Louisiana Register*, Volume 15, Number 11, page 953, the value of the motor vehicle at the time of the first and subsequent renewal shall be the value of the vehicle as established in Subsection B.2 or C as the case may be, except the date of valuation shall be the date of the first renewal.

3. For motor vehicles acquired and subsequently registered in Louisiana prior to January 1, 1990, the value of the motor vehicle at the time of the first renewal after January 1, 1990, and for every subsequent renewal shall be the value of the vehicle as established in Subsection B.2 or C as the case may be, except the date of valuation shall be the date of the first renewal.

B. Except as otherwise provided, the value of the motor vehicle shall be the fair market value on the date the motor vehicle is initially registered as determined by the higher of the following:

1. bill of sale (or invoice gross sales price) or;
2. 75 percent of the value contained in the most current *N.A.D.A. Official Used Car Guide, South-Western Edition* (or its successor). In the case of classic automobiles or other

automobiles of particular interest not included in the *N.A.D.A. Official Used Car Guide, South-Western Edition* (or its successor), 75 percent of the value shall be determined by reference to the *N.A.D.A. Official Older Used Car Guide* or the *Value Guide to CARS of Particular Interest*. If the value of the motor vehicle cannot be determined by reference to any of these three guide books, the actual value of the motor vehicle shall be determined by the Office of Motor Vehicles based upon such information supplied by the person seeking to register the vehicle and such information that may be required from such person by the assistant secretary or his designee. If the vehicle is damaged, or the vehicle is reacquired, the value of the vehicle shall be determined pursuant to Subsection C or D of this Section, respectively.

C. The valuation of motor vehicles damaged in excess of 25 percent of the fair market value as established pursuant to Subsection B shall be the value of the motor vehicle at time of acquisition as determined pursuant to this Subsection. The following must be presented to the Office of Motor Vehicles to establish an actual value on such a vehicle of less than 75 percent of the book value:

1. An affidavit by the seller or transferor of the motor vehicle specifying in detail the nature of damage to the vehicle and a written invoice from a bona fide mechanic or repairman showing a detailed estimate of the cost of repair to said vehicle. The assistant secretary of his designee may require additional information or documentation to determine the value of the motor vehicle. Upon review of all documentation and information, the assistant secretary or his designee may subtract the proven damages from the value of the motor vehicle determined pursuant to Subsection B to determine the value of the motor vehicle for purposes of the vehicle registration license tax; or

2. If the seller is a licensed new or used motor vehicle dealer, then the dealer or an employee of such dealer shall submit an affidavit specifying the nature of the damage and the sales price. The assistant secretary of his designee may require additional information or documentation to determine the value of the motor vehicle. Upon review of all documentation and information, the assistant secretary or his designee may subtract the proven damages from the value of the motor vehicle determined pursuant to Subsection B to determine the value of the motor vehicle for purposes of the vehicle registration license tax.

D. Motor vehicles, the ownership of which is reacquired by the original owner within a period of two years from date of original acquisition, shall be registered at the original value upon renewal or registration by the original owner. Upon a showing of good cause by the person seeking to register the motor vehicle, the assistant secretary of the Office of Motor Vehicles may permit the vehicle to be valued as provided in Subsection C or D as the case may be.

E. Additional documentation may be required of any applicant for license or registration, including renewals by the assistant secretary of the Office of Motor Vehicles or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:463(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 23:

**§357. Assessment of the Vehicle Registration License Tax**

A. Except as provided in this Subchapter, every motor vehicle registered in Louisiana shall be subject to the motor vehicle license tax at a rate implemented in R.S. 47:463(A)(2) as amended by Acts 1989, Second Extraordinary Session, Number 23, §1. The vehicle registration license tax shall be assessed and collected at the time of acquisition and initial registration and at each subsequent renewal of the registration until such time as the vehicle is transferred to a new owner, or the registration is canceled and the license plate is returned to the Office of Motor Vehicles.

B. The vehicle registration license tax shall be assessed and collected as follows:

1. Each motor vehicle shall be taxed at a minimum of \$10 per year for the first \$10,000 value, plus \$1 per \$1,000 value in excess of \$10,000.

2. For the purpose of computing the additional tax of \$1 per each \$1,000 value, any amount of \$500 or more shall be rounded off to the next highest \$1,000 and any amount less than \$500 shall be disregarded.

3. Except as otherwise provided in this Subchapter, the value of the motor vehicle shall be determined at the time of the first registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:463(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 23:

**§359. Declaratory Orders and Rulings**

A. Any person desiring a ruling on the applicability of R.S. 47:463 or any other statute, or the applicability or validity of any rule, to the payment of the vehicle registration license tax as it applies to the transfer, registration, or renewal of the registration of any motor vehicle shall submit a written petition to the assistant secretary. The written petition shall cite all constitutional provisions, statutes, ordinances, cases, and rules which are relevant to the issue presented or which the person wishes the assistant secretary to consider prior to rendering an order or ruling in connection with the petition. The petition shall be typed, printed or written legibly, and signed by the person seeking the ruling or order. The petition shall also contain the person's full printed name, the complete physical and mailing address of the person, and a daytime telephone number.

B. If the petition seeks an order or ruling on a transaction handled by the Office of Motor Vehicles, the person submitting the petition shall notify the person or persons who submitted the transaction, if other than the person submitting the petition, including any lienholder, lessee, and registered owner. Such notice shall be sent by certified mail, return receipt requested. In such case, the petition shall not be considered until proof of such notice has been submitted to the secretary, or until the person petitioning for the order or ruling establishes that the person or persons cannot be notified after a due and diligent effort. The notice shall include a copy of the petition submitted to the assistant secretary.

C. The assistant secretary may request the submission of legal memoranda to be considered in rendering any order or ruling. The assistant secretary or his designee shall base the order or ruling on the documents submitted including the petition and legal memoranda. If the assistant secretary or his

designee determines that the submission of evidence is necessary for a ruling, the matter may be referred to a hearing officer prior to the rendering of the order or ruling for the taking of such evidence.

D. Notice of the order or ruling shall be sent to person submitting the petition as well as the persons receiving notice of the petition at the mailing addresses provided in connection with the petition.

E. The assistant secretary may decline to render an order or ruling if the person submitting the petition has failed to comply with any requirement in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:463(B) and R.S. 49:962.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 23:

**§361. Administrative Actions**

A. The department may deny any application to register any motor vehicle if it is determined that information, documentation, or other materials submitted in connection with the application is false, inaccurate, misleading, or incomplete, or if the incorrect amount is submitted as payment of the vehicle registration license tax. The department may retain or return to the person submitting the application, any such information, documentation or other material. The department, in its discretion, may make copies of the information, documentation or other material prior to returning said things to the person submitting the items. The notice of the denial shall be issued at the time the application is rejected and may be hand-delivered to the applicant or the person submitting the application on behalf of the applicant, or may be mailed to the applicant at the discretion of the department.

B. The department may cancel, suspend or revoke the registration of any motor vehicle if it is subsequently determined that information, documentation, or other materials submitted in connection with the application to register the motor vehicle was false, inaccurate, misleading, or incomplete, or if the incorrect amount was submitted as payment of the vehicle registration license tax. The department, in its discretion, may allow the applicant a reasonable opportunity to correct any problems prior to canceling, suspending, or revoking the registration. The notice of cancellation, suspension, or revocation shall be mailed to the applicant.

C. The applicant shall have 30 days from the date of any notice required by this Section to request an administrative hearing to review the action of the department. Any request for an administrative hearing shall only be mailed to the department at Box 64886, Baton Rouge, LA, 70896-4886, or hand-delivered to the Office of Motor Vehicle Headquarters in Baton Rouge, LA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:463(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 23:

**§363. Payment Under Protest**

A. Any person resisting the payment of any amount of the tax imposed by R.S. 47:463 shall provide notice to the assistant secretary at the time of the payment of the tax of the person's intention to file suit for the recovery of the contested amount of the tax.

B. If the contested payment of the license registration tax is submitted with an application for registration to a public tag agent, the applicant's notice required in Subsection A shall be submitted to the public tag agent and a copy of the notice sent to the assistant secretary.

C. If a person other than the applicant for registration of the motor vehicle submits the contested payment with the application to the department, the applicant's notice required in Subsection A shall be submitted to the department by the person submitting the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:463(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 23:

Thomas H. Normile  
Undersecretary

9706#019

**DECLARATION OF EMERGENCY**

**Department of Social Services  
Office of Rehabilitation Services**

**Vocational Rehabilitation Policy  
Manual (LAC 67:VII.101)**

The Department of Social Services, Rehabilitation Services has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to amend the following rule in the Vocational Rehabilitation Services Policy Manual, Sections: Eligibility and Conditions for Case Closure.

The rule governing Louisiana Rehabilitation Services' policy relative to the timeframe for determining eligibility ensures that individuals will receive a timely decision regarding their eligibility for Vocational Rehabilitation Services.

The rule governing Louisiana Rehabilitation Services' policy relative to closure of an individual's case record after a successful employment outcome is achieved ensures that the individual's employment is stable, compatible with the individual's abilities and capabilities, and the individual is satisfied with the job placement.

This emergency rule is effective June 10, 1997. It is necessary to extend emergency rulemaking, since the declaration of emergency of March 10, 1997 was effective for a maximum of 120 days and will expire before the final rule takes effect.

The LRS policy manuals are referenced in LAC 67:VII. Specific amendments to the Vocational Rehabilitation Policy Manual are as follows:

**V. ELIGIBILITY AND INELIGIBILITY DECISIONS**

\*\*\*

D. Compliance Provisions Relating to Eligibility, Extended Evaluations, and/or Ineligibility Decisions

\*\*\*

5. Timeframe for Determining Eligibility. Eligibility must be determined within a reasonable period of time, not to

exceed 60 days after the individual has signed an application for vocational rehabilitation services. Exceptions to this 60-day timeframe can occur if:

(1) the determination is made that an extended evaluation is necessary to determine the individual's eligibility for vocational rehabilitation services and the nature and scope of services needed; or

(2) the client agrees to an extension of time because exceptional and unforeseen circumstances beyond the agency's control have made it impossible for the rehabilitation counselor to make an eligibility determination within this time frame.

**XI. CONDITIONS FOR CASE CLOSURE**

**A. Options for Closure**

\*\*\*

B. Closure as Successfully Rehabilitated. An individual is determined to have achieved an employment outcome if the following requirements are met:

1. the provision of services under the individual's IWRP has contributed to the achievement of the employment outcome.

2. the employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

3. the employment outcome is in the most integrated setting possible, consistent with the individual's informed choice.

4. the individual has maintained the employment outcome for a period of at least 90 days.

5. the individual and the rehabilitation counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

**Title 67**

**SOCIAL SERVICES**

**Part VII. Rehabilitation Services**

**Chapter 1. General Provisions**

**§101. Vocational Rehabilitation Policy Manual**

A. LRS Vocational Rehabilitation Policy Manual provides opportunities for employment outcomes through vocational and other rehabilitation services. Its policy manual guides its functions and governs its actions within the parameters of federal law.

B. Copies of the policy manual can be viewed at Louisiana Rehabilitation Services State Office, 8225 Florida Boulevard, Baton Rouge, LA and at each of its nine Louisiana Rehabilitation Services Regional Offices (statewide), or at the Office of the State Register, 1051 North Third Street, Room 512, Baton Rouge, LA 70802.

AUTHORITY NOTE: Promulgated in accordance with R.S.49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), repromulgated LR 21:189 (February 1995), LR 21:191 (February 1995), LR 21:473 (May 1995), LR 21:837 (August 1995), LR 22:993 (October 1996), LR 23:292 (March 1997), LR 23:

Madlyn B. Bagneris  
Secretary

9706#045

**DECLARATION OF EMERGENCY**

**Department of Treasury  
Board of Trustees of the State Employees Group  
Benefits Program**

**Administrative Policy—Retirees with Medicare**

Pursuant to the authority granted by R.S. 42:871(C) and 874(A)(2), vesting the board of trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board of trustees hereby invokes the emergency rule provisions of R.S. 49:953(B) to amend its administrative policy relative to premiums for retirees with Medicare.

This emergency rule shall become effective on July 1, 1997, and shall remain effective for a maximum of 120 days or until promulgation of the final rule, whichever occurs first.

The board finds that it is necessary to amend its administrative policy to provide that, for those employees who retire on or after July 1, 1997, the reduced premium rate for retirees with Medicare will be applied only to those who are enrolled for Medicare Parts A and B. Failure to adopt these amendments on an emergency basis will adversely affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents which are crucial to the delivery of vital services to the citizens of the state. Accordingly, the Administrative Policy of the State Employees Group Benefits Program is hereby amended to provide as follows:

**Administrative Policy—Reduced Premium Rates for Retirees with Medicare**

For all Employees who retire on or after July 1, 1997, the reduced premium rate for retirees with Medicare will be applied only with respect to those persons who are enrolled for Medicare Parts A and B.

James R. Plaisance  
Executive Director

9706#013

This emergency rule shall become effective on July 1, 1997, and shall remain effective for a maximum of 120 days or until promulgation of the final rule, whichever occurs first.

The Board finds that it is necessary to amend provisions of the Plan Document relative the Catastrophic Illness Endorsement to provide for annual restoration of benefits. Failure to adopt these amendments on an emergency basis will adversely affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents which are crucial to the delivery of vital services to the citizens of the state. Accordingly, the Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars:

Amend the Catastrophic Illness Endorsement provision in the Schedule of Benefits on page 6 of the Plan Document, to read as follows:

**Catastrophic Illness Endorsement (Optional)**

All eligible expenses are payable at 100 percent following diagnosis of any covered disease.

Maximums for any one disease or combination thereof per lifetime:

Option 1 -- \$10,000 Maximum

Automatic Annual Restoration, up to \$1000

Option 2 -- \$5,000 Maximum

Automatic Annual Restoration, up to \$500

Amend Article 3, Section VI, by adding a new Subsection, designated as Subsection G, to read as follows:

**G. Restoration of Catastrophic Illness Endorsement Benefits**

On and after January 1, 1997, Catastrophic Illness Endorsement benefits shall be restored by the Plan each January 1, up to the maximum amount of the annual restoration as stated in the Schedule of Benefits, provided that such restoration will not increase the lifetime maximum Catastrophic Illness Endorsement benefits above that provided in the Schedule of Benefits.

James R. Plaisance  
Executive Director

9706#011

**DECLARATION OF EMERGENCY**

**Department of Treasury  
Board of Trustees of the State Employees  
Group Benefits Program**

**Plan Document—Catastrophic Illness**

Pursuant to the authority granted by R.S. 42:871(C) and 874(A)(2), vesting the board of trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board of trustees hereby invokes the emergency rule provisions of R.S. 49:953(B) to amend the Plan Document of Benefits.

**DECLARATION OF EMERGENCY**

**Department of Treasury  
Board of Trustees of the State Employees Group  
Benefits Program**

**Plan Document—Point of Service PPO Regions**

Pursuant to the authority granted by R.S. 42:871(C) and 874(A)(2), vesting the board of trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board of trustees hereby invokes the emergency rule provisions of R.S. 49:953(B) to amend the Plan Document of Benefits.



This emergency rule shall become effective on July 1, 1997, and shall remain effective for a maximum of 120 days or until promulgation of the final rule, whichever occurs first.

The board finds that it is necessary to amend provisions of the Plan Document relative to point of service regions for Preferred Provider Organizations (PPOs) to coincide with Health Maintenance Organization (HMO) service areas. Failure to adopt these amendments on an emergency basis will adversely affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents which are crucial to the delivery of vital services to the citizens of the state. Accordingly, the Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars:

Amend Article 3, Section X, Subsection A, Paragraph 1, to read as follows:

**B. Point of Service PPO Regions (Areas)**

1. The following regions, designated by United States Postal Service ZIP codes, are used to determine whether there is a PPO provider in the same area as the point of service:

- Region 1 Zip Codes 70000 through 70199
- Region 2 Zip Codes 70300 through 70399
- Region 3 Zip Codes 70400 through 70499
- Region 4 Zip Codes 70500 through 70599
- Region 5 Zip Codes 70600 through 70699
- Region 6 Zip Codes 70700 through 70899
- Region 7 Zip Codes 71300 through 71499
- Region 8 Zip Codes 71000 through 71199
- Region 9 Zip Codes 71200 through 71299

James R. Plaisance  
Executive Director

9706#014

**DECLARATION OF EMERGENCY**

**Department of Treasury  
Board of Trustees of the State Employees  
Group Benefits Program**

Plan Document—Prescription Drug

Pursuant to the authority granted by R.S. 42:871(C) and 874(A)(2), vesting the board of trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board of trustees hereby invokes the emergency rule provisions of R.S. 49:953(B) to amend the Plan Document of Benefits.

This emergency rule shall become effective on July 1, 1997, and shall remain effective for a maximum of 120 days or until promulgation of the final rule, whichever occurs first.

The board finds that it is necessary to amend provisions of the Plan Document relative to prescription drug benefits to

provide a minimum copayment of \$12 for brand name drugs. Failure to adopt these amendments on an emergency basis will adversely affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents which are crucial to the delivery of vital services to the citizens of the state. Accordingly, the Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars:

Amend the Prescription Drug provision under "Percentage Payable after Satisfaction of Applicable Deductibles" in the Schedule of Benefits on page 5 of the Plan Document, to read as follows:

Prescription Drugs (subject to a minimum copayment of \$3 per prescription for generic drugs, and \$12 per prescription for brand name drugs, not to exceed the maximum allowable charges) . . .90 percent (Network), 50 percent nonNetwork, in State, 80 percent nonNetwork, out of State\*\*\*

Amend Article 3, Section XI, Subsections A and D to read as follows:

**XI. Prescription Drug Benefits**  
\* \* \*

A. Upon presentation of the Group Benefits Program Identification card at a network pharmacy, the Plan Member shall be responsible for payment of 10 percent of eligible charges for the drug, with a minimum copayment of \$3 per prescription when a generic drug is dispensed and \$12 per prescription when a brand name drug is dispensed, provided, however, that in no event will a combination of payments made by the prescription benefits management firm and the Plan Member exceed the actual charge by the pharmacy for the drug.

\* \* \*

D. Regardless of where the prescription drug is obtained, eligible expenses for brand name drugs shall be limited to the prescription benefits management firm's maximum allowable charge and eligible expenses for generic drugs shall be limited to the prescription benefits management firm's generic maximum allowable charge.

\* \* \*

James R. Plaisance  
Executive Director

9706#010

**DECLARATION OF EMERGENCY**

**Department of Treasury  
Board of Trustees of the State Employees Group  
Benefits Program**

Plan Document—Sleep Disorders

Pursuant to the authority granted by R.S. 42:871(C) and 874(A)(2), vesting the board of trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board of trustees

hereby invokes the emergency rule provisions of R.S. 49:953(B) to amend to the Plan Document of Benefits.

This emergency rule shall become effective on July 1, 1997, and shall remain effective for a maximum of 120 days or until promulgation of the final rule, whichever occurs first.

The board finds that it is necessary to amend provisions of the Plan Document to limit benefits for the treatment of sleep disorders. Failure to adopt these amendments on an emergency basis will adversely affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents which are crucial to the delivery of vital services to the citizens of the state. Accordingly, the Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars:

Amend Article 3, Section XIII, by adding a new Subsection, designated as Subsection OO, to read as follows:

#### VIII. Exceptions and Exclusions for All Medical Benefits

No benefits are provided under this contract for:

\* \* \*

OO. Treatment of sleep disorders, except when provided under the direction of a board certified neurologist certified in the treatment of sleep disorders by the American Sleep Association at a facility, whether affiliated with a hospital or a free standing sleep laboratory, certified by the American Sleep Association; notwithstanding, benefits otherwise payable are provided for nonsurgical treatment of snoring, but no benefits are provided under any circumstances for sleep studies conducted in a patient's home or for surgical treatment of snoring, including LAUP;

James R. Plaisance  
Executive Director

9706#012

# Rules

## RULE

### Department of Agriculture and Forestry Office of the Commissioner

#### Emergency Airstrip for Agricultural Purposes (LAC 7:I.107)

In accordance with provisions of the Administrative Procedure Act, the Department of Agriculture and Forestry hereby adopts LAC 7:I.107 regarding the requirements for the use of certain roads as emergency airstrips to aid in the use of aircraft for agricultural purposes. The department published its notice of intent in the February, 1997 issue of the *Louisiana Register* on page 213.

These rules comply with and are enabled by R.S. 3:18.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part I. Administration

#### Chapter 1. Administrative Procedure

#### §107. Emergency Airstrip for Agricultural Purposes Program

A. Creation. There is hereby established within the Department of Agriculture and Forestry a program to designate certain roads as emergency airstrips to aid in the use of aircraft for agricultural purposes to be known as the "Emergency Airstrip for Agricultural Purposes Program."

#### B. Declaration of Emergency

1. The department may declare an agricultural emergency to exist which requires the use of portions of designated roads as airstrips for agricultural purposes when conditions are such that agricultural turf airstrips are rendered unavailable for safe use.

2. Each declaration of agricultural emergency shall be in writing and contain a declaration number, the date, and a list of the portions of designated roads which may be utilized as airstrips during the agricultural emergency.

3. The department shall provide a copy of the declaration to the sheriff and police jury for the parish in which each of the designated roads is located, and the aviation division of the State Department of Transportation and Development (hereinafter referred to as "DOTD") prior to utilization of the emergency airstrip. If the designated road is a state road, a copy of the declaration should also be provided to the communications center at State Police Headquarters and to the secretary of DOTD. If a designated road is located on the parish line, a copy of the declaration must be provided to the sheriff and police jury for both parishes.

4. The appropriate law enforcement entity as set forth in Subsection B.3 above shall be responsible for implementing security and safety requirements for road traffic during periods when a road designated for use as an emergency airstrip to aid in the use of aircraft for agricultural purposes is

actually utilized for that purpose. At a minimum, the appropriate law enforcement entity shall have at least one officer at the site and signs shall be placed at each end and at all approach ramps of a designated road to notify persons that the road is designated for use as an emergency airstrip to aid in the use of aircraft for agricultural purposes. The officer will insure that whenever aircraft are in the process of landing, taking off, or taxiing, there shall be no movement of vehicles on the emergency airstrip or within 500 feet of each landing threshold of the emergency airstrip. The enforcement entity providing said officer shall have the option of cost recovery for services from the party requesting use of the emergency airstrip.

#### C. Designation of Roads

1. Upon declaration by the department that an agricultural emergency exists, certain roads, including but not limited to dead-end roads and strategically placed parish roads, may be designated by the department for use as airstrips to aid in the use of aircraft for agricultural purposes.

2. Whenever possible, the department shall pre-designate a portion of a road for use as an emergency agricultural airstrip for use in the event a declaration of an agricultural emergency is made by the department. The request for pre-designation must be made by mail or facsimile to the department and include the following information:

- a. location of the road marked on a topography map;
- b. reason for designation; and
- c. a statement that the road meets all the criteria set forth in Subsection C.3 or a statement setting forth the reasons why a waiver under Subsection C.4 should be issue.

3. Predesignated emergency agricultural airstrips shall be inspected and registered by DOTD Aviation using similar criteria as utilized by DOTD in the registration of an agricultural use permanent airstrip. The registration certificate shall be issued to and held by the department. The registered and designated airstrip shall be marked and signed as such. Persons seeking predesignation must contact the aviation division of DOTD for specifications regarding the appropriate marking and signage required for the registered and designated emergency airstrip.

4. The department may authorize use of airstrips which have not been pre-designated and registered with the aviation division of DOTD, on a case-by-case basis, when safety and aircraft performance would not be compromised by such waiver and the use of said road as an emergency agricultural airstrip is deemed necessary by the department. Any such airstrip authorized shall, at a minimum, meet all of the following:

- a. the surface must be flat and straight for a minimum distance to 2,000 feet;
- b. the width shall be a minimum of 20 feet for the full length of the landing area. Sufficient wing tip clearance shall be provided as required for the aircraft utilizing the emergency agricultural airstrip;

- c. there shall be no potholes or depressions greater than 3 inches in depth over the entire landing surface;
- d. there shall be no vertical obstructions such as utility poles, trees, buildings, road signs, mail boxes, etc., on more than one longitudinal side of the landing surface;
- e. there shall be no overhead obstructions such as utility lines, overpasses, bridges, etc., for the full length of the landing area and within 500 feet of each landing area threshold;
- f. each landing area threshold shall be marked in such a way as to be readily identified from an aircraft in flight (e.g., white or orange cones, buckets, or painted tires); and
- g. threshold markers shall be placed on either side of the landing area at the thresholds and shall be no taller than 24 inches.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:18.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 23:703 (June 1997).

Bob Odom  
Commissioner

9706#093

**RULE**

**Department of Civil Service  
Board of Ethics**

**Lobbyists Required Reporting (LAC 52:I.Chapter 17)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Civil Service, Board of Ethics adopts the following form, as required by R.S. 24:53(G), which will enable lobbyists to file semi-annual expenditure reports.

**Title 52  
ETHICS**

**Part I. Board of Ethics**

**Chapter 17. Lobbyist Disclosure Act**

**Appendix A**

<b>LOBBYING EXPENDITURE REPORT</b>
<input type="checkbox"/> COVERING JANUARY 1 THROUGH JUNE 30 DUE AUGUST 15
<input type="checkbox"/> COVERING JULY 1 THROUGH DECEMBER 31 DUE FEBRUARY 15

<b>Lobbyist's Registration Number</b> _____
---

<b>FOR OFFICE USE ONLY</b> Postmark Date: _____
---

**Instructions**

- Print in ink or type.
- Fill in Registration Number in spaces provided.
- Complete form, have it notarized and return to the Board of Ethics, 8401 United Plaza Boulevard, Suite 200, Baton Rouge, LA 70809, (504) 922-1400
- **This form must be delivered or postmarked by the due date.**
- This form may be faxed to (504) 922-1414. The original should be forwarded on the day of fax transmittal.

1. NAME \_\_\_\_\_  
Last First MI

2. BUSINESS ADDRESS \_\_\_\_\_  
Street and Number

\_\_\_\_\_  
City State Zip

MAILING ADDRESS \_\_\_\_\_

3. BUSINESS PHONE \_\_\_\_\_  
Area Code and Telephone Number

4. Total of all expenditures made January 1 through June 30: \$ \_\_\_\_\_  
(Include expenditures from Schedules A and B)

5. Total of all expenditures made July 1 through December 31: \$ \_\_\_\_\_  
(When Applicable) (Include expenditures from Schedules A and B)

6. Total of all expenditures made during calendar year: \$ \_\_\_\_\_  
(Line 4 added with Line 5 should equal Line 6)

7. Did you make an expenditure exceeding \$50 on one occasion for any one legislator:

From January 1 through June 30?  Yes  No  
From July 1 through December 31?  Yes  No  NA

If the answer to either question in Number 7 above is YES, please complete Schedule A and attach.

8. Did you make expenditures exceeding the sum of \$250 for any one legislator:

From January 1 through June 30?  Yes  No  
From July 1 through December 31?  Yes  No  NA

If the answer to either question in Number 8 above is YES, please complete Schedule A and attach.

9. Did you expend funds for a reception, social gathering, or other function to which the entire legislature, either house, any standing committee, select committee, statutory committee, committee created by resolution of either house, subcommittee of any committee, recognized caucus, or any delegation thereof were invited during the reporting period?

Yes  No

If the answer to Number 9 above is YES, please complete Schedule B and attach.

State of \_\_\_\_\_

Parish of \_\_\_\_\_

Before me, the undersigned authority, personally came and appeared \_\_\_\_\_, who, after being duly sworn by me, did declare and acknowledge to me that the above statements are true and correct.

\_\_\_\_\_  
Signature of Lobbyist

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**RULE**

**Department of Economic Development  
Office of Financial Institutions**

**Depository Institution Records Retention  
(LAC 10:I.701 and LAC 10:III.111)**

Under the authority of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 6:127, the commissioner of the Office of Financial Institutions repeals the rule promulgated in the *Louisiana Register*, Volume 9, Pages 680-683 (October 1983) regarding bank records retention schedules and adopts a rule providing for a record retention schedule for all depository institutions subject to the supervision of the commissioner. This rule significantly streamlines the existing record retention rule by requiring that applicable institutions maintain minimum records and retention periods as deemed necessary by the commissioner for the proper examination and supervision of the institution by this office.

**Title 10**

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,  
INVESTMENT SECURITIES, AND UCC**

**Part I. Financial Institutions**

**Chapter 7. Records Retention**

**§701. Records Retention Schedule**

Each depository institution subject to the regulation and supervision of the Office of Financial Institutions shall retain such minimum records which are deemed necessary for the examination and supervision of such institutions by this office and for such minimum retention periods as determined by the commissioner and set forth in a "record retention schedule." This rule does not replace the institution's responsibility to create, implement, and maintain its own comprehensive record retention program, consistent with the institution's strategic goals and objectives. Such records may be retained in various forms including but not limited to hard copies, photocopies, computer printouts or microfilm, microfiche, imaging, or other types of electronic media storage that can be readily reproduced into hard copies.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 6:127.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 23:705 (June 1997).

**Part III. Banks**

**Chapter 1. General Provisions**

**§111. Retention of Banking Records**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 6:170.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Office of Financial Institutions, LR 9:680 (October 1983), repealed by the Department of Economic Development, Office of Financial Institutions, LR 23:705 (June 1997).

**Larry L. Murray  
Commissioner**

9706#017

<b>SCHEDULE A: EXPENDITURES FOR LEGISLATORS</b>			
This Schedule must be completed if you answered YES to either question 7 or 8 on the Lobbying Expenditure Report. If, during the period January 1 through June 30 or the period July 1 through December 31, you made either a) an expenditure for any one legislator exceeding \$50 on any one occasion or b) aggregate expenditures exceeding \$250 for any one legislator during a reporting period, then you must provide the aggregate total of expenditures made on that legislator in that reporting period.			
1. LEGISLATOR'S NAME	2. AMOUNT OF EXPENDITURES MADE ON A LEGISLATOR FOR WHOM YOU EITHER SPENT OVER \$50 ON ONE OCCASION OR MADE EXPENDITURES EXCEEDING \$250 BETWEEN JANUARY 1 AND JUNE 30	3. AMOUNT OF EXPENDITURES MADE ON A LEGISLATOR FOR WHOM YOU EITHER SPENT OVER \$50 ON ONE OCCASION OR MADE EXPENDITURES EXCEEDING \$250 BETWEEN JULY 1 AND DECEMBER 31	4. TOTAL OF COLUMNS 2 AND 3

<b>SCHEDULE B: EXPENDITURES FOR RECEPTIONS, ETC.</b>			
This Schedule must be completed if you answered YES to question 9 on the Lobbying Expenditure Report. The following information must be provided for all receptions, social gatherings, or other functions to which the entire legislature, either house, any standing committee, select committee, statutory committee, committee created by resolution of either house, subcommittee of any committee, recognized caucus, or any delegation thereof, was invited.			
1. NAME(S) OF GROUP(S) INVITED	2. DATE OF RECEPTION	3. LOCATION OF RECEPTION	4. TOTAL AMOUNT OF EXPENDITURES FOR ATTENDING LEGISLATORS*

\*No amount expended on persons other than attending legislators is reportable.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 24:50 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Civil Service, Board of Ethics for Elected Officials, LR 22:1120, amended by the Department of Civil Service, Board of Ethics, LR 23:704 (June 1997).

**R. Gray Sexton  
Executive Secretary**

9706#030

**RULE**

**§203. Establishment of Fees and Assessments**

**Department of Economic Development  
Office of Financial Institutions**

**Fees and Assessments (LAC 10:I.201-205)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and as provided under R.S. 6:126(A), the commissioner of the Office of Financial Institutions amends the following rule originally promulgated in December 1993, and subsequently amended in October 1995 and March 1997; and repromulgates the rule in its entirety. The commissioner eliminates the following in the rule:

1. the relocation fee for a main office or a branch office;
2. the fee charged banks, savings and loan associations and savings banks for the establishment of a loan or trust production office;
3. the fee charged to obtain a replacement charter or branch certificate;
4. the fee charged to exceed the legal lending limit to finance the sale of other real estate;
5. the fee for the filing of an agreement for substitution of fiduciary between two or more financial institutions authorized to exercise fiduciary powers; and
6. the fee imposed for the late filing of a call report or thrift financial report.

Also included in the amended rule is a reduction of the fee charged for the conversion of a national bank or federal savings and loan association or savings bank to a state-chartered bank, savings and loan association or savings bank. Also included in the amended rule is a clarification of the fee for the acquisition of a Louisiana-domiciled bank by an in-state or out-of-state financial institution holding company to include Louisiana-domiciled savings and loan associations and savings banks. Additionally, an applicant may now request a reduction of the applicable fees when filing multiple, simultaneous applications.

**Title 10**

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT  
INVESTMENT SECURITIES AND UCC**

**Part I. Financial Institutions  
(formerly Part I. Banks)**

**Chapter 2. Fees and Assessments**

**§201. General Provisions**

The Depository Institutions Section of the Louisiana Office of Financial Institutions ("OFI") is funded entirely through assessments and fees levied on state-chartered banks, savings and loan associations, savings banks and credit unions for services rendered. All fees detailed in this rule are nonrefundable and must be paid at the time the application is filed with this office. An applicant may request that a reduced fee be charged for the simultaneous filing of multiple applications. This privilege will not be afforded to applications that will not be expected to be consummated within 12 months of the filing date.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 6:121(B)(1) and 6:126(A).

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 23:706 (June 1997).

DESCRIPTION	FEE
A. For the reservation of a corporate name of a state bank, savings and loan association, or savings bank.	\$100
B. Application for a de novo state bank, savings and loan association or savings bank charter, or the merger or consolidation of two banks, savings and loan associations, or savings banks. The fee for a merger or consolidation may be reduced based on certain factors including, but not limited to: the date of each institution's most recent examination, the financial condition of the applicant, the structure of the institutions, the complexity of the transaction, the number of similar transactions contemplated, and any other factor(s) as determined by the Commissioner of Financial Institutions.	\$10,000; \$5,000 for each additional institution affected.
C. The conversion from a national or federally-chartered depository institution to a state-chartered depository institution.	\$1,500
D. Application for a state bank, savings and loan association or savings bank for a branch office.	standard form: \$1,000 short form: \$250
E. Processing fee for an application to acquire a failing or failed institution. If the applicant is the successful bidder, the processing fee will be applied to the application fee(s) as set forth in B. and D. above:	
1. Existing state-chartered financial institution.	\$500 per branch
2. De Novo state-chartered financial institution.	\$5,000
F. Notification by a state bank, savings and loan association, or savings bank for an off-site electronic financial terminal machine.	\$100
G. Application for a conversion or merger of a state-chartered bank, savings and loan association, or savings bank into a national bank, a federal savings and loan association, or a federal savings bank.	\$1,500
H. Application for the organization and/or merger of a stock or mutual holding company for an already existing bank, savings and loan association, or savings bank (phantom).	\$2,000
I. Special examination fee for a state bank, savings and loan association, or savings bank. Fee per examiner.	\$50/hour
J. Semi-annual assessment of each state-chartered bank, savings and loan association, and savings bank at a floating rate to be assessed no later than June 30 and December 31, to be based on the total consolidated average assets, for the preceding quarter. Not applicable to Trust Banks. Any amounts collected in excess of actual expenditures of the OFI shall be credited or refunded on a pro-rata basis. Any shortages in assessments to cover actual operating expenses of OFI shall be added to the next variable assessment or billed on a pro-rata basis.	Variable

K. Annual assessment of each holding company domiciled in and/or operating in Louisiana, to be assessed no later than September 30 of each year to be based upon the holding company's total consolidated assets as of the previous June 30, in accordance with the following schedule.	
1. Assets less than \$100,000,000	\$350
2. Assets of \$100,000,000 to \$149,999,999	\$500
3. Assets of \$150,000,000 or greater	\$650
L. Examination fee for holding companies of each bank, savings and loan association, or savings bank domiciled in and/or operating in Louisiana. Fee per examiner.	\$50/hour
M. Semi-annual assessment for each bank limited to the exercise of trust powers only and domiciled and operating in Louisiana to be assessed no later than June 30 and December 31.	\$500
N. Examination fee for each trust bank domiciled and operating in Louisiana. Fee per examiner.	\$50/hour
O. Examination fee for a trust department of a state-chartered bank, savings and loan association, or savings bank. Fee per examiner.	\$50/hour
P. Examination of the registered transfer agent activities of a state-chartered bank, savings and loan association, or savings bank. Fee per examiner.	\$50/hour
Q. Review of a restatement and/or amendment to the Articles of Incorporation of a state-chartered bank, savings and loan association or savings bank.	\$250
R. Application by a state-chartered bank, savings and loan association, or savings bank to exercise trust powers and/or re-institute trust powers formerly surrendered.	\$1,000
S. Application by a state-chartered bank, savings and loan association, or savings bank to establish or acquire a subsidiary or service corporation.	\$1,000
T. Application by an in-state or out-of-state holding company to acquire a Louisiana bank, savings and loan association, or savings bank, or a holding company thereof, or an out-of-state holding company with a Louisiana bank, savings and loan or savings bank subsidiary(-ies).	\$1,000; \$11,000 if de novo charter also required.
U. Corporate Credit Union Examination Fee.	\$5,000 plus \$400 per day per examiner.
V. Application by a state-chartered bank, savings and loan association, or savings bank to merge with its parent holding company.	\$1,000
W. Processing fee for a certificate of authority filed by a state-chartered savings and loan association or savings bank not domiciled in Louisiana to operate a branch in Louisiana.	\$1,000
X. Application for conversion by any state-chartered depository institution to another state charter.	\$1,500

Y. Application for the voluntary conversion of a depository institution from a mutual to a stock form (equity ownership).	\$1,500
Z. - AE. Repealed.	

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:126(A), 6:212 and 6:646(B)(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:1546 (December 1993), amended LR 21:1069 (October 1995), LR 23:706 (June 1997).

#### §205. Administration

The commissioner may increase any of the fees in §203 when a combination of two or more of the transactions described in that Section occur, said fee not to exceed the lesser of \$50 per hour, or the combined fees as stated above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1) and 6:126(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:1546 (December 1993), repromulgated LR 23:707 (June 1997).

Larry L. Murray  
Commissioner

9706#018

#### RULE

#### Department of Economic Development Racing Commission

#### Deposit for Expenses (LAC 35:V.8305)

The Racing Commission amends LAC 35:V.8305, Deposit for Expenses, to provide for increased suspensive appeal deposits for individuals violating electrical device rules.

#### Title 35

#### HORSE RACING

#### Part V. Racing Procedures

#### Chapter 83. Appeals to the Commission

#### §8305. Deposit for Expenses

A. A deposit of not less than \$50 nor more than \$500 may be required by the commission to defray the necessary expenses of witnesses called and necessary equipment required by the commission upon appeal to the commission by stewards' final rulings.

B. However, a deposit of \$1,000 shall be required by the commission upon appeal of a stewards' ruling pursuant to LAC 35:I.1706.

C. If the commission upholds the stewards' ruling, the commission shall retain the full deposit. If the commission finds in favor of the appellant, the deposit shall be returned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:144, R.S. 4:148 and R.S. 4:197.



HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 4:289 (August 1978), amended by the Department of Economic Development, Racing Commission, LR 16:763 (September 1990), LR 23:707 (June 1997).

Paul D. Burgess  
Executive Director

9706#004

## RULE

### Department of Economic Development Racing Commission

#### Electric Battery Violation Penalties (LAC 35:I.1706)

The Racing Commission adopts LAC 35:I.1706, Electric Battery Violation Penalties, because of the need to establish concrete penalties for individuals violating rules involving the possession and use of electrical devices on racetracks.

### Title 35 HORSE RACING

#### Part I. General Provisions

#### Chapter 17. Corrupt and Prohibited Practices

#### §1706. Electric Battery Violation Penalties

A. Any person whom the commission finds to have violated, attempted to violate, or conspired to violate R.S. 4:175(D) and/or LAC 35:I.1705 as it pertains to an electrical or mechanical device or other expedient, shall be revoked and such person shall be ineligible for licensing for a period not less than five years from the date such revocation takes effect. The minimum penalty established herein shall not be diminished, reduced, suspended in whole or in part, or remitted except under conditions set forth herein below.

B. In addition to license revocation and a minimum period of ineligibility, the commission may fine the violator an amount not less than \$3,000 and not more than \$10,000, which fine must be paid within 30 days of the date on which the commission's decision becomes effective. If any fine is not timely paid, then the person shall remain ineligible for licensing for an indefinite period of time beyond the period imposed in Subsection A.

C. Upon imposition of the penalty by the commission, it shall, pursuant to R.S. 4:175(F), notify the district attorney for the parish in which the violation occurred and formally request that the district attorney and its attorney institute a criminal prosecution.

D. The penalties imposed by the commission pursuant to Subsections A and B may only be diminished, reduced, suspended or remitted if the State Police Racing Investigations Unit, with the consent of the assistant attorney general, formally requests in writing that such penalties be modified for good cause. Such request must be made within 10 days of the commission's imposition of the penalty.

E. This rule shall be applicable to all violations occurring on or after the date of adoption of this rule.

F. Any licensed individual who refuses to answer under oath, for any reason whatsoever, any questions put to him during a deposition, hearing, or administrative investigation concerning such licensed individual's knowledge, awareness, use or possession of an electrical device, or of methods and practices engaged in by persons designing, manufacturing, creating, distributing or testing electrical devices shall be suspended by the stewards for six months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148 and R.S. 4:175.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 23:708 (June 1997).

Paul D. Burgess  
Executive Director

9706#005

## RULE

### Department of Economic Development Racing Commission

#### Interstate Wagering (LAC 35:XIII.10379)

The Racing Commission adopts LAC 35:XIII.10379, Authority to Grant Permission for Interstate Wagering, to simplify and quicken the approval process for simulcast wagering requests from racing associations.

### Title 35 HORSE RACING Part XIII. Wagering

#### Chapter 103. Pari-Mutuels

#### §10379. Authority to Grant Permission for Interstate Wagering

The chairman is authorized to grant permission for any request for interstate simulcasting whenever he finds that there is not impediment to the request by virtue of federal or state law, that there is no conflict with the rules or policies of the commission regarding such permission; and that such permission is in the best interest of racing in Louisiana. Any such action on the part of the chairman, or a duly authorized vice-chairman acting in his place, shall not require further ratification by the commission. Any such action taken pursuant to this rule shall constitute the consent of the commission pursuant to 15 U.S.C. Section 3004(a)(2) or (3), whichever is applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149 and R.S. 4:149.3.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 23:708 (June 1997).

Paul D. Burgess  
Executive Director

9706#006

**RULE**

**Department of Economic Development  
Racing Commission**

**Method of Payments (LAC 35:XIII.10367)**

The State Racing Commission amends LAC 35:XIII.10367, Method of Payments, in conjunction with the rule amendment (§10365) involving the reduction of payoffs in a minus pool from \$1.10 to \$1.05 on each \$1 wager.

**Title 35  
HORSE RACING  
Part XIII. Wagering**

**Chapter 103. Pari-Mutuels  
§10367. Method of Payments**

Payments due on all wagers shall be made in conformity with the well-established practice of the pari-mutuel system. Money wagered on winning tickets is returned in full plus the profits. The practice is to work in dollars and not in number of tickets. The break permitted by law is deducted in all of the calculations which are necessary to arrive at the payoff prices, i.e., the odd cents over any multiple of \$.10 of winnings per dollar wagered, except in the case of a minus pool, as provided in §10365.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:149, R.S. 4:166 and R.S. 4:166.3.

**HISTORICAL NOTE:** Adopted by the Louisiana State Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:441 (December 1976), repromulgated LR 3:37 (January 1977), LR 4:282 (August 1978), amended by the Department of Economic Development, Racing Commission, LR 23:709 (June 1997).

Paul D. Burgess  
Executive Director

9706#007

**RULE**

**Department of Economic Development  
Racing Commission**

**Pari-Mutuel Pool (LAC 35:XIII.10365)**

The Racing Commission amends LAC 35:XIII.10365, Association's Deduction from Pari-Mutuel Pool, by reducing the minimum payoff in a negative ("minus") wagering pool from \$1.10 to \$1.05 on each \$1 wager.

**Title 35  
HORSE RACING  
Part XIII. Wagering**

**Chapter 103. Pari-Mutuels  
§10365. Association's Deduction from Pari-Mutuel Pool**

The commission deducted by the association from pari-mutuel pools shall not exceed that percentage which is

provided by law of the gross amount of money handled and the odd cents over any multiple of \$0.10 of winnings per dollar wagered. All associations licensed by the commission to conduct racing under the pari-mutuel or certificate system of wagering must in all cases of a minus pool, pay off \$1.05 on each \$1 wager.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:149, R.S. 4:166 and R.S. 4:166.3.

**HISTORICAL NOTE:** Adopted by the Louisiana State Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:441 (December 1976), repromulgated LR 3:37 (January 1977), LR 4:282 (August 1978), amended by the Department of Economic Development, Racing Commission, LR 23:709 (June 1997).

Paul D. Burgess  
Executive Director

9706#008

**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 741—Math Graduation Requirements**

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 amends Bulletin 741, Mathematic Requirements for High School Graduation.

**MATHEMATICS**

Shall be selected from the following courses and may include a maximum of two entry level courses (designated by E): Introductory Algebra/Geometry (E), Algebra I-Part 1 (E), Algebra I-Part 2, Integrated Mathematics I (E), Integrated Mathematics II, Integrated Mathematics III, Applied Mathematics I (E), Applied Mathematics II, Applied Mathematics III, Algebra I (E), Geometry, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics.

**3 units**

**Program of Studies**

**MATHEMATICS**

**2.105.17** Effective for 1997-98 incoming freshmen and thereafter, three units of mathematics shall be required for graduation. They shall be selected from the following courses and may include a maximum of two entry level courses (designated by E): Introductory Algebra/Geometry (E), Algebra I-Part 1 (E), Algebra I-Part 2, Integrated Mathematics I (E), Integrated Mathematics II, Integrated Mathematics III, Applied Mathematics I (E), Applied Mathematics II, Applied Mathematics III, Algebra I (E), Geometry, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics.

## HONOR'S CURRICULUM

(Effective for incoming freshmen 1997-98 and thereafter)

<b>ENGLISH</b>	<b>4 Units</b>
English I, II, III, IV (No substitutions)	
<b>MATHEMATICS</b>	<b>4 Units</b>
Algebra I or Applied Mathematics I and II; Algebra II; Geometry or Applied Geometry; and one additional unit to be selected from Pre-Calculus, Calculus, Advanced Mathematics I or II	
<b>NATURAL SCIENCE</b>	<b>3 Units</b>
Biology; Chemistry; and Environmental Science, Physics or Physics of Technology	
<b>SOCIAL STUDIES</b>	<b>3 Units</b>
United States History; World History; and World Geography or Western Civilization	
<b>FREE ENTERPRISE</b>	<b>½ Unit</b>
<b>CIVICS</b>	<b>½ Unit</b>
<b>FINE ARTS SURVEY</b>	<b>1 Unit</b>
Any two units of credit in band, orchestra, choir, dance, art or drama may be substituted for one unit of Fine Arts Survey	
<b>FOREIGN LANGUAGE (in same language)</b>	<b>2 Units</b>
<b>PHYSICAL EDUCATION</b>	<b>2 Units</b>
<b>ELECTIVES</b>	<b>4 Units</b>
<b>TOTAL</b>	<b>24 Units</b>

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

**HISTORICAL NOTE:** Amended by the Board of Elementary and  
Secondary Education, LR 23:709 (June 1997).

Weegie Peabody  
Executive Director

9706#034

## RULE

### Board of Elementary and Secondary Education

#### Bulletin 746—Ancillary Counselor for K-12 Certification

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 amends certification requirements for Ancillary Counselor K-12 and Counselor K-12. The certification requirements will be placed in Bulletin 746, Standards for State Certification of School Personnel. These revisions are mandatory September 1, 2001.

#### Ancillary Counselor K-12

1. Counselor in the School Setting. An applicant who meets the following requirements may be issued an Ancillary Counselor K-12 certificate.

The applicant must hold a master's degree in school counseling from a regionally accredited institution or a master's degree with the equivalent hours and courses required for a master's degree in school counseling. The

graduate training must include a total of 24 semester hours of professional courses distributed so that at least one course will be taken in each of the basic areas listed below.

a. Principles and Administration of School Counseling Programs

- Career and Lifestyle Development
- Individual Appraisal
- Counseling Theory and Practice
- Group Processes
- Human Growth and Development
- Social and Cultural Foundations in Counseling
- Supervised Practicum in a School Setting

2. Professional Counselor in the School Setting. An Ancillary Professional Counselor certificate may be issued to an applicant who has met the requirements for counselor in the school setting and holds current licensure as a Licensed Professional Counselor in Louisiana (LPC) in accordance with Act 892 L.S. 1987 et seq.

**NOTE:** An applicant who holds a Louisiana teaching certificate and meets all other requirements listed above may be issued an endorsement for Counselor K-12 or Professional Counselor K-12. Refer to Part VIII, Administrators, Supervisors and Special Service Personnel, of this Bulletin 746.

#### Counselor K-12

1. Counselor in the School Setting. An applicant who holds a valid Louisiana teaching certificate and meets the following requirements may be issued an endorsement for counselor in the school setting.

The applicant must hold a master's degree in school counseling from a regionally accredited institution or a master's degree with the equivalent hours and courses required for a master's degree in school counseling. The graduate training must include a total of 24 semester hours of professional courses distributed so that at least one course will be taken in each of the basic areas listed below.

a. Principles and Administration of School Counseling Programs

- Career and Lifestyle Development
- Individual Appraisal
- Counseling Theory and Practice
- Group Processes
- Human Growth and Development
- Social and Cultural Foundations in Counseling
- Supervised Practicum in a School Setting

2. Professional Counselor in the School Setting. A professional endorsement may be issued to an applicant who has met the requirements for counselor in the school setting and holds current licensure as a Licensed Professional Counselor in Louisiana (LPC) in accordance with Act 892 L.S. 1987 et seq.

**NOTE:** An applicant who does not hold a Louisiana teaching certificate but meets all other requirements listed above may be issued an Ancillary Counselor K-12 or Professional Counselor K-12 certificate. Refer to Part IX, Ancillary Personnel, of this Bulletin 746.

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

**HISTORICAL NOTE:** Amended by the Board of Elementary and Secondary Education, LR 23:710 (June 1997).

Weegie Peabody  
Executive Director

9706#033

## RULE

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

#### Scholarship and Grant Policy and Procedure Manual

The Student Financial Assistance Commission (LASFAC) amends the Glossary of the Scholarship and Grant Policy and Procedure Manual, issued May 20, 1996, with the following technical correction:

**"Academic Year (High School):**

For purposes of the Louisiana Honors Scholarship Program, the annual academic year for high school begins with the summer session, includes the fall and winter terms and ends at the conclusion of the spring term, in that order.

For example, for a high school graduate to be considered for award of the scholarship to attend college in the 1996 fall term, he or she must have graduated from high school during the summer term 1995 (usually June or July), mid-term 1995 (usually December), or the spring term 1996 (usually May or June).

This definition is not to be confused with the Louisiana Department of Education's definition of school year, which is found in Bulletin 741."

LASFAC supplies copies of the manual to schools participating in the scholarship and grant programs administered by the commission.

Jack L. Guinn  
Executive Director

9706#003

## RULE

### Tuition Trust Authority Office of Student Financial Assistance

#### Student Tuition Assistance and Revenue Trust (START Saving) Program (LAC 28:VI.Chapters 1 and 3)

The Tuition Trust Authority adopts rules governing the Student Tuition Assistance and Revenue Trust (START Saving) Program.

The Student Tuition Assistance and Revenue Trust (START Saving) Program was enacted in the 1995 Regular Legislative Session as Act 547, effective June 18, 1995. The Internal Revenue Code (IRC) Section 529 provides tax incentives for those state tuition savings and prepayment programs meeting the definition of a qualified state tuition program. Amendments to Act 547 are being proposed to conform the statute with the IRC. Implementation of these START Saving Program Rules is contingent upon the enactment of conforming changes.

## Title 28

### EDUCATION

#### Part VI. Student Tuition Trust Authority

##### Chapter 1. General Provisions

##### §101. Program Description and Purpose

A. The Louisiana Student Tuition Assistance and Revenue Trust (START Saving) Program was enacted in 1995 to provide a program of savings for future college costs to:

1. help make education affordable and accessible to all citizens of Louisiana;
2. assist in the maintenance of state institutions of postsecondary education by helping to provide a more stable financial base to these institutions;
3. provide the citizens of Louisiana with financing assistance for education and protection against rising tuition costs, to encourage savings to enhance the ability of citizens to obtain access to institutions of postsecondary education;
4. encourage academic excellence, to promote a well-educated and financially secure population to the ultimate benefit of all citizens of the state; and
5. encourage recognition that financing an education is an investment in the future.

B. The START Saving Program establishes education savings accounts by individuals, groups, or organizations with provisions for routine deposits of funds to cover the future educational costs of a designated beneficiary or a group of beneficiaries.

1. In addition to earning regular interest at competitive rates, certain accounts are also eligible for tuition assistance grants provided by the state to help offset the beneficiary's cost of postsecondary tuition.

2. The grant amount is determined by the account owner's annual income and total annual deposits of principal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:711 (June 1997).

##### §103. Legislative Authority

Act Number 547 of the 1995 Regular Legislative Session, effective June 18, 1995, enacted the Louisiana Student Tuition Assistance and Revenue Trust (START) Saving Program as Chapter 22-A, Title 17 of the Louisiana Revised Statutes (R.S. 17:3091 - 3099.2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:711 (June 1997).

##### §105. Program Administration

A. The Louisiana Tuition Trust Authority (LATTA) is a statutory authority whose membership consists of the Louisiana Student Financial Assistance Commission (LASFAC), plus one member from the Louisiana Bankers Association, the state treasurer, and one member each from the house of representatives and state senate.

B. The LATTA administers the START Saving Program through the Louisiana Office of Student Financial Assistance (LOSFA).

C. LOSFA is the organization created to perform the functions of the state relating to programs of financial assistance and certain scholarship programs for higher education in accordance with directives of its governing bodies and applicable law, and as such is responsible for administering the START Saving Program under the direction of the LATTA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:711 (June 1997).

### §107. Applicable Definitions

*Beneficiary*—the person named in the education savings account depositor's agreement as the individual entitled to apply the account balance, or portions thereof, toward payment of their postsecondary qualified higher education expenses.

*Depositor's Agreement*—the agreement for program participation executed by the account owner which incorporates, by reference, R.S. Chapter 22-A, Title 17, and the rules promulgated by the LATTA to implement this statute and any other state or federal law applicable to the agreement.

*Education Assistance Account (EAA)*—an account which is eligible for tuition assistance grants and is established on behalf of a designated beneficiary by a parent, grandparent, legal guardian, or person claiming the beneficiary as a dependent on their federal income tax or by an independent undergraduate on his own behalf.

*Education Savings Account*—a comprehensive term which refers to the two types of accounts that may be established under the program: an *Education Assistance Account* and an *Education Scholarship Account*.

*Education Scholarship Account (ESA)*—an account which is not eligible for tuition assistance grants and is established on behalf of a beneficiary or beneficiaries by a person or organization other than a parent, grandparent, legal guardian, independent student or person claiming the beneficiary or beneficiaries as dependent(s) on that person's or organization's federal income tax return.

*Eligible Educational Institution*—either a state college, university, or technical college or institute or an independent college or university located in this state that is accredited by the regional accrediting association, or its successor, approved by the U.S. secretary of education or a public or independent college or university located outside this state that is accredited by one of the regional accrediting associations, or its successor, approved by the U.S. secretary of education or a proprietary school licensed pursuant to R.S. Chapter 24-A of Title 17, and any subsequent amendments thereto.

*Emergency Refund*—a refund of the redemption value of an account due to an unforeseen event which has adversely impacted the account owner, such as termination of employment, death, or permanent disability and resulted in a severe reduction in income or extraordinary expenses.

*Enrollment Period*—that period designated by the LATTA during which applications for enrollment in the START program will be accepted by the LATTA.

*False or Misleading Information*—a statement or response made by a person which is knowingly false or misleading and made for the purpose of establishing a program account and/or receiving benefits to which the person would not otherwise be entitled.

*Family Member*—in reference to the account beneficiary:

1. an ancestor of such individual;
2. the spouse of such individual;
3. a lineal descendant of such individual, of such

individual's spouse or parent of such individual or the spouse of any lineal descendant described herein. A legally adopted child of an individual shall be treated as a lineal descendant of such individual.

*Fully Funded Account*—an account having a redemption value equal to or greater than five times the annual tuition at the highest cost Louisiana public college or university projected to the scheduled date of the beneficiary's first enrollment in an eligible educational institution. An account which is "fully funded" is no longer eligible for accrual of tuition assistance grants. However, if subsequent cost projections result in the fully funded amount being more than the account balance, then tuition assistance grants may resume until the level of the most recent fully funded account projection has been met.

*Independent Student*—a person who is defined as an independent student by the Higher Education Act of 1965, as amended, and if required, files an individual federal income tax return in his/her name and designates him/herself as the beneficiary of an education assistance account.

*Louisiana Office of Student Financial Assistance (LOSFA)*—the organization responsible for administering the START Saving Program under the direction of the Louisiana Tuition Trust Authority.

*Louisiana Resident*—

1. any person who resided in the state of Louisiana continuously during the 12 months immediately prior to the date of application and who has manifested intent to remain in the state by establishing Louisiana as legal domicile, as demonstrated by compliance with all of the following:

- a. if registered to vote, is registered to vote in Louisiana;
- b. if licensed to drive a motor vehicle, is in possession of a Louisiana driver's license;
- c. if owning a motor vehicle located within Louisiana, is in possession of a Louisiana registration for that vehicle;
- d. if earning an income, has complied with state income tax laws and regulations.

2. a member of the Armed Forces stationed outside of Louisiana, but who claims Louisiana as his "home of record" and is in compliance with Paragraph 1.d above, is exempt from the requirement of continuous residence in the state during the 12 months preceding the date of completion of the depositor's agreement;

3. a member of the Armed Forces stationed in Louisiana under permanent change of station orders shall be considered eligible for program participation;

4. persons less than 21 years of age are considered Louisiana residents if they reside with and are dependent upon one or more persons who meet the above requirements.

*Louisiana Tuition Trust Authority (LATTA)*—the statutory body responsible for the administration of the START Saving Program.

*Maximum Allowable Account Balance*—the amount projected to equal five times the annual qualified higher education expenses, including tuition, at the eligible educational institution selected projected to the scheduled date of the beneficiary's first enrollment in that institution. In the event no specific eligible educational institution is named by the account owner, the maximum allowable account balance amount is projected to equal five times the annual qualified higher education expenses, including tuition, at the highest cost public institution in the state, projected to the scheduled date of the beneficiary's first enrollment. Once the redemption value of an education assistance account equals or exceeds the maximum allowable account balance, principal deposits will no longer be accepted for the account. However, if subsequent projections increase the maximum allowable account balance, principal deposits may resume until the most recent maximum allowable account balance has been attained.

*Owner of Account*—the person(s), independent student, organization or group that completes a depositor's agreement on behalf of a beneficiary or beneficiaries and is the owner of record of all funds credited to the account.

*Qualified Higher Education Expenses*—tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible institution of postsecondary education.

*Rate of Expenditure*—the rate [see §309. C] per academic year, at which tuition assistance grants may be disbursed from an education assistance account to pay the beneficiary's cost of tuition, or portion thereof, at an eligible educational institution.

*Redemption Value*—the cash value of an education savings account attributable to the sum of the principal invested, the interest earned on principal and authorized to be credited to the account by the LATTA, any tuition assistance grants appropriated by the legislature and authorized by the LATTA to be allocated to the account and the interest earned on tuition assistance grants, less any tuition assistance grants or interest thereon restricted from expenditure and less any penalties required by *Internal Revenue Code*, Section 529.(b)(3). If the account has a redemption value after the beneficiary has completed his educational program, this excess value shall be treated as a refund.

*Refund Recipient*—the person authorized by the depositor's agreement, or by operation of law, to receive refunds from the account.

*Scheduled Date of First-Enrollment*—for a dependent beneficiary, is the month and year in which the beneficiary turns 18 years of age. For an independent student, the scheduled date of first-enrollment is the expected date of enrollment reported by the independent student beneficiary. This date is used to determine eligibility for tuition assistance grants. See the term "*Fully Funded Account*."

*Tuition*—the mandatory educational charges required as a condition of enrollment and limited to undergraduate enrollment. It does not include nonresidence fees, laboratory fees, room and board nor other similar fees and charges.

*Tuition Assistance Grant*—a payment allocated to an education assistance account, on behalf of the beneficiary of the account, by the state. The grant amount is calculated based upon the account owner's annual adjusted gross income and total annual deposits of principal. The grant and interest earned may only be used to pay the beneficiary's tuition, or portion thereof, at an eligible in-state institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997).

### Chapter 3. Education Savings Account

Note: Except where otherwise provided, all terms, conditions, and limitations in this Chapter shall apply to both education assistance accounts and education scholarship accounts.

#### §301. Education Assistance Accounts (EAA)

A. An Education Assistance Account is an Education Savings Account eligible for tuition assistance grants, which is established on behalf of a designated beneficiary by a parent, grandparent, legal guardian or the person claiming the designated beneficiary of the account as a dependent on their federal income tax return, or by an independent student on his own behalf.

##### B. Program Enrollment Period

1. All eligible beneficiaries may be enrolled between July 1 and November 1 of each year.

2. In addition to the July 1 through November 1 enrollment period, the enrollment period is open 12 months a year for those depositors' agreements completed prior to the named beneficiary's first birthday.

##### C. Completing the Depositor's Agreement

1. This agreement must be completed, in full, by the account owner.

2. The owner shall designate a beneficiary.

3. The owner may designate a limited power of attorney to another person who would be authorized to act on the owner's behalf, in the event the owner became incapacitated.

4. The legal spouse of the owner may be listed as co-owner of the account.

5. Transfer of account ownership is not permitted.

6. Only the owner(s) or the beneficiary may be designated to receive refunds from the account.

D. Agreement to Terms. Upon executing a depositor's agreement, the account owner certifies that he understands and agrees to the following statements:

1. Admission to a Postsecondary Educational Institution—that participation in the START Program does not guarantee that a beneficiary will be admitted to any institution of postsecondary education;

2. Payment of Full Tuition—that participation in the START Program does not guarantee that the full cost of the beneficiary's tuition will be paid at an institution of postsecondary education nor does it guarantee enrollment as a resident student;

3. Maintenance of Continuous Enrollment—that once admitted to an institution of postsecondary education, participation in the START Program does not guarantee that the beneficiary will be permitted to continuously enroll or receive a degree, diploma, or any other affirmation of program completion;

4. Guarantee of Redemption Value—that the LATTA guarantees payment of the redemption value of any Education Savings Account, subject to the limitations imposed by R.S.17:3098;

5. Conditions for Payment of Education Expenses—that payments for qualified higher education expenses under the START Saving Program are conditional upon the beneficiary's acceptance and enrollment at an eligible educational institution;

6. Fees—that except for penalties which may be imposed on refunds, the LATTA shall not charge fees for the opening or the maintenance of an account; financial institutions may be authorized by the LATTA to offer assistance in establishing a START Program account.

#### E. Acceptance of the Depositor's Agreement

1. A depositor's agreement will be accepted upon evidence of the following:

- a. proof of citizenship and residency as defined by §301.F and G;
- b. completion and submission of the depositor's agreement;
- c. receipt by the LATTA of the initial deposit amount required to open an account;
- d. acceptance by the LATTA of the signed depositor's agreement.

2. Upon acceptance of the depositor's agreement, the LATTA will establish and credit the account of the named beneficiary with the amount of the initial deposit.

F. Citizenship Requirements. Both the account owner and beneficiary must meet the following citizenship requirements:

1. be a United States citizen; or
2. be a permanent resident of the United States as defined by the U.S. Immigration and Naturalization Service (INS) and provide copies of INS documentation with the submission of the depositor's agreement.

#### G. Residency Requirements

1. On the date an account is opened, meaning an initial deposit has been made and accepted, either the account owner or his designated beneficiary must be a Louisiana resident, as defined in §107 of these rules.

2. If the owner indicates Louisiana residency, he must provide proof of same with the submission of the depositor's agreement.

3. Proof of residency of the account owner may be indicated by supplying copies of one or more of the documents listed in this Section that show continuous residency in the state of Louisiana for the preceding 12 months:

- a. Louisiana voter's registration card;
- b. Louisiana driver's license;
- c. Louisiana motor vehicle registration;
- d. homestead exemption;
- e. utility bills at the same residence;

- f. professional or occupational license;
- g. proof of full-time Louisiana employment.

4. If the account owner is a member of the Armed Forces stationed in Louisiana under permanent change of station orders, he must provide a copy of such orders.

5. If the account owner is a nonresident of the state of Louisiana, he must provide proof that the named beneficiary is a Louisiana resident. Proof of residency for beneficiaries less than 18 years of age may be indicated by supplying copies of one or more of the following documents:

- a. under the age of 1 at the time the completed depositor's agreement is received:
  - i. a birth certificate indicating the beneficiary was born in Louisiana;
  - ii. any item listed under Subparagraph b below.
- b. between 1 year of age and kindergarten enrollment:
  - i. a progress report form from the child's preschool or day care center indicating 12 months of residency;
  - ii. in the event there exist no records on the beneficiary, the beneficiary will be considered a Louisiana resident if the beneficiary resides with and is dependent upon one or more persons who provide documentation of residency listed in this Section;
- c. school aged children from kindergarten to twelfth grade:

- i. a school report card or transcript from a Louisiana public or private school;
- ii. in the event school documents are unavailable, the beneficiary will be considered a Louisiana resident if the beneficiary resides with and is dependent upon one or more persons who provide documentation of residency as listed in this Section.

6. The determination of residency shall be based upon verifiable circumstances or actions and certified true copies of relevant documentation.

7. The LATTA may request additional documentation to clarify circumstances and formulate a decision that considers all facts relevant to residency.

#### H. Providing Personal Information

1. The account owner is required to disclose personal information in the depositor's agreement, including:

- a. his Social Security Number;
- b. the designated beneficiary's Social Security Number;
- c. the beneficiary's date of birth;
- d. the familial relationship between the owner and the designated beneficiary;
- e. the owner's prior year's adjusted gross income amount as reported to the Internal Revenue Service.

2. By signing the depositor's agreement, the account owner provides written authorization for the LATTA to access his annual tax records through the Louisiana Department of Revenue and Taxation.

3. Social Security Numbers will be used for purposes of federal income tax reporting and to access individual account information for administrative purposes [see §315].

I. First Disbursement Restriction. A minimum of one year must lapse between the date the owner makes the first deposit opening an account and the first disbursement from



the account to pay a beneficiary's qualified higher education expenses, which will normally be the beneficiary's projected scheduled date of first-enrollment in an eligible educational institution.

J. Number of Accounts for a Beneficiary. There is no limit on the number of education savings accounts that may be opened for one beneficiary by different account owners; however, the sum total of funds in all accounts for the same beneficiary may not exceed the maximum allowable account balance for that beneficiary and the sum of all education assistance accounts will be used to determine when these accounts are fully funded for the purpose of earning tuition assistance grants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:713 (June 1997).

### **§303. Education Scholarship Accounts (ESA)**

Reserved

### **§305. Deposits to Education Savings Accounts**

#### **A. Application Fee and Initial Deposit Amount**

1. No application fee will be charged to participants applying for a START Program account directly to the LATTA.

2. Financial institutions may be authorized by the LATTA to offer assistance in establishing a START Program account.

3. An initial deposit of at least \$10 is required to open an education savings account and the initial and all subsequent deposits must be rendered in whole dollar amounts of at least that amount.

4. A lump sum deposit may not exceed the maximum allowable account balance [see §107].

#### **B. Deposit Options**

1. The account owner shall select one of the following deposit options during the completion of the depositor's agreement; however, the owner may change the monthly deposit amount at any time and the payment method by notifying the LATTA:

- a. occasional lump sum payment(s);
- b. monthly payments made directly to the LATTA or to a LATTA-approved financial institution;
- c. automatic account debit, direct monthly transfer from the owner's checking or savings account to the LATTA;
- d. payroll deduction, if available through the owner's employer.

2. Account owners are encouraged to maintain a schedule of regular monthly deposits.

3. After acceptance of the depositor's agreement and annually thereafter, the LATTA will project the amount of the monthly deposit that will assure the account owner of sufficient savings to meet the qualified higher education expenses of the beneficiary at the scheduled date of enrollment at the selected institution, or the highest cost public institution if one was not pre-selected.

#### **C. Limitations on Deposits**

1. All deposits must be rendered in whole dollar amounts of at least \$10 and must be made in cash (check,

money order, credit or debit card), defined as any of the deposit options listed in §305.B.1.

2. A minimum of \$100 must be deposited annually for the account to be considered for award of state tuition assistance grants.

3. Once the account becomes fully funded [see §107], it will no longer be considered for tuition assistance grants, regardless of the total amount of annual deposits made to the account.

4. Once the redemption value has reached or exceeded the maximum allowable account balance [see §107], principal deposits will no longer be accepted to the account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997).

### **§307. Allocation of Tuition Assistance Grants**

A. Tuition assistance grants are state-appropriated funds allocated to an education assistance account, on behalf of the beneficiary named in the account.

1. The grants are calculated based upon the account owner's annual adjusted gross income and total annual deposits of principal.

2. Although allocated to individual accounts, tuition assistance grants are state funds and shall be held in an escrow account maintained by the state treasurer until the beneficiary attends an eligible institution as set forth in §307.G.

#### **B. Providing Proof of Annual Adjusted Gross Income**

1. The account owner's annual adjusted gross income is used in computing the annual tuition assistance grant allocation.

2. To be eligible in any given year for a tuition assistance grant, the account owner of an education assistance account must:

- a. authorize the LATTA to access the owner's state tax return filed with the Louisiana Department of Revenue and Taxation; or
- b. provide the LATTA a copy of his federal income tax return filed for that year.

3. In completing the depositor's agreement, the account owner of an education assistance account authorizes the LATTA to access his records with the Louisiana Department of Revenue and Taxation. In the event the account owner will not file his tax information with the Louisiana Department of Revenue and Taxation by their May 15 deadline, he must provide the LATTA with:

- a. a copy of the form filed with the Internal Revenue Service (Form 1040, 1040A, 1040EZ, or 1040TEL); or
- b. a notarized statement as to why no income tax filing was required of the owner.

4. To ensure timely allocation of tuition assistance grants to the account, the owner should provide these documents prior to July 1 following the applicable tax year.

5. If the account owner fails to provide the required tax documents by December 31 of the year following the taxable year, the account shall not be allocated a tuition assistance grant for the year being considered.

**B. Availability of Tuition Assistance Grants**

1. The availability of tuition assistance grants to be allocated to education assistance accounts is subject to an appropriation by the Louisiana Legislature.

2. In the event that sufficient grants are not appropriated during any given year, the LATTA shall reduce tuition assistance grant rates, pro rata, as required to limit grants to the amount appropriated.

C. Tuition Assistance Grant Rates. The tuition assistance grant rates applicable to an education assistance are determined by the adjusted gross income of the account owner, according to the following schedule:

Reported Adjusted Gross Income	Tuition Assistance Grant Rate*
0 to \$14,999	14 percent
\$15,000 to \$29,999	12 percent
\$30,000 to \$44,999	10 percent
\$45,000 to \$59,999	8 percent
\$60,000 to \$74,999	6 percent
\$75,000 to \$99,999	4 percent
\$100,000 and above	0 percent

\*Rates may be reduced pro rata, to limit grants to amounts appropriated by the Legislature.

D. Restrictions on Allocation of Tuition Assistance Grants to Education Assistance Accounts. The allocation of tuition assistance grants is limited to education assistance accounts which:

1. have principal deposits totaling at least \$100 annually;
2. have an owner's reported adjusted gross income of less than \$100,000;
3. have a redemption value that is less than that of a fully funded account [see §107].

E. Frequency of Allocation of Tuition Assistance Grants to Education Assistance Accounts. Tuition assistance grants will be allocated annually and reported on the July 1 quarterly statement, or no later than the second statement following the owner's required disclosure of his or her prior year's federal adjusted gross income.

F. Rate of Interest Earned on Tuition Assistance Grants. The rate of interest earned on tuition assistance grants shall be the rate of return earned on the Tuition Assistance Fund as reported by the state treasurer.

**G. Restriction on Use of Tuition Assistance Grants**

1. Tuition assistance grants, and any interest which may accrue thereon, may only be expended in payment of the beneficiary's tuition, or a portion thereof, at an eligible educational institution located in the state of Louisiana.

2. Tuition assistance grants may not be used at an out-of-state eligible educational institution, nor may they be used to pay for any qualified higher education expenses other than tuition.

3. Tuition assistance grants, although allocated to a beneficiary's account and reported on the account owner's quarterly statements, are assets of the state of Louisiana until

expended to pay a beneficiary's tuition at an eligible Louisiana institution.

4. Tuition assistance grants are not the property of the account owner or beneficiary.

5. The amount of tuition assistance grants which may be expended during a given term is determined by the length of the program in which the beneficiary actually enrolls [see §309].

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997).

**§309. Disbursement of Account Funds for Payment of Qualified Higher Education Expenses of a Beneficiary**

**A. Enrollment Notification**

1. The designated beneficiary of an education assistance account must notify the LATTA of the name and address of the institution at which he has enrolled using the Notice of Enrollment form.

2. The Notice of Enrollment form should be completed and returned as soon as the beneficiary has determined which institution he will attend and must be returned at least 60 days prior to the beginning of the term for which benefits are to be utilized to ensure timely notification of available benefits to the beneficiary and the educational institution.

B. Statement of Available Funds. Upon receipt of the Notice of Enrollment, the LATTA will forward to both the beneficiary and the institution:

1. a statement specifying the amount of tuition assistance grants which may be expended from the account for the specified academic term; and
2. the balance of the account which may be expended for any remaining qualified higher education expenses that may be billed by the institution.

**C. Rate of Expenditure of Tuition Assistance Grants**

1. To determine the beneficiary's allowable rate of expenditure of tuition assistance grants from an education assistance account, the total of tuition assistance grants and interest earned thereon which has been allocated to the account is divided by the number of years, or the number of remaining years, in the program in which the beneficiary enrolled or is attending, meaning the number of years to complete an undergraduate certificate, associate degree, or bachelor's degree program as defined by the institution, not to exceed four years.

2. The amount so calculated or the actual tuition, whichever is less, is the amount of tuition assistance grants which may be expended for the academic year.

a. If the student is attending a semester institution, the amount shall be divided by 2 to determine the amount allowable each semester;

b. If attending a quarter institution the amount shall be divided by 3 to determine the amount allowable each quarter.

D. Expenditure of Principal and Interest. The balance of principal and earned interest in an education savings account may be expended as authorized by the beneficiary to pay his qualified higher education expenses billed by the institution.

**E. Payments to Eligible Educational Institutions**

1. After the final date for adding or dropping courses without penalty, the institution may bill the START program for the qualified higher education expenses of the beneficiary, up to the amounts specified in the Statement of Available Funds.

2. Upon reconciliation of institutional billing statements, the LATTA will disburse funds from the appropriate accounts, consolidate and forward payment directly to the institution.

3. The LATTA will make all payments for qualified higher education expenses directly to the eligible educational institution.

4. No payments for qualified higher education expenses shall be disbursed directly to the beneficiary.

**F. Withdrawal During the Academic Term**

1. If the designated beneficiary of an education savings account withdraws from the institution prior to the end of the academic term and withdrawals from the education savings account have been used to pay all or part of his qualified higher education expenses for that term, an institutional refund to the education savings account may be required.

2. If any refund is due the beneficiary from the institution, a pro rata share of any refund of qualified higher education expenses, including tuition, equal to that portion of the qualified higher education expenses paid by disbursements from the education savings account, shall be made by the institution to the LATTA.

3. The LATTA will credit any refunded amount to the appropriate education savings account.

**G. Receipt of Scholarships**

1. If the designated beneficiary of an education savings account is the recipient of a scholarship, waiver of tuition, or similar subvention which cannot be converted into money by the beneficiary, the owner or beneficiary may request a refund from the education savings account in the amount equal to the value of the scholarship, waiver or similar subvention up to the balance of principal and interest in the account.

2. Upon the institution's verification that the beneficiary received a scholarship, waiver or similar subvention, the LATTA will refund, without penalty, the amount to the account owner or the beneficiary, as designated in the depositor's agreement.

**H. Advanced Enrollment.** A beneficiary may enroll in an eligible educational institution prior to his scheduled date of first-enrollment [see §107] and utilize education savings account funds; however, a beneficiary may not utilize funds from an education savings account prior to one year from the date the account owner made the first deposit opening the account.

**I. Part-Time Attendance and Nonconsecutive Enrollment.** A beneficiary may utilize funds in an education savings account for enrollments which are nonconsecutive and for part-time attendance at an eligible educational institution.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3091-3099.2.

**HISTORICAL NOTE:** Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:716 (June 1997).

**§311. Termination and Refund of an Education Savings Account**

**A. Account Contributions.** Contributions to an education savings account are voluntary.

**B. Account Terminations**

1. The account owner may terminate an account at any time.

2. The LATTA may terminate an account in accordance with §311.E.

**C. Refunds**

1. A partial refund of an account may only be made as described in §311.F.3.

2. All other requests for refund will result in the refund of the redemption value and termination of the account.

**D. Designation of a Refund Recipient**

1. In the depositor's agreement, the account owner may designate the beneficiary to receive refunds from the account; however, the beneficiary, if so designated, must be enrolled in an eligible educational institution to be eligible for receipt of any such refund, otherwise the refund will be made directly to the account owner or his estate.

2. Refunds of interest earnings will be reported as income to the individual receiving the refund for both federal and state tax purposes.

3. In the event the beneficiary receives any refund of principal from the account, the tax consequence must be determined by the recipient.

**E. Involuntary Termination of an Account with Penalty**

1. The LATTA may terminate a depositor's agreement if it finds that the account owner or beneficiary provided false or misleading information [see §107].

2. All interest earnings on principal deposits may be withheld and forfeited, with only principal being refunded.

3. An individual who obtains program benefits by providing false or misleading information will be prosecuted to the full extent of the law.

**F. Voluntary Termination of an Account without Penalty.**

No penalty will be assessed for accounts which are terminated and fully refunded or partially refunded due to the following reasons:

1. the death of the beneficiary; the refund shall be equal to the redemption value of the account, less unexpended tuition assistance grants and interest thereon, and shall be made to the account owner;

2. the disability of the beneficiary; the refund shall be equal to the redemption value of the account, less unexpended tuition assistance grants and interest thereon, and shall be made to the account owner or the beneficiary, as designated in the depositor's agreement;

3. the beneficiary receives a scholarship, waiver of tuition, or similar subvention that the LATTA determines cannot be converted into money by the beneficiary, to the extent the amount of the refund does not exceed the amount of the scholarship, waiver of tuition, or similar subvention awarded to the beneficiary.

**G. Voluntary Termination of an Account with Penalty**

1. Refunds for any reason other than those specified in §311.E and F will be assessed a penalty of 10 percent of

interest earned on principal deposits accumulated in said account at the time of termination.

2. Reasons for voluntary account termination with penalty include, but are not limited to the following:

a. death of the account owner; upon notification of the death of the account owner, if there is no co-owner, the education assistance account will be terminated and a refund with penalty will be issued to the person designated on the depositor's agreement or the account owner's estate, whichever is applicable;

b. decision not to attend; upon notification in writing that the beneficiary has reached 18 years of age and has stated he does not intend to attend an institution of higher education;

c. upon notification in writing that the beneficiary has completed his educational program and does not plan to pursue further education.

3. Refunds made under the provisions of §311.G shall be equal to the redemption value of the education savings account at the time of the refund minus 10 percent of accumulated interest earned on principal deposits, and shall be made to the person designated in the depositor's agreement.

#### H. Frequency of Refund Payments

1. Payment of routine refunds will be restricted to the first day of each calendar quarter, or the next business day if the first day falls on a weekend or holiday.

2. Routine refund requests received by the close of the second month of a quarter will be paid on the first day of the following calendar quarter, or the next business day if the first day falls on a weekend or holiday.

3. Routine refund requests received during the third month of the quarter will be paid on the first day of the second quarter following the quarter in which the request was received.

4. Emergency refunds [see §107] will be paid within 30 days of receipt of the request by the LATTA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997).

#### §313. Substitution, Assignment, and Transfer

A. Substitute Beneficiary. The beneficiary of an education savings account may be changed to an eligible substitute beneficiary provided the account owner completes a Beneficiary Substitution form and the following requirements are met:

1. the substitute beneficiary meets the definition of a qualified beneficiary at the time of substitution;

2. the substitute beneficiary is a member of the family of the former beneficiary, meaning that he is a spouse, parent, child, grandchild, brother, sister, half-brother, half-sister, or parent or spouse of such, of the original beneficiary [see §107];

3. if the account owner is a nonresident of the state of Louisiana, the substitute beneficiary meets the applicable residency requirements [see §301.G];

4. if the original beneficiary is an independent student [see §107], meaning he is also the owner of the account, the substitute beneficiary must be the spouse or child of the owner.

B. Assignment or Transfer of Account Ownership. The ownership of an education savings account, and all interest, rights and benefits associated with such, are nontransferable.

#### C. Changes to the Depositor's Agreement

1. The account owner may request changes to the depositor's agreement.

2. Changes must be requested in writing and be signed by the account owner or co-owners.

3. Changes which are accepted will take effect as of the date the notice is received by the LATTA.

4. The LATTA shall not be liable for acting upon inaccurate or invalid data which was submitted by the owner.

5. The account owner will be notified by the LATTA in writing of any changes affecting the depositor's agreement which result from changes in applicable federal and state statutes and rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997).

#### §315. Miscellaneous Provisions

##### A. Account Statements and Reports

1. The LATTA will forward to each account owner a quarterly statement of account which itemizes the:

a. date and amount of deposits and interest earned during the prior quarter;

b. total principal and interest accrued to the statement date; and

c. total tuition assistance grants and interest allocated to the account as of the statement date.

2. Interest earned on principal during a calendar quarter shall be credited to accounts and reported as of the first day of the following quarter.

3. Tuition assistance grants shall be allocated annually and reported on the July 1 quarterly statement or no later than the second statement following the owner's required disclosure of his or her prior year's federal adjusted gross income.

B. Tuition Assistance Grants. Tuition assistance grants will be allocated annually and reported on the July 1 statement, or no later than the second statement following the account owner's required disclosure of annual adjusted gross income to the LATTA.

##### C. Earned Interest

1. Interest earned on principal deposits during a calendar quarter will be credited to accounts and reported to account owners as of the first day of the following quarter, beginning with the first full calendar quarter following the date of the first deposit.

2. The rate of interest earned shall be the rate of return earned on the fund as reported by the state treasurer and approved by the LATTA.

##### D. Refunded Amounts

1. Interest earned on an education savings account which is refunded to the account owner or beneficiary will be taxable for state and federal income tax purposes.

2. No later than January 31 of the year following the year of the refund, the LATTA will furnish the State Department of Revenue and Taxation, the Internal Revenue

Service and the recipient of the refund an Internal Revenue Service Form 1099, or whatever form is appropriate according to applicable tax codes.

**E. Maximum Allowable Account Balance Report**

1. The account owner of an education savings account will be notified, in writing, of the maximum allowable account balance.

2. The maximum allowable account balance is based on the cost of qualified higher education expenses for the eligible educational institution designated on the depositor's agreement, projected to the date of the beneficiary's scheduled date of first enrollment.

3. If no eligible educational institution was designated on the depositor's agreement, the maximum allowable account balance will be projected based upon the highest cost in-state eligible public educational institution.

4. If the account owner changes the institution designated on the depositor's agreement, a revised maximum allowable account balance will be calculated and the account owner will be notified of any change.

5. The maximum allowable account balance is revised and reported to account owners annually, and is based upon changes in the cost projections for qualified higher education expenses.

**F. Rule Changes.** The LATTA reserves the right to amend the Rules regulating the START Program's policies and procedures; however, any amendments to rules affecting participants will be published in accordance with the Administrative Procedure Act and distributed to account owners for public comment prior to the adoption of final rules.

**G. Determination of Facts.** The LATTA shall have sole discretion in making a determination of fact regarding the application of these Rules.

**H. Individual Accounts.** The LATTA will maintain an individual account for each beneficiary, showing the redemption value of the account.

**I. Confidentiality of Records.** All records of the LATTA identifying account owners and designated beneficiaries of education savings accounts, amounts deposited, expended or refunded, are confidential and are not public records.

**J. No Investment Direction.** No account owner or beneficiary of an education savings account may direct the investment of funds credited to an account.

**K. No Pledging of Interest as Security.** No interest in an education savings account may be pledged as security for a loan.

**L. Excess Funds**

1. Principal deposits to an education savings account are no longer accepted once the account total reaches the maximum allowable account balance [see §305.C]; however, the principal and interest earned thereon may continue to earn interest and any tuition assistance grants allocated to the account may continue to accrue interest.

2. Funds in excess of the maximum allowable account balance may remain in the account and continue to accrue

interest and may be expended to an eligible educational institution in accordance with §309, or upon termination of the account, will be refunded in accordance with §311.

**M. Withdrawal of Funds.** Funds may not be withdrawn from an education savings account except as set forth in §309 and §311.

**N. NSF Procedure**

1. A check received for deposit to an education savings account which is returned due to insufficient funds in the depositor's account on which the check is drawn, will be redeposited and processed a second time by the START Program's financial institution.

2. If the check is returned due to insufficient funds a second time, the check will be returned to the depositor.

**O. Effect of a Change in Residency**

1. On the date an account is opened, either the account owner or beneficiary must be a resident of the state of Louisiana [see §301.G]; however, if the owner or beneficiary, or both, temporarily or permanently move to another state after the account is opened, they may continue participation in the program in accordance with the terms of the depositor's agreement.

2. The account owner may elect to terminate the account or request a "rollover" of account funds to a qualified state tuition program in the new state of residence. Only the principal deposited, and interest earned thereon, may be "rolled over."

3. Tuition assistance grants allocated to an education assistance account are not transferrable nor refundable.

**P. Effect on Other Financial Aid.** Participation in the START Program does not disqualify a student from participating in other federal, state or private student financial aid programs; however, depending upon the regulations which govern these other programs at the time of enrollment, the beneficiary may experience reduced eligibility for aid from these programs.

**Q. Change in Projected School of Enrollment**

1. The account owner may redesignate the beneficiary's projected school of enrollment, but not more than once annually.

2. If the change in school results in a change in the account's fully funded or maximum allowable account balance, the account owner will be notified.

**R. Abandoned Accounts.** Abandoned accounts will be defined and treated in accordance with R.S. 9:151 et seq., as amended, the Louisiana Uniform Unclaimed Property Act.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3091-3099.2.

**HISTORICAL NOTE:** Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997).

Jack L. Guinn  
Executive Director

9706#002

**RULE**

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

Particulate Matter Standards  
(LAC 33:III.1311)(AQ148)

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 amends the Air Quality Division regulations, LAC 33:III.1311 (AQ148).

This revision clarifies the requirements for all processes and the requirements for fluid catalytic cracking units. Section 1311 applies to all processes. Subsection D of §1311 applies to fluid catalytic cracking units and is identical to New Source Performance Standards. This revision is necessary in order to distinguish the requirements for fluid catalytic cracking units from the requirements for all other processes. It is also necessary in order to clarify that the opacity requirement for all fluid catalytic cracking units is 30 percent (consistent with NSPS), and not a more stringent 20 percent as the previous language stated.

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

**Title 33  
ENVIRONMENTAL QUALITY  
Part III. Air**

**Chapter 13. Emission Standards for Particulate Matter (Including Standards for Some Specific Facilities)**

**Subchapter A. General  
§1311. Emission Limits**

\* \* \*

[See Prior Text in A-B]

C. The emission of particulate matter from any source other than sources covered under Subsection D of this Section shall be controlled so that the shade or appearance of the emission is not denser than 20 percent average opacity (see Table 4, Chapter 15); except the emissions may have an average opacity in excess of 20 percent for not more than one six-minute period in any 60 consecutive minutes.

D. Fluid Catalytic Cracking Units. No owner or operator shall discharge or cause the discharge into the atmosphere from any new or existing fluid catalytic cracking unit catalyst regenerator gases exhibiting greater than 30 percent opacity, except for one six-minute average opacity reading in any one-hour period.

\* \* \*

[See Prior Text in E-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 LR

14:348 (June 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:720 (June 1997).  
**Subchapter B. Reserved**

Gus Von Bodungen  
Assistant Secretary

9706#024

**RULE**

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

Revision to General Conformity  
(LAC 33:III.1405)(AQ152\*)

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 amends the Air Quality Division Regulations, LAC 33:III.1405.B, (AQ152\*).

This rule is identical to a federal law or regulation which is applicable in Louisiana. No fiscal or economic impact will result from the rule. Therefore, the rule is promulgated in accordance with R.S. 49:953(F)(3) and (4). This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 9:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This revision to §1405 gives administrative authority to EPA, rather than to the state. This is in agreement with federal regulations at 40 CFR 51.859, and is required by EPA as a condition for full approval of the General Conformity State Implementation Plan (SIP). After promulgation, this revision will be submitted under the governor's signature as a revision to the General Conformity SIP.

**Title 33  
ENVIRONMENTAL QUALITY  
Part III. Air**

**Chapter 14. Conformity  
Subchapter A. Determining Conformity of General Federal Actions to State or Federal Implementation Plans**

**§1405. Applicability**

\* \* \*

[See Prior Text in A]

B. For federal actions not covered by Subsection A of this Section, a conformity determination under this Subchapter is required for each criteria pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in Subsection B.1 or 2 of this Section. Emissions from federal actions must be determined using methods described in LAC 33:III.1411.

\* \* \*

[See Prior Text in B.1-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 Radiation Protection, Air Quality Division, LR 20:1270 (November 1994), amended LR 23:720 (June 1997).

Gus Von Bodungen, P.E.  
Assistant Secretary

9706#025

## RULE

### Department of Environmental Quality Office of Solid and Hazardous Waste Hazardous Waste Division

#### Treatment Facilities Exemption (LAC 33:V.105)(HW058\*)

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 amends the Hazardous Waste Division regulations, LAC 33:V.105.D (HW058\*).

This rule is identical to a federal law or regulation which is applicable in Louisiana. No fiscal or economic impact will result from the rule. Therefore, the rule is promulgated in accordance with R.S. 49:953(F)(3) and (4). This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This rule contains clarification to LAC 33:V.105.D.6 and 7, for the chapters from which totally enclosed treatment facilities, elementary neutralization units, and wastewater treatment units are exempt.

## Title 33

### ENVIRONMENTAL QUALITY

#### Part V. Hazardous Waste and Hazardous Materials

##### Subpart 1. Department of Environmental Quality—Hazardous Waste

#### Chapter 1. General Provisions and Definitions

##### §105. Program Scope

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including *Solid Waste* and *Hazardous Waste*, appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

\* \* \*

[See Prior Text in A-D.5]

6. The owner or operator of a totally enclosed treatment facility as defined by LAC 33:V.109 is exempt from the requirements of LAC 33:V.Chapters 15, 17,18, 19, 21, 23, 25, 26, 27, 28, 29, 31, 32, 33, 35, 37, and 43.

7. The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined by LAC 33:V.109 is exempt from the requirements of LAC 33:V.Chapters 15, 17, 18, 19, 21, 23, 25, 26, 27, 28, 29, 31, 32, 33, 35, 37, and 43.

\* \* \*

[See Prior Text in D.8-M.10]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), LR 23:721 (June 1997).

H. M. Strong  
Assistant Secretary

9706#027

## RULE

### Department of Environmental Quality Office of Solid and Hazardous Waste Solid Waste Division

#### Waste Tire Remediation Agreements (LAC 33:VII.10536)(SW023)

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 amends the Solid Waste Division regulations, LAC 33:VII.10536 (SW023).

This rule provides for a mechanism by which the state can enter into contracts with waste tire processors for the cleanup of promiscuous/unauthorized tire piles in parishes that have elected not to pursue contracts for these cleanups. These waste tire piles create environmental and health-related problems and pose a significant threat to the safety of the community should a fire occur. The elimination of breeding areas for mosquitoes caused by waste tire piles will reduce the exposure to these insects and the serious health problems associated therewith.



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

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part VII. Solid Waste**  
**Subpart 2. Recycling**

**Chapter 105. Waste Tires**  
**§10536. Cleanup of Promiscuous/Unauthorized Tire Piles**

\* \* \*

[See Prior Text in A-F]

G. The department may enter into agreements with processors holding either a standard waste tire processing permit or a mobile processor authorization certificate for the remediation of promiscuous/unauthorized waste tire sites.

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).

H. M. Strong  
Assistant Secretary

9706#026

**RULE**

**Department of Environmental Quality**  
**Office of Water Resources**  
**Water Pollution Control Division**

Louisiana Pollutant Discharge Elimination System  
(LPDES) Program (LAC 33:IX.Chapters 23-27)(WP020)

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 amends the Water Pollution Control Division regulations, LAC 33:IX.Chapters 23-27 (WP020).

The rule clarifies existing regulations by correction of errors, addition of statutory definitions, and addition of cross-references to Subchapter V. Language has also been added which clarifies that the state may terminate LWDPs permits in certain cases when a facility has both an LPDES and an LWDPs permit. The original intent of the regulations was to allow for termination of LWDPs permits under certain conditions; however, this intent was not clearly stated. These regulations clarify this situation.

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

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part IX. Water Quality Regulations**  
**Chapter 23. The Louisiana Pollutant Discharge**  
**Elimination System (LPDES) Program**  
**Subchapter A. Definitions and General Program**  
**Requirements**  
**§2301. General Conditions**

\* \* \*

[See Prior Text in A - D.1]

2. for facilities with both valid NPDES and valid LWDPs permits, the NPDES permit shall become the LPDES permit and become enforceable under these regulations. The LWDPs permit will also remain in effect and be enforceable under these regulations until such time as it expires or is terminated;

3. for facilities with valid LWDPs permits only, the LWDPs permit shall remain in effect and be enforceable under these regulations until such time as the LWDPs permit expires or is terminated and an LPDES permit is issued; and

\* \* \*

[See Prior Text in D.4 - 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 23:199 (February 1997), LR 23:722 (June 1997).

**§2313. Definitions**

The following definitions apply to LAC 33:IX.Chapter 23.Subchapters A-G. Terms not defined in this Section have the meaning given by the CWA. When a defined term appears in a definition, the defined term is sometimes placed in quotation marks as an aid to readers.

\* \* \*

[See Prior Text]

*New Discharger*—any building, structure, facility, or installation:

\* \* \*

[See Prior Text in (a) - (c)]

(d). which has never received a finally effective permit for discharges at that site. This definition includes an indirect discharger which commences discharging into waters of the state after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a site under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the EPA regional administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the EPA regional administrator shall consider the factors specified in 40 CFR

125.122(a) (1)-(10). An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a new discharger only for the duration of its discharge in an area of biological concern.

\*\*\*

[See Prior Text]

*Pollutant*—for the purposes of the Louisiana Pollutant Discharge Elimination System, as defined in the act, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, except those regulated under the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq., as amended, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. For the purposes of the Louisiana Pollutant Discharge Elimination System, as defined in the act, *Pollutant* does not mean:

(a). water, gas, waste, or other material that is injected into a well for disposal in accordance with a permit approved by the Department of Natural Resources or the Department of Environmental Quality; or

(b). water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources.

\*\*\*

[See Prior Text]

*Waters of the State*—for purposes of the Louisiana Pollutant Discharge Elimination System, all surface waters within the state of Louisiana and, on the coastline of Louisiana and the Gulf of Mexico, all surface waters extending therefrom three miles into the Gulf of Mexico. For purposes of the Louisiana Pollutant Discharge Elimination System, this includes all surface waters that are subject to the ebb and flow of the tide, lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, impoundments of waters within the state of Louisiana otherwise defined as "waters of the United States" in 40 CFR 122.2, and tributaries of all such waters. *Waters of the State* does not include waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act, 33 U.S.C. 1251 et seq.

\*\*\*

[See Prior Text]

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 23:722 (June 1997).

#### §2319. Effect of a Permit

A.1. Except for any toxic effluent standards and prohibitions imposed under Section 307 of the CWA and standards for sewage sludge use or disposal under 405(d) of the CWA, compliance with a permit during its term

constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, 307, 318, 403, and 405 (a)-(b) of the CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in LAC 33:IX.2383, 2387, and 2769.

\*\*\*

[See Prior Text in A.2 - C]

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 23:723 (June 1997).

#### §2323. Confidentiality of Information

\*\*\*

[See Prior Text in A - B]

C. Additional information concerning nondisclosure of confidential information is found in LAC 33:I.Chapter 5 and LAC 33:IX.2763.

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 23:723 (June 1997).

#### Subchapter B. Permit Application and Special LPDES Program Requirements

##### §2331. Application for a Permit

\*\*\*

[See Prior Text in A - F.6.i]

7. a topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area;

8. a brief description of the nature of the business; and

9. additional application requirements in LAC 33:IX.2765.A.

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 state administrative authority, using application forms provided by the state administrative authority:

1. Outfall Location. The latitude and longitude to the nearest 15 seconds and the name of the receiving water. Additional outfall location requirements are found in LAC 33:IX.2765.B.

\*\*\*

[See Prior Text in G.2 - G.13]

H. Application Requirements for Manufacturing, Commercial, Mining and Silvicultural Facilities Which Discharge Only Nonprocess Wastewater. Except for stormwater discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for LPDES

permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the state administrative authority, using application forms provided by the state administrative authority:

1. Outfall Location. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water. Additional outfall location requirements are found in LAC 33:IX.2765.B.

\* \* \*

[See Prior Text in H.2 - J.4]

K. Application Requirements for New Sources and New Discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for LPDES permits (except for new discharges of facilities subject to the requirements of Subsection H of this Section or new discharges of storm water associated with industrial activity which are subject to the requirements of LAC 33:IX.2341.C.1 and this Section [except as provided by LAC 33:IX.2341.C.1.b]) shall provide the following information to the state administrative authority, using the application forms provided by the state administrative authority:

1. Expected Outfall Location. The latitude and longitude to the nearest 15 seconds and the name of the receiving water. Additional outfall location requirements are found in LAC 33:IX.2765.B.

\* \* \*

[See prior Text in K.2 - Footnote 1]

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 23:723 (June 1997).

### Subchapter C. Permit Conditions

#### §2355. Conditions Applicable to All Permits

The following conditions apply to all LPDES permits. Additional conditions applicable to LPDES permits are in LAC 33:IX.2357. 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.

\* \* \*

[See Prior Text in A - C]

D. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. Additional requirements are found in LAC 33:IX.2771.

\* \* \*

[See Prior Text in E - I.4]

5. perform such additional requirements for inspection and entry as are found in LAC 33:IX.2773.

\* \* \*

[See Prior Text in J - J.3.d]

- e. the analytical techniques or methods used;
- f. the results of such analyses; and
- g. additional information found in LAC 33:IX.2775.

\* \* \*

[See Prior Text in J.4 - L.6.a]

b. The following shall be included as information which must be reported within 24 hours under this Paragraph:

i. any unanticipated bypass which exceeds any effluent limitation in the permit (see Subsection M.3.b of this Section);

ii. any upset which exceeds any effluent limitation in the permit; and

\* \* \*

[See Prior Text in L.6.b.iii - M.3.a]

b. Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required in LAC 33:IX.2355.L.6 (24-hour notice). Additional reporting requirements are found in LAC 33:IX.2777.A.

\* \* \*

[See Prior Text in M.4 - N.3.b]

c. the permittee submitted notice of the upset as required in LAC 33:IX.2355.L.6.b.ii (24-hour notice). (Additional reporting requirements are found in LAC 33:IX.2777.B); and

\* \* \*

[See Prior Text in N.3.d - 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).

#### §2361. Establishing Limitations, Standards, and Other Permit Conditions

In addition to the conditions established under LAC 33:IX.2359.A, each LPDES permit shall include conditions meeting the following requirements when applicable.

\* \* \*

[See Prior Text in A - H]

I. Monitoring Requirements. In addition to LAC 33:IX.2369, the following monitoring requirements:

\* \* \*

[See Prior Text in I.1 - Q]

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).

#### Subchapter D. Transfer, Modification, Revocation and Reissuance, and Termination of Permits

#### §2383. Modification or Revocation and Reissuance of Permits

When the state administrative authority receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see LAC 33:IX.2355), receives a request for modification or revocation and reissuance under LAC 33:IX.2407, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in Subsections A and B of this Section for modification or revocation and reissuance or both exist. If cause exists, the state administrative authority may modify or revoke and reissue the permit accordingly, subject to the

limitations of LAC 33:IX.2407.C and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term (see LAC 33:IX.2407.C.2). If cause does not exist under this Section or LAC 33:IX.2385, the state administrative authority shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in LAC 33:IX.2385 for minor modifications the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in 40 CFR part 124 (or procedures of an approved state program) followed.

\*\*\*

[See Prior Text in A - A.6]

7. Reopener. When required by the reopener conditions in a permit, which are established in the permit under LAC 33:IX.2361.C (for CWA toxic effluent limitations and standards for sewage sludge use or disposal, see also LAC 33:IX.2361.B) or 2719.E (pretreatment program).

\*\*\*

[See Prior Text in A.8 - A.18]

B. Causes for Modification or Revocation and Reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

1. cause exists for termination under LAC 33:IX.2387 or 2769, and the state administrative authority determines that modification or revocation and reissuance is appropriate;

\*\*\*

[See Prior Text in B.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 Water Pollution Control Division, LR 23:724 (June 1997).

#### §2387. Termination of Permits

\*\*\*

[See Prior Text in A - A.2]

3. a determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;

4. a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW); or

5. additional causes of termination contained in LAC 33:IX.2769.

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[See Prior Text in 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 Water Pollution Control Division, LR 23:725 (June 1997).

#### Subchapter E. General Program Requirements

##### §2407. Modification, Revocation and Reissuance, or Termination of Permits

A. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person

(including the permittee) or upon the state administrative authority's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in LAC 33:IX.2383, 2387, or 2769. All requests shall be in writing and shall contain facts or reasons supporting the request.

\*\*\*

[See Prior Text in B.1 - B.3]

C. If the state administrative authority tentatively decides to terminate a permit under LAC 33:IX.2387 or 2769, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under LAC 33:IX.2409. In the case of EPA-issued permits, a notice of intent to terminate shall not be issued if the EPA regional administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved state under 40 CFR 123.24(b)(1) (NPDES), or 501.14(b)(1)(Sludge).

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[See Prior Text in 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 Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:725 (June 1997).

#### §2413. Fact Sheet

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[See Prior Text in A - B.7]

8. provisions satisfying the requirements of LAC 33:IX.2445; and

9. additional requirements found in LAC 33:IX.2779.

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).

#### §2415. Public Notice of Permit Actions and Public Comment Period

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[See Prior Text in A - E]

F. Additional public notice requirements are found at LAC 33:IX.2781.A.

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).

#### Subchapter P. Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act

##### §2569. Best Management Practices Programs

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[See Prior Text in A - B.4.c.x]

Comment: Additional technical information on BMPs and the elements of a BMP program is contained in a publication entitled "Guidance Manual for Developing Best Management Practices (BMP)." Copies may be obtained by written request to Office of Water Resource Center (mail code: 4100) Environmental Protection Agency, Washington, D.C. 20460.

\* \* \*

[See Prior Text in 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 by the Water Pollution Control Division, LR 23:725 (June 1997).

**Subchapter S. Secondary Treatment Under the LPDES Program**

**§2651. Treatment Equivalent to Secondary Treatment**

This Section describes the minimum level of effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment (LAC 33:IX.2643. *Facilities Eligible for Treatment Equivalent to Secondary Treatment*) in terms of the parameters BOD<sub>5</sub>, TSS and pH. All requirements for the specified parameters in LAC 33:IX.2651.A, B, and C shall be achieved except as provided for in LAC 33:IX.2647, or 2651.D, E, or F.

\* \* \*

[See Prior Text in A - F.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 Water Pollution Control Division, LR 23:726 (June 1997).

**Subchapter T. General Pretreatment Regulations for Existing and New Sources of Pollution**

**§2727. Confidentiality**

\* \* \*

[See Prior Text in A - C]

D. Additional information concerning nondisclosure of confidential information is found in LAC 33:I.Chapter 5 and LAC 33:IX.2763.

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).

**Subchapter V. Additional Requirements Applicable to the LPDES Program**

**§2767. Enforcement Actions**

\* \* \*

[See Prior Text in A - A.4]

5. fails to comply with any condition of the permit; or

6. fails to pay applicable fees under the provisions of LAC 33:IX.Chapter 13.

\* \* \*

[See Prior Text in 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 Water Pollution Control Division, LR 23:726 (June 1997).

**§2769. Additional Requirements for Permit Renewal and Termination**

\* \* \*

[See Prior Text in A - C]

D. If a permittee has a valid LPDES permit, the state administrative authority may terminate the permittee's LWDPs permit upon its own initiative or at the request of the permittee.

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).

**§2777. Additional Requirements for Bypass and Upset Conditions**

\* \* \*

[See Prior Text in A]

B. Upset. Upon becoming aware of an upset, notice shall be submitted within 24 hours (LAC 33:IX.2355.N.3.c) unless an earlier notice is required in R.S. 30:2025(J) and/or 30:2076(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 Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:726 (June 1997).

**§2781. Public Notice and Availability of Information**

A. In addition to the requirements in LAC 33:IX.2415, publication of the notice one time in the newspaper(s) specified by the office and submission of proof of publication will be required. The costs of publication shall be borne by the applicant.

B. 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 30:2074(D) and designated as such in accordance with these regulations (LAC 33:IX.2323 and 2763) shall be made available to the public for inspection and copying in accordance with the Public Records Act, R.S. 44:1 et seq.

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).

**Appendix N**

**Pollutants Eligible for a Removal Credit**

I. Regulated Pollutants in 40 CFR Part 503 Eligible for a Removal Credit

\* \* \*

[See Prior Text in Appendix 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 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:726 (June 1997).

Linda Korn Levy  
Assistant Secretary

9706#023

## RULE

### Department of Health and Hospitals Board of Medical Examiners

#### Noncancer-Related Chronic or Intractable Pain Medications (LAC 46:XLV.6915-6923)

The Board of Medical Examiners (board), pursuant to the authority vested in the board by the Medical Practice Act, R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B), and the provisions of the Administrative Procedure Act, has adopted rules governing the prescription, dispensation and administration of medications used in the treatment of noncancer-related chronic or intractable pain, LAC 46:XLV, Subpart 3, Chapter 69, §§6915-6923. The administrative rules were proposed for adoption by notice of intent published in the *Louisiana Register*, Volume 22, pages 1276-1279 (December 20, 1996). In consideration of public comments on the rules, the board has modified the proposed rules in several respects. The text of the final rules, as adopted by the board, is set forth below.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XLV. Medical Professions Subpart 3. Practice

#### Chapter 69. Prescription, Dispensation and Administration of Medications

#### Subchapter B. Medications Used in the Treatment of Noncancer-Related Chronic or Intractable Pain

#### §6915. Scope of Subchapter

The rules of this Subchapter govern physician prescription, dispensation, administration or other use of controlled substances employed in the treatment of noncancer-related chronic or intractable pain.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 23:727 (June 1997).

#### §6917. Definitions

As used in this Subchapter, unless the content clearly states otherwise, the following terms and phrases shall have the meanings specified:

**Addiction**—a compulsive disorder in which an individual becomes preoccupied with obtaining and using a substance, despite adverse social, psychological and/or physical consequences, the continued use of which results in a decreased quality of life.

**Board**—the Louisiana State Board of Medical Examiners.

**Chronic Pain**—pain which persists beyond the usual course of a disease, beyond the expected time for healing from bodily trauma, or pain associated with a long-term incurable or intractable medical illness or disease.

**Controlled Substance**—any substance defined, enumerated or included in federal or state statute or regulations 21 CFR §§1308.11-15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations and statute.

**Diversion**—the conveyance of a controlled substance to a person other than the person to whom the drug was prescribed or dispensed by a physician.

**Drug Abuse**—a maladaptive or inappropriate use or overuse of a medication.

**Intractable Pain**—a chronic pain state in which the cause of the pain cannot be eliminated or successfully treated without the use of controlled substance therapy and, which in the generally accepted course of medical practice, no cure of the cause of pain is possible or no cure has been achieved after reasonable efforts towards such cure have been attempted and documented in the patient's medical record.

**Noncancer-Related Pain**—that pain which is not directly related to symptomatic cancer.

**Physician**—physicians and surgeons licensed by the board.

**Protracted Basis**—utilization of any controlled substance for the treatment of noncancer-related chronic or intractable pain, for a period in excess of 12 weeks during any 12-month period.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 23:727 (June 1997).

#### §6919. General Conditions/Prohibitions

The treatment of noncancer-related chronic or intractable pain with controlled substances constitutes legitimate medical therapy when provided in the usual course of professional medical practice and when fully documented in the patient's medical record. A physician duly authorized to practice medicine in Louisiana and to prescribe controlled substances in this state shall not, however, prescribe, dispense, administer, supply, sell, give or otherwise use for the purpose of treating such pain, any controlled substance unless done in strict compliance with applicable state and federal laws and the rules enumerated in this Subchapter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 23:727 (June 1997).

#### §6921. Use of Controlled Substances, Limitations

A. **Requisite Prior Conditions.** In utilizing any controlled substance for the treatment of noncancer-related chronic or intractable pain on a protracted basis, a physician shall comply with the following rules:

1. **Evaluation of the Patient.** Evaluation of the patient shall initially include a full history, including complete medical, pain, alcohol and substance abuse histories, an assessment of the impact of pain on the patient's physical and psychological functions, a review of previous diagnostic studies, previously utilized therapies, an assessment of coexisting illnesses, diseases or conditions and a complete physical examination.

2. **Medical Diagnosis.** A medical diagnosis shall be established and fully documented in the patient's medical record, which indicates not only the presence of noncancer-related chronic or intractable pain, but also the nature of the underlying disease and pain mechanism if such are determinable.

3. **Treatment Plan.** An individualized treatment plan shall be formulated and documented in the patient's medical record, which includes medical justification for controlled substance therapy. Such plan shall include documentation that other medically reasonable alternative treatments for relief of the patient's noncancer-related chronic or intractable pain have been offered or attempted without adequate or reasonable success. Such plan shall specify the intended role of controlled substance therapy within the overall plan, which therapy shall be tailored to the individual medical needs of each patient.

4. **Patient Information.** A physician shall ensure that the patient and/or his guardian is informed of the benefits and risks of protracted controlled substance therapy.

B. **Controlled Substance Therapy.** Upon completion and satisfaction of the conditions prescribed in Subsection A of this Section, and upon a physician's judgment that the prescription, dispensation or administration of a controlled substance is medically warranted, a physician shall adhere to the following rules:

1. **Assessment of Treatment Efficacy and Monitoring.** Patients shall be seen by the physician at appropriate regular and frequent intervals, of no less than 12 weeks, to assess the efficacy of treatment, assure that controlled substance therapy remains indicated, and evaluate the patient's progress toward treatment objectives and any adverse drug effects. During each visit, attention shall be given to the possibility of decreased function or quality of life as a result of controlled substance usage, as well as indications of possible addiction, drug abuse or diversion.

2. **Drug Screen.** If a physician reasonably believes that the patient is suffering from addiction or drug abuse or that he is diverting controlled substances, the physician shall obtain a drug screen on the patient. It is within the physician's discretion to decide the nature of the screen and which type of drug(s) to be screened.

3. **Responsibility for Treatment.** A physician shall take primary responsibility for the controlled substance therapy employed by him in the treatment of a patient's noncancer-related chronic or intractable pain.

4. **Consultation.** Consultation with specialists may be warranted depending on the expertise of a physician and the complexity of the presenting problem. If the patient is maintained on controlled substance therapy on a protracted basis, the physician should either consult with one or more specialists for additional evaluation and/or treatment in order to achieve treatment objectives, or he should document in the patient's medical record the reason he has not obtained such consultation. It is within the discretion of the physician to decide the level and type of consultation which is believed to be medically warranted.

5. **Medications Employed.** A physician shall document in the patient's medical record the medical necessity for the use of more than one type or schedule of controlled substance employed in the management of a patient's noncancer-related chronic or intractable pain.

6. **Treatment Records.** A physician shall document and maintain in the patient's medical record, accurate and complete records of all history, physical and other

examinations and evaluations, consultations, laboratory and diagnostic reports, treatment plans and objectives, controlled substance and other medication therapy, informed consents, periodic assessments and reviews and the results of all other attempts at analgesia which he has employed alternative to controlled substance therapy.

7. **Documentation of Controlled Substance Therapy.** At a minimum, a physician shall document in the patient's medical record the date, quantity, dosage, route, frequency of administration, the number of controlled substance refills authorized, as well as the frequency of visits to obtain refills.

C. **Termination of Controlled Substance Therapy.** Evidence or behavioral indications of addiction, drug abuse or diversion of controlled substances, shall be followed by tapering and discontinuation of controlled substance therapy and referral to an addiction medicine specialist, a pain management specialist, a psychiatrist, or other substance abuse specialist, or by an immediate referral to an addiction medicine specialist, a pain management specialist, a psychiatrist or other substance abuse specialist for treatment. Such therapy shall be reinitiated only after referral to, and written concurrence of the medical necessity of continued controlled substance therapy by an addiction medicine specialist, a pain management specialist, a psychiatrist or other substance abuse specialist based upon his physical examination of the patient and a review of the referring physician's medical record of the patient.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 23:727 (June 1997).

### **§6923. Effect of Violation**

Any violation of or failure of compliance with the provisions of this Subchapter, §§6915-6923, shall be deemed a violation of R.S. 37:1285(A)(6) and (14), providing cause for the board to suspend or revoke, refuse to issue, or impose probationary or other restrictions on any license held or applied for by a physician to practice medicine in the state of Louisiana culpable of such violation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 23:728 (June 1997).

Delmar Rorison  
Executive Director

9706#041

### **RULE**

**Department of Health and Hospitals  
Office of Public Health**

**Orleans Parish Individual Sewage**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the secretary of the Department of Health and Hospitals has amended the following rule governing the installation of individual sewage systems in certain areas of Orleans Parish.



The present rule inadvertently prohibits those individuals with failing and/or inadequate sewage treatment systems from upgrading or replacing their systems, thereby exposing their families to disease and pollution of the state's waterways.

**Rule**

The Department of Health and Hospitals, Office of Public Health prohibits the installation of individual sewage systems in the following areas of Orleans Parish:

- 1) property between the Chef Pass and the Rigolets, outside the hurricane protection levee; and
- 2) property on the Lake Pontchartrain side of the L and M Railroad tracks that parallels Hayne Boulevard outside the hurricane protection levee; and
- 3) property on either side of U.S. Highway 11 between Powers Junction and Interstate 10, commonly referred to as Irish Bayou.

This does not preclude the installation of approved individual sewage disposal systems on individually owned lots of record, i.e., those legally established and duly recorded with the parish prior to July 28, 1967, or those lots legally established and duly recorded with the parish that meet the minimum lot size prescribed in the State Sanitary Code.

Bobby P. Jindal  
Secretary

9706#069

**RULE**

**Department of Health and Hospitals  
Office of Public Health**

**Sanitary Code—Childhood Immunizations  
for Day Care and School Entry (Chapter II)**

As mandated by Act Number 998 of the 1995 Regular Session, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., under the authority of R.S. 40:5, the Department of Health and Hospitals, Office of Public Health has amended the Louisiana Sanitary Code, Chapter II, as follows:

**Chapter II  
Control of Diseases**

**2:025** Appropriate immunizations for age for regulatory purposes shall be determined using the current immunization schedule from the Advisory Committee for Immunization Practice (ACIP) of the United States Public Health Service. Compliance will be based on the individual having received an appropriate number of immunizations for his/her age of the following types:

- a. vaccines which contain tetanus and diphtheria toxoids, including DTP, DtaP, DT, Td or combinations which include these components;
- b. Polio vaccine, including OPV, eIPV, IPV, or combinations which include these components;
- c. vaccines which contain measles antigen, including MMR and combinations which include these components.

A two-month period will be allowed from the time the immunization is due until it is considered overdue. Medical, religious, and philosophic exemptions will be allowed for compliance with regulations concerning day care attendees and school enterers. Only medical and religious exemptions will be allowed for compliance with regulations concerning public assistance recipients. A copy of the current Office of Public Health immunization schedule can be obtained by writing to the Immunization Program, Office of Public Health, 4747 Earhart Boulevard, Suite 107, New Orleans, LA 70125 or by calling (504)483-1905 or toll free 1-800-251-2229.

**2:025-1** Any child 18 years or under admitted to any day care center or residential facility shall have verification that the child has had all appropriate immunizations for age of the child according to the Office of Public Health schedule unless presenting a written statement from a physician stating that the procedure is contraindicated for medical reasons, or a written dissent from parents. The operator of any day care center shall report to the state health officer through the health unit of the parish or municipality where such day care center is located any case or suspected case of reportable disease. Health records, including immunization records, shall be made available during normal operating hours for inspection when requested by the state health officer. When an outbreak of a communicable disease occurs in a day care center or residential facility, the operator of said day care center or residential facility shall comply with outbreak control procedures as directed by the state health officer.

**2:025-2** On or before October 1 of each year, the operator of each day care center, nursery school, or residential facility enrolling or housing any child 18 years or under, shall submit a preliminary immunization status report of all children enrolled or housed as of that date. Forms for submittal shall be provided by the state health officer, and shall include identifying information for each child, and for each dose of vaccine received by the child since birth. Any child exempt from the immunization requirement shall also be identified, and the reason for exemption given on the form. After review of the form(s) by the state health officer or his or her designee, the day care center, nursery school, or residential facility operator will notify, on or before December 31 of each year, the parent or guardian of all enrolled or housed children who are not compliant with the immunization requirement of Sections 2:025 and 2:025-1 of this code.

Bobby P. Jindal  
Secretary

9706#067

**RULE**

**Department of Health and Hospitals  
Office of Public Health**

**Sanitary Code—Shellfish  
Tag Retention (Chapter XXIII)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the secretary of the Department of Health

and Hospitals has amended Chapter XXIII, Section 23:006, Special Requirements, of the State Sanitary Code to clarify the shell-stock tag retention time at food service establishments.

**Rule**

**Chapter XXIII**

**Eating and Drinking Establishments**

**23:006-2** Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be packed in nonreturnable packages identified with the name and address of the original shell-stock processor, shucker-packer, or repacker, and the interstate certification number issued in accordance with Chapter IX of this code and by law. Shell-stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell-stock (oysters, clams, or mussels) shall be identified by an attached tag in accordance with Chapter IX of this code, and this tag shall be kept on file for 90 days from the date the container is emptied, or until picked up by a representative of the state health officer, whichever comes first.

\*\*\*

Bobby P. Jindal  
Secretary

9706#068

**RULE**

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

**Home and Community Based Services Waiver  
Program—Mentally Retarded/Developmentally Disabled**

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

**Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following regulations governing the MR/DD Waiver Program to:

- 1) terminate the previous restrictions placed on the assignment of vacated waiver slots;
- 2) establish methodology for the assignment of slots; and
- 3) clarify admission and discharge criteria, mandatory reporting requirements and the effective date that Medicaid reimbursement for waiver services shall begin.

The total number of slots assigned shall not exceed the maximum number of slots approved by the Health Care Financing Administration. The assignment of vacated and

previously unoccupied waiver slots; admission and discharge criteria; mandatory reporting requirements and the effective date for Medicaid reimbursement for waiver services to begin prior to the approval of the plan of care shall be determined in accordance with the following guidelines.

**Programmatic Allocation of Waiver Slots**

The waiting list shall be used to protect the individual's right to be evaluated for waiver eligibility. The Office for Citizens with Developmental Disabilities (OCDD) shall notify the next individual on the waiting list in writing that a slot is available and that he/she is next in line to be evaluated for possible waiver slot assignment. A copy of the notification letter shall be forwarded to the regional Health Standards Office. The individual then chooses a case manager who will assist in the gathering of the documents needed for both the financial and medical certification eligibility process. If the individual is determined to be ineligible either financially or medically, that individual is notified in writing and a copy of the notice is forwarded to the regional OCDD Office. The next person on the waiting list is notified as stated above and the process continues until an eligible person is encountered. A waiver slot is assigned to an individual when eligibility is established and the individual is certified. Utilizing these procedures, waiver slots shall be allocated to the targeted groups cited below as follows:

1. When a currently certified participant is discharged from the waiver, the vacated slot shall be available for allocation to the next person on the MR/DD Waiver waiting list who successfully completes the financial and medical certification eligibility process and is certified for the waiver.

2. A minimum of 40 slots shall continue to be available for allocation to foster children in the custody of the Department of Social Services, Office of Community Services (OCS) who successfully complete the financial and medical certification eligibility process and are certified for the waiver. OCS is the parent for those children who have been placed in their custody by court order. OCS shall be responsible for assisting the individual to gather the documents needed in the eligibility determination process; preparing the comprehensive plan of care; and submitting the plan of care document to the Health Standards Section.

3. A maximum of 80 slots shall be available for allocation to the next 80 persons on the MR/DD Waiver waiting list who successfully complete the financial and medical certification eligibility process and are certified for the waiver.

4. A maximum of 160 slots shall be available for allocation to current residents of the Pinecrest Development Center who successfully complete the financial and medical certification eligibility process and are certified for the waiver.

5. A maximum of 78 slots shall be available for allocation to current residents of public community homes who successfully complete the financial and medical certification eligibility process and are certified for the waiver.

6. Waiver slots shall no longer be reserved for use as emergency slots nor shall emergency slots be assigned.

**Waiver Admission Criteria**

Admission to the MR/DD Waiver Program shall be determined in accordance with the following criteria:

- 1. initial and continued Medicaid eligibility as determined by the parish BHSF Office;
- 2. initial and continued eligibility for an ICF-MR level of care as determined by the regional Health Standards Office in consultation with the regional OCDD Office;
- 3. the plan of care must provide justification that the waiver services are appropriate, cost effective and represent the least restrictive treatment alternative for the individual; and
- 4. assurance that the health and safety of the individual can be maintained in the community with the provision of reasonable amounts of waiver services as determined by the regional Health Standards Office.

**Waiver Discharge Criteria**

Participants shall be discharged from the MR/DD Waiver Program if one of the following criteria is met:

- 1. loss of Medicaid eligibility as determined by the parish BHSF Office;
- 2. loss of eligibility for an ICF-MR level of care as determined by the regional Health Standards Office in consultation with the regional OCDD Office;
- 3. incarceration or placement under the jurisdiction of penal authorities, courts or state juvenile authorities;
- 4. change of residence to another state with the intent to become a resident of that state;
- 5. admission to an ICF-MR facility or nursing facility;
- 6. the health and welfare of the waiver participant cannot be assured in the community through the provision of reasonable amounts of waiver services as determined by the regional Health Standards Office, i.e., the waiver participant presents a danger to himself or others;
- 7. failure to cooperate in either the eligibility determination process or the performance of the care plan; or
- 8. continuity of services is interrupted as a result of the participant not receiving waiver services during a period of 14 or more consecutive days. This does not include interruptions in services because of hospitalization.

**Mandatory Reporting Requirements**

Case managers and waiver service providers are obligated to report changes that could affect the waiver participant's eligibility including, but not limited to, those changes cited in the discharge criteria, to either the parish BHSF Office or the regional Health Standards Office within five working days. In addition, case managers and waiver service providers are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and well-being of the waiver participant and completing an incident report. The incident report shall be submitted to the Regional Health Standards Office within five working days of the incident.

**Reimbursement of Waiver Services**

Reimbursement shall not be made for waiver services provided prior to the date of approval for the plan of care.

Bobby P. Jindal  
Secretary

9706#059

**RULE**

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

**Medicaid Eligibility—Low-Income Families**

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

**Rule**

Medicaid establishes a new Medicaid eligibility group for low-income families with children who meet eligibility requirements described in Section 1931 of the Social Security Act. Eligibility criteria under the AFDC State Plan in effect on July 16, 1996 will be used to determine eligibility. Additionally, recipients of TANF are deemed to meet these criteria so long as TANF requirements are more restrictive than eligibility requirements under the AFDC State Plan in effect on July 16, 1996.

Bobby P. Jindal  
Secretary

9706#058

**RULE**

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

**Rehabilitation Services Reimbursement**

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

**Rule**

The Department of Health and Hospitals, Bureau of Health Services Financing shall reimburse rehabilitative services as follows:

- 1. the payment schedule for rehabilitation clinics shall be based on the hourly rates of \$40 per hour for physical therapy, \$40 per hour for occupational therapy, and \$30 per hour for speech therapy;
- 2. outpatient hospital rehabilitation services shall be reimbursed at 110 percent of the rates paid to rehabilitation clinics;
- 3. rehabilitation clinics shall be reimbursed for evaluations at the rate which was in effect for those services as of July 6, 1995; and

4. outpatient hospitals shall be reimbursed for evaluations at 110 percent of the rate paid to rehabilitation clinics for that service.

Outpatient hospital rehabilitation services shall no longer be included in the cost report for settlement. Hospitals shall now be required to use the same state-assigned HCPCS procedure codes used by rehabilitation clinics in addition to the applicable hospital revenue code when submitting a claim for rehabilitation services.

Bobby P. Jindal  
Secretary

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## RULE

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

#### Targeted Case Management Services and Reimbursement

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

#### Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions to govern case management services including consumer eligibility requirements, provider enrollment, provider standards for participation and reimbursement methodology and general provisions. These provisions apply to case management services provided either to targeted population groups or to waiver participants who receive case management services as a separate service. These include the following groups of individuals:

1. infants and toddlers with special needs;
2. high-risk pregnant women;
3. persons infected with HIV;
4. persons in Waiver Program(s) who receive case management as a separate service.

All case management providers must follow the policies and procedures included in this notice as well as in the Department of Health and Hospitals *Case Management Provider Manual*. Under this rule the term *Case Management* has the same meaning as the term *Family Service Coordination*. Case management services must be delivered in accordance with all applicable federal and state laws and regulations.

The department repeals the limitations on infants and toddlers case management services in the September 24, 1996 emergency rule and reduces the reimbursement rate for these services.

## I. Standards of Participation

In order to be reimbursed by the Medicaid Program, a provider of targeted or waiver case management service must comply with all of the requirements listed below:

Exceptions may be granted by the secretary on a case-by-case basis as determined by an assessment of available services in the community.

A. Provider Enrollment Requirements. Case management agencies who wish to provide Medicaid-funded targeted or waiver case management services must contact the department to request an enrollment packet and copy of the DHH *Case Management Provider Manual*. Applicants must indicate the population(s) and the geographical areas they wish to serve. The provider must meet all applicable licensure, general standards for participation in the Medicaid Program and specific provider enrollment and participation requirements for the population(s) to be served. Each enrolling agency must also submit a separate provider agreement (Form PE-50) and Disclosure of Ownership form to DHH for each targeted or waiver population and geographical area (DHH region) the agency plans to serve. Each office site of a case management agency must be enrolled separately. Approval by DHH entitles the agency to provide services in the parishes of that DHH region only. This requirement is applicable to both new providers and existing providers already enrolled. When an agency wishes to provide case management services in a parish in another region and that parish is not contiguous to the parish in which an enrolled office site is located, the agency must establish an office in the other region, submit a separate enrollment packet, and receive DHH approval to provide services in that DHH region regardless of the number of case managers providing services in the new region. When there are less than three case managers providing services in a parish in another region and that parish is contiguous to the parish in which an enrolled office site is located, the agency is not required to establish an office in the other region.

In accordance with Section 4118(i) of the Omnibus Budget Reconciliation Act (OBRA) of 1987, Public Law 100-203, the department may restrict enrollment and service areas of agencies that are enrolled in the Medicaid Program to provide case management services to developmentally disabled consumers including infants and toddlers with special needs in order to ensure that the case management providers available to these targeted groups and any subgroups are capable of ensuring that the targeted consumers receive the full range of needed services. Case management agencies must meet the enrollment requirements listed below to be approved for enrollment.

All applicant case management agencies must meet the requirements listed in 1-16 below to participate as a case management provider in the Medicaid Program, regardless of the targeted or waiver group served:

1. have demonstrated direct experience in successfully serving the target population and demonstrated knowledge of available community services and methods for accessing them including all of the following:
  - a. have established linkages with the resources available in the consumer's community;

b. maintain a current resource file of medical, mental health, social, financial assistance, vocational, educational, housing and other support services available to the target population;

c. demonstrate knowledge of the eligibility requirements and application procedures of federal, state, and local government assistance programs which are applicable to consumers served;

d. employ a sufficient number of qualified case manager and supervisory staff who meet the skills, knowledge, abilities, education, training, supervision, staff coverage and maximum caseload size requirements described in this document;

2. possess a current license to provide case management/service coordination in Louisiana or written proof of application for licensure;

3. demonstrate administrative capacity to provide all core elements of case management and insure effective case management services to the target population in accordance with licensing and DHH requirements by DHH review of the following:

a. current detailed budget for case management;

b. report of annual outside audit by a certified public accountant performed in accordance with generally accepted accounting principles;

c. cost report by September 30 of each year following 12 months of operation;

d. provider policies and procedures;

e. functional organization chart depicting lines of authority; and

f. program philosophy, goals, services provided, and eligibility criteria that define the target population or waiver group to be served;

4. assure that all case manager staff is employed by the agency in accordance with Internal Revenue Service (IRS) regulations (including submission of a W-2 Form on each case manager). Contracting case manager staff is prohibited. Contracting of supervisors must comply with IRS regulations. Each case manager must be employed at least 20 hours per week;

5. assure that all new staff satisfactorily complete an orientation and training program in the first 90 days of employment and possess adequate case management abilities, skills and knowledge before assuming sole responsibility for their caseload and each case manager and supervisor satisfactorily complete case management related training on an annual basis to meet at least minimum training requirements described below. The provision and/or arranging of such training is the responsibility of the provider;

6. have a written plan to determine the effectiveness of the program and agrees to implement a continuous quality improvement plan approved by the department;

7. document and maintain an individual record on each consumer which includes all of the elements described in licensing standards for case management and in this document;

8. agree to safeguard the confidentiality of the consumer's records in accordance with federal and state laws and regulations governing confidentiality;

9. assure a consumer's right to elect to receive case management as an optional service and the consumer's right to terminate such services;

10. assure that no restriction will be placed on the consumer's right to elect to choose a case management agency, a qualified case manager, and other service providers and change the case management agency, case manager and service providers consistent with Section 1902(a)(23) of the Social Security Act;

11. if enrolled as a Medicaid case management provider, after July 20, 1994, assure that the agency and case managers will not provide case management and Medicaid reimbursed direct services to the same consumer(s);

12. have financial resources and a financial management system capable of:

a. adequately funding required qualified staff and services;

b. providing documentation of services and costs;

c. complying with state and federal financial reporting requirements; and

d. submitting reports in the manner specified by Medicaid;

13. maintain a written policy for intake screening, including referral criteria;

14. maintain a written policy for transition and closure;

15. with the consumer's permission, agree to maintain regular contact with, share relevant information and coordinate medical services with the consumer's primary care or attending physician or clinic;

16. fully comply with the *Code of Governmental Ethics*.

Applicants must meet the following additional enrollment requirements for specific target groups:

17. demonstrate the capacity to participate and agree to participate in the Case Management Information System (CAMIS) and provide up-to-date data to the Regional Office and/or Program Office on a weekly basis via electronic mail (applicable to infants and toddlers with special needs). CAMIS and electronic mail software will be provided without charge to the provider;

18. have demonstrated successful experience with delivery and/or coordination of services for pregnant women; have a working relationship with a local obstetrical provider/acute care hospital providing deliveries for 24-hour medical consultation; have a multidisciplinary team consisting, at a minimum, of: a physician; primary nurse associate or certified nurse manager; registered nurse; social worker; and nutritionist. All team members must meet DHH licensure and perinatal experience requirements (applicable to high-risk pregnant women only);

19. satisfactorily complete a one-day training as approved by the Department of Health and Hospitals HIV Program Office.

An enrolled case management provider must re-enroll requesting a separate Medicaid provider number and is subject to the above-described enrollment requirements and procedures in order to provide case management services to an additional target population. Applicants will be subject to review by DHH to determine ability and capacity to serve the target population and a site visit to verify compliance with all

provider enrollment requirements prior to a decision by the Medicaid Program on enrollment as a case management provider or at any time subsequent to enrollment. Enrolled case management providers will be subject to review by the DHH and the U.S. Department of Health and Human Services to verify compliance with all provider enrollment requirements at any time subsequent to enrollment.

If the applicant agency is determined to be eligible for enrollment, the agency will be notified in writing by the Medicaid Program of the effective date of enrollment and the unique Medicaid case management provider number for each office site and targeted or waiver group. If the department determines that the applicant case management agency does not meet the general or specific enrollment requirements listed above, the applicant agency will be notified in writing of the deficiencies needing correction. The applicant agency must submit appropriate documentation of corrective action taken. If the applicant agency fails to submit the required documentation of corrective action taken within 30 days of the notice, the application will be rejected. If the case management agency does not meet all of the requirements above, the applicant agency will be ineligible to provide case management services to any targeted or waiver group.

## II. Standards of Payment

In order to be reimbursed by the Medicaid Program, an enrolled provider of targeted or waiver case management service must comply with all of the requirements listed below. Exceptions may be granted by the secretary on a case-by-case basis as determined by an assessment of available services in the community.

A. **Staff Coverage.** All case managers must be employed by the case management agency a minimum of 20 hours per week and work at least 50 percent of the time during normal business hours (8 a.m. to 5 p.m., Monday through Friday). Contracting of case manager staff is prohibited. Case management supervisors must be employed a minimum of eight hours per week for each full-time case manager (four hours a week for each part-time case manager) they supervise and maintain on-site office hours at least 50 percent of the time. A supervisor must be continuously available to case managers by telephone or beeper at all other times when not on site when case management services are provided. The provider agency must ensure that case management services are available 24 hours a day, seven days a week.

B. **Staff Qualifications.** Each Medicaid-enrolled provider must ensure that all staff providing targeted case management services have the skills, qualifications, training and supervision in accordance with licensing standards and the department requirements listed below. In addition, the provider must maintain sufficient staff to serve consumers within mandated caseload sizes described below.

1. **Education and Experience for Case Managers.** All case managers hired or promoted on or after July 22, 1994, must meet all of the following minimum qualifications for education and experience:

a. a bachelor's degree in a human-service-related field such as psychology, education, rehabilitation counseling, or counseling from an accredited institution; and one year of

paid experience in a human-service-related field providing direct consumer services or case management; or

b. a licensed registered nurse; and one year of paid experience as a registered nurse in public health or a human-service-related field providing direct consumer services or case management in the human-service-related field; or

c. a bachelor's or master's degree in social work from a social work program accredited by the Council on Social Work Education.

The above general minimum qualifications for case managers are applicable for all targeted and waiver groups. Thirty hours of graduate level course credit in the human-service-related field may be substituted for the year of required paid experience.

d. additional qualifications are required for service provision to high-risk pregnant women and MR/DD waiver participants:

(1) a bachelor's degree in a human-service-related field such as psychology, education, rehabilitation counseling, or counseling from an accredited institution; and one year of paid experience in a human-service-related field providing direct consumer services or case management in the human-service-related field; and demonstrated knowledge about perinatal care; or

(2) a licensed registered nurse; and one year of paid experience as a registered nurse in public health or a human-service-related field providing direct consumer services or case management in the human-service-related field; and demonstrated knowledge about perinatal care; or

(3) a bachelor's or master's degree in social work from a social work program accredited by the Council on Social Work Education; and demonstrated knowledge about perinatal care; or

(4) a registered dietician; and one year of paid experience in providing nutrition services to pregnant women.

(5) case managers who provide services to MR/DD waiver participants must have a minimum of one year paid post-degree experience working directly with persons with mental retardation or developmental disabilities.

2. **Education and Experience for Case Management Supervisors.** A case management supervisor hired or promoted on or after July 22, 1994, or any other individual supervising case managers must meet all of the education and experience requirements listed below. Staff supervising case management for high risk pregnant women must meet the same qualifications as the case managers for these populations:

a. a master's degree in social work, psychology, nursing, counseling, rehabilitation counseling, education (with special education certification), occupational therapy, speech therapy or physical therapy from an accredited institution; and two years of paid post-master's degree experience in a human-service-related field providing direct consumer services or case management; one year of this experience must be in providing direct services to the target population to be served; or

b. a bachelor's degree in social work from a social work program accredited by the Council on Social Work Education; and three years of paid post-bachelor's degree experience in a human-service-related field providing direct consumer services or case management. One year of this experience must be in providing direct services to the target population to be served;

c. a licensed registered nurse and three years of paid post-licensure experience as a registered nurse in public health or a human service field providing direct consumer services or case management. Two years of this experience must be in providing direct services to the target population to be served; or

d. a bachelor's degree in a human-service-related field such as psychology, education, rehabilitation counseling, or counseling from an accredited institution; and four years of paid post-bachelor's degree experience in a human-service-related field providing direct consumer services or case management in the human-service-related field. Two years of this experience must be in providing direct services to the target population to be served.

The above general minimum qualifications for case management supervisors are applicable for all targeted and waiver groups. Thirty hours of graduate level course credit in the human-service-related field may be substituted for one year of required paid experience. Additional qualifications for specific targeted or waiver groups are delineated below:

e. each Medicaid-enrolled provider must ensure that all case management supervisory staff for high-risk pregnant women have demonstrated knowledge about perinatal care and meet the following qualifications:

(1) a bachelor's degree in a human-service-related field such as psychology, education, rehabilitation counseling, or counseling from an accredited institution; and four years of paid post-bachelor's degree experience in a human-service-related field providing direct consumer services or case management; two years of this experience must be in providing direct services to the target population to be served;

(2) a licensed registered nurse; and three years of paid post-bachelor's degree experience in a human-service-related field providing direct consumer services or case management in the human-service-related field; two years of this experience must be in providing direct services to the target population to be served; or

(3) a bachelor's or master's degree in social work from a social work program accredited by the Council on Social Work Education; and two years of paid post bachelor's degree experience in a human-service-related field providing direct consumer services or case management; one year of this experience must be in providing direct services to the target population to be served; or

(4) a registered dietician; and three years of paid post-bachelor's degree experience in a human-service-related field providing direct consumer services or case management; two years of this experience must be in providing direct services to pregnant women.

3. **Requisite Knowledge, Skills and Abilities.** Each Medicaid-enrolled provider must look for the following

knowledge, skills and abilities in hiring case management staff and must ensure that all staff providing targeted or waiver case management services possess the following basic knowledge, skills, and abilities prior to assuming full caseload responsibilities.

a. **Knowledge:**

- (1) community resources;
- (2) medical terminology;
- (3) case management principles and practices;
- (4) consumer rights;
- (5) state and federal laws for public assistance.

b. **Skills:**

- (1) time management;
- (2) assessment;
- (3) interviewing;
- (4) listening.

c. **Abilities:**

- (1) preparing service plans;
- (2) coordinating delivery of services;
- (3) advocating for the consumer;
- (4) communicating both orally and in writing;
- (5) establishing and maintaining cooperative working relationships;
- (6) maintaining accurate and concise records;
- (7) assessing medical and social aspects of each case and formulating service plans accordingly;
- (8) problem solving;
- (9) remaining objective while accepting the consumer's lifestyle.

4. **Training.** Case manager and supervisor training must be provided by or arranged by the case manager's employer at the employer's expense.

a. **Training for New Case Managers.** Orientation of at least 16 hours must be provided to all staff, volunteers, and students within one week of employment. A minimum of eight hours of the orientation training must cover orientation on the target population including but not limited to specific service needs and resources. Other topics covered by the orientation must include, at a minimum:

- (1) provider policies and procedures;
- (2) Medicaid/Program Office policies and procedures;
- (3) confidentiality;
- (4) documentation in case records;
- (5) consumer rights protection and reporting of violations;
- (6) consumer abuse and neglect policies and procedures;
- (7) professional ethics;
- (8) emergency and safety procedures;
- (9) data management and record keeping;
- (10) infection control and universal precautions.

b. In addition to the required 16 hours of orientation, all new employees with no documented required experience and training must receive a minimum of 16 hours of training during the first 90 calendar days of employment which is related to the target population served and specific knowledge, skills, and techniques necessary to provide case management to the target population. This training must be



provided by an individual with demonstrated knowledge of the training topics and the target population. This training must include the following at a minimum:

- (1) assessment techniques;
- (2) service planning;
- (3) resource identification;
- (4) interviewing and interpersonal skills;
- (5) data management and record keeping;
- (6) communication skills.

c. Annual Training. A case manager must satisfactorily complete 40 hours of case-management related training annually which may include training updates on subjects covered in orientation and initial training. For new employees, the 16 hours of orientation training are not included in the 40-hour minimum annual training requirement. The 16 hours of training for new staff required in the first 90 days of employment may be part of this 40-hour minimum annual training requirement. Appropriate updates of topics covered in orientation and training for a new case manager must be included in the required 40 hours of annual training. The Department of Health and Hospitals *Case Management Provider Manual* contains a list of suggested additional training topics.

Each case management supervisor must complete 40 hours of training a year, at a minimum. In addition to the required and topics for case managers, the following are required topics for supervisory training:

- (1) professional identification/ethics;
- (2) process for interviewing, screening, and hiring of staff;
- (3) orientation/in-service training of staff;
- (4) evaluating staff;
- (5) approaches to supervision;
- (6) managing caseload size;
- (7) conflict resolution;
- (8) documentation;
- (9) time management.

The required orientation and training for case managers and supervisors described above must be documented in the employee's personnel record including: dates and hours of specific training, trainer or presenter's name, title, agency affiliation or qualification, other sources of training and orientation/training agenda.

d. Training—Infants and Toddlers with Special Needs

(1) A minimum of eight hours of orientation for new family service coordination staff must be ChildNet specific training as defined by the Department of Education. A minimum of 24 additional hours of training must be provided to new family service coordinators hired in the first 90 days of employment. This training must cover advanced subjects as defined by the Department of Education in addition to the subjects listed above. Initial training specific to ChildNet must be arranged and/or coordinated by the regional infant/toddler coordinator. Advanced training in specific subjects must be satisfactorily completed prior to the case manager/family service coordinator assuming those duties. Ongoing annual training is the responsibility of the family service coordination agency.

(2) Case management does not consist of the provision of other needed services, but is to be used as a vehicle to help an eligible consumer gain access to them. If there is no interaction in person, by telephone or in correspondence on behalf of the consumer, it is most likely not a billable case management activity without sufficient justification. New family service coordination supervisors must satisfactorily complete a minimum of 40 hours of family service coordination training before assuming supervisory duties for this target population. Experienced supervisors must also complete a minimum of 40 hours per calendar year on advanced ChildNet specific subjects defined by the Department of Education.

e. Mandatory Medicaid Training. Enrolled case management agencies must ensure that all case management staff satisfactorily complete DHH provider required training on case management policies and procedures when provided.

C. Supervision. Each case management agency must have and implement a written plan for supervision of all case management staff. Face-to-face supervision must occur at least one time per week per case manager for a minimum of one hour per week. Supervisors must review at least 10 percent of each case manager's case records each month for completeness, compliance with these standards, and quality of service delivery. Case managers must be evaluated at least annually by their supervisor according to written provider policy on evaluating their performance. Supervision of individual staff must include the following:

1. direct review, assessment, problem solving, and feedback regarding the delivery of case management services;
2. teaching and monitoring of the application of consumer centered principles and practices;
3. assuring quality delivery of services;
4. managing assignment of caseloads; and
5. arranging for training as appropriate.

The case manager supervisor must assess staff performance, review individual cases, provide feedback and help staff develop problem solving skills using two or more of the following methods:

- a. individual, face-to-face sessions with staff;
- b. group face-to-face sessions with all case management staff; or
- c. sessions in which the supervisor accompanies a case manager to meet with consumers.

Documentation: Each supervisor must maintain a file on each case manager supervised and document supervisory sessions on at least a weekly basis. The file on the case manager must include, at a minimum:

- (1) date and content of the supervisory sessions; and
- (2) results of the supervisory case review which shall address, at a minimum: completeness and adequacy of records; compliance with standards; and effectiveness of services.

Each case management supervisor must not supervise more than five full-time case managers or a combination of full-time case managers and other human service staff. A supervisor may carry one-fifth of a caseload for each case manager supervised less than five supervisees. If the

supervisor carries a caseload, he or she must be supervised by an individual who meets the supervisor qualifications.

D. Caseload Size Standards. Each full-time case manager is subject to a maximum caseload of consumers as indicated below:

GROUP	CASES
MR/DD Waiver	45
Infants and toddlers with special needs	35
High-risk pregnant women	60
HIV infected	45
Fragile elderly	40

*Mixed* caseloads are those where a case manager serves at least five consumers from a second target population or five waiver participants. For caseloads containing consumers who are MR/DD waiver participants in addition to those who are infants and toddlers with special needs, the maximum caseload is 35. For other "mixed" caseloads, the number of cases must be prorated.

E. Consumer Eligibility Requirements for Targeted Populations. Case management providers must ensure that consumers of Medicaid-funded targeted case management services are Medicaid-eligible and meet the additional eligibility requirements specific to the targeted or waiver population group. The eligibility requirements for each targeted and waiver group are listed below. With respect to infants and toddlers with special needs, this determination is made through the Multidisciplinary Evaluation (MDE) process and is not the responsibility of the case management/family service coordination agency. Also, the service plan for case management services provided to mentally retarded/developmentally disabled individuals and infants and toddlers with special needs is subject to prior authorization by the Medicaid agency or its designee. Providers are required to participate in provider training and technical assistance as required by the Medicaid agency or its designee.

1. Infants and Toddlers with Special Needs. The infant/toddler must meet the following criteria:

a. have a medical condition established and documented by a licensed medical doctor. In the case of a hearing impairment, a licensed audiologist or licensed medical doctor must make the determination; or

b. be developmentally delayed in one or more of the following areas:

(1) cognitive development;

(2) physical development, including vision and hearing; eligibility must be based on a documented diagnosis made by a licensed medical doctor (vision); or a licensed medical doctor or licensed audiologist (hearing);

(3) communication development;

(4) social or emotional development;

(5) adaptive development.

The determination of a developmental delay must be made in accordance with applicable federal regulations and ChildNet policies and procedures.

## 2. High-Risk Pregnant Women

a. pregnancy must be verified by a licensed physician, licensed primary nurse associate, or certified nurse midwife;

b. reside in the metropolitan New Orleans area including Orleans, Jefferson, St. Charles, St. John and St. Tammany parishes;

c. be determined high risk based on a standardized medical risk assessment. A medical risk assessment (screening) must be performed by a licensed physician, a licensed primary nurse associate, or a certified nurse-midwife to determine if the patient is high risk. A pregnant woman is considered high risk if one or more risk factors are indicated on the form used for risk screening. Providers of medical risk assessment must use the standardized Risk Screening Form approved by DHH;

d. must require services from multiple health, social, informal and formal service providers and is unable to access the necessary services.

## 3. HIV Infected Persons

a. Written verification of HIV infection by a licensed physician or laboratory test result is required.

b. The adult consumer must have reached, as documented by a physician, a level 70 on the Karnofsky scale (or cares for self but is unable to carry on normal activity or do active work) at some time during the course of HIV infection.

c. The pediatric consumer must display symptoms of illness related to HIV infection. All consumers must require services from multiple health, social, informal and formal service providers and be unable to access the necessary services.

4. Frail Elderly. The consumer must be a participant in the Home Care for the Elderly waiver.

5. MR/DD Waiver. The consumer must be participant in the MR/DD Waiver.

F. Description of Case Management Services/Provider Responsibilities. The definition of *Case Management* adopted by the department is "services provided by qualified staff to the targeted or waiver population to assist them in gaining access to the full range of needed services including medical, social, educational, and other support services." Targeted and waiver case management services consist of intake, assessment, service planning, linkage/service coordination, monitoring/follow-up, re-assessment, and transition/closure. The department utilizes a broker model of case management in which consumers are referred to other agencies for specific services they need. These services are determined by professional assessment of the consumer's needs and provided according to a comprehensive individualized written service plan. All case management services must be provided by qualified staff as defined in Section A above. The provider must ensure that there is no duplication of payment, that there is only one case manager for each eligible consumer and that the consumer is not receiving other targeted case management services from any other provider.

The required core elements of targeted or waiver case management services and provider responsibilities which all

Medicaid enrolled case management agencies must comply with are described below.

1. **Case Management Intake.** *Intake* is defined as the determination of eligibility and need for targeted case management services. Intake is the entry point into case management. The purpose of intake is to gather baseline information to determine the consumer's need, appropriateness, eligibility and desire for case management. The case management provider must have written eligibility criteria for case management services provided by the agency. The required procedures of intake screening are:

- a. interview the consumer within three working days of receipt of a referral, preferably face-to-face;
- b. determine if the consumer is currently Medicaid-eligible;
- c. determine if the consumer is eligible for services by virtue of the eligibility requirements of the target population described in Section B above;
- d. determine if the consumer's needs require case management services;
- e. inform the family of procedural safeguards, rights and grievance/appeal procedure and which include the following:

- (1) determine if the consumer freely accepts case management as optional;

- (2) provide the consumer freedom of choice of available targeted case management providers as well as case managers. Advise the consumer of his right to change case management providers and case managers;

- (3) provide the consumer freedom of choice of available service providers. The consumer must sign a standardized intake form to verify the above procedural safeguards;

- f. obtain signed release form(s) from the consumer/guardian.

Intake activities performed solely to determine eligibility and need for targeted case management are not billable to Medicaid.

The above general case management intake procedures are applicable for all targeted and waiver groups. Additional or other procedures for specific targeted or waiver groups are delineated below.

g. *Intake for Infants and Toddlers with Special Needs* is defined as a comprehensive interagency multidisciplinary, ongoing process which ensures that eligible children are appropriately identified, located, referred and evaluated for early intervention services. The child search coordinator in the local education agency is the single point of entry into ChildNet. The child search coordinator is responsible for completion of the following intake procedures:

- (1) Upon receipt of a referral, the child search coordinator must assist the family in identifying and choosing an enrolled family service coordinator provider to assist in the MDE process. Referrals received directly by a family service coordination provider must be immediately referred to the appropriate child search coordinator.

- (2) The child search coordinator must provide the family freedom of choice to select an enrolled family service coordination provider, and advise the family of the right to

change family service coordinator provider agencies, family service coordinators and other service providers.

- (3) The child search coordinator must advise the family of their procedural safeguards and provide them with a copy of their rights under ChildNet.

- h. Intake for High-Risk Pregnant Women must include a standardized medical risk assessment. A medical risk assessment (screening) must be performed by a licensed physician, a licensed primary nurse associate, or a certified nurse-midwife to determine if the patient is high risk. A pregnant woman is considered high risk if one or more risk factors are indicated on the form used for risk screening. Providers of medical risk assessment must use the standardized Risk Screening Form approved by DHH;

2. **Case Management Assessment.** *Assessment* is defined as the process of gathering and integrating formal/professional and informal information concerning a consumer's goals, strengths, and needs to assist in the development of a comprehensive, individualized service plan. The purpose of assessment is to establish a service plan and contract between the case manager and consumer. The following areas must be addressed in the assessment when relevant:

- a. identifying information;
- b. medical/physical;
- c. psychosocial/behavioral;
- d. developmental/intellectual;
- e. socialization/recreational;
- f. financial;
- g. educational/vocational;
- h. family functioning;
- i. personal and community support systems;
- j. housing/physical environment; and
- k. status of other functional areas or domains.

Providers may be required to use standardized assessment instruments for certain targeted populations. The assessment must identify the consumer's strengths, needs and priorities. The assessment must be conducted by the case manager through in-person contact, individualized observations and questions with the consumer and, where appropriate, in consultation with the consumer's family and support network, other professionals, and service providers. The assessment must identify areas where a professional evaluation is necessary to determine appropriate services or interventions. The case manager must arrange for any necessary professional/clinical evaluations needed to clearly define the consumer's specific problem areas. Authorization must be obtained from the consumer/guardian to secure appropriate services.

The assessment must be initiated as soon as possible, preferably within seven calendar days of receipt of the referral, and must be completed no later than 30 days after the referral for case management services. A face-to-face interview with the consumer is required as part of the assessment process. The initial assessment interview with the consumer must be conducted in the consumer's home to accurately assess the actual living conditions and health and mental status of the consumer unless this is not the consumer's preference or there are genuine concerns regarding safety. If

the interview cannot be conducted in the consumer's home, an alternative setting in the consumer's community must be chosen jointly with the consumer and documented in the case record. All assessments must be written, signed, dated, and documented in the case record.

Assessments performed on children in the custody of the Office of Community Services (OCS) or Office of Youth Development (OYD) must actively involve the assigned foster care worker or probation officer and must be approved by the agency with legal custody of the child. Assessments performed on consumers in the custody of the Office of Developmental Disabilities (OCDD) must actively involve the assigned Regional Office OCDD staff and must be approved by OCDD.

The above general case management assessment procedures are applicable for all targeted and waiver groups. Additional procedures for specific targeted or waiver groups are delineated below.

(1) Assessment for Infants and Toddlers with Special Needs. The child search coordinator is responsible for ensuring all the components of the assessment/multidisciplinary evaluation (MDE) are fulfilled within the required timeliness. In addition, the child search coordinator must coordinate with the family service coordinator to ensure the development of the initial Individualized Family Service Plan within the required 45-day time lines. The case manager/family service coordinator is responsible for assisting the family through the multidisciplinary evaluation process including the following:

(a) informing the family of the steps involved in the MDE process, explaining their rights and procedural safeguards and securing their participation;

(b) reviewing relevant medical information and prior evaluations;

(c) coordinating the performance of identified or necessary evaluations and KIDMED screenings and immunizations, and an examination by a licensed physician to ensure timely completion of the MDE and IFSP;

(d) identifying or coordinating the identification of the family's concerns, priorities and resources;

(e) the MDE must include the following:

1) a review of pertinent records related to the child's current health status and medical history;

2) results of a KIDMED screening or documented referral for KIDMED screening;

3) an evaluation of the child's level of functioning in each of the following developmental areas: cognitive development; physical development, including vision and hearing (by a licensed physician or hearing by a licensed audiologist); communication development; social or emotional development; and adaptive development;

4) an assessment of the child's strengths and needs and the identification of appropriate early intervention services to meet those needs; and

5) with family consent, the family's identification of their concerns, priorities and resources related to enhancing the development of their child;

6) be signed and dated by multidisciplinary team participants.

(2) Assessment for high-risk pregnant women is a multidisciplinary evaluation of the high-risk patient to identify factors that may adversely affect health status. Professionals from nursing, nutrition and social work disciplines working as a team must each evaluate the consumer and family needs through interactions and interviews.

(a) Each professional assessment must reflect the identified areas for counseling, intervention and follow up services.

(b) The nursing, nutritional, and psychosocial assessments must be documented on standardized forms approved by the department.

(c) Assessments must be completed within 14 calendar days after the risk assessment is completed or receipt of the referral. There may be extenuating circumstances with certain patients that may hinder compliance with this time frame for assessment.

(d) The case manager is responsible for assisting the family through the multidisciplinary evaluation process including the following:

1) coordinating the performance of identified or necessary evaluations to ensure timely completion in preparation for the multidisciplinary team staffing;

2) identifying or coordinating the identification of the consumer's concerns, priorities and resources.

(e) A home assessment must be completed by the case manager as part of the initial assessment. If a home visit is refused by the consumer/guardian or there are genuine concerns regarding safety, an alternative setting in the consumer's community may be chosen jointly with the consumer and documented in the case record.

(3) Assessment for MR/DD Waiver Participants

(a) Comprehensive Strengths Assessment. The case manager must complete this standardized strength assessment form in a face-to-face interview with the consumer. The assessment must identify current status in identified areas of community living, the desired outcomes, as well as strategies which have worked in the past to meet the needs or desired outcomes. The strengths assessment must also include a summary paragraph of the need for case management services, identifying current needs and factors by history which emphasize the need for services;

(b) CAMIS Initial Assessment.

3. Case Management Service Planning. *Service Planning* is defined as the development of a written agreement based upon assessment data (which may be multidisciplinary), observations and other sources of information which reflect the consumer's needs, capacities and priorities, and specifies the services and resources required to meet these needs.

a. The service plan must be developed through a collaborative process involving the consumer, family, case manager, other support systems and appropriate professionals and service providers. It should be developed in the presence of the consumer and, therefore, cannot be completed prior to a meeting with the consumer. The consumer, case manager, support system and appropriate professional personnel must be directly involved and have agreed to assume specific functions and responsibilities.

b. The service plan must be completed within 45 calendar days of the referral for case management services.

(1) The consumer must be informed of his or her right to refuse a service plan after carefully reviewing it.

(2) The service plan must be signed and dated by the consumer and the case manager.

c. Although service plans may have different formats, all plans must incorporate all of the following required components:

(1) statement of prioritized long-range goals (problems or needs) which have been identified in the assessment;

(2) one or more short-term objectives or expected outcomes linked to each goal that is to be addressed in order of priority;

(3) specification of action steps, services or interventions planned, and payment mechanism, if applicable;

(4) assignment of individual responsibility for goal accomplishment; and

(5) time frames for completion or review.

d. The service plan must document frequency and/or intensity of contacts between the consumer and case manager, service providers and others, the persons to be contacted and whether the visits must be to the consumer's place of residence or to another location, such as a service delivery site. Each service plan must be kept in the consumer's record. The assessment and service plan must be completed prior to providing ongoing case management services.

The above general case management service planning procedures are applicable for all targeted and waiver groups. Additional procedures for specific targeted or waiver groups are delineated below.

e. Service Planning for Infants and Toddlers with Special Needs. The family service coordinator's responsibilities in the Individual Family Service Plan (IFSP) must include all of the following;

(1) convening a meeting to develop the IFSP within 45 calendar days of referral;

(2) attending the IFSP meeting;

(3) ensuring that the IFSP meeting is conducted in settings and at times that are convenient to families; in the native language of the family or other mode of communication used by documentation to the regional office within prescribed time lines in accordance with Office of Mental Health procedures.

f. Service Planning for MR/DD Waiver Participants. A standardized service plan form must be completed with the consumer/guardian, signed by the consumer/guardian and case manager, and approved by the case manager's supervisor.

g. Service Planning/Multidisciplinary Team Staffing for High-Risk Pregnant Women

(1) Following completion of the medical risk assessment home visit, professional and case management assessments, a multidisciplinary team staffing and completion of the service plan must take place within 30 days of the intake screening of each high-risk pregnant woman.

(2) The consumer may be restaffed one time during the pregnancy or post-partum period as necessary to maintain a viable comprehensive service plan.

4. Case Management Linkage. *Linkage* is defined as the implementation of the service plan involving the arranging for a continuum of both informal and formal services. After obtaining authorization from the consumer, the case manager must contract with the direct service providers or direct the consumer to contact the service providers, as appropriate. The case manager must contract with the consumer for formal and informal services and supports to be arranged. Attempts must be made to meet service needs with informal service providers as much as possible. The responsibilities of the case manager in service coordination are:

a. translating assessment findings into services;

b. determining which services and connections are needed;

c. being aware of community resources (food stamps, SSI, Medicaid, etc.);

d. exploration of both formal and informal services for consumers;

e. communicating and negotiating with service providers;

f. training and support of the consumer in the use of personal and community resources identified in the service plan;

g. linking consumers through referrals to services that meet their needs as identified in the service plan; and

h. advocacy on behalf of the consumer to assist them in accessing appropriate benefits or services.

5. *Case Management Follow-Up/Monitoring*—defined as the follow-up mechanism to assure applicability of the service plan.

a. The purpose of monitoring/follow-up contacts made by the case manager is to determine if the services are being delivered as planned, and/or services adequately meet consumer needs and to determine effectiveness of the services and the consumer's satisfaction with them.

b. The consumer must be contacted within the first 10 working days after the initial service plan is completed to assure appropriateness and adequacy of service delivery.

c. Thereafter, face-to-face follow-up visits must be made with the consumer/guardian at least monthly as part of the linkage and monitoring follow-up process, or more frequently as dictated by the service plan or determined by the needs of the consumer/guardian. In addition, visits must be made to consumer's home on a quarterly basis, at a minimum. If the consumer refuses home visits or there are genuine concerns regarding safety, an alternative setting in the consumer's community may be chosen jointly with the consumer.

d. The case manager must communicate regularly by telephone, in writing and in face-to-face meetings and home visits with the consumer/guardian, professionals and service providers involved in the implementation of the service plan. The nature of these follow-up contacts (e.g., telephone, home visit) and the individuals contacted is determined by the status and needs of the consumer, as identified in the service plan and determined by the case manager.

Through follow-up/monitoring activity, the case manager must determine whether or not the service plan is effective in meeting the consumer's needs and identify when

changes in the consumer's status occur, necessitating a revision in the service plan. Reassessment is required when a major change in status of the consumer/guardian occurs.

e. Monitoring of services provided includes the following:

(1) following up to assure that the consumer actually received the services as scheduled;

(2) assuring that consumer/consumer's family is able and willing to comply with recommendations of service providers;

(3) measuring progress of consumer in meeting service plan goals and objectives and determining whether the services adequately address the consumer's needs.

Monitoring information must be obtained by the case manager through direct observation and direct feedback. The case manager must gather information from direct service providers for monitoring purposes. The case manager must obtain verbal or written service reports from direct service providers.

The above general case management service planning procedures are applicable for all targeted and waiver groups. Additional procedures for specific targeted or waiver groups are delineated below.

f. Follow-Up/Monitoring for High-Risk Pregnant Women. The case manager must maintain at least weekly face-to-face or telephone contact with the consumer/guardian, family, informal and/or formal providers to implement the service plan and follow up/monitoring service provision and the consumer's progress in accordance with the service plan.

6. Case Management Reassessment. *Reassessment* is defined as the process by which the baseline assessment is reviewed. It provides the opportunity to gather information for evaluating and revising the overall service plan.

a. After the initial assessment is completed and initial service plan is implemented, the consumer's needs and progress toward accomplishing the goals listed in the service plan goals must be re-evaluated on a routine basis or when a significant change in status or needs occurs. If indicated, the identified needs, short-term goals or objectives, services, and/or service providers must be revised.

b. Reassessment is accomplished through interviews and periodic observations.

c. A schedule for re-assessing and modifying the initial goals and service plans must be part of the initial workup. Reassessment and review and/or updating of the service plan must be done at intervals of no less than 90 calendar days. If there is a minor change in the service plan, the case manager must revise the plan and initial and date the change. More frequent re-assessments may be required, depending upon the consumer's situation.

d. At least every six months, a complete review of the service plan must be done to assure that goals and services are appropriate to the consumer's needs identified in the assessment/re-assessment process.

(1) A home-based re-assessment must be done on at least an annual basis unless this is not the consumer's preference or there are genuine concerns regarding safety.

(2) If the re-assessment cannot be conducted in the consumer's home, an alternative setting in the consumer's

community must be chosen jointly with the consumer and documented in the case record.

The above general case management re-assessment procedures are applicable for all targeted and waiver groups. Additional procedures for specific targeted or waiver groups are delineated below.

e. Reassessment for Infants and Toddlers with Special Needs. Ongoing assessment is a component of the IFSP process.

(1) A review of the IFSP must be conducted at least every six months, or more often if conditions warrant, or if the family requests a review to determine the following:

(a) the degree to which progress is being made toward achieving the outcomes; and

(b) whether modifications or revisions of the outcomes or services are necessary.

(2) The review may be carried out by a meeting or by other means that are acceptable to the families and other participants.

(3) An annual meeting must be conducted to evaluate the IFSP and, as appropriate, revise the IFSP. The results of any ongoing assessments of the child and family, and any other pertinent information must be used in determining what early intervention services are needed and will be provided.

7. Case Management Transition/Closure. Discharge from case management must occur when the consumer no longer needs or desires the services, or becomes ineligible for them. The closure process must ease the transition to other services or care systems.

a. When closure is deemed appropriate, the consumer must be notified immediately so that appropriate arrangements can be made.

b. The case manager must complete a final re-assessment identifying any unresolved problems or needs and discussing with the consumer methods of arranging for their own services.

c. Criteria for closure include but are not limited to the following:

(1) resolution of the consumer's service needs with low probability of recurrence;

(2) consumer requests termination of services;

(3) death;

(4) permanent relocation out of the service area;

(5) long-term admission to a hospital, institution or nursing facility;

(6) does not meet the criteria for the case management established by the funding source (e.g., Medicaid or the Program Office);

(7) the consumer requires a level of care beyond that which can safely be provided through case management;

(8) the safety of the case manager is in question; or

(9) noncompliance.

All cases which do not have an active service plan and necessary linkage or monitoring activities must be closed. Infants and toddlers eligible under ChildNet are no longer eligible for Medicaid-funded case management services if they do not require and receive two or more of the required Medicaid services.

8. Procedures for Changing Providers. A consumer may freely change case management providers or case managers or terminate services at any time. DHH maintains a listing of enrolled and approved case management providers for each target and waiver population which consumers and service providers may access for referral purposes.

a. Once the consumer has chosen a new case management provider, the new provider must complete the standardized "Provider Change Notification" form, obtain the consumer's written consent and forward the original change form to the previous case management provider. Upon receipt of the completed form, the previous provider must send copies of the following information as required by licensing standards within 10 working days:

- (1) most current service plan;
- (2) current assessments on which service plan is based;
- (3) number of services used in the calendar year;
- (4) current and previous quarter's progress notes.

b. The new provider must bear the cost of copying which cannot exceed the community's competitive copying rate. The previous provider may not provide case management services after the date the notification is received.

The above general procedures for changing case management providers are applicable for all targeted and waiver groups except as otherwise specified for particular groups delineated below.

c. Procedures for Changing Family Service Coordination Providers—Infants and Toddlers with Special Needs. If a family chooses to change family service coordination agencies or a change is necessary for any reason, the following procedures will be followed:

(1) The family will be referred back to the child search coordinator. This referral can be made by the family, the current family service coordinator, or other service providers.

(2) The child search coordinator will provide the family with the official list of family service coordination providers and the freedom of choice form.

(3) The child search coordinator will review the family's rights under ChildNet with the family including the right to change family service coordinators or agencies.

(4) The child search coordinator or the family, if the family chooses, will notify the newly selected agency.

(5) The child search coordinator will notify the old agency at termination.

(6) After receiving written informed paternal consent, the new agency will request records from the previous agency. The previous agency will make these records available within 10 working days of receipt of the request.

### III. General Provisions

A. Components of the Case Record. The provider must keep sufficient records to document compliance with licensing and Medicaid case management requirements for the target population served and provision of case management services. Separate case management records must be maintained on each consumer which fully document services for which Medicaid payments have been made. The provider must

maintain sufficient documentation to enable the Medicaid Program to verify that each charge is due and proper prior to payment. The provider must make available all records which the Medicaid Program finds necessary to determine compliance with any federal or state law, rule, or regulation promulgated by the Medicaid Program, DHH or DHHS or other applicable state agency.

The consumer's case record must consist of the following information, at a minimum:

1. Medicaid eligibility information;
2. documentation verifying that the consumer meets the requirements of the targeted population;
3. a copy of the standardized procedural safeguard form signed by the consumer;
4. copies of any professional evaluations and other reports used to formulate the service plan;
5. case management assessment;
6. progress notes;
7. service logs;
8. copies of correspondence;
9. at least six months of current pertinent information relating to services provided. (Records older than six months may be kept in storage files or folders, but must be available for review.)
10. if the provider is aware that a consumer has been interdicted, a statement to this effect must be noted.

B. Service Logs. Service logs are the means for recording units of billable time. There must be case notes corresponding to each recorded time of case management activity. The notes should not be a narrative with every detail of the circumstances. Service logs must reflect service delivered, the "paper trail" for each service billed. Logs must clearly demonstrate allowable services billed.

1. Services billed must clearly be related to the current service plan.

2. Billable activities must be of reasonable duration and must agree with the billing claim.

3. All case notes must be clear as to who was contacted and what allowable case management activity took place. Use of general terms such as "assisted consumer to" and "supported consumer" do not constitute adequate documentation.

4. Logs must be reviewed by the supervisor to insure that all billable activities are appropriate in terms of the nature and time and documentation is sufficient. Federal requirements for documenting case management claims require the following information must be entered on the service log to provide a clear audit trail:

- a. name of consumer;
- b. name of provider and person providing the service;
- c. names and telephone numbers of persons contacted;
- d. start and stop time of service contact and date of service contact;
- e. place of service contact;
- f. purpose of service contact;
- g. content and outcome of service contact.

C. Progress Notes. Progress notes are the means of summarizing billable activities, observations and progress



toward meeting service goals in the case management record. Progress notes must:

1. be clear as to who was contacted and what case management activity took place for each recorded time of case management. It must be clear why that time period was billed;

2. record activities and actions taken, by whom, and progress made; and indicate how goals in the service plan are progressing;

3. document delivery of each service identified on the service plan;

4. record any changes in the consumer's medical condition, behavior or home situation which may indicate a need for a re-assessment and service plan change;

5. be legible, as well as legibly signed, including functional title, and fully dated;

6. be complete, entered in the record preferably weekly but at least monthly and signed by the primary case manager;

7. be recorded more frequently (weekly) when there is frequent activity or significant changes occur in the consumer's service needs and progress;

8. quarterly progress notes are required in addition to the minimum monthly recording;

9. a summary must also be entered in the consumer's record when a case is transferred or closed.

D. Case Record Organization. The organization of individual case management records on consumers and location of documents within the record must conform with state licensing standards and be consistent among records. All entries made by staff in consumer records must be legible, fully dated, legibly signed and include the functional title of the individual. Any error made by the staff in a consumer's record must be corrected using the legal method which is to draw a line through the erroneous information, write "error" by it and initial the correction. Correction fluid cannot be used in consumer records.

E. Availability of Case Records. Providers must make all necessary consumer records available to appropriate state and federal personnel at all reasonable times. Providers must always safeguard the confidentiality of consumer information. Under no circumstances should providers allow case management staff to take records home. The case management agency can release confidential information only under the following conditions:

1. by court order; or
2. by the consumer's written informed consent for release of the information. In cases where the consumer has been declared legally incompetent, the individual to whom the consumer's rights have devolved must provide informed written consent.

F. Storage of Case Records. Providers must provide reasonable protection of consumer records against loss, damage, destruction, and unauthorized use. Administrative, personnel and consumer records must be retained until records are audited and all audit questions are answered or three years from the date of the last payment, whichever is longer.

#### **IV. Reimbursement**

A. All reimbursement for optional targeted and waiver case management services shall be made in accordance with

all applicable federal and state regulations. Providers shall not bill for failed attempts to make contact with either consumers or collateral.

B. The reimbursement rate for optional targeted and waiver case management services is a monthly rate for the provision of mandated monthly minimum services. It is not a capitated rate. Interim billing of one hour and additional 15-minute increments is permitted up to the monthly rate. Interim billing for case management services for Elderly Waiver, MR/DD Waiver and Infants and Toddlers must meet the following criteria for billing and cannot occur prior to providing at least one 15-minute continuous face-to-face encounter in the 30-day cycle and:

1. completion of at least 60 minutes of case management services;

2. additional 15-minute periods of services provided in a 30-day cycle can be billed only after the first hour and the face-to-face encounter has been provided.

C. Hour- or 15-minute codes cannot be accumulated across 30-day cycles and must count anew for each cycle or authorized period if less.

D. Billed case management services shall be monitored through the use of provider record review, consumer survey for verification of services provision and quality of service, and verification with collateral of contacts made on behalf of the recipient. Any situation involving fraud and/or abuse in the provision of case management services will be referred to the SURS Unit for investigation. A subsequent referral will be made to the State Attorney General's Medicaid Fraud Control Unit by the SURS Unit if a criminal investigation is warranted.

E. The following Minimum Program Standards are required for the reimbursement of Case Management Services.

1. Mentally Retarded/Developmentally Disabled Individuals in the MR/DD Waiver Program.

- a. A minimum of three hours of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. The three hours must include one continuous 15-minute face-to-face contact with the recipient in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up/monitoring. Two home visits are required in a six-month period. Service provider records for MR/DD waiver participants must be monitored by the case management agency every 60 days.

- b. Services shall be authorized for a maximum three-month time period. All services must be documented on the MRCAMIS service log and be entered into MRCAMIS. Weekly submission of MRCAMIS data is required.

- c. The procedure codes applicable to case management services for the MR/DD population are Z0192 (hourly code) and Z1192 (15-minute code) for waiver participants.

2. Infants and Toddlers with Special Needs

- a. A minimum of two hours of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. The two hours must include one continuous 15-minute

face-to-face contact with the recipient in addition to case management activities such as assessment/service plan development/update, linkage to services and follow-up/monitoring. Two home visits are required in a six-month period. Service provider records for MR/DD waiver participants must be monitored by the case management agency every 60 days.

b. Services shall be authorized for a maximum three-month time period. All services must be documented on the MRCAMIS service log and be entered into MRCAMIS. Weekly submissions of MRCAMIS data are required.

c. The procedure codes applicable to case management services for the MR/DD population are Z0192 (hourly code) and Z1192 (15-minute code) for waiver participants.

### 3. Persons Infected with HIV

a. A minimum of two hours of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. The two hours must include one face-to-face contract with the recipient in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up/monitoring. A home assessment is a required component of the initial assessment for HIV case management services. A home visit must be made with the recipient on a quarterly basis.

b. The procedure code applicable to case management services for this population is Z0095.

### 4. High Risk Pregnant Women of the Metropolitan New Orleans Area

a. A minimum of one hour of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. This must include one face-to-face contact with the recipient in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up monitoring. A home assessment is a required component of the initial assessment for high risk pregnant women case management services.

b. In addition, the following contacts are required:

(1) a minimum of monthly verbal contact with the recipient's obstetrician or his staff;

(2) weekly verbal contact with the recipient beginning with her thirty-seventh week of pregnancy until the delivery;

(3) quarterly home visits with the recipient;

(4) weekly contact with other service providers and/or informal supports; and

(5) a postpartal home visit to be made within 10 to 14 calendar days after delivery focusing on postpartal concerns and infant care.

c. The procedure codes continue to be X0057 for assessment and X0058 for ongoing services.

d. Only one assessment service shall be reimbursed for each pregnancy.

### 5. Home Care for the Elderly Waiver Program Participants

a. A minimum of two-hours of documented case management services provided in each month in which

services are billed is necessary to receive the full monthly fee. The two hours must include one face-to-face contact with the consumer in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up/monitoring. A home visit must be made with the recipient on a quarterly basis.

b. Service provider records must be monitored by the case management agency every 60 days.

c. The procedure codes for this population are Z0188 (hourly code) and Z1188 (15 minute).

F. General Requirements. Payment for targeted or waiver case management services is dictated by the nature of the activity and the purpose for which the activity is performed. All case management services billed must be provided by qualified case managers and meet the definition of *Case Management*, "services provided by qualified staff to the targeted or waiver population to assist them in gaining access to the full range of needed services including medical, social, educational, and other support services." Case management does not consist of the provision of other needed services, but is to be used as a vehicle to help an eligible consumer gain access to them. If there is no interaction in person, by telephone or in correspondence on behalf of the consumer, it is most likely not a billable case management activity without sufficient justification. This definition encompasses assisting eligible consumers in gaining access to needed services including:

1. identifying services needed;

2. linking consumer with the most appropriate providers of services; and

3. monitoring to ensure needed services are received.

The above general requirements for reimbursement are applicable for all targeted and waiver groups. Additional requirements for specified targeted or waiver groups is delineated below.

### 4. Reimbursement Requirements for Infants and Toddlers with Special Needs

a. Candidates for case management services must be Medicaid eligible.

b. Medicaid eligibles must be certified as a member of the targeted populations by the Medicaid agency or its designee.

c. The case management service plan is subject to prior authorization by the Medicaid agency or its designee.

d. Providers of case management services are required to participate in provider training and technical assistance as required by the Medicaid agency or its designee.

G. Nonbillable Activities. Federal regulations require that the Medicaid program ensure that payments made to providers do not duplicate payments for the same or similar services furnished by other providers or under other authority as an administrative function or as an integral part of a covered service.

A technical amendment (Public Law 100-617) in 1988 specifies that the Medicaid program is not required to pay for case management services that are furnished to consumers without charge. This is in keeping with Medicaid's longstanding position as the payer of last resort. With the statutory exceptions of case management services included in

Individualized Education Programs (IEPs) or Individualized Family Service Plans (IFSPs) and services furnished through Title V public health agencies, payment for case management services cannot be made when another third-party payer is liable, nor may payments be made for services for which no payment liability is incurred.

Time spent in activities which are not a direct part of a contact are not Medicaid reimbursable. Activities that, while they may be necessary, do not result in a service identified in the service plan being provided to the consumer are not reimbursed. The following examples of activities are not considered targeted case management services for Medicaid purposes and are not reimbursable by the Medicaid Program as case management:

1. outreach, case finding or marketing;
  2. counseling or any form of therapeutic intervention;
  3. developing general community or placement resources or a community resource directory;
  4. legislative or general advocacy;
  5. professional evaluations;
  6. training;
  7. providing transportation;
  8. telephone calls to a busy number, leaving messages, faxing or mailing information;
  9. travel to a consumer's home for a home visit, and the consumer is not at home so that the visit cannot be held but a note is left;
  10. "housekeeping" activities in connection with record keeping (Recording a contact in the case record at the time service is provided is billable.);
  11. in-service training, supervision;
  12. discharge planning;
- Exception: 10 days (30 days for developmentally disabled waiver participant) before discharge from an inpatient facility to assist the consumer in the transition from inpatient to outpatient status, and in arranging appropriate services and 10 days after institutionalization or hospitalization to arrange for closure of community services.
13. intake screening which takes place prior to and is separate from assessment;
  14. general administrative, supervisory or clerical activities;
  15. record keeping;
  16. general interagency coordination;
  17. program planning;
  18. Medicaid billing or communications with Medicaid Program;
  19. running errands for family (shopping, picking up medication, etc.);
  20. accompanying family to appointments or recreational activities, waiting for appointments with family;
  21. lengthy interaction to "get acquainted", "provide support", or "hand holding";
  22. activities performed by agency staff other than the primary case manager;
  23. accompanying another case manager for safety reasons.

Bobby P. Jindal  
Secretary

9706#057

## RULE

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

#### Temporary Assistance for Needy Families (TANF) Work Requirements

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

#### Rule

Effective concurrently with implementation of the Personal Responsibility and Work Opportunity Act of 1996 provisions for financial assistance by Department of Social Services, eligibility for Medicaid as a TANF recipient is terminated for failure to meet work requirements as described in Section 1931(b)(3) of the Social Security Act.

Bobby P. Jindal  
Secretary

9706#055

## RULE

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

#### Voter Registration Assistance

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

#### Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing designates Medicaid Application Centers as voter assistance agencies and establishes participation in voter registration by such centers as a condition for application center certification which shall provide the following services:

- 1) distribute voter registration application form to any applicant or recipient who is qualified to register;
- 2) assist any applicant or recipient in completing voter registration application form, unless the person refuses such assistance;
- 3) accept completed voter registration application form for submission to the registrar of voters within the parish where the voter registration agency is located;
- 4) accept any change of address or name submitted by a registrant which shall serve as a notification of change of

address or name for voter registration, unless the registrant states at the time of submission that the change is not for voter registration purposes. The transmittal procedure shall be handled in the same manner as voter registration applications.

Bobby P. Jindal  
Secretary

9706#056

## RULE

### Department of Public Safety and Corrections Gaming Control Board

Riverboat Gaming: Transfers of Interest in Licensees and Permittees; Loans and Restrictions (LAC 42:XIII.Chapter 25); and Repeal of Patron Disputes (LAC 42:XIII.3501-3513)

The Gaming Control Board hereby amends LAC 42:XIII.2523 and 3501; adopts LAC 42:XIII.2524; and repeals LAC 42:XIII.3503, 3505, 3506, 3507, 3509, 3511, and 3513 pursuant to R.S. 27:1 et seq., and R.S. 49:950 et seq., the Administrative Procedure Act.

#### Title 42

#### LOUISIANA GAMING

#### Part XIII. Riverboat Gaming

#### Subpart 2. State Police Riverboat Gaming Enforcement Division

#### Chapter 25. Transfers of Interest in Licensees and Permittees; Loans and Restrictions

#### §2523. Board Actions Concerning Loans and Lines of Credit

A. Whenever any licensee or person acting on behalf of a licensee ("borrower" herein), applies for, receives, accepts, or modifies the terms of any loan, line of credit, third-party financing agreement, sale with buy-back or lease-back provisions or similar financing transaction, or makes use of any cash, property, credit, loan or line of credit, or guarantees, or grants other form of security for a loan, such borrower shall notify the board in writing no less than 60 days prior to such transaction, unless more stringent conditions are imposed by the board. Such notice shall include the following:

1. the names and addresses of all the parties to the transaction;
2. the amounts and sources of funds;
3. the property or credit received or applied;
4. the nature and the amount of security provided by or on behalf of the borrower or person required to meet the applicable qualification requirements and suitability requirements of R.S. 27:1 et seq.;
5. the specific nature and purpose of the transaction; and
6. such other information and documentation the board or division may require.

B. The report described in Subsection A of this Section shall be signed under oath by the borrower, an authorized

representative of the borrower, or person required to meet the applicable qualification requirements and suitability requirements of R.S. 27:1 et seq.

C. All transactions described in Subsection A of this Section require prior written approval by the board unless:

1. the amount of the transaction does not exceed \$2,500,000 and all of the lending institutions involved therein are federally regulated financial institutions;
2. the loan amount of the transaction does not exceed \$1,000,000 and all of the lending entities are qualified parties;
3. the transaction is exempted from the prior written approval requirement pursuant to the provisions of §2524 of this Chapter;
4. the loan amount does not exceed \$500,000 and the transaction is one other than those described in Subsection C.1, 2, or 3 of this Section;
5. the transaction modifies the terms of an existing loan or line of credit which has been previously approved pursuant to this Section, and after preliminary investigation pursuant to Subsection D of this Section, the board determines that the modification does not substantially alter such terms.

D. The board, after preliminary review, shall determine whether the transaction is exempt from the requirement of prior written approval, and shall notify the borrower of the determination.

E. In the event the transaction is not determined exempt pursuant to Subsection C, the board shall render a decision approving or disapproving the transaction.

F. If the transaction is disapproved, the decision of the board shall be in writing and shall set forth detailed reasons for such disapproval.

G. The board may require that the transaction be subject to conditions which must be accepted by all parties prior to approval. The acceptance of such conditions shall be in a manner approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), amended by the Gaming Control Board, LR 23:746 (June 1997).

#### §2524. Publicly Registered Debt and Securities

If the transaction described in §2523.A of this Chapter involves publicly registered debt and securities registered with the Securities and Exchange Commission (SEC), and sold pursuant to a firm underwriting understanding agreement, no board approval is required; however, in addition to filing the notice required in §2523.A and B, the borrower shall:

1. file with the board, within one business day after filing with the SEC, copies of all registration statements and all final prospectus with respect to such debt securities and will give notice to the division within one business day of the effectiveness of such registration statement; and
2. file a report with the board within 45 days after the completion of sales under such registration, setting forth the amount of securities sold and the identities of the purchasers thereof from the underwriters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:746 (June 1997).

### **Chapter 35. Patron Disputes**

#### **§3501. Licensee Duty to Notify Division of Patron Dispute**

Whenever a licensee refuses to pay winnings claimed by a patron and the patron and the licensee are unable to resolve the dispute, the licensee shall notify the division in writing of the dispute within seven days of the licensee being notified of the dispute. Such notice shall identify the parties involved in the dispute, and shall state all known relevant facts regarding the dispute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), amended by the Gaming Control Board, LR 23:747 (June 1997).

#### **§3503. Division Investigation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:747 (June 1997).

#### **§3505. Division's Decision**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:747 (June 1997).

#### **§3506. Hearings**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:747 (June 1997).

#### **§3507. Division's Order**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:747 (June 1997).

#### **§3509. Appeal to Commission**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:747 (June 1997).

#### **§3511. Unauthorized Claims**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:747 (June 1997).

#### **§3513. Payment of Winnings after Final Order Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:747 (June 1997).

Hillary J. Crain  
Chairman

9706#040

## **RULE**

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

#### **Support Enforcement Services—Authority and Enforcement (LAC 67:III.Chapters 23, 25, and 27)**

The Department of Social Services, Office of Family Support has amended LAC 67:III, Subpart 4, Support Enforcement Services (SES), the child support enforcement program.

Pursuant to Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, changes in the administration of SES are mandated. Most significant is the delegation of authority to state programs to take action on matters that previously required orders under/by the state judicial system. This rule effects new and revised policy in areas of authority, adjustment and enforcement of support obligations and general program administration which will further improve the purpose and scope of SES.

Previous §2543 was renumbered as §2575 in order to improve and expand codification of Subchapters L and M. Where LAC policy previously cited the SES relationship to "AFDC," the Aid to Families with Dependent Children Program, policy now cites "FITAP," the Family Independence Temporary Assistance Program, which has replaced state AFDC Program.

## **Title 67**

### **SOCIAL SERVICES**

#### **Part III. Office of Family Support**

#### **Subpart 4. Support Enforcement Services**

#### **Chapter 23. Single State Agency Organization**

#### **Subchapter A. Designation, Authority, Organization and Staffing**

#### **§2304. Expedited Administrative Process**

SES will have administrative authority to order the following activities:

1. order genetic testing;
2. subpoena financial or other information needed to establish, modify, or enforce orders, and impose penalties for failure to respond to such subpoenas;
3. direct the noncustodial parent to make his payments to the state;
4. order income withholding;
5. initiate liens;
6. seize and sell assets;
7. increase the monthly support amounts for the liquidation of arrears;
8. transfer cases between jurisdictions;
9. establish paternity;
10. establish support orders; and
11. modify support orders.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:747 (June 1997).

## **Chapter 25. Support Enforcement**

### **Subchapter B. Support Obligation**

#### **§2509. Income Assignment**

A. ...

1. Orders issued in the state before October 1, 1996, if not previously subject to income assignment, shall become subject to withholding if arrearages occur, without the need for a judicial or administrative hearing. Orders enforced by SES will be subject to withholding without advance notice to the obligor.

A.2 - B.2. ...

3. Employers shall remit any amounts withheld through income assignment within seven days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:236.3 and 45 CFR 303.100, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:1083 (November 1985), amended by the Department of Social Services, Office of Eligibility Determinations, LR 15:809 (October 1989), LR 16:33 (January 1990), amended by the Office of Family Support, LR 23:748 (June 1997).

### **Subchapter C. Formula for Support Obligation**

#### **§2512. Adjustment of Child Support Orders**

SES will review orders on FITAP cases every three years, and will make adjustments if appropriate. SES will send a notice to non-FITAP cases every three years advising both parties of the right to request a review. If either party requests a review, SES will conduct the review, and will make adjustments if appropriate.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 303.8, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 19:1178 (September 1993), amended LR 23:748 (June 1997).

### **Subchapter L. Enforcement of Support Obligations**

#### **§2540. Suspension of License(s) for Nonpayment of Child Support**

A - B. ...

C. In cases in which a noncustodial parent fails to respond to a subpoena or a warrant involving support or paternity matters SES may petition the court to suspend all licenses of the parent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:315.30 through 315.35; P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 22:118 (February 1996), amended LR 23:748 (June 1997).

#### **§2542. Voiding of Fraudulent Transfers**

In cases in which a noncustodial parent transfers income or property to avoid payment of support, SES shall seek to void such transfer.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:748 (June 1997).

### **Subchapter M. Cooperation with Other State Agencies**

#### **§2543. Department of Revenue and Taxation**

Repealed (identical text now found in §2575).

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:236.9.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 22:223 (March 1996), repealed LR 23:748 (June 1997).

#### **§2575. Department of Revenue and Taxation**

[Editor's Note: Identical text in this Section was previously promulgated in §2543.]

A. Support Enforcement Services may refer support cases to the Department of Revenue and Taxation which can use any means available under law to collect delinquent court-ordered child support payments. SES will provide to the obligor a 30-day advance notice prior to referral.

B. Criteria for referral include cases in which the obligor is not making regular child support payments at least equal to the monthly obligation; income assignment cannot be used; the obligor is delinquent \$1,000 or more; and there is an indication that the obligor may have assets which could be seized to pay the delinquency.

C. The Department of Revenue will refer information to SES when an obligor indicates that collection would result in undue hardship to the health and welfare of his family. SES will review the case and render a decision on continuance within 45 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:236.9, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:748 (June 1977).

#### **§2576. Department of Motor Vehicles and Law Enforcement Agencies**

SES may obtain information relating to motor vehicle and law enforcement files for purposes of locating a noncustodial parent and for purposes of enforcing orders.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:748 (June 1997).

### **Chapter 27. General Program Administration**

#### **Subchapter C. Establishment and Modification of Support Orders**

##### **§2754. Obtaining Consumer Reports for Purposes Related to Child Support**

SES will obtain credit reports on noncustodial parents from consumer reporting agencies to be used in determining ability to pay child support and the appropriate level of such payments. Such information will be obtained only after the

parent has been given 10-day notice, or the parent waives the 10-day notice.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:748 (June 1997).

**§2755. Cooperative Agreements with Financial Institutions**

SES will enter into cooperative agreements with financial institutions to match data in an effort to locate assets of noncustodial parents who are delinquent in payment of support, and to place liens or to encumber such assets.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:749 (June 1997).

Madlyn B. Bagneris  
Secretary

9706#060

**RULE**

**Department of Treasury  
Housing Finance Agency**

**HOME Affordable Rental  
Housing (LAC 16:II.105)**

In accordance with R.S. 49:51 et seq., the Housing Finance Agency amends the regulations governing the criteria used to award HOME Funds to Affordable Rental Housing Projects.

The purpose of the amendment is to increase the categories in which the projects may be awarded points toward selection for the award of HOME Funds.

**Title 16**

**COMMUNITY AFFAIRS**

**Part II. Housing Finance Agency**

**Chapter 1. HOME Investment Partnership Program**

**§105. Selection Criteria to Award HOME Funds for Affordable Rental Housing**

Applications for HOME Funds will be rated in accordance with the selection criteria (Appendix IX) for which the applicant must initially indicate that the project qualifies.

**APPENDIX IX**

**Selection Criteria to Award Home Funds to Affordable Rental Housing Projects**

The applicant hereby requests priority consideration based upon the Project satisfying one or more of the following conditions (minimum threshold of 115 points required):

A. <i>Ratio of Project's Intermediary Cost to Development Costs</i>	POINTS
(i) Less than or equal to 10 percent	20 _____
(ii) More than 10 percent but less than or equal to 15 percent	15 _____
(iii) More than 15 percent but less than or equal to 20 percent	10 _____
(iv) More than 20 percent	0 _____

B. <i>Thirty Percent or more of Project Units serve Households whose Incomes are the Following Percentages of Median Income</i>	
(i) 20 percent or less	25 _____
(ii) More than 20 percent but less than 30 percent	20 _____
(iii) More than 30 percent but less than 40 percent	15 _____
(iv) More than 40 percent but less than 45 percent	10 _____
C. <i>Project Involves Extended Low Income Use Years of Compliance Period</i>	
(i) 18 years to 20 years	10 _____
(ii) More than 20 years to 25 years	15 _____
(iii) More than 25 years to 30 years	20 _____
(iv) More than 30 years	25 _____
D. <i>Project Located in Qualified Census Tract/ Difficult Development Area/RD Target Area</i>	50 _____
E. <i>Project Serves Special Needs Groups [Check one or more]</i>	
(i) Elderly _____	
(ii) Homeless _____	
(iii) Handicapped _____	
(a) 100 percent of units or 50 units serve special needs group	20 _____
(b) 50 percent or 25 units serve special needs group	15 _____
(c) 25 percent or 15 units serve special needs group	10 _____
F. <i>Project contains Handicapped Equipped Units</i>	
(i) 5 percent but less than 10 percent	5 _____
(ii) 10 percent but less than 15 percent	10 _____
(iii) 15 percent or more	15 _____
G. <i>Project Serves Large Families Percentage of Units having Four or more Bedrooms</i>	
(i) 5 percent but less than 10 percent	5 _____
(ii) 10 percent but less than 15 percent	10 _____
(iii) 15 percent but less than 20 percent	15 _____
H. <i>Project to Provide Supportive Services (attach description of Supportive Services to be provided the costs thereof and the source of funding such services)</i>	50 _____
I. <i>Project is Single Room Occupancy (SRO)</i>	10 _____
J. <i>Project is Scattered Site</i>	20 _____
K. <i>Developer submitted an executed Referral Agreement with Local PHA pursuant to which Developer agrees to rent low income units to households at the top of PHA's waiting list or if Project located in area without PHA, Project has RD Commitment Letter</i>	10 _____
L. <i>Project involves New Construction in Areas with 95 percent or more residential rental occupancy</i>	10 _____
M. <i>Local Nonprofit Sponsor of Project</i>	10 _____
N. <i>Distressed Properties (written certification from HUD or RD that property is distressed must be included in application)</i>	20 _____
O. <i>Project Receives Historic Tax Credits or involves Substantial Rehabilitation (Rehabilitation Hard Costs greater than \$5,000 per unit)</i>	25 _____
P. <i>All Units in Project are Vacant or Abandoned</i>	25 _____



- Q. *Project involves Low Income Units which do not exceed:*
- (i) 60 percent of the Total Project units 10 \_\_\_\_\_
  - (ii) 50 percent of the Total Project units 15 \_\_\_\_\_
  - (iii) 40 percent of the Total Project units 20 \_\_\_\_\_

- R. *Leverage Ratio for each HOME Dollar*
- \$1 0 \_\_\_\_\_
  - \$2 5 \_\_\_\_\_
  - \$3 10 \_\_\_\_\_
  - \$4 15 \_\_\_\_\_
  - \$5 20 \_\_\_\_\_
  - \$6 25 \_\_\_\_\_
  - \$7 30 \_\_\_\_\_
  - \$8 35 \_\_\_\_\_

- S. *Project to Reconstruct or Rehabilitate Substandard Housing Units to Minimum Housing Quality Standard with Total HOME Funds per Unit not Exceeding:*
- \$ 2,500 50 \_\_\_\_\_
  - \$ 5,000 40 \_\_\_\_\_
  - \$ 7,500 30 \_\_\_\_\_
  - \$10,000 20 \_\_\_\_\_
  - \$15,000 10 \_\_\_\_\_

- T. *Project Involves Lease-to-Own of one unit buildings, including town homes* 50 \_\_\_\_\_

- U. *Economic Development Benefits. Project located in geographic area certified by Department of Economic Development to benefit from location of new facilities or expansion of existing facilities which will generate additional jobs and housing needs.* 50 \_\_\_\_\_

- V. *Developer Fees (including Builder Profit and Builder Overhead when there exists Identity of Interest between Builder and Developer) are 10 percent or less under Subsidy Layering Review Guidelines* 25 \_\_\_\_\_

W. *Matching Certification Exceeds \$50,000* 50 \_\_\_\_\_

X. *Penalty Points*  
 Net Syndication Proceeds ≤ 110 percent Developer Fee 50 \_\_\_\_\_

TOTAL:

Formula to Calculate Ration of Project's Intermediary Cost to Development Costs:

Step 1: Add following amounts from Appendix II

- Line II. B (Land Improvements) \$ \_\_\_\_\_
- Line II. C(ii)(Demolition) \$ \_\_\_\_\_
- Line II. C(ii)(Rehab or New Construction) \$ \_\_\_\_\_

TOTAL: \$ \_\_\_\_\_

Step 2: Add following amounts from Appendix II

- Line II. D (Subtotal) \$ \_\_\_\_\_
- Line II. F (Subtotal) \$ \_\_\_\_\_
- Line II. G (Subtotal) \$ \_\_\_\_\_

TOTAL: \$ \_\_\_\_\_

Step 3: Divide Total of Step 1 by Total of Step II and specify percentage: %

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Housing Finance Agency, LR 19:908 (July 1993), amended LR 21:959 (August 1996), LR 22:717 (August 1996), LR 23:749 (June 1997).

V. Jean Butler  
 President

9706#020

# Notices of Intent

## NOTICE OF INTENT

Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences  
Seed Commission

Seed Law (LAC 7:XIII.Chapter 87)

The Department of Agriculture and Forestry, Seed Commission hereby gives notice of its intent to amend its rules relative to the Louisiana Seed Law. These proposed amendments are in accordance with R.S. 49:950 et seq., the Administrative Procedure Act and R.S. 3:1433. These amendments correct technical and typographical errors and change the facility to be used for quarantine of sugar cane foundation stock.

### Title 7

### AGRICULTURE AND ANIMALS

#### Part XIII. Seeds

#### Chapter 87. Rules and Regulations Pursuant to the Louisiana Seed Law

#### Subchapter A. Rules and Regulations for the Enforcement of Louisiana Seed Law

#### §8709. List and Limitations of Noxious Weed Seed

Name	Limitations
1. Field Bindweed ( <i>Convolvulus arvensis</i> )	Prohibited
2. Hedge Bindweed ( <i>Convolvulus sepium</i> )	Prohibited
3. Nutgrass ( <i>Cyperus esculentus</i> , <i>C. rotundus</i> )	Prohibited
4. Itchgrass ( <i>Rottboellia exaltata</i> L., <i>R. cochinchinensis</i> )	Prohibited
5. Balloon Vine ( <i>Cardiospermum halicacabum</i> )	Prohibited
6. Cocklebur ( <i>Xanthium</i> spp.)	5 per lb.
7. Spearhead ( <i>Rhynchospora</i> spp.)	5 per lb.
8. Purple Moonflower ( <i>Ipomoea turbinata</i> )	9 per lb.
9. Red Rice ( <i>Oryza sativa</i> var.)	9 per lb.
10. Wild Onion and/or Wild Garlic ( <i>Allium</i> spp.)	9 per lb.
11. Canada Thistle ( <i>Cirsium arvense</i> )	100 per lb.
12. Dodder ( <i>Cuscuta</i> spp.)	100 per lb.
13. Johnsongrass ( <i>Sorghum halepense</i> )	100 per lb.
14. Quackgrass ( <i>Agropyron repens</i> )	100 per lb.
15. Russian Knapweed ( <i>Centaurea repens</i> )	100 per lb.
16. Blueweed, Texas ( <i>Helianthus ciliaris</i> )	200 per lb.
17. Bermuda Grass ( <i>Cynodon dactylon</i> )	300 per lb.
18. Bracted Plantain ( <i>Plantago aristata</i> )	300 per lb.

19. Buckhorn Plantain ( <i>Plantago lanceolata</i> )	300 per lb.
20. Cheat ( <i>Bromus secalinus</i> )	300 per lb.
21. Hairy Chess ( <i>Bromus commutatus</i> )	300 per lb.
22. Corncockle ( <i>Agrostemma githago</i> )	300 per lb.
23. Darnel ( <i>Lolium temulentum</i> )	300 per lb.
24. Dock ( <i>Rumex</i> spp.)	300 per lb.
25. Horsenettle ( <i>Solanum carolinense</i> )	300 per lb.
26. Purple Nightshade ( <i>Solanum elaeagnifolium</i> )	300 per lb.
27. Sheep Sorrel ( <i>Rumex acetosella</i> )	300 per lb.
28. Morning Glory ( <i>Ipomoea</i> spp.)	18 per lb.
29. Wild Poinsettia ( <i>Euphorbia heterophylla</i> , <i>E. Dentata</i> )	18 per lb.
30. Wild Mustard and Wild Turnips ( <i>Brassica</i> spp.)	300 per lb.
31. Hemp Sesbania, Coffeebean, Tall Indigo ( <i>Sesbania exaltata</i> )	300 per lb.
32. Curly Indigo ( <i>Aeschynomene virginica</i> )	300 per lb.
33. Mexican Weed ( <i>Caperonia castaneaefolia</i> )	300 per lb.
Sum of total noxious weed (Subject to limitations above)	500 per lb.

Limitations on noxious and prohibited weeds are listed on individual certified crop seed regulations. Noxious weed seed tolerance of one for regulatory action on certified seed being offered for sale in Louisiana for those noxious weed seed which are prohibited by the Louisiana Certified Seed Regulations for the specific seed kind in question.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:1431 and R.S. 3:1433.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended LR 5:96 (May 1979), LR 7:285 (June 1981), LR 8:563 (November 1982), LR 9:206 (April 1983), repealed and readopted LR 12:825 (December 1986), amended LR 14:605 (September 1988), LR 23:

#### Subchapter B. General Seed Certification Requirements

#### §8729. Application Deadlines

A. - K.2. ...

L. Turf and Pasture Grass

1. - 2. ...

M. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:1433.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Seed Commission, LR 8:565 (November 1982), amended LR 9:195 (April 1983), repealed and readopted by the Department of Agriculture and Forestry, Seed Commission, LR 12:825 (December 1986), amended LR 13:155 (March 1987), LR

**§8743. Noxious Weeds**

A. ...

	Limitations on weed seed in certified seed (by pounds)
1. Field Bindweed ( <i>Convolvulus arvensis</i> )	Prohibited
2. Hedge Bindweed ( <i>Convolvulus sepium</i> )	Prohibited
3. Nutgrass ( <i>Cyperus esculentus</i> , <i>C. rotundus</i> )	Prohibited
4. Itchgrass ( <i>Rottboellia exaltata</i> L., <i>R. cochinchinensis</i> )	Prohibited
5. Balloon Vine ( <i>Cardiospermum halicacabum</i> )	Prohibited
6. Cocklebur ( <i>Xanthium</i> spp.)	5 per lb.
7. Spearhead ( <i>Rhynchospora</i> spp.)	5 per lb.
8. Purple Moonflower ( <i>Ipomoea turbinata</i> )	9 per lb.
9. Red Rice ( <i>Oryza sativa</i> var.)	9 per lb.
10. Wild Onion and/or Wild Garlic ( <i>Allium</i> spp.)	9 per lb.
11. Canada Thistle ( <i>Cirsium arvense</i> )	100 per lb.
12. Dodder ( <i>Cuscuta</i> spp.)	100 per lb.
13. Johnsongrass ( <i>Sorghum halepense</i> )	100 per lb.
14. Quackgrass ( <i>Agropyron repens</i> )	100 per lb.
15. Russian Knapweed ( <i>Centaurea repens</i> )	100 per lb.
16. Blueweed, Texas ( <i>Helianthus ciliaris</i> )	200 per lb.
17. Bermuda Grass ( <i>Cynodon dactylon</i> )	300 per lb.
18. Bracted Plantain ( <i>Plantago aristata</i> )	300 per lb.
19. Buckhorn Plantain ( <i>Plantago lanceolata</i> )	300 per lb.
20. Cheat ( <i>Bromus secalinus</i> )	300 per lb.
21. Hairy Chess ( <i>Bromus commutatus</i> )	300 per lb.
22. Corncockle ( <i>Agrostemma githago</i> )	300 per lb.
23. Darnel ( <i>Lolium temulentum</i> )	300 per lb.
24. Dock ( <i>Rumex</i> spp.)	300 per lb.
25. Horsenettle ( <i>Solanum carolinense</i> )	300 per lb.
26. Purple Nightshade ( <i>Solanum elaeagnifolium</i> )	300 per lb.
27. Sheep Sorrel ( <i>Rumex acetosella</i> )	300 per lb.
28. Morning Glory ( <i>Ipomoea</i> spp.)	18 per lb.
29. Wild Poinsettia ( <i>Euphorbia heterophylla</i> , <i>E. Dentata</i> )	18 per lb.
30. Wild Mustard and Wild Turnips ( <i>Brassica</i> spp.)	300 per lb.

31. Hemp Sesbania, Coffeebean, Tall Indigo ( <i>Sesbania exaltata</i> )	300 per lb.
32. Curly Indigo ( <i>Aeschynomene virginica</i> )	300 per lb.
33. Mexican Weed ( <i>Caperonia castaneaefolia</i> )	300 per lb.
Sum of total noxious weed (Subject to limitations above)	500 per lb.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1431 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:566 (November 1982), amended LR 9:197 (April 1983), repealed and readopted LR 12:825 (December 1986), amended LR 14:605 (September 1988), LR 23:

**§8745. Bulk Certification Requirements**

A. - C.3. ...

D. Sampling of Seed to be Certified in Bulk. Seed sampling shall be conducted as provided in LAC 7:XIII.8735.D, except that, at the option of the applicant, the sample to determine moisture content and germination is drawn.

E. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433 and R.S. 3:1434.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:566 (November 1982), repealed and readopted LR 12:825 (December 1986), amended LR 23:

**§8747. Interagency Certification (Out-of-State Seed)**

A. - C.4. ...

D. Seed to be certified by interagency action must be sequentially numbered.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:566 (November 1982), amended LR 9:196 (April 1983), repealed and readopted LR 12:825 (December 1986), amended LR 23:

**Subchapter C. Requirements for Certification of Specific Crops/Varieties**

**§8773. Seed Corn (Open-Pollinated) Seed Certification Standards**

A. ...

B. Seed Standards

Factor	Foundation	Registered	Certified
Pure Seed	98.00%	98.00%	98.00%
Inert Matter	2.00%	2.00%	2.00%
Other Crops	None	None	5 seed/lb.
Other Varieties	None	None	3 seed/lb.
Noxious and Other Weeds	None	None	None
Germination	80.00%	80.00%	80.00%

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:572 (November 1982), amended LR 9:197 (April 1983), repealed and repromulgated LR 12:825 (December 1986), amended LR 23:

**§8775. Millet Seed Certification Standards**

**A. Field Standards**

Factor	Foundation	Registered	Certified
Land Requirement	1 yr.	1 yr.	1 yr.
Isolation	1,320 ft.	1,320 ft.	825 ft.
Other Varieties	None	1 plant per acre	10 plants per acre

**B. Seed Standards**

Factor	Foundation	Registered	Certified
Pure Seed	98.00%	98.00%	98.00%
Inert Matter	2.00%	2.00%	2.00%
Other Crops	None	None	None
Other Varieties	None	5 seed/lb.	10 seed/lb.
Noxious Weeds	None	None	None
Other Weeds	5 seed/lb.	5 seed/lb.	5 seed/lb.
Germination	75.00%	75.00%	75.00%

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:572 (November 1982), amended LR 9:197 (April 1983), repealed and repromulgated LR 12:825 (December 1986), amended LR 23:

**§8779. Onion Bulb Seed Certification Standards**

**A. - C.2. ...**

**D. Seed Standards**

Factor	Foundation	Registered	Certified
Pure Seed	99.50%	99.50%	98.00%
Inert Matter	0.50%	0.50%	2.00%
Other Varieties	None	None	None
Other Crops	0.20%	0.20%	0.20%
Noxious Weeds	None	None	None
Germination	80.00%	80.00%	80.00%

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:572 (November 1982),

amended LR 9:197 (April 1983), repealed and repromulgated LR 12:825 (December 1986), amended LR 15:613 (August 1989), LR 23:

**§8803. Southern Field Pea (Cowpea) Seed Certification Standards**

**A. ...**

**B. Seed Standards**

Factor	Breeder	Foundation	Registered	Certified
Pure Seed	99.00%	98.00%	98.00%	98.00%
Inert Matter	1.00%	2.00%	2.00%	2.00%
Other Crops	None	None	None	1 seed/lb.
Other Varieties	None	None	None	1 seed/lb.
Noxious Weeds	None	None	None	None
Other Weeds	None	None	None	1 seed/lb.
Germination	80.00%	80.00%	80.00%	80.00%

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:583 (November 1982), amended LR 9:197 (April 1983), repealed and readopted LR 12:825 (December 1986), amended LR 23:

**§8805. Sugarcane (Tissue Culture) Certification Standards**

**A. Limitation of Stand Eligibility**

1. Source of foundation stock is limited only to material obtained from the Louisiana State University Agricultural Center or USDA-ARS Sugarcane Research Unit sugarcane variety selection programs that has been processed through the LSUAC sugarcane quarantine program.

2. Additional propagation of original foundation stock shall be according to procedures determined by the American Sugar Cane League, the Louisiana Department of Agriculture and Forestry, the LSUAC, and the USDA-ARS Sugarcane Research Unit.

3. Source of registered stock is limited to plantlets produced through tissue culture of foundation material or the first ratoon thereof.

a. Stock that meets all standards except insect and/or weeds standards be maintained in the program as seed increase fields only, but may not be marketed to producers. Such stocks are eligible for recertification once they come in compliance with applicable regulations.

4. Source of certified stock is limited to:

a. three consecutive years from planting of registered stock; and

b. two consecutive harvests of certified stock.

**B. - F.2.c. ...**

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:1433.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Seed Commission, LR 12:825 (December 1986), amended LR 23:

Interested persons may submit comments on the proposed rules to Eric Gates through the close of business at 4:30 p.m. on July 18, 1997, at 5835 Florida Boulevard, Baton Rouge, LA 70806.

Bob Odom  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Seed Law**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No costs or savings are anticipated for any state or local governmental unit.  
The proposed amendments to these regulations correct typographical errors and make other housekeeping changes. They also change the requirement for quarantine of sugar cane foundation stock from quarantine at a United States Department of Agriculture facility to quarantine at a Louisiana State University quarantine facility.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No effect on revenue collections is anticipated for any governmental unit.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
No costs are anticipated for any person or nongovernmental group. Sugarcane seed producers any benefit economically due to the proximity of the new facility.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No effects on competition or employment are anticipated from these regulations.

Richard Allen  
Assistant Commissioner  
9706#071

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

**Termite Control (LAC 7:XXV.14135)**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry and the Structural Pest Control Commission propose to amend LAC 7:XXV.14135 to add Subsection J regarding the minimum specifications for termite control work and the requirements for baits and baiting systems and to put in place a pilot project for new bait and

baiting products. These rules comply with and are enabled by R.S. 3:3203, R.S. 3:3256, R.S. 3:3363, R.S. 3:3366 and R.S. 3:3370.

No preamble regarding these rules is available.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXV. Structural Pest Control**

**Chapter 141. Structural Pest Control Commission**

**§14135. Minimum Specifications for Termite Control Work**

A. - I. ...

**J. Requirements for Baits and Baiting Systems**

1. Any licensee or any person working under the supervision of a licensee, who applies baits and/or baiting systems, shall be certified in the use of the baits and baiting systems, by the manufacturer of the product, prior to any application of the bait or baiting system. Manufacturer certification and training programs shall have approval of the agenda prior to the program by the Louisiana Department of Agriculture and Forestry. Manufacturer shall notify LDAF in writing of the licensees and technicians certified.

2. Bait and baiting systems shall be used according to label and labeling.

3. All baits and baiting systems applications shall be contracted and reported according to R.S. 3:3370 and LAC 7:XXV.14115 and pay the fee as described in LAC 7:XXV.14115.E.

4. Records of contracts, graphs, monitoring (if required), and bait applications shall be kept according to LAC 7:XXV.14113.

5. All structures that cannot be treated according to the bait and baiting minimum specifications must have a waiver of the listed item or items signed by the owner prior to the baiting treatment. A copy of signed waiver must be filed with the Louisiana Department of Agriculture and Forestry with the monthly termite eradication reports.

6. A consumer information sheet, supplied by the manufacturer and approved by the commission, shall be supplied to the registered pest control operator. The pest control operator shall, in turn, supply a copy of the consumer information sheet to all persons contracted.

7. At termination of the bait contract, the pest control operator shall remove all components of bait and baiting systems.

8. The commission hereby establishes a pilot program for the use of bait and baiting systems and shall include but not be limited to the following:

a. all baits and baiting systems products shall be subject to the pilot project for a period of a minimum of one year. The Structural Pest Control Commission shall reevaluate the products in the pilot program prior to the end of the first quarter of every calendar year;

b. pilot project bait and baiting system products shall, upon approval of the commission, be listed in the *Louisiana Register*;

c. pilot project bait and baiting system products are subject to all regulations in LAC 7:XXV.14135.J;

d. monitoring may be used to detect the presence of subterranean termites. Monitoring may include the use of

toxicant delivery systems. All delivery systems shall be inspected at regular intervals, not less than once monthly and data shall be recorded;

e. baits and baiting systems may be used as a stand-alone termite treatment only with written approval by LDAF;

f. baits and baiting systems may be used as a supplement to traditional ground termiticide treatments.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:3302 and R.S. 3:3306.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:958 (November 1989), LR 20:644 (June 1994), LR 21:931 (September 1995), LR 23:

Interested persons should submit written comments on the proposed rules to Bobby Simoneaux through the close of business on July 25, 1997 at 5835 Florida Boulevard, Baton Rouge, LA 70806.

A public hearing will be held on July 25, 1997 at 9:30 a.m. at the address listed above. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at the hearing.

Bob Odom  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bait and Bait Systems**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No costs or savings are anticipated for any state or local governmental unit.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No effect on revenue collections is anticipated for any state or local governmental unit.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The rules set the minimum specifications for termite control work and the requirements for baits and baiting systems and put in place a pilot new bait and baiting products.  
No costs are anticipated for any person or nongovernmental group. Consumers and pest control operators will receive an economic benefit from the ability to use new technology to obtain better control of termites, thereby reducing the damage done by termites.  
An estimate of receipts, income and specific economic benefits cannot be determined at this time.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No effects on competition or employment are anticipated from these regulations.

Richard Allen  
Assistant Commissioner  
9706#094

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Agriculture and Forestry  
Office of Animal Health Services  
Livestock Sanitary Board**

**Brucellosis and Pseudorabies Quarantining, Vaccinating and Testing of Swine (LAC 7:XXI.11776 and 11777)**

In accordance with provisions of the Administrative Procedure Act, the Department of Agriculture and Forestry, Livestock Sanitary Board proposes to amend rules and regulations governing the requirements for quarantining, vaccinating and testing of swine for brucellosis and pseudorabies in Louisiana.

These rules comply with and are enabled by R.S. 3:2093 et seq.

No preamble concerning the proposed rules is available.

**Title 7  
AGRICULTURE AND ANIMALS  
Part XXI. Diseases of Animals**

**Chapter 117. Livestock Sanitary Board  
Subchapter E. Swine**

**§11776. Quarantining, Vaccinating and Testing Swine for Brucellosis and Pseudorabies**

A. The state veterinarian or his representative shall have the authority to conduct epidemiologic investigations and quarantine of:

1. swine herds in which one or more of the animals are found to be positive to pseudorabies, as determined by the epidemiologist, based on the interpretation of official tests;
2. the herd of origin of swine that have been added to a herd that becomes quarantined because of pseudorabies, if swine have been acquired from said herd of origin within the last 12 months;
3. herds which have received swine from herds found to have pseudorabies;

B.. Herds of swine including feedlots, within a 1.5-mile radius of the quarantined herd, will be monitored in accordance with the recommendation of the state veterinarian and/or epidemiologist by either a test of all breeding swine or by an official random sample test;

C. A herd plan and epidemiology report must be completed within 30 days from the date an animal that originated from the herd was found to be a reactor at slaughter. A herd test must be completed within 45 days from the date an animal that originated from the herd was found to be a reactor at slaughter.

D. To be eligible for release from quarantine, a swine herd must meet the following requirements:

1. All swine positive to an official pseudorabies test must be tagged with an official reactor tag in the left ear and permitted on Form VS 1-27 to recognized slaughter establishment, rendering plant, or disposed of on the herd premises or other "approved" location by disposal means authorized by applicable state laws within 15 days. All swine, over 6 months of age and a random sampling of any

growing/finishing swine which remain in the herd, must be tested negative 30 days or more after removal of reactors. No livestock on the premises shall have shown signs of pseudorabies after removal of reactors.

2. Whole Herd Depopulation. All swine on the premises must be tagged with an official reactor tag in the left ear and permitted on a Form VS 1-27 to a recognized slaughter establishment, rendering plant, or disposed of on the herd premises or other "approved" location by disposal means authorized by applicable state laws. The premises must remain depopulated for 30 days and the herd premises must be cleaned and disinfected with an approved disinfectant prior to putting swine back on the premises.

E. A herd of swine quarantined because of brucellosis must meet one of the following requirements:

1. All swine positive to an official brucellosis test must be tagged with an official reactor tag in the left ear and permitted on Form VS 1-27 to a recognized slaughter establishment, rendering plant, or disposed of on the herd premises by disposal means authorized by applicable state laws within 15 days.

a. All swine over 6 months of age which remain in the herd, must be tested according to an approved herd plan.

b. A herd may be released from quarantine upon completion of three negative Complete Herd Tests (CHT):

i. the first test must be completed at least 30 days after removal of the last reactor;

ii. a second CHT must be conducted 60-90 days following the first CHT;

iii. a third CHT is required 60-90 days following the second CHT.

iv. a fourth CHT is required six months after the third CHT.

2. Whole Herd Depopulation

a. All swine on the premises must be tagged with an official reactor tag in the left ear and permitted on a Form VS 1-27 to a recognized slaughter establishment, rendering plant, or disposed of on the herd premises or other "approved" location by disposal means authorized by applicable state laws.

b. The premises must remain depopulated for 30 days and the herd premises must be cleaned and disinfected with an approved disinfectant prior to putting swine back on the premises.

F. All movement from pseudorabies/brucellosis quarantined herds, must be accompanied by a VS Form 1-27, Permit for Movement of Restricted Animals, listing the official, individual identification of each animal to be removed.

1. This form must be delivered to an authorized representative at destination.

2. These permits will be issued by a representative of the Louisiana Livestock Sanitary Board.

G. All exposed swine moving from quarantined premises in interstate or intrastate commerce, must move directly to a recognized slaughter establishment or to an approved swine quarantined feedlot or rendering plant.

H. The use of pseudorabies vaccine is prohibited, except by permission of the state veterinarian.

I. All swine, 6 months of age or older, must be tested negative for pseudorabies and brucellosis by an official test within 30 days prior to sale. Swine originating from a brucellosis validated - pseudorabies qualified free herd or from a monitored feeder pig herd are exempt from this testing requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 16:392 (May 1990), amended LR 18:839 (August 1992), LR 20:1258 (November 1994), LR 23:

#### **§11777. Operation of Livestock Auction Markets**

All swine which are sold or offered for sale in livestock auction markets must meet the general requirements of §11709 and the following specific Pseudorabies/Brucellosis requirements:

1. All breeder and feeder swine moving to Louisiana auction markets from farms outside Louisiana must meet the requirements of §11709.

2. All swine over 6 months of age, being sold at Louisiana livestock auction markets must be identified by an official swine back tag, placed on the animals' forehead and an official metal ear tag.

3. The market shall furnish the Livestock Sanitary Board's official representative a copy of each check-in slip, showing the name of the auction market, the date, the name and complete address of each consignor, and the official back tag numbers applied to the consignor's livestock. It shall be a violation of this regulation for anyone to consign livestock to a Louisiana livestock auction market and give a name and address that is not the name and address of the owner consigning the livestock to the auction market.

4. All swine 6 months of age or older arriving at a livestock auction market without an official negative test will have a blood sample drawn for testing. Swine originating from a brucellosis validated - pseudorabies qualified free herd or from a monitored feeder pig herd are exempt from this testing requirement. Testing for pseudorabies and brucellosis at livestock auction markets may be suspended by the state veterinarian due to climatic conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Livestock Sanitary Board, LR 11:245 (March 1985), amended LR 11:615 (June 1985), amended by the Department of Agriculture and Forestry, LR 16:392 (May 1990), LR 18:839 (August 1992), LR 23:

All interested persons may submit written comments on the proposed rule through July 18, 1997 to Dr. Maxwell Lea, Jr., Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806. All interested persons will be afforded an opportunity to submit data, views or arguments in writing at the address above.

Bob Odom  
Commissioner



FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

RULE TITLE: Brucellosis and Pseudorabies  
Quarantining, Vaccinating and Testing of Swine

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

There would be no costs to state or local governmental units to implement the proposed amendment. The \$26,500 that it will cost to conduct this program will be derived from the federal government.

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

There would be no effect on revenue collections of state or local government units by this proposed action.

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

Louisiana's \$13 million pork industry would be economically benefited in the future by being able to move their swine interstate with less restrictions. Some markets that are currently not open to Louisiana swine under federal requirements would be opened as the state moves forward in disease programs.

Some swine producers would see a decrease in income initially if their herds were found to be infected with pseudorabies because they would have to send any diseased swine to slaughter. These people would benefit economically as this disease was eradicated from their herd. Louisiana accredited veterinarians would benefit economically by receiving \$3 per head to test the swine at livestock auction markets. It is estimated that these 17 veterinarians would test a total of 5,000 hogs for an increase in revenue of \$15,000.

IV. ESTIMATED EFFECT ON COMPETITION AND  
EMPLOYMENT (Summary)

It is estimated that there would not be any impact of the proposed action on competition and employment in the public and private sectors.

Richard Allen  
Assistant Commissioner  
9706#088

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Agriculture and Forestry  
Office of Marketing  
Market Commission

Vegetables and Citrus Fruits  
(LAC 7:V.1715 and 1727)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Market Commission proposes to amend LAC 7:V.1715 and 1727 to provide for standardized grade, maturity and labeling and other matters governing the marketing or sale of citrus in Louisiana. These rules comply with and are enabled by R.S. 3:405.

No preamble regarding these rules is available.

Title 7

AGRICULTURE AND ANIMALS

Part V. Advertising, Marketing, and Processing

Chapter 17. Market Commission—Fruits and  
Vegetables

Subchapter A. Fruits and Vegetables

§1715. Citrus

In addition to regulations stipulated in LAC 7:1703, the following regulations and definitions are prescribed governing the marketing and/or sale of citrus in Louisiana.

A. Definitions

*Broker*—a person who assumes neither ownership nor possession of citrus, nor washes, packs, sizes, or grades citrus, but is engaged in the business of acting as an agent, for a fee or commission, in the sale or transfer of citrus between producers or packers as sellers and other packers, wholesalers, or retailers as buyers.

*Citrus*—shall include the following: lemons, satsumas, mandarins, navels, grapefruit, tangerines, and all Valencia varieties of citrus.

*Citrus Container*—any container used to sell field-run citrus. Boxes shall have volume or weight labeled on the side and the name and address of the producer/packer.

*Commission*—the Louisiana Department of Agriculture and Forestry, Market Commission.

*Department*—the Louisiana Department of Agriculture and Forestry.

*Field-run Citrus*—unwashed and unsized citrus sold by the producer to a packer for further processing.

*Louisiana Citrus Producer*—any person engaged in growing citrus in Louisiana for wholesale or retail sale.

*Packer*—any person who washes, sizes, and packs citrus for wholesale/retail sales.

*Producer*—any person engaged in growing citrus for the purpose of wholesale or retail sale.

*Retailer*—any person who sells citrus to a consumer.

*Small Louisiana Citrus Producer*—any person who grows and markets his own citrus, for retail sales only, either at his fruit stand, store, or farm.

*Standard Citrus Receptacle or Flexible Covering or Binding*—any container used for the purpose of packing fruit for wholesale or retail trade.

*Washed Citrus*—citrus that is free from dirt, adhering foreign material, or residue that materially detracts from the appearance, the edible or the marketing quality of the fruit.

*Wholesaler*—any person engaged in the business of buying citrus from producers, packers, brokers, wholesalers, or other persons on his own account, and selling or transferring citrus to other wholesalers, packers, retailers, or other persons and consumers. A wholesaler includes a person engaged in producing citrus from his own farm and disposing of any portion of his production in any manner other than retail sales at his fruit stand, store or on his farm.

B. Citrus sold in Louisiana shall be required to meet the minimum maturity test of soluble solids in relation to percentage of anhydrous citric acid. Citrus fruit shall include the following: lemons, satsumas, mandarins, navels, grapefruit, tangerines, and all Valencia varieties of citrus.

1. Satsumas, mandarins, navels, tangerines, tangelos,

Valencia and other round oranges must meet a maturity test of 10 percent soluble solids to 1 percent anhydrous citric acid.

2. Grapefruit must meet a maturity test of 6 percent soluble solids to 1 percent anhydrous citric acid.

3. Citrus fruit not meeting maturity tests standards will be put off sale, and the product will be seized by the Louisiana Department of Agriculture and Forestry in accordance with provisions in §1715.J to prevent the citrus from again entering the wholesale or retail markets. The packer, or the producer or the wholesaler, or any combination of the three may be charged the costs that are involved in seizing and destroying the product.

C. Citrus for wholesale will be marketed only in new standard citrus containers which are sound, clean, and free of weather stains and discolorations. All containers must have the following on the outside of the container:

1. name of fruit, unless the fruit is in a see-through sack or a container that is not covered, such as a ½ bushel basket;
2. volume, net weight or count;
3. name of producer and/or packer;
4. if the fruit is being packed for someone other than the packer, then the label can read "Packed For:" and give the person's name and address.

D. All citrus sold in Louisiana shall be washed and sold by weight, volume, or count for wholesale marketing purposes with the following exceptions:

1. if fruit offered for wholesale is not sized, all fruit within a container shall be of uniform size;
2. producers who sell only their own citrus retail are exempt from washing and sizing fruit; however, the citrus must be clean and sold either by weight, volume, or count;
3. producers who sell their citrus to a packer for processing and packing. Producers must invoice all such sales as field-run citrus. The packer buying field-run citrus is responsible for washing, sizing, and labeling of the citrus.

E. Products labeled as Louisiana citrus (Louisiana oranges, tangerines, etc.) shall have proof of origin. If the origin of the product cannot be proven, then all signs referring to the product as Louisiana citrus must be removed.

F. All producers, producer-packers, packers, and wholesalers shall furnish an invoice stating the type of citrus, volume or weight sold, and origin. All retail outlets must have a copy of the invoice showing the origin of the citrus before the citrus can be advertised or sold as "LOUISIANA CITRUS." If the seller cannot prove the citrus was grown in Louisiana, then all advertising stating such must be removed.

G. All citrus leaving the state must comply with all of the above regulations. No citrus shall be allowed to leave the state that has not been cleaned, properly labeled and packed in standard citrus containers.

H. Employees or agents of the Louisiana Department of Agriculture and Forestry are authorized to enter any store, vehicle, roadside stand, market, or any other business or place where citrus is packed, processed or sold to determine if the citrus is in compliance with these rules and regulations. In addition, any agent or employee of the Louisiana Department of Agriculture and Forestry may take necessary quantities of citrus fruits to conduct maturity tests. A receipt for such fruit will be issued upon request.

I. Penalties. Any person, corporation or other organization violating the provisions of this Chapter may be levied of civil penalty of not less than \$25 or more than \$500. In addition, any person, corporation or other organization violating the provisions of this Chapter or part of Chapter 5 of R.S. 3:401 - 414 shall be fined not less than \$25 nor more than \$500 or imprisoned for not less than 10 days nor more than six months, or both.

J. If any authorized inspector, in the discharge of his duties, has reason to believe that any lot of citrus being sold is not in compliance with these rules and regulations, he shall issue a stop sale for such lot. If there is a question as to whether or not the lot meets maturity requirements, then the inspector will take a sample of the fruit to run a maturity test. A stop-sale may be issued for up to 24 hours while the maturity tests are being performed. If the citrus does not meet minimum maturity requirements, the lot will have a permanent stop sale issued and may be removed by the department to a proper cold storage until such time as the wholesaler or the packer can be contacted and inform the department of how he will dispose of the citrus.

1. Citrus that has a stop sale issued for reasons other than failing to meet maturity requirements may be reworked and offered for reinspection. The inspector who issued the stop sale shall serve the person in possession of the lot with notice of noncompliance. Such notice shall be served in person before the inspector leaves the premises. The person in possession shall notify the owner of the lot, or every other person that has an interest in it of the serving of such notice of noncompliance. The notice of noncompliance shall include all of the following:

- a. description of the lot;
- b. location of the lot;
- c. reasons for which the lot is held.

2. The owner of the lot shall have 48 hours from the time of serving of such notice of noncompliance for reconditioning or for the correction of the deficiencies which are noted in the notice of noncompliance. If such lot is reconditioned or the deficiencies are corrected, the inspector shall remove the stop sale tags and release the lot for marketing or may, with the consent of the owner of such, divert the lot to other lawful uses or destroy it.

3. If the owner of the lot fails or refuses to give such consent, or if the lot has been reconditioned or the deficiencies otherwise corrected so as to bring it into compliance within 48 hours, the inspector shall proceed as provided in Chapter 5 of R.S. 3:3552.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Market Commission, LR 11:248 (March 1985), amended by the Department of Agriculture and Forestry, Office of Marketing, Market Commission, LR 23:

#### **§1727. Mislabeling of Fresh Fruits and Vegetables Prohibited**

A. No person or firm shall mislabel any fresh fruit or vegetable, or place or have any false or misleading statement or designation of quality, grade, trademarks, trade name, area of production or place of origin on any fruit or vegetable, or on any placard used in connection with or having reference to

any fresh fruit or vegetable or container, bulk lot, bulk load, load, arrangement, or display of fresh fruits or vegetables. Any fruits and/or vegetables found mislabeled shall have a stop sale placed on the product and may be seized by the department.

B. Fruits or vegetables labeled as a Louisiana-grown or produced product must have proof of origin of that product, such as sale invoices that give the producers or producer-packer's name and address. Any product labeled, "Louisiana Fruit," "Louisiana Vegetables," or has the name of a town (such as "Ruston Peaches," "Hammond Strawberries," etc.) attached to said product, that implies it was produced in that region, must have proof that the product is a Louisiana product and was produced in that region.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Market Commission, LR 11:249 (March 1985), amended by the Department of Agriculture and Forestry, Office of Marketing, Market Commission, LR 23:

Interested persons should submit written comments on the proposed rules to James Pruitt through the close of business on July 18, 1997 at 5835 Florida Boulevard, Baton Rouge, LA 70806.

Bob Odom  
Commissioner

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

##### RULE TITLE: Vegetables and Citrus Fruits

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No costs or savings are anticipated for any state or local governmental unit.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No effect on revenue collections is anticipated for any governmental unit.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The rules provide for standardization of grade, maturity, labeling, marketing and sale of citrus in Louisiana.  
No costs are anticipated for any person or nongovernmental group. Consumers will receive the benefit of having a standardized grade, maturity, and labeling requirement for citrus fruit. Citrus producers, packers and retailers will know the standards they and their competitors must adhere to, thereby making marketing of citrus fruit easier and more economical.  
An estimate of receipts, income and specific economic benefits cannot be determined at this time.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No effects on competition or employment are anticipated from these regulations.

Richard Allen  
Assistant Commissioner  
9706#095

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

## NOTICE OF INTENT

### Department of Economic Development Board of Certified Public Accountants

Comprehensive Rule Revisions  
(LAC 46:XIX.Chapters 1-31)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and of R.S. 37:75, the Board of Certified Public Accountants gives notice of its intent to amend LAC 46:XIX. The amendments are the result of a year of review and study by the board's rules committee. The objectives are to update the rules in response to changes in the profession of public accounting and the related standards of practice, to clarify or improve the grammar of the text, and to promulgate as rules certain policies and procedures that have evolved over the years following the last rule revisions which were promulgated in 1991.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XIX. Certified Public Accountants

#### Chapter 1. General Provisions

#### §101. Definitions

A. The definitions included in the Act are used herein with the following additions which apply to LAC 46:XIX, unless otherwise indicated in following Chapters:

*Accountants' Report*—a report:

a. rendering any opinion or statement, or denying an opinion, that financial statements or elements thereof are presented, prepared or compiled in accordance with generally accepted accounting principles or any other comprehensive basis of accounting; and/or

b. referring to an audit, examination, review or lack thereof.

*The Act*—Act 510 of the 1979 Regular Session of the Louisiana Legislature or as it may hereafter be amended.

*Board*—the State Board of Certified Public Accountants of Louisiana.

*Client or Enterprise*—any person or entity, whether organized for profit or not, for which a licensee performs professional services.

*CPA Examination*—the examination required for a certificate as a Certified Public Accountant (CPA).

*Firm*—a proprietorship, partnership, professional corporation, limited liability company, limited liability partnership, or any other organization or entity which may be authorized by law to engage in the practice of public accountancy.

*Generally Accepted Accounting Principles (GAAP)*—those standards promulgated by the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB) and their predecessor or successor entities and similar pronouncements issued by other entities having similar generally recognized authority.

*Licensee*—a person licensed to practice public accounting by the board.

*Member*—a member of a limited liability company.

*Peer Review or Quality Review*—a study, appraisal, or review of one or more aspects of the professional work of a CPA or firm of CPAs in the practice of public accountancy by a licensed CPA or firm of licensed CPAs, who are not affiliated with the CPA or CPA firm being reviewed.

*Rule*—each board statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the board and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the board, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the board. The term includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by the board. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

B. Masculine terms shall include the feminine and, when the context requires, shall include firms.

C. Where the context requires, singular shall include the plural or plural shall include the singular.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, amended LR 6:1 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### §103. Special Definitions; Public Accountancy; Exceptions

A. - B.2. ...

a. The accompanying balance sheet of XYZ Company as of December 31, 19XX and the related statements of income, retained earnings, and cash flows for the year then ended have been compiled by me (us).

b. - c. ...

i. Management has elected to omit substantially all of the disclosures (and the statement of cash flows) required by generally accepted accounting principles. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the company's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

3. - 4. ...

C. Practice in Louisiana

*Practice in Louisiana*—performing or offering to perform those services set forth in R.S. 37:72(A) in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:72.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants January 1974, amended LR 6:1 (January 1980), LR 10:76 (February 1984), LR 11:757 (August 1985), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### §105. Domicile

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:73.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated

LR 6:1 (January 1980), amended LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

## Chapter 3. Operating Procedures

### §301. Officers

The officers shall be chairman, secretary, and treasurer. The duties of the respective officers shall be the usual duties assigned to the respective office. The newly elected officers shall assume the duties of their respective offices on the first day of the month following the election of the officers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 4:358 (October 1978), amended LR 6:2 (January 1980), LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### §303. Fiscal Year

The fiscal year of the board shall end on June 30 of each year. The annual meeting shall be held as soon as practical after the close of the fiscal year, at which meeting the board shall elect its officers who shall serve until the next annual meeting or until their successors assume their duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 4:358 (October 1978), amended LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### §305. Meetings

A. Any meeting may be called by the chairman or by joint call of at least two of its members, to be held at the principal office of the board, or at such other place as may be fixed by the board. Regularly scheduled board meetings are usually held on the last working days of January, April, July and October.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 4:358 (October 1978), amended LR 6:2 (January 1980), LR 9:207 (April 1983), LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1067 (November 1991), LR 23:

### §307. Duties of the Secretary

A. The duties of the secretary include, but are not limited to the following.

1. It shall be the duty of the secretary to determine when the prerequisites and procedures required by the Act and by the board for taking the CPA examination have been satisfactorily completed by an applicant.

2. The secretary shall determine when, in his opinion, the prerequisites and procedures required by the Act and by the board shall have been satisfactorily completed in respect to issuance of certificates and/or licenses and he shall submit at each meeting of the board, for its approval or disapproval, current tabulations thereof, listing the names of the persons concerned.

3. The secretary shall list in the minutes of the board all persons approved for the issuance of certificates and/or

licenses and all persons whose certificates and/or licenses are revoked, suspended, or reinstated.

4. It shall be the responsibility of the secretary to see that an official register of all certified public accountants who have received certificates from the board is maintained.

5. It shall be the responsibility of the secretary that an annual listing of all certified public accountants licensed to practice is maintained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 4:358 (October 1978), amended LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### §309. Duties of the Treasurer

A. The duties of the treasurer include, but are not limited to the following:

1. The treasurer shall be responsible for the maintenance of the accounts of the board and the preparation of a financial report once a year, as of June 30, and shall submit an annual budget to the board for its approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 4:358 (October 1978), amended LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

## Chapter 5. Rules of Professional Conduct

### §500. General

#### A. Preamble

1. The services usually and customarily performed by those in the public practice of accountancy involve a high degree of skill, education, trust, and experience which are professional in scope and nature. The use of professional designations carries an implication of possession of the competence associated with a profession. The public, in general, and the business community, in particular, rely on this professional competence by placing confidence in reports and other services of accountants. The public's reliance, in turn, imposes obligations on persons utilizing professional designation, both to their clients and to the public in general. These obligations include maintaining independence of thought and action; continuously improving professional skills; observing, where applicable, generally accepted accounting principles and generally accepted auditing standards; promoting sound and informative financial reporting; holding the affairs of clients in confidence; upholding the standards of the public accountancy profession; and maintaining high standards of personal and professional conduct in all matters affecting fitness to practice public accountancy.

2. The board has an underlying duty to the public to insure that these obligations are met in order to achieve and maintain a vigorous profession capable of attracting the bright, young minds essential for adequately serving the public interest.

3. These Rules of Professional Conduct are intended to have application to all kinds of professional services performed for the public in the practice of public accountancy,

including but not limited to services relating to auditing; accounting; review and compilation services; tax services; management advisory and consulting services; and financial planning, and intended to apply as well to all certificate or license holders, whether or not engaged in the practice of public accounting, except where the wording of one of these Rules of Professional Conduct clearly indicates that the applicability is more limited.

4. In the interpretation and enforcement of these rules, the board may consider relevant interpretations, rulings, and opinions issued by the boards of other jurisdictions and appropriate committees of professional organizations, but will not be bound thereby.

B. Definitions. The following terms have meanings which are specific to §501.A.

*Audit-Sensitive Activities*—those activities normally an element of or subject to significant internal accounting controls.

For example, the following positions, which are not intended to be all-inclusive, would normally be considered audit-sensitive, even though not positions of significant influence: a cashier, internal auditor, accounting supervisor, purchasing agent, or inventory warehouse supervisor.

*Close Relatives*—nondependent children, stepchildren, brothers, sisters, grandparents, parents, parents-in-law, and their respective spouses.

*Grandfathered Loans*—those loans which were made under normal lending procedures, terms, and requirements by a financial institution before January 1, 1992, and before independence was required with respect to the financial institution. Such loans must not be renegotiated after independence became required and must be kept current as to all terms. Such loans shall be limited to:

- a. loans obtained by the licensee which are not material in relation to the net worth of the borrower; or
- b. home mortgages; or
- c. any other fully secured loan, except one secured solely by a guarantee of the licensee.

*Licensee*—

- a. the term includes:
  - i. the licensee's firm;
  - ii. the firm's proprietors, partners, shareholders or members;
  - iii. employees or contractors participating in the engagement, except those who perform only routine clerical functions;
  - iv. employees or contractors with a managerial position located in an office participating in a significant portion of the engagement; and
  - v. entities whose operating, financial, or accounting policies can be controlled by one or more of the persons described in i-iv above, or by two or more such persons if they choose to act together;
- b. the term also includes employees and contractors of the licensee or his firm who provide services to clients and are associated with the client in any capacity described in §501.A.1.b, if the individuals are located in an office participating in a significant portion of the engagement;
- c. the term does not include such an individual solely because he was formerly associated with the client in any capacity described in §501.A.1.b, if such individual has

disassociated from the client and does not participate in the engagement for the client covering any period of his association with the client;

d. in addition, the term may include the following relatives of the licensee or of the individuals described above: spouses, dependents, descendants, close relatives, persons living in a household with the licensee, or a former proprietor, partner, shareholder or member of the licensee's firm. Independence may be affected depending on the nature of the relationships, the employment or audit sensitive activities of the individuals, or on whether the individuals have significant influence over the engagement or the enterprise, as applicable to the circumstances.

*Period of Professional Engagement*—the period during which professional services are provided, with such period starting when the licensee begins to perform professional services requiring independence and ending with the notification of the termination of that professional relationship by the licensee or by the client.

*Permitted Personal Loans*—

a. automobile loans and leases collateralized by the automobile;

b. loans of the surrender value of an insurance policy;

c. borrowing fully collateralized by cash deposits at the same institution;

d. credit cards and cash advances on checking accounts with an aggregate unpaid balance of \$5,000 or less, provided that these are obtained from a financial institution under its normal lending procedures, terms, and requirements and are at all times kept current as to all terms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 and R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### §501. Independence, Integrity and Objectivity

#### A. Independence

1. A licensee shall not issue an accountants' report on the financial statements of an enterprise in such a manner as to imply that he is acting as an independent public accountant with respect thereto, nor shall he perform any other service in which independence is required under professional standards, unless he is independent with respect to such enterprise. Independence shall be considered to be impaired if, for example:

a. during the period of his professional engagement or at the time of issuing an accountants' report, the licensee:

i. - iii. ...

iv. had any loan to or from the enterprise or any officer, director, or principal stockholder thereof other than permitted personal loans and grandfathered loans;

b. during the period covered by the financial statements, during the period of the professional engagement, or at the time of issuing an accountants' report, the licensee:

i. - ii. ...

2. The foregoing examples are not intended to be all inclusive.

#### B. Integrity and Objectivity

1. A licensee in the performance of professional services shall neither knowingly misrepresent facts nor

subordinate his judgment to that of others. He shall be objective and shall not place his own financial interests nor the financial interests of a third party ahead of the legitimate financial interests of the client or the public in any context in which the client or the public can reasonably expect objectivity from one using the CPA title.

2. If the licensee uses the CPA title in any way to obtain or maintain a client relationship, the board will presume the reasonable expectation of objectivity.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 3:308 (July 1977), amended 4:358 (October 1978), LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### §503. Competence and Professional Standards

#### A. Definition

*Professional Standards*—include but are not limited to those standards defined by Statements on Auditing Standards (SAS); Statements on Standards for Accounting and Review Services (SSARS); Statements on Standards for Consulting Services (SSCS); Statements on Standards for Attestation Engagements (SSAE); and Standards for Performing and Reporting on Peer Reviews or Quality Reviews issued by the American Institute of Certified Public Accountants; and Governmental Auditing Standards issued by the Comptroller General of the United States.

B. Competence. A licensee shall not undertake any engagement for performance of professional services which he cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with generally accepted accounting principles, and §503.C.

C. Professional Standards. A licensee shall not act or imply that he is acting as a CPA by permitting association of his name or firm's name, issuing an accountants' report, or expressing an opinion, in connection with financial statements, elements thereof, or the written assertions and representations of a client, or by the performance of professional services, unless he has complied with applicable professional standards. This rule does not apply in any instance in which such compliance would otherwise be prohibited by the Act or by rule of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 3:308 (July 1977), amended 4:358 (October 1978), LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### §505. Responsibilities to Clients

A.1.a. - b. ...

c. prohibit disclosures in the course of a peer review or quality review of a licensee's professional services; or

d. ...

2. ...

B.1. - 3. ...

4. a copy of the licensee's working papers, to the extent that such working papers include records which would

ordinarily constitute part of the client's books and records and are not otherwise available to the client;

5. examples of records described in this Section include but are not limited to computer generated books of original entry, general ledgers, subsidiary ledgers, adjusting, closing and reclassification entries, journal entries and depreciation schedules, or their equivalents.

C. The nonpayment of professional fees and/or out-of-pocket expenses shall not be a basis for failure to furnish the records referred to in §505.B.3, 4 and/or 5 above. A licensee shall be permitted to collect in advance of issuance a reasonable fee for time and expenses of issuing or reproducing documents referred to in §505.B.1, 2, 4 and 5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 3:308 (July 1977), amended LR 4:358 (October 1978), LR 6:2 (January 1980), LR 11:757 (August 1985), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1067 (November 1991), LR 23:

#### §507. Other Responsibilities and Practices

A. Discreditable Acts. A CPA shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to items listed in R.S. 37:84 and the following:

1. dishonesty, fraud or gross negligence in the practice of public accountancy;
2. suspension or revocation of, or a voluntary consent decree concerning, the right to practice before any state or federal agency for a cause which, in the opinion of the board, warrants its action;
3. knowingly participating in the preparation of a false or misleading financial statement or tax return;
4. fiscal dishonesty or breach of fiduciary responsibility of any type;
5. failure to comply with a final order of any state or federal court;
6. repeated failure to respond to a client's inquiry within a reasonable time without good cause;
7. false communication to the board; or
8. causing a breach in the security of the CPA examination.

B. ...

#### C. Advertising

1. Licensees shall have a right to advertise. However, a licensee shall not use or participate in the use of any public communication, written or verbal, having reference to professional services performed by the licensee, which contains a false, fraudulent, misleading, deceptive or unfair statement or claim, nor any form of communication having reference to the professional services of the licensee which is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious, or harassing conduct. A false, fraudulent, misleading, deceptive, or unfair statement or claim includes but is not limited to a statement or claim which:

a. - b. ...

c. contains any testimonial or laudatory statement, or other statement or implication that the licensee's professional services are of exceptional quality; or

d. - k. ...

2.a. - g. ...

D. Written Advertisements, Solicitations and Other Public Communications

1. ...

a. a licensee shall not mail or deliver any advertisement, solicitation or other public communication if such advertisement, solicitation or other public communication would violate §507.C.

2. ...

E. Form of Practice. A licensee may practice public accountancy only in a proprietorship, a partnership, a limited liability partnership, a limited liability company, a professional corporation organized in accordance with the Louisiana Professional Accounting Corporations Law or similar law of another state, or any other organization or entity which may be authorized by law.

#### F. Firm Name

1. The name under which a licensee practices public accounting must indicate clearly whether he is an individual practicing in his own name or a named member of a firm. If the name includes the designation "and Company" or "and Associates" or "Group" or abbreviations thereof, there must be at least two licensees involved in the standards practice, who may be either partners, shareholders, members or employees of the firm. However, names of one or more past partners, shareholders, or members may be included in the firm name of a successor firm.

2. A partner, member or shareholder surviving the death or withdrawal of all other partners, members or shareholders may continue to practice under the partnership or corporate name for up to two years after becoming a sole practitioner, sole member or sole shareholder.

3. No licensee shall allow a person who is not a licensee and who is not in partnership with him or in his employ on a salary, to practice in his name. If a firm is incorporated, words so indicating must appear in or with the firm name each time it is used.

G. Communications. A CPA shall, when requested, respond to communications from the board in the manner requested by the board within 30 days of the mailing of such communications by certified mail, or by such other delivery methods available to the board, to the last address received by the board from the CPA.

H. Applicability. All of the Rules of Professional Conduct in this Chapter shall apply to and be observed by licensees. Notwithstanding anything herein to the contrary, they shall also apply to and be observed by CPAs not in public practice, where applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 3:308 (July 1977), amended 4:358 (October 1978), LR 6:2 (January 1980), LR



9:207 (April 1983), LR 10:278 (April 1984), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1068 (November 1991), LR 23:

## **Chapter 7. Continuing Professional Education (CPE)**

### **§701. Basic Requirements**

A. Each licensee shall participate in at least 120 hours of continuing professional education every three years. The hours of a licensee to whom §701.B.2 applies shall be reduced pro rata for the compliance period containing his effective date.

#### **B. Effective Date**

1. As to any licensee who was licensed as of January 1, 1980, the effective date of these requirements was January 1, 1980.

2. As to any licensee who obtains an initial license, the effective date of these requirements shall be January 1 of the year after his initial license was issued.

#### **C. Compliance Period**

1. The first compliance period for continuing professional education was the three-year period ended December 31, 1982, and subsequent compliance periods shall end on December 31 each third year thereafter.

2.a. - b. ...

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:4 (January 1980), LR 15:614 (August 1989), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### **§703. Standards for Programs**

A. - B.1. ...

2. Instructors, lecturers or speakers should be qualified with respect to program content and teaching method used.

3. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:4 (January 1980), LR 15:614 (August 1989), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### **§705. Programs which Qualify**

A. The overriding consideration in determining whether a specific program qualifies as acceptable continuing education is that it be a formal program of learning which contributes directly to the growth in the professional knowledge and professional competence of an individual licensed to practice as a certified public accountant. Formal programs of learning are those programs that are designed and primarily intended as educational activities, and comply with all CPE standards. Magazines are not designed as educational programs nor do they comply with CPE standards. Accordingly, examinations on magazine articles will not qualify for credit.

B. Accredited University or College Courses as Defined in §1300. Credit and noncredit courses earn continuing education credit as set forth in §709.

C. Formal correspondence or other individual study programs which require registration and provide evidence of satisfactory completion will qualify as set forth in §709.B.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:5 (January 1980), amended LR 15:614 (August 1989), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1068 (November 1991), LR 23:

### **§707. Subjects which Qualify**

A. The following general subject matters are acceptable so long as they contribute to the growth in professional knowledge and professional competence of the individual licensee:

1. - 6. ...

7. Personal Development. Personal Development is the field of study which includes self-management and management of others both inside and outside of the business environment. It includes issues of quality of life, interpersonal relationships, self-assessment, personal improvement, public relations, communications and writing skills. (See §709.G.1 for limitation.)

8. Professional Ethics. Professional Ethics includes the study of the codes of professional ethics applicable to all CPA registrants and their effect on business decisions. (See §709.G.2.)

B. Areas other than those listed above may be acceptable if the licensee can demonstrate that they contribute significantly to his growth in professional knowledge and competence. The responsibility for substantiating that a particular program is acceptable and meets the requirements rests solely upon the licensee.

C.1. - 2. ...

3. Courses which have product or service sales as their underlying content shall not qualify for CPE credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:5 (January 1980), amended LR 15:615 (August 1989), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### **§709. Credit Hours Granted**

A.1. ...

2. Continuing education credit will be given for whole hours only, with a minimum of 50 minutes constituting one hour.

As an example, 100 minutes of continuous instruction would count for two hours; however, more than 50 minutes but less than 100 minutes of continuous instruction would only count for one hour. For continuous conferences, conventions and other programs when individual segments are less than 50 minutes, the sum of the segments will be considered equal to one total program.

3. Credit courses at accredited universities or colleges shall earn 15 hours of continuing education for each semester hour of credit. A quarter hour credit shall equal 10 hours.

4. Continuing education credit allowable for noncredit short courses at accredited universities or colleges will be determined by the board.

B. Individual Study Program. The amount of credit to be allowed for correspondence and formal individual study programs (including taped study programs) is to be recommended by the program sponsor. These programs shall

be pretested by the developer to determine the average completion time. Credit will be allowed in the period in which the course is completed.

1. Noninteractive self-study programs shall receive CPE credit equal to one-half the average completion time.

2. Interactive self-study programs shall receive CPE credit equal to the average completion time provided the course sponsor is registered as an interactive self-study course sponsor with either the AICPA, NASBA, or a State Society of CPAs, and the sponsor confirms that the course is an interactive self-study course.

a. An interactive self-study program is one which simulates a classroom learning process by providing ongoing responses and evaluation to the learner regarding his or her learning progress. These programs guide the learner through the learning process by:

i. requiring frequent student response to questions that test for understanding of the material presented;

ii. providing evaluative responses and comments to incorrectly answered questions; and

iii. providing reinforcement responses and comments to correctly answered questions.

b. Ongoing responses, comments, and evaluations communicate the appropriateness of a learner's response to a prompt or question. Such responses, comments, and evaluations must be frequent and provide guidance or direction for continued learning throughout the program by clarifying or explaining assessment of inappropriate responses, providing reinforcement for appropriate responses, and directing the learner to move ahead or review relevant material. It is the response of the learner that primarily guides the learning process in an interactive self-study program. Not all technology based self-study programs constitute interactive programs. Technology based self-study programs must meet the criteria set forth in the definition of interactive self-study programs, as must other self-study programs developed using different modes of delivery.

3. CPE program developers shall keep appropriate records of how the average completion time of self-study programs was determined.

4. The entire continuing education requirement may be accomplished by programs designated as "self-study" programs.

5. The board will not approve any program that does not offer sufficient evidence that the work has actually been accomplished.

#### C. Service as Lecturer or Speaker

1. Credit for one hour of continuing professional education will be granted for each hour completed as a lecturer or speaker to the extent it contributes directly to the individual's growth in professional knowledge and competence and provided the program would qualify for credit under these rules. No credit will be granted for repetitious presentations of a group program.

2. In addition, a lecturer or speaker may claim up to two hours of credit for advance preparation for each teaching hour awarded in §709.C.1, provided the time is actually devoted to preparation.

3. ...

D. - E. ...

F. CPE Credit for Reviewers. Credit will be granted for actual time expended reviewing reports for the board's positive enforcement programs up to a maximum of 16 credit hours per year as approved by the board's practice monitoring administrator provided the reviewer completes and returns the assigned checklist(s).

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:5 (January 1980), amended LR 11:757 (August 1985), LR 13:13 (January 1987), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 15:615 (August 1989), LR 17:1068 (November 1991), LR 23:

#### §711. Maintenance of Records and Control

A. Participants in formal CPE programs shall retain the documentation of their participation in CPE programs for a period of five years after the end of the calendar year in which the program is completed. Participants in formal CPE programs shall also retain advance materials, which should include the requirements set forth in §703.B.1, and other promotional material which reflects the content of a course and the name of the instructor(s) in the event the participant is requested by the board to substantiate the course content.

B. Acceptable evidence of completion includes, but is not limited to, the following:

1. for group programs, a certificate of attendance or other verification supplied by the sponsor which includes:

a. sponsorship organization;

b. location of course;

c. title and/or description of content;

d. dates attended; and

e. the qualifying hours recommended by the course sponsor;

2. for self-study programs, a certificate supplied by the sponsor after satisfactory completion of a workbook, an examination, or an interactive course that confirms the name of the sponsor, the title and/or description of the course contents, the date of completion and the qualifying hours recommended by the course sponsor;

3. for a university or college course that is successfully completed for credit, an official transcript reflecting the grade earned;

4. for instruction credit, evidence obtained from the sponsor of having been the seminar lecturer or speaker at a program in addition to the items required by §711.B.1; and

5. for published articles, books, or CPE programs, evidence of publication.

C. Sponsors shall furnish a record of attendance or completion to participants which shall reflect the CPE credit hours earned.

D. Practitioners, partners, members, or shareholders and employees of a firm of certified public accountants will not be required to maintain the above records personally if the firm has a policy of maintaining such records for its members and professional employees and does maintain the records required herein for the required time and reports such information to each person at least once each year.

E. Each sponsoring organization shall maintain records of programs sponsored which shall show:

1. that the programs were developed and presented in accordance with the standards set forth in §703. If a program is developed by one organization and sponsored by another, the sponsoring organization shall not be responsible for program development standards and related record maintenance if:

a. it has reviewed the program and has no reason to believe that program development standards have not been met; and

b. it has on record certification by the developing organization that the program development standards have been met and that the developing organization will maintain the required records relative thereto;

2. date of each program presentation;

3. location of each course presentation;

4. name and qualifications of each seminar instructor, lecturer, and speaker conducting a program for the sponsor;

5. outline of the course or documentation which is the equivalent of an outline;

6. number of CPE contact hours recommended for each course;

7. an accurate record of attendance of participants which shall reflect the CPE credit hours earned by each participant; and

8. a summary of the program evaluations by the participants.

F. The CPE program sponsor shall maintain records and information required by §711.E.1-8 for a period of five years after the end of the calendar year in which the CPE course was completed.

G. Records required under this rule shall be maintained for five years and shall be made available to the board or its designee(s) for inspection at the board's request.

H. Failure of a CPE program sponsor to comply with the CPE standards shall be cause for the board to deny credit for courses offered by the CPE sponsor until such time as the CPE sponsor can demonstrate to the board that the compliance standards are being met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:5 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 15:615 (August 1989), LR 23:

## **Chapter 9. Compensation and Expenses of Board Members**

### **§901. Monthly Compensation**

A. The officers of the board shall received compensation of \$150 per month and other members shall receive \$100 per month. This compensation shall be for time expended by such members in conducting and/or monitoring examinations, attending board meetings and hearings, issuing of certificates and licenses, conducting investigations, and discharging other duties and powers of the board.

B. A new appointee to the board shall be seated at the first board meeting he attends following his qualification as

required by R.S. 37:74. A new appointee's compensation shall commence the month he is seated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:76.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:6 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

## **Chapter 11. Certificate; License; Prohibited Acts §1101. Necessity for Certificate, License; Prohibited Acts**

No partnership, corporation, limited liability partnership, limited liability corporation, or any other organization or entity which may be authorized by law to engage in the practice of public accountancy, whether domiciled within or without the state of Louisiana, shall practice the profession of public accounting in Louisiana unless all partners, members, or shareholders thereof who practice public accounting in Louisiana are holders of licenses issued by the board and properly renewed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:77.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:6 (January 1980), amended LR 13:13 (January 1987), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

## **Chapter 13. Examination §1300. Definitions**

*CPA Examination*—the examination required for a certificate as a Certified Public Accountant (CPA).

*Accredited University or College*—a university or college accredited by any one of the six regional accreditation associations: the Southern Association of Colleges and Schools; Middle States Association of Colleges and Schools; New England Association of Schools and Colleges; North Central Association of Colleges and Secondary Schools; Northwest Association of Schools and Colleges; and Western Association of Schools and Colleges.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### **§1301. General Requirements**

A.1. Examinations are ordinarily held in May and November of each year. Candidates for these examinations shall file complete application forms. A complete application is one that is properly filled out, including payment of the required examination fee and, if an initial application, accompanied by all required official transcripts.

2. Applications for the May examination must be received in the office of the board's agent no later than 5 p.m., March 1. Applications for the November examination must be received in the office of the board's agent no later than 5 p.m., September 1. If the last day for filing falls on a Saturday, Sunday or state of Louisiana holiday, the due date will be extended to include the next state of Louisiana working day.

3. First time or transfer-of-grades candidates who have not taken their accounting courses in Louisiana must include

a copy of the course description(s) of all accounting courses not clearly identified by titles listed in §1303.A.

B. The examination shall consist of:

1. the Uniform Certified Public Accountant Examination prepared and graded by the American Institute of Certified Public Accountants; or

2. if applicable, the International Uniform CPA Qualification Examination (IQEX) prepared and graded by the American Institute of Certified Public Accountants.

C. ...

D. All examinations shall be in writing and must be completed in the time allotted by the board. To comply with the requirements of the American with Disabilities Act (ADA) the board may authorize modification to this Subsection.

E. A candidate must sit for all the sections for which he is scheduled in order to receive his grades and to be able to sit for the next examination.

F. In order to pass the examination a candidate must receive a grade of at least 75 in each section.

G. The following rule shall apply for conditional credit:

1. if a grade of 50 or more is made in each section, a candidate who passes at least two sections at a single examination shall receive credit for the sections passed, conditioned upon his passing the remaining section or sections as set forth in §1303.G.2;

2.a. a candidate who has received credit for passing at least two sections of the examination, as set forth in §1303.G.1, shall be required to remove the condition in any of the next four consecutive examinations but shall receive no credit for passing a section or sections at any examination in which he makes a grade of less than 50 in any other section;

b. beginning with the May 1998 examination and thereafter, a candidate who receives credit for passing at least two sections of the examination, as set forth in §1301.G.1, shall be required to remove the condition in any of the next six consecutive examinations but shall receive no credit for passing a section or sections at any examination in which he makes a grade of less than 50 in any other section.

H. Any candidate who makes a grade below 40 (39 or lower) in any section will not be allowed to take the next consecutive examination. This rule does not apply to conditioned candidates.

I. Grades shall be accepted from other states when a candidate for transfer of grades has met all the requirements of Louisiana candidates except that he sat for the examination in another state. He shall submit a completed initial application with an official transcript and a statement from an officer of the state board from which he is transferring as to dates of passing the examination and grades made. A conditioned candidate shall pay for each section for which he sits and shall pay a transfer fee at the time he requests the transfer. If a candidate has passed all sections in another state, he shall be required to pay a transfer fee, in addition to other requirements.

J. Each candidate shall be notified by mail, on the date specified by the American Institute of Certified Public Accountants, of the grades earned by him in each section of the examination. No information concerning grades will be released until such date.

K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:78.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:6 (January 1980), amended LR 9:208 (April 1983), LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1068 (November 1991), LR 23:

**§1303. Educational Requirements**

A. To be eligible for examination and certification by and under auspices of the board, after December 31, 1996, an applicant shall possess a baccalaureate degree, duly conferred by an accredited university or college recognized and approved by the board, and shall have, in the course of attaining such degree, or in addition thereto, received credit for not less than 150 hours of postsecondary, graduate, or postgraduate education at and by an accredited college or university approved by the board. The applicant shall present evidence which shall consist of one or more official transcripts certifying that the applicant has attained the foregoing degree and educational hours, and said transcripts shall evidence award of credit for satisfactory completion of the following courses and credit hours, according to whether such courses and credits are taken as an undergraduate course and semester hour or a graduate course and semester hour.

	Undergraduate Semester Hours	Graduate Semester Hours
Accounting Courses:	24	21
Intermediate	6	3
Cost	3	3
Income Tax	3	3
Auditing	3	3
Accounting Electives:	9	9
3 semester hours from one of the following: Advanced Financial Accounting, Not-for-Profit Accounting/Auditing, Theory		
6 semester hours in accounting above the basic and beyond the elementary level		
Business Courses (other than Accounting Courses):	24	24
Including at least 3 semester hours in Commercial Law, as it affects accountancy for CPA examination candidates		

1. The board will accept for business course credit semester hours earned in courses offered through the institution's College of Business and reported on official transcripts in the following areas:

- a. commercial law;
- b. economics;
- c. management;
- d. marketing;
- e. business communications;

- f. statistics;
- g. finance;
- h. data processing;
- i. mathematics (as it pertains to business);
- j. technical writing (covering subjects as opinions, tax planning reports, and management advisory service reports and management letters);
- k. computer science (other than courses such as COBOL or FORTRAN);

1. CPA examination review courses if the curriculum is developed and taught in a classroom environment by a faculty member under contract at the accredited college or university which is offering the course for credit.

2. Up to six semester hours in industry-specific business courses may be used to satisfy the business courses requirement described in §1303.A.1.

3. Up to six semester hours for internship may be applied to the 150 hours requirement, but may not be used to meet the accounting or business courses requirement.

4. Standard conversion (four quarter hours equals three semester hours) will be applied whenever a school is not on the semester basis.

5. Remedial courses may be applied to the 150-hour requirement, but may not be used to satisfy the accounting or business courses requirement.

6. Credit hours for repeated courses for which credit has been previously earned may not be applied to the 150-hour requirement.

B. An applicant who has taken an examination approved by the board prior to December 31, 1996 shall not be required to receive credit for 150 hours until his eligibility expires in accordance with this Subsection. Such applicants remain eligible to take any examination administered by the board prior to December 31, 1999, and shall thereafter be eligible, subject to applicable rules and regulations of the board, to take sections of the examination in order to pass all sections of the examination. Candidates who have earned conditional credit(s) which expire after December 31, 1999 shall remain eligible until the expiration of the conditional credit(s). After expiration of their conditional credit(s) they shall be required to show completion of 150 semester hours before reapplying to take any other CPA examination in Louisiana.

C. In the event that the applicant's degree does not reflect the credit hours in the courses prescribed by §1303.A, the board may, on good cause shown by the applicant, allow the substitution of other courses that, in the board's judgment, are substantially equivalent to any of such prescribed courses or to the credit hours prescribed therein. Documentation of good cause for any such requested substitution shall be submitted by the applicant to the board upon affidavit sworn to and subscribed by the applicant and an officer of the university, college or other educational institution where the course to be substituted was taken. Such affidavit shall set forth a course description of the course sought to be substituted and a comparison of the content of such course to that of the course for which substitution is requested.

D. If the applicant's degree does not reflect the credit hours in the courses prescribed by §1303.A, an applicant may become eligible for examination and certification by and

under the auspices of the board by having otherwise taken and completed the courses required by this rule and received credit for satisfactory completion thereof awarded by an accredited university, college, vocational or extension school recognized and approved by the board.

E. With respect to the course requirements specified by §1303.A, the board does not recognize credit received for courses granted on the basis of advanced placement examinations (such as CLEP, ACT or similar examinations). Except for correspondence courses at an accredited university approved by the board, the course credits specifically listed in §1303.A shall have been awarded pursuant to satisfactory completion of a course requiring personal attendance at classes in such course.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:78.

**HISTORICAL NOTE:** Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:6 (January 1980), amended LR 11:757 (August 1985), LR 13:13 (January 1987), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 15:616 (August 1989), LR 17:1070 (November 1991), LR 23:

### §1305. Penalties

A. - C. ...

D. Any person who communicates to another person any of the contents of a CPA examination which is classified as a nondisclosed examination shall be subject to disciplinary action by the board.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:78.

**HISTORICAL NOTE:** Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:7 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

## Chapter 15. Certification

### §1503. By Reciprocity

A. Definition

*In Good Standing*—the applicant is in compliance with the rules and regulations of the appropriate licensing board, including payment of the annual registration fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the applicant must have complied with all of the provisions of the appropriate licensing board order.

B. An applicant who has been certified as a public accountant by any state, as defined by R.S. 37:71(F), shall be eligible for certification by the board, provided that:

1. the applicant possesses a baccalaureate degree and satisfies the educational requirements of §1303;

2. the applicant has successfully passed the Uniform Certified Public Accountant Examination prepared and graded by the American Institute of Certified Public Accountants;

3. the scores achieved by the applicant on all examinations are certified to the board by the state which issued the applicant's original certification;

4. at the time of the application and consideration thereof by the board, the applicant possesses and confirms to the board current certification in good standing issued by any state which grants reciprocity certification to public accountants certified by the board. If the applicant has been certified in more than one state, the original, initial

certification need not be current; however, it may not have been suspended for cause other than nonpayment of fees;

C. An applicant otherwise eligible for reciprocity certification under §1503.B, save for possession of a baccalaureate degree, or the credit for not less than 150 hours of university or college education, shall nonetheless be eligible for reciprocity certification by the board, provided that the applicant's original, initial certification as a public accountant by any state was issued on or before September 1, 1975, or the applicant has been in active, continuous practice as a certified public accountant for not less than four years during the 10 years immediately preceding the date on which the applicant's application for reciprocity certification is received by the board.

D. Notwithstanding the foregoing requirements for certification, an applicant for reciprocity certification who, at the time of the application and consideration by the board, possesses current certification in good standing issued by any state whose certification requirements have been determined by the board to be substantially equivalent to those set forth in §§1301, 1303, and 1501, and which grants and has agreed to reciprocity certification in a manner consistent with the provisions of this Subsection, shall be deemed, upon receipt of written confirmation from the appropriate state licensing board that the applicant's certification is current and in good standing, to have satisfied the requirements for certification by the board.

E.1. Applicants for reciprocal certificates shall not be required to reside or have a place for the regular transaction of business in Louisiana, but shall be required to take the CPA oath.

2. Complete applications for reciprocal certificates must be received in the board's office 30 days prior to a regular board meeting (§305).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:78 and R.S. 37:77.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:7 (January 1980), amended LR 9:208 (April 1983), LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1069 (November 1991), LR 23:

## **Chapter 17. Qualifications for Licensing**

### **§1702. By Reciprocity**

Notwithstanding the foregoing requirements of §1701, an applicant for initial licensing who has qualified for reciprocity certification under §1503.D, and who possesses a current license to practice public accounting in good standing by virtue of certification or license issued by any state which grants and has agreed to reciprocity licensing in a manner consistent with the provisions of this Section, and whose experience requirements have been determined by the board to be substantially equivalent to those set forth in §§1703, 1705, and 1707, shall be deemed, upon receipt of written confirmation from the appropriate state licensing board that the applicant's license to practice is current and in good standing, to have satisfied the requirements for licensing by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:79, R.S. 37:77 and R.S. 37:75

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### **§1703. Qualifying Accounting Experience; Nature of Practice**

A.1.a. - b. ...

2. by employment for a period equivalent in the opinion of the board to employment under §1703.A.1 in the accounting field in industry, business, government, or college teaching, or any combination of such types of employment, provided that such experience is obtained under proper supervision and is of sufficient depth and quality, as defined by §1705;

a. except for specific, prior approved, high-level governmental auditing positions, qualifying experience obtained through employment in industry, business, government or college teaching must be for a minimum of four years; or

3. ...

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:79, R.S. 37:77, and R.S. 37:75.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated and amended LR 4:223 (June 1978), amended LR 6:7 (January 1980), LR 9:208 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 15:617 (August 1989), LR 23:

### **§1705. Equivalent Experience**

A.1. ...

a. supervision in the application of generally accepted accounting principles by a licensed CPA holding a managerial level one or more positions above the applicant's level;

b. employment by a firm or organization having its financial statements audited or reviewed on a periodic basis by independent CPAs during the term of the applicant's employment. The applicant must have been responsible for providing information, explaining systems and procedures, and/or preparing schedules and analyses;

c. ...

d. employment as a full-time teacher of subjects primarily in the accounting discipline, with the rank of assistant professor or above (or comparable positions), for an accredited college or university as defined in §1300;

e. ...

2.a. - d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:79, R.S. 37:77, and R.S. 37:75.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated and amended LR 4:223 (June 1978), amended LR 6:7 (January 1980), LR 9:208 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1069 (November 1991), LR 23:

### **§1707. Advanced Degree Experience Equivalency**

A master's degree, or a more advanced degree, with a concentration in accounting shall be considered equivalent to one year of experience obtained on the staff of a CPA or firm of CPAs. As used herein, concentration in accounting shall mean at least 15 credit hours in accounting courses (e.g., auditing, theory, practice, managerial, tax) the contents

of which are at a higher level and are in addition to the courses used to satisfy the requirements to sit for the examination (§1303.A), with at least three of the required 15 credit hours in theory and practice and at least three credit hours in auditing.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:79, R.S. 37:77, and R.S. 37:75.

**HISTORICAL NOTE:** Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated and amended LR 4:223 (June 1978), amended LR 6:7 (January 1980), LR 9:208 (April 1983), LR 11:758 (August 1985), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

## **Chapter 19. Application for CPA Examination, Certification, Licensing; Procedures**

### **§1903. Initial Application**

A. First time or transfer candidates must complete an initial application form. An official transcript from each institution at which original credit toward the educational requirements was earned must accompany the initial application form. Official evidence of baccalaureate degree conferral must be included, regardless of any other degrees the candidate has earned.

B. Candidates who have completed courses in fulfillment of the educational requirement in institutions outside Louisiana are required to submit course descriptions of all accounting and business courses not clearly identified by titles as listed in §1303.

C. Candidates who have completed educational requirements at institutions outside the U.S. must have their credentials evaluated by the Foreign Academic Credentials Service.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:78, R.S. 37:79, R.S. 37:80 and R.S. 37:81.

**HISTORICAL NOTE:** Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated and amended LR 6:8 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### **§1909. Unable to Sit for Examination**

If, after filing his application, a candidate is unable to sit for the CPA examination, he must so notify the agent of the board not later than seven working days prior to the first day of the examination; otherwise, the fee shall be forfeited. A service charge will be assessed on all refunds of examination fees.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:78, R.S. 37:79, R.S. 37:80 and R.S. 37:81.

**HISTORICAL NOTE:** Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated and amended LR 6:8 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1069 (November 1991), LR 23:

## **Chapter 20. Temporary Permits**

### **§2001. Scope of Chapter**

The rules of this Chapter govern the qualifications for and issuance of temporary permits authorizing the practice of public accountancy in the state of Louisiana for a specified period, pursuant to the authority vested in the board by R.S. 37:75(B)(13).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:75(B)(13).

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 15:618 (August 1989), amended LR 23:

### **§2003. Scope of Authority**

A. Subject to satisfaction of the qualifications and procedures prescribed by this Chapter, a temporary permit may be issued by the board to a person who or a firm which is neither a resident of Louisiana or licensed by the board, but who is certified and licensed as a CPA by another state, to authorize the permittee's incidental, temporary practice of public accounting in Louisiana.

B. A temporary permit is valid and effective only for the period of time specified therein and may be issued under this Chapter as follows:

1. A temporary permit covering a period of one year and renewable annually may be issued to a person or firm certified and licensed or registered in another state whose laws and rules regarding qualification for certification, licensing, and firm registration, and whose laws and rules with respect to conduct and practice have been determined by the board to be substantially equivalent to those of Louisiana and provided such other state has agreed to grant similar privileges to persons or firms who are licensed CPAs of Louisiana.

2. For persons or firms certified and licensed or registered in states or jurisdictions whose laws and rules have not been determined by the board to be substantially equivalent to those of Louisiana, a temporary permit issued shall be limited in term to a period of 90 days and to the performance of a single, specified engagement, and may not be renewed.

3. For the purpose of quality or peer reviews, a temporary permit covering a period of one year and renewable annually may be issued by the board to a person who or firm which is neither a resident of Louisiana nor licensed by the board, but who is certified and licensed as a CPA by another state, authorizing the practice of public accountancy in Louisiana limited solely to the performance of quality reviews or peer reviews.

C. The board's issuance of a temporary permit under this Chapter shall not be construed to provide any right or entitlement whatsoever to certification, licensing or registration under Louisiana law, or to the renewal of this permit after its expiration.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:75(B)(13).

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 15:618 (August 1989), amended LR 17:1070 (November 1991), LR 23:

### **§2005. Qualifications, Disqualifications for Temporary Permit**

A.1. - 2. ...

3. submit a completed application to the board, through its executive director, not less than 30 days prior to any activity within Louisiana to which the permit shall be applicable; and

4. pay the fee applicable to application for and issuance of temporary permits, as provided by Chapter 21 of these rules; provided, however, that the payment of a single fee shall satisfy the application fee requirement for two or more



partners, shareholders, members or employees of the same firm applying for a temporary permit.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75(B)(13).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 15:618 (August 1989), amended LR 23:

**§2007. Application Procedure**

A. - B.2. ...

3. with respect to permits applied for under §2003.B.2, specify the nature of the professional engagement to be performed in Louisiana and for which the temporary permit is sought, the inclusive dates during which and the place or places at which such engagement will be performed, and the name and address of the person, firm or entity for whom or on whose behalf such engagement will be performed;

4. - 5. ...

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75(B)(13).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 15:618 (August 1989), amended LR 23:

**§2009. Issuance of Permit**

If the qualifications, requirements and procedures prescribed by this Chapter are met to the satisfaction of the board, the board shall issue to the applicant a temporary license to practice public accounting in the state of Louisiana specifying the time period and other restrictions which apply to such permit. A temporary permit shall be valid and effective only if signed by the secretary, treasurer, or executive director of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75(B)(13).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 15:618 (August 1989), amended LR 23:

**Chapter 21. Fees and Service Charges for CPA Examination, Certification, Licensing**

**§2101. Assessment of Fees**

A. Examination, certification, licensing and other fees shall be assessed by the board in conformity with R.S. 37:80(E).

Service Charge for refund of examination fee (§1909)	\$ 50
Original certification	\$ 50
Original license	\$ 50*
Reinstatement of license	\$ 50
Replacement CPA certificate	\$ 50**
Temporary permits	\$100

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:80.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated and amended LR 6:8 (January 1980), amended LR 9:209 (April 1983), LR 11:758 (August 1985), LR 13:13 (January 1987), LR

15:619 (August 1989), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1070 (November 1991), LR 23:

**Chapter 23. Issuance of Certificate, License §2303. License**

When a certified public accountant has met all the requirements for licensing, the board shall issue him a license to practice as a licensed certified public accountant. All such licenses shall be valid only when signed by the treasurer of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:81.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:8 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

**Chapter 25. Renewals of Certification, Licensing §2501. Annual Renewals, Reinstatement, Fees**

A. - F. ...

G. In addition to the delinquent and reinstatement penalties, a fine may be assessed against those certified public accountants who have received three suspensions within the previous six years.

H. Practicing certified public accountants who have not timely renewed their certificates and licenses are in violation of R.S. 37:77 and therefore subject to the provisions of R.S. 37:84.B.

I. Certificate and/or License Renewal or Reinstatement

1. No certificate and/or license of any certified public accountant who has failed to timely remit full payment of any fees, fines, penalties, expenses, or reimbursement of costs incurred by the board, which the certified public accountant owes the board or has been ordered to pay to the board, shall be annually renewed, or reinstated.

2. The board may refuse to renew, or to reinstate, any certificate and/or license any certified public accountant who has failed to comply with §507.G.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:82 and R.S. 84.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:8 (January 1980), amended LR 9:209 (April 1983), LR 11:758 (August 1985), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1070 (November 1991), LR 23:

**§2503. Annual Notice of Form of Practice**

A.1. ...

2. Every certified public accountant who is licensed by the board and who is not practicing public accounting in his own name or who is not a partner, member or shareholder in a firm's registration must complete an Annual Notice of Form of Practice and CPA Firm Registration form.

B.1. ...

2. Each firm of certified public accountants with one or more Louisiana licensees as partners, members or shareholders which does not have an office located in Louisiana shall designate a licensee to register that firm in Louisiana. The designated licensee shall file those forms, lists, and documents required of a firm maintaining offices in Louisiana as set forth in §2503.C.

C. Each resident licensee shall file annually at the time he applies for renewal of his license a list of all resident and nonresident partners, members or shareholders associated with him in the practice of public accounting and the location and resident partner, member, shareholder, or manager of each office or branch office maintained in Louisiana. One annual listing by the senior or resident partner, member or shareholder of each firm will satisfy this requirement for all partners, members or shareholders of the firm, providing that each partner, member or shareholder gives adequate reference to this listing.

1. In the event that a firm with one or more offices in Louisiana has no partner, member or shareholder who is a resident licensee, the firm must designate a licensee partner, member or shareholder to be responsible for the filing set forth above.

2. ...

D. ...

E. An original letterhead must be attached to the statement referred to in §2503.A and C. Only licensed employees or licensed associates may be shown on stationery but such names shall be separated from that of the individual practitioner or those of the partners, members or voting shareholders by an appropriate line. Deceased or retired partners, members or shareholders shall be appropriately identified.

F. An annual filing fee to be set by the board, based on the total number of partners, members and/or shareholders in the firm who are not licensed to practice in Louisiana but not to exceed \$15 per partner, member or shareholder with a maximum of \$2,500 per firm, shall be paid by each firm that files in accordance with the provisions of §2503.C.

G. A filing fee, calculated in the same manner as the most recent annual filing fee provided in §2503.F and prorated for the number of complete months remaining in the year, shall be paid by each firm that files in accordance with the provisions of §2503.D and that did not pay an annual filing fee for the immediately preceding filing period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:82.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:8 (January 1980), amended LR 9:209 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1070 (November 1991), LR 23:

#### **§2504. Practice Monitoring Programs**

A. - C. ...

D. Any firm which shall have been subjected to a professional Peer Review or Quality Review approved by and acceptable to the board and conducted pursuant to standards not less stringent than Peer Review and Quality Review standards applied by the American Institute of Certified Public Accountants shall be exempted from the provisions of §2504.A, B and C provided that the following requirements are satisfied. A firm which is a member of the Securities and Exchange Commission Practice Section or the Private Companies Practice Section of the American Institute of Certified Public Accountants Division for CPA Firms shall have furnished a copy of a Peer Review report to the board. Or, a firm which is not a member of the Securities and

Exchange Commission Practice Section or the Private Companies Practice Section of the American Institute of Certified Public Accountants Division for CPA Firms has an approved provider certify to the board, the accountant's or firm's participation in a Peer Review or Quality Review program and the dates of the accountant's or firm's most recent quality review should the firm seek exemption on the basis of a Peer Review or Quality Review.

E. - G. ...

H.1. Oversight. The board shall appoint a Peer Review Oversight Committee (PROC) whose function shall be the oversight and monitoring of sponsoring organizations for compliance and implementation of the minimum standards for performing and reporting on quality or peer reviews. The PROC shall consist of three members, none of whom are current members of the State Board of Certified Public Accountants of Louisiana. These members shall be currently licensed by the board.

2. Responsibilities. At least one member of the PROC will attend all meetings of the Society of Louisiana Certified Public Accountants Peer Review Committee (PRC), or any successor thereof.

3. Compensation. Compensation of PROC members shall be set by the board.

4. Duties of the PROC

a. The PROC will observe the plenary sessions of the PRC which include the assignment of reviews to committee members and the summary meeting where the conclusions of the review committee members are discussed;

b. ...

c. may observe the deliberations of the PRC and report their observations to the board; and

d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:82.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1071 (November 1991), LR 23:

#### **§2505. Change in Address or Practice Status**

All certified public accountants or licensed certified public accountants shall promptly notify the board in writing within 30 days of any change in mailing address, practice status, or in the case of an individual, change of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:82.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:8 (January 1980), amended LR 9:209 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### **Chapter 27. Renewals of Licensing—Reports on Continuing Professional Education**

#### **§2701. Submit with Application**

Each licensee shall submit with his application for license renewal, on forms supplied by the board, a report of programs of continuing professional education completed during the applicable period and other information relative to fulfilling the continuing education requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:82.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1071 (November 1991), LR 23:

### **§2703. In Lieu of Report**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:82.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), repealed by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

## **Chapter 29. Causes of Nonissuance, Suspension, Revocation or Restriction; Reinstatement**

### **§2901. Charges in Writing; Investigative Files**

A. Charges against holders of CPA certificates and/or licenses shall be made in writing, signed by the persons preferring the charges and addressed or delivered to the board. The board's investigative staff may establish or open an investigative file upon receipt of such charges.

B. Investigative files may be established or opened by any member of the board who has been designated as investigating officer, in accordance with §2903, for the purpose of investigating any potential violations of Chapter 5, Rules of Professional Conduct or the rules, regulations or statutes which the board is authorized to enforce, whether as a result of charges made in accordance with §2901.A or otherwise initiated by the investigating officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:84.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### **§2903. Investigating Officer**

All charges shall be referred to the members of the board or other persons designated as investigating officers, who are appointed by the chairman of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:84.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), amended LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### **§2909. Hearing**

A. The board may at a hearing:

A.1.a. - b. ...

2. suspend any certificate and/or license. When a certificate and/or license is suspended, such suspension shall not be for a period of more than three years; during the time of suspension, the holder shall not be considered a CPA;

3. officially censure or reprimand the holder of any certificate and/or license;

4. invoke additional penalties and/or requirements to be complied with or refrained from, including but not limited to educational requirements, peer review, and/or restrictions on practice, for a designated period, or before reinstatement of a certificate or license. The failure by a person to abide by the

additional penalties and/or requirements invoked by the board is a violation of the rules of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:84.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### **§2911. Other**

Any of the above provisions notwithstanding, the board may suspend or revoke a certificate and/or license without a hearing for the following causes:

1. conviction of a felony or entry of a plea of guilty or nolo contendere to a felony charge under the laws of the United States or of any state; or

2. conviction of any crime or entry of a plea of guilty or nolo contendere to any criminal charge an element of which is fraud or which arises out of such individual's practice of public accounting; or

3. the refusal of the licensing authority of another state to issue or renew a license, permit or certificate to practice public accounting in that state; or the revocation or suspension of, or other restriction imposed on, a license, permit or certificate issued by such licensing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:84.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

## **Chapter 31. Petitions for Rulemaking**

### **§3101. Scope of Chapter**

The rules of this Chapter prescribe the procedures by which interested persons may petition the State Board of Certified Public Accountants of Louisiana to exercise its rulemaking authority under the Louisiana Public Accountancy Law by the adoption, amendment or repeal of administrative rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2), 953(C), R.S. 37:75(A)(3), (B)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### **§3103. Definitions—as Used in this Chapter**

*Interested Person*—a person who or which:

1. holds or has applied for any certification, license or permit issued by the board;

2. is subject to the regulatory jurisdiction of the board;

3. is or may be affected by the practice of public accounting in the state of Louisiana.

*Person*—an individual natural person, partnership, corporation, company, association, governmental subdivision or other public or private organization or entity.

*Rulemaking*—the process by which the board exercises its authority under the laws of the state of Louisiana, including the Public Accountancy Law, R.S. 37:71-92, and the Administrative Procedure Act, R.S. 49:950-999, to formulate, propose and adopt, amend or repeal and promulgate administrative rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2), 953(C), R.S. 37:75(A)(3), (B)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### §3105. Authorization

An interested person, individually or jointly with other interested persons, may, in accordance with the provisions of this Chapter, petition the board for the adoption, amendment or repeal of administrative rules and regulations within the rulemaking authority of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2), 953(C), R.S. 37:75(A)(3), (B)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### §3107. Petitions for Rulemaking

A. General Form. A petition for rulemaking must be made and submitted to the board in writing, legibly printed or typed in ink.

B. Title and Signature. A petition for rulemaking shall be plainly and prominently titled and styled as such and shall be manually signed by an individual petitioner, by an authorized officer or representative of the petitioner, or by an attorney at law representing the petitioner. The full name, title or office, if any, address and telephone number of a person signing a petition for rulemaking shall be printed or typed under the person's signature. Where a person signs a petition for rulemaking in a representative capacity, the petitioner or petitioners represented by the signature must be clearly identified.

C. Required Contents. A petition for rulemaking shall:

1. clearly identify each petitioner by name and address of residence or principal place of business;

2. describe the legal status or nature of the petitioner to establish that the petitioner is an interested person, within the meaning of §3103 of this Chapter;

3. in the case of a petition for adoption of a new rule, set forth a concise statement of the substance, nature, purpose and intended effect of the rule which the petitioner requests that the board adopt and citation to the statutory authority for the board's exercise or rulemaking authority in the manner and on the subject requested;

4. in the case of a petition for amendment of an existing rule, specify, by citation to the *Louisiana Administrative Code*, the rule or rules which the petitioner requests that the board amend, together with a concise statement of the manner in which it is proposed that the rule or rules be amended, the purpose and intended effect of the requested amendment, and citation to the statutory authority for the board's exercise or rulemaking authority in the manner and on the subject requested;

5. in the case of a petition for repeal of an existing rule, specify, by citation to the *Louisiana Administrative Code*, the rule or rules which the petitioner requests that the board repeal, together with a concise statement of the purpose and intended effect of such repeal;

6.a. provide an estimate of the fiscal and economic impact of the requested rulemaking on:

i. the revenues and expenses of the board and other state and local governmental units;

ii. costs and/or benefits to directly affected persons;

iii. competition and employment in the public and private sectors; or

b. provide a statement that the petitioner has insufficient information or is otherwise unable to provide a reasonable estimate of such fiscal and economic impact;

7. set forth a concise statement of the facts, circumstances, and reasons which warrant exercise of the board's rulemaking authority in the manner requested; and

8. in the case of a petition for exercise of the board's emergency rulemaking authority under R.S. 49:953(B), a statement of the facts and circumstances supporting a finding by the board that an imminent peril to the public justifies the adoption, amendment or repeal of a rule upon shorter notice than that provided by R.S. 49:953(A).

D. Permissible Contents. In support of petitions for the adoption of a new rule or amendment of an existing rule, the board encourages, but does not require, the submission of a verbatim text of the rule proposed for adoption or amendment, prepared in the form prescribed by Title 1 of the *Louisiana Administrative Code* and as otherwise prescribed by the Office of the State Register. A petition for rulemaking may also be accompanied by such other information and data, in written or graphic form, as the petitioner may deem relevant in support of the petition for rulemaking.

E. Submission and Filing. Two copies of a petition for rulemaking, together with all supporting exhibits, if any, shall be filed with the board by delivery or mailing thereof to the board's executive director at the offices of the board.

F. Nonconforming Petitions. The board may refuse to accept for filing, or may defer consideration of, any petition for rulemaking which does not conform to the requirements of this Section.

G. Public Record. A petition for rulemaking shall be deemed a public record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2), 953(C), R.S. 37:75(A)(3), (B)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

### §3109. Board Consideration

A. Consideration by the Board. A petition for rulemaking may be considered and acted on by the board at any regular or special meeting of the board. Within the time prescribed by §3111 for disposition of a petition for rehearing, the board may request additional information from the petitioners or interested persons other than the petitioners as it may deem relevant to its consideration of the petition.

B. Oral Presentations. Within the time prescribed by §3111 for disposition of a petition for rehearing, the board may, on its own initiative or at the request of the petitioner or any other interested person, permit petitioners and other interested persons to appear before the board to make an oral presentation of information, data, views, comments and arguments, in support of or opposition to the rulemaking requested by petitioners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2), 953(C), R.S. 37:75(A)(3), (B)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

**§3111. Disposition of Petitions for Rulemaking**

A. Form of Determination. The board may grant or deny a petition for rulemaking in whole or in part. The board's determination with respect to a petition for rulemaking shall be stated in writing and served on the person signing the petition. If the board denies a petition for rulemaking, in whole or in part, its determination shall state the reasons for the board's denial of the petition. If the board grants a petition for rulemaking, in whole or in part, it shall promptly thereafter initiate rulemaking proceedings in accordance with R.S. 49:953. Nothing herein shall be construed to require that the board, in granting a petition for the adoption or amendment of a rule, adopt or employ the specific form or language requested by the petitioner, provided that the rule or amendment proposed by the board gives effect to the substance and intent of the rule or amendment requested by the petitioner.

B. Time for Determination. The board will render its determination with respect to a petition for rulemaking:

1. within 90 days of the date on which a complete petition for rulemaking conforming to the requirements of §3107 hereof is filed with the board; or
2. within 60 days of the date on which, at the request of the petitioner, the board entertains an oral presentation by the petitioner, whichever is later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2), 953(C), R.S. 37:75(A)(3), (B)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

**§3113. Construction and Effect**

A. Board Discretion in Rulemaking. The provisions of this Chapter are intended to provide an orderly and reasonable means for interested persons to petition the board to exercise its rulemaking authority under law and to provide for board consideration of such petitions. Petitions for rulemaking are addressed to the board's discretion as to the necessity or appropriateness of the adoption, amendment or repeal or a rule in the discharge of its licensing and regulatory responsibilities under the Public Accountancy Law. Nothing in the rules of this Chapter, accordingly, shall be deemed to create any right or entitlement in any person to require the board to exercise its rulemaking authority.

B. Nature and Effect of Determination. The board's disposition of a petition for rulemaking by a determination made under §3111.A does not constitute, and shall not be deemed to constitute, a "decision" or "order" within the meaning of R.S. 49:951(A)(3) or a declaratory order or ruling within the meaning of R.S. 49:962, and the procedures prescribed by this Chapter do not constitute an adjudication within the meaning of R.S. 49:951(A)(1). A determination by the board with respect to a petition for rulemaking, accordingly, is final and not subject to judicial review or other appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2), 953(C), R.S. 37:75(A)(3), (B)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:

Interested persons may submit written comments through July 21, 1997 to Michael A. Henderson, CPA, Executive Director, Board of Certified Public Accountants, 601 Poydras Street, Suite 1770, New Orleans, LA 70130.

A public hearing on the proposed rules will be held on Wednesday, July 30, 1997 at the board's offices at 601 Poydras Street, Suite 1770, New Orleans, LA 70130, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at the hearing.

Michael A. Henderson  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Comprehensive Rule Revisions**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No costs or savings to state or local governmental units are anticipated as a result of implementation of the proposed rule changes. The board's operations will change procedurally primarily because the rules will be simpler to understand and administer. However, the changes would not be to the extent that potential savings are measurable with accuracy.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No effect on revenue to state or local governmental units is anticipated as a result of implementation of the proposed rule changes.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
No effect on costs or economic benefits to directly affected persons or nongovernmental groups are anticipated as a result of the proposed rule changes. The objectives for amending the rules were to update terms by adding, deleting or changing superseded terminology and expired dates; to reflect in the rules, changes in board internal management or procedure; to clarify, explain, or improve grammar; and to change regulations in accordance with changes in the profession. The amendments (1) to solely update terms or dates that are no longer applicable or that have been superseded, (2) to change the internal management or procedures of the board, and (3) to clarify, further explain the rules or to improve grammar are not expected to have a measurable effect on CPAs, their clients, CPA examination candidates, or the public. The amendments reflecting additional or reduced requirements on CPAs, CPA firms, or CPA candidates will have a negligible impact on costs, work load, or paperwork which is not subject to estimation.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no known effect on competition and employment.

Michael A. Henderson, CPA  
Executive Director  
9706#050

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

## NOTICE OF INTENT

### Department of Economic Development Office of Financial Institutions

#### Capital Companies Tax Credit Program (LAC 10:XV.301-321)

In accordance with the authority granted by the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority granted by R.S. 51:1929, the commissioner of the Office of Financial Institutions proposes to amend LAC 10:XV.301-321 entitled Capital Companies Tax Credit Program, to provide for administration of the program, definitions and guidelines for participation in the program by licensed Certified Louisiana Capital Companies.

#### Title 10

### FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES, AND UCC Part XV. Other Regulated Entities

#### Chapter 3. Capital Companies Tax Credit Program

##### §301. Description of Program

These rules implement the Capital Companies (CAPCOs) Tax Credit Program pursuant to R.S. 51:1921 et seq. and R.S. 22:1068(E). This program was created by Act 642 of the 1983 Legislature, amended by Act 891 in 1984, Acts 695 and 915 in 1986, Act 496 in 1989, Acts 279 and 724 of 1993, and Act 21 of 1996.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1921-1933.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:

##### §303. Definitions Provided by Rule

The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise:

###### *Affiliate and/or Affiliated Company—*

a. solely for purposes of the transfer or sale of income or premium tax credits pursuant to R.S. 51:1924(F), R.S. 22:1068(E)(4), and LAC 10:XV.305(B), *affiliate* is defined as follows:

i. any person that controls, is controlled by or under common control with another person (including any person that would become an affiliate as a result of a business combination); or

ii. members, partners, or shareholders and any family members thereof, of a legal entity that invests in a CAPCO.

b. for all other purposes, the term *affiliate* is defined as follows:

i. when used with respect to a specified person or legal entity, *affiliate* means a person or legal entity controlling, controlled by or under common control with, another person or legal entity, directly or indirectly through one or more intermediaries;

ii. when used with respect to a qualified Louisiana business, *affiliate* means a legal entity that directly or indirectly, through one or more intermediaries, controls or is controlled by a qualified Louisiana business;

c. for purposes of R.S. 22:1068(E)(2)(c), a *group of affiliates* shall mean a person and not less than all affiliates of such person.

*Allowable Organization Costs*—those direct costs incurred to incorporate and charter an entity; however, such costs are limited to 25 percent of capitalization, before any reduction for disallowed organization costs.

a. Direct organization costs include, but are not limited to legal, accounting, consulting fees and printing costs directly related to the chartering or incorporation process, pre-opening and development stage enterprise costs that may be capitalized under Generally Accepted Accounting Principles (GAAP) and filing fees paid to chartering authorities. Allowable organization costs may be capitalized and amortized over a period not to exceed five years.

b. Pre-opening and development stage enterprise costs that generally are not capitalized under GAAP, such as salaries and employment benefits, rent, depreciation, supplies, directors' fees, training, travel, expenses associated with the establishment of business relationships, postage and telephone fees are examples of costs that shall be expensed and not capitalized. Similarly, direct costs associated with the offering and issuance of capital stock are not considered to be organization costs and shall not be capitalized; these costs shall be deducted from the proceeds in recording initial capitalization.

*Application*—a completed application as determined by the commissioner.

###### *Associate of a CAPCO—*

a. any of the following:

i. a person serving a CAPCO, or an entity that directly or indirectly controls a CAPCO, as any of the following: officer, director (including advisory, regional directors and directors emeritus), employee (provided such employee has significant management and policy responsibilities and powers, or is highly compensated in comparison with the other people employed with the employee), agent, investment or other advisor, manager (in the case of a manager-managed limited liability company), managing member (in the case of a member-managed limited liability company), accountant, or general/special counsel;

ii. a person directly or indirectly owning, controlling or holding with the power to vote 10 percent or more of the outstanding voting securities or other ownership interests of the CAPCO;

iii. a current or former spouse, parent, child, sibling, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of any person described in §303.A. *Associate of a CAPCO*.a.i or ii;

iv. a person individually or collectively controlled by or under common control, directly or indirectly, with any person described in §303.A. *Associate of a CAPCO*.a.i, ii or iii;

v. a person that invests in the CAPCO and has received an income tax credit or premium tax reduction under the CAPCO Program;

vi. an affiliate of any person described in §303.A. *Associate of a CAPCO*.a.v; or

vii.(a). a person that, within six months before or at any time after the date that a CAPCO invests in the person, is controlled by a CAPCO or any of its affiliates. A CAPCO's primary purpose is to provide venture capital to qualified Louisiana businesses in need of capital; not to invest in subsidiaries of the CAPCO or its affiliates, or companies that a CAPCO or its affiliates intend to control. Such investments will result in an associate determination and will not be considered "qualified investments" in assessing a CAPCO's compliance with its continuing certification requirements.

(b). Section 303.A. *Associate of a CAPCO*.a.vii.(a) does not apply to an investment made by a CAPCO in a qualified Louisiana business if, within six months before or at any time after the date of the investment, the qualified Louisiana business is not controlled by the CAPCO or its affiliates. However, even though a CAPCO may not intend to control a business in which it invests, it may obtain control over the qualified Louisiana business after its initial investment. If control is acquired after the initial investment as a result of the following circumstances, such control will not create an associate relationship under §303.A. *Associate of a CAPCO*.a.vii.(a):

(i). persons controlled by the CAPCO as a means of protecting the CAPCO's investment or resulting from a material breach of any financing agreement; or

(ii). instances involving transitory or short-term control of a person by a CAPCO (or an affiliate of the CAPCO) solely to remedy actions by the person that may cause the CAPCO's investment in such person to fail to be treated as a qualified investment, on the good faith belief that such operation of the person is necessary to ensure that the investment in the person will be treated as a qualified investment.

b. For the purposes of this definition, if any associate relationship described in §303.A. *Associate of a CAPCO*.a.i-vi exists between a person and the CAPCO at any time within six months before or at any time after the date that the CAPCO makes its initial investment in such person, that associate relationship is considered to exist on the date of the financing.

**BIDCO**—a Business and Industrial Development Corporation licensed pursuant to the Louisiana Business and Industrial Development Corporation Act, R.S. 51:2386 et seq.

**Business**—for the purposes of determining if a qualified Louisiana business operates primarily in Louisiana or performs substantially all of its production in Louisiana means an entity, together with all of that entity's affiliates that would directly or indirectly receive an economic benefit from a financing by a CAPCO. For purposes of this definition, an affiliate of the entity includes any entity which will become an affiliate of the entity as a result of a financing from a CAPCO.

**CAPCO**—a Certified Louisiana Capital Company certified pursuant to the Louisiana Capital Companies Tax Credit Program, R.S. 51:1921 et seq.

**Capitalization**—for purposes of initial certification, pursuant to R.S. 51:1925(B):

a. Generally Accepted Accounting Principles (GAAP) Capital: common stock, preferred stock, general

partnership interests, limited partnership interests, and any other equivalent ownership interest, all of which shall be exchanged for cash; surplus; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; reduced by disallowed organization costs;

b. LESS: the following, when any preferred or common stock, partnership interests, or other equivalent ownership interests are subject to redemption or repurchase by the CAPCO: preferred stock, common stock, partnership interests, limited partnership interests, and other equivalent ownership interests shall be multiplied by the following percentage reductions and deducted from capital:

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

c. Notwithstanding the foregoing, there will be no reduction for a withdrawal within five years after certification, provided the withdrawal is contemplated by all governing documents and disclosed to all prospective investors and any such withdrawal is concurrently replaced by an equal amount of cash GAAP capital. Moreover, the amount contemplated to be withdrawn shall not be the basis for any income tax credit or premium tax reduction.

**Commissioner**—the commissioner of the Office of Financial Institutions.

**Control**—

a. Solely for purposes of determining control of or by a qualified Louisiana business or if a person is an associate of a CAPCO, control means:

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote, 50 percent or more of the then outstanding voting securities issued by a legal entity, when such control is used with respect to a specified person or legal entity.

b. For all other purposes, *control* means:

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote 25 percent or more of the then outstanding voting securities issued by a legal entity.

**Date Certified, Newly Certified or Designated as a Certified Louisiana Capital Company**—the date that the Department notifies a CAPCO of its certification.

**Date on Which an Investment Pool Transaction Closes**—Date that a CAPCO designates, and notifies the



department of such designated date, that it has received an investment of certified capital in an investment pool. For purposes of this definition, an investment pool transaction may not close prior to:

a. execution of all legal documents and elimination of all material contingencies associated with the consummation of the transaction; and

b. the date that the CAPCO receives a cash investment of certified capital that is available for investment in qualified Louisiana businesses.

*Equity Features*—includes [pursuant to R.S. 51:1923(4) and (5)] the following:

a. *Royalty Rights*—rights to receive a percent of gross or net revenues, may be either fixed or variable, may provide for a minimum or maximum dollar amount per year or in total, may be for an indefinite or fixed period of time, and may be based upon revenues in excess of a base amount.

b. *Net Profit Interests*—rights to receive a percent of operating or net profits, may be either fixed or variable, may provide for a minimum or maximum dollar amount per year or in total, may be for an indefinite or fixed period of time, and may be based upon operating or net profits in excess of a base amount.

c. *Warrants for Future Ownership*—options on the stock of the qualified Louisiana business. The qualified Louisiana business may repurchase a warrant (a "call") or the qualified Louisiana business may be required to repurchase a warrant (a "put") at some fixed amount or an amount based on a pre-agreed upon formula.

d. *Equity Sale Participation Rights*—conversion options of debt, to convert all or a portion of the debt to the qualified Louisiana business's stock, then to participate in the sale of the stock of the qualified Louisiana business.

e. *Equity Rights*—the receipt or creation of a significant equity interest in a qualified Louisiana business.

f. And such other conceptually similar rights and elements as the OFI may approve.

*Family Member*—spouse, parent, child, sibling, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law.

*Financing Assistance Provided in Cash and The Investment of Cash*—a transaction, which in substance and in form, results in a disbursement of cash.

Examples of transactions excluded from this definition are: circular transactions as determined by the commissioner; capitalization of accrued principal, interest, royalty or other income; letters of credit; loan guarantees; loan collection expenses or legal fees incurred by a CAPCO in protecting its collateral interest in an investment.

*Investment*—

a. for purposes of earning tax credits or reductions under R.S. 51:1923(1) and (2), R.S. 51:1924(A) and (B), or R.S. 22:1068(E), means a transaction that, in substance and in form, is the investment of cash in exchange for:

i. common stock, preferred stock, or an equivalent ownership interest in a CAPCO; or

ii. a loan receivable or note receivable from a CAPCO which has a stated final maturity date of not less than five years from the origination date of the loan or note;

iii. notwithstanding the above, an investment shall also include debt instruments which are obligations of the

investing insurance company to a certified Louisiana capital company. Such debt instruments shall be converted into cash at a rate of not less than 10 percent per year from the date of the investment;

iv. however, at all times, in order to perfect the tax credits earned as a result of an investment described in Subparagraphs a-c of this Paragraph, the CAPCO shall have at least 50 percent of the certified capital of each investment pool that is received in cash:

(a). available to be invested in qualified investments in qualified Louisiana businesses;

(b). invested in qualified investments in qualified Louisiana businesses, provided that the only investments in qualified Louisiana businesses that will comply with this Subparagraph are those qualified investments made subsequent to the investment date of the investment pool; or

(c). a combination of §303.A.*Investment.d.i* and *ii*.

b. an *Investment* furthers economic development within Louisiana. If the proceeds from an investment are used in a manner consistent with representations contained in the affidavit required to be obtained from the qualified Louisiana business prior to an investment in the business and the documented use of such proceeds promote Louisiana economic development. Proceeds shall be determined to promote Louisiana economic development if more than 50 percent of the proceeds derived from the investment are used by the qualified Louisiana business for two or more of the following purposes:

i. to hire significantly more Louisiana employees;

ii. to directly purchase or lease furniture, fixtures, land or equipment that will be used in the Louisiana operations of the business or to construct or expand production or operating facilities located in Louisiana;

iii. to purchase inventory for resale from Louisiana-based operations or outlets;

iv. to capitalize a business in order for the business to secure future debt financing to support the Louisiana operations of the business;

v. to increase or preserve working capital and/or cash flows for Louisiana operations of the business;

vi. to preserve or expand Louisiana corporate headquarters operations;

vii. to support research and development or technological development within Louisiana;

viii. to fund start-up businesses that will operate primarily in Louisiana; or

ix. to provide for an additional economic benefit not otherwise described above. However, before this purpose may be used as a basis for a determination that the investment furthers economic development within Louisiana, the CAPCO shall request in writing and the commissioner shall issue a written response to the CAPCO that, based upon relevant facts and circumstances, the proposed investment will further Louisiana economic purposes and result in a significant net benefit to the state. The commissioner's letter opinion shall be issued within 30 days of the request by the CAPCO, and shall be part of the annual review required to be performed by the department and billed according to provisions contained in §307.D of this Section. However, upon written notification to

the CAPCO, the 30-day period can be extended by the commissioner if he determines that the initial information submitted is insufficient or incomplete for such determination.

*Louisiana Employees—*

a. Full-time and part-time employees and officers, converted to a full-time equivalent basis, that perform services in Louisiana for a qualified Louisiana business in exchange for salaries, wages and/or other compensation, which is included in Louisiana withholding tax returns filed by the qualified Louisiana business.

b. The term *Louisiana employees* shall not include:

i. attorneys, accountants or advisors providing consulting or professional services to a qualified Louisiana business on a contract basis; or

ii. employees of any business that perform services (contractor) for a qualified Louisiana business.

For example: a contractor may enter into an agreement to perform services for a qualified Louisiana business. The contractor's employees that perform services under that agreement would not be Louisiana employees under this definition.

*Net Income*—net income as defined under or consistent with Generally Accepted Accounting Principles.

*Net Worth*—net worth as defined under or consistent with Generally Accepted Accounting Principles.

*Office*—the Office of Financial Institutions (OFI).

*Operates Primarily in Louisiana*—a business operates primarily in Louisiana if, at the time of the initial investment, the business is in good standing with the Louisiana Secretary of State, if applicable, and meets one or more of the following:

a. the business has more than 50 percent of its total assets located in Louisiana;

b. more than 50 percent of the business' net income is allocable or apportionable to Louisiana in accordance with Louisiana income tax law, but disregarding whether the business is taxable or tax-exempt for Louisiana income tax purposes;

c. more than 50 percent of the total salaries, wages and/or other compensation of the business are paid to Louisiana employees; or

d. the CAPCO has, prior to investing in the business, received a written opinion from the commissioner that, based upon relevant facts and circumstances, the business has demonstrated it operates primarily in Louisiana and will continue to operate primarily in Louisiana for at least one year from the date of any financing by a CAPCO. The commissioner's letter opinion shall be issued within 30 days of the request by the CAPCO, and shall be part of the annual review required to be performed by the department and billed according to provisions contained in §307.D. However, upon written notification to the CAPCO, the 30-day period can be extended by the commissioner if he determines that the initial information submitted is insufficient or incomplete for such determination.

*Participation Between CAPCOs*—are loans or other investments in which one or more CAPCOs have an ownership interest. If a loan or investment is determined to meet the definition of a qualified investment, a CAPCO may only include its participation (ownership interest) as a qualified investment.

*Performs Substantially All of Its Production in Louisiana*—a business performs substantially all of its production in Louisiana if:

a. the business derives more than 50 percent of its gross receipts from the sale of manufactured, produced or processed goods; and

b. more than 50 percent of the total value added to the business' finished product is added within Louisiana.

*Permissible Investments*—for purposes of R.S. 51:1926(B), cash deposited with a federally-insured financial institution; certificates of deposit in federally-insured financial institutions; investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States; investment-grade instruments (rated in the top four rating categories by a nationally recognized rating organization); obligations of any state, municipality or of any political subdivision thereof; or any other investments approved in advance and in writing by the commissioner.

*Person*—a natural person or juridical entity. If used with respect to acquiring control of or controlling a specified person, *person* includes a combination of two or more persons acting in concert.

*Primary Business Activity of a CAPCO*—the investment of a CAPCO's certified capital primarily in qualified investments in qualified Louisiana businesses. Primary business activity is demonstrated by having at all times, a minimum of 50 percent of total certified capital of each investment pool, which has been collected in cash, available for investment in or having been invested as qualified investments in qualified Louisiana businesses.

*Sophisticated Investor*—any of the following:

a. an institutional investor such as a bank, savings and loan association or other depository institution insured by the Federal Deposit Insurance Corporation, registered investment company or insurance company;

b. a corporation with total assets in excess of \$5,000,000;

c. a natural person whose individual net worth, or joint net worth with that person's spouse at the time of his purchase, exceeds \$1,000,000; or

d. a natural person with an individual income in excess of \$200,000 in each of two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

*Total Certified Capital Under Management*—for purposes of investment limits, pursuant to R.S. 51:1926(B):

a. GAAP Capital: common stock, preferred stock, general partnership interests, limited partnership interests and other equivalent ownership interests, all of which shall be exchanged for cash; surplus; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; reduced by disallowed organization costs.

b. PLUS: Qualified Non-GAAP Capital: the portion off debentures, notes or any other quasi-equity/debt

instruments with a maturity of not less than five years which is available for investment in qualified investments.

c. LESS: the following, when any GAAP capital or Qualified Non-GAAP capital is subject to redemption or repurchase by the CAPCO:

The GAAP Capital and Qualified Non-GAAP Capital subject to redemption or repurchase shall be multiplied by the following percentage reductions and deducted from capital:

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1921-1933.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:

### §305. Income and Premium Tax Credits

A. In order to be eligible for any income or premium tax credits, debentures, notes or any other quasi-equity/debt instruments shall have an original maturity date of not less than five years from the date of issuance. If an investment is in the form of stock, partnership interest, or any other equivalent ownership interest, such investment shall not be subject to redemption or repurchase within five years from the date of issuance. Except in the case where a CAPCO voluntarily decertifies and preserves all income and premium tax credits, if debentures, notes or any other quasi-equity/debt instruments or stock, partnership interests, or other equivalent ownership interests are redeemed or repurchased within five years from issuance, any income or premium tax credits previously taken, to the extent applicable to the investment redeemed or repurchased, shall be repaid to the Department of Insurance or the Department of Revenue and Taxation at the time of redemption, and any remaining tax credits shall be forfeited, pursuant to R.S. 51:1927 and R.S. 51:1928. Amortization of a note over its stated maturity does not constitute a redemption or repurchase under this Subpart.

B. Income or premium tax credits may be sold or transferred, subject to the following conditions.

1. The transfer or sale of income or premium tax credits, pursuant to R.S. 51:1924(F) or R.S. 22:1068(E)(4), will be restricted to transfers or sales between affiliates and sophisticated investors, collectively referred to as acquirors. Furthermore, even though a transfer or sale of credits, know as an election under this Section, may involve several entities, only one election may be made during any calendar year. Therefore, an investor in a CAPCO may only transfer or sell credits once during a calendar year and the entity that purchases the credit may not transfer credits obtained during the year of purchase. In any subsequent calendar year, the

purchaser of the credits may make one election per year, if needed.

2. Companies and/or individuals shall submit to the Department of Insurance or the Department of Revenue and Taxation in writing, a notification of any transfer or sale of income or premium tax credits within 30 days of the transfer or sale of such credits. The notification shall include the original investor's income or premium tax credit balance prior to transfer, the remaining balance after transfer, all tax identification numbers for both transferor and acquiror, the date of transfer, and the amount transferred.

3. If an insurance company transfers premium tax credits between affiliates or sophisticated investors, the notification submitted to the Department of Insurance shall be provided on forms prescribed by the Department of Insurance.

4. If income tax credits are transferred between affiliates or sophisticated investors (acquirors), the notification submitted to the Department of Revenue and Taxation must include a worksheet, which the transferor and each acquiror shall also attach to their Louisiana corporate and/or individual income tax returns, which shall contain the following information for each corporation or individual involved:

- a. name of transferor and each acquiror;
- b. the gross Louisiana corporation or individual income tax liability of the transferor and each acquiror; and
- c. credits taken by the transferor and each acquiror under R.S. 51:1924(A) and (B).

5. Failure to comply with this rule will jeopardize the income or premium tax credit transferred.

6. The transfer or sale of income or premium tax credits, pursuant to R.S. 51:1924(F) or R.S. 22:1068(E)(4), shall not affect the time schedule for taking such tax credits, as provided in R.S. 51:1924(A) and (E) or R.S. 22:1068(E)(3), respectively. Any income or premium tax credits transferred or sold pursuant to R.S. 51:1924(F) or R.S. 22:1068(E)(4), which credits are subject to recapture pursuant to R.S. 51:1927(C), 51:1928(A) or R.S. 22:1068(E)(4), shall be the liability of the taxpayer that actually claimed the credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1924, 1927, 1928 and 1929, and R.S. 22:1068(E).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 16:762 (September 1990), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:

### §307. Application Fees, Other Fees

A. An advance notification of intent to seek certification shall be filed by a company or entity, the applicant, prior to filing an application. An advance notification fee of \$100 shall be submitted with the advance notification form.

B. An application fee shall be submitted with the application based on 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000. If 0.2 percent of the total taxes to be exempted exceeds the amount of the application fee originally submitted, the

CAPCO shall submit the difference, up to the \$5,000 maximum, to the office. Checks should be payable to the Office of Financial Institutions.

C. The office reserves the right to return the advance notification or application to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees for advance notifications and applications which have been accepted will not be refundable.

D. The commissioner shall conduct an annual review of each CAPCO to determine the company's compliance with the rules and statutes. Examiner time shall be billed at a rate not less than \$50 per hour, per examiner, or \$500 per review, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1925, 1927 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:

#### **§309. Application Process**

A. A company organized and existing under the laws of Louisiana, created for the purpose of making qualified equity investments, or financing assistance as a licensed BIDCO, as required in R.S. 51:1921 et seq., shall make written application for certification to the commissioner on application forms provided by the office.

B. The form for applying to become a CAPCO may be obtained from the Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095, and shall be filed at the same address. The time and date of filings shall be recorded at the time of filing in the office and shall not be construed to be the date of mailing.

C. Said application and all submissions of additional information reported to the office, shall be forwarded via United States mail or private or commercial interstate carrier, properly addressed and postmarked and signed by a duly authorized officer, manager, member or partner and shall be made pursuant to procedures established by the commissioner.

D. The commissioner shall cause all applications to be reviewed by the office and designate those he determines to be complete. In the event that an application is deemed to be incomplete in any respect, the applicants will be notified within 30 days of receipt. An incomplete application shall be resubmitted, either in a partial manner or totally, as deemed necessary by the commissioner. A previously incomplete application may be resubmitted, which will establish a new time and date received for that application.

E. The submission of any false or misleading information in the application documents will be grounds for rejection of the application and denial of further consideration, as well as decertification, if such information discovered at a subsequent date would have resulted in the denial of such license. Whoever knowingly submits a false or misleading statement

to a CAPCO and/or the department may be subject to civil and criminal sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1925 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:

#### **§311. Conditions of Certification**

A. All CAPCOs, through an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, shall certify and acknowledge all of the following conditions for certification as a certified Louisiana capital company and shall certify and acknowledge that the act statement is true and correct:

1. The CAPCO has an initial capitalization of not less than \$200,000. If any capitalization is repurchased or contemplated to be repurchased by the CAPCO within five years after certification, the CAPCO will concurrently replace any repurchased capital with cash capital, as defined under Generally Accepted Accounting Principles. Furthermore, any contemplated repurchases shall be disclosed in all governing documents to all prospective investors. The amount repurchased shall not be the basis for any income tax credits or premium tax reductions.

2. At least 30 days prior to the sale or redemption of stock, partnership interests, other equivalent ownership interests or debentures constituting 10 percent or more of the then outstanding shares, partnership interests, other equivalent ownership interests or debentures, the CAPCO will provide a written notification to the office.

3. The board of directors will not elect new or replace existing board members or declare dividends without prior written consent of the office for the first two years of business.

4. The CAPCO will immediately notify the office when its total certified capital under management is not sufficient to enable the CAPCO to operate as a viable going concern.

5. The CAPCO will not engage in any activity which represents a material difference from the business activity described in its application without first obtaining prior written approval by the office.

6. The CAPCO will comply with the CAPCO Act and all applicable rules, regulations and policies that are currently in effect or enacted after the date of certification.

7. The CAPCO will adopt OFI's valuation guidelines and record retention policies.

8. Any other conditions deemed relevant to the commissioner.

B. If a CAPCO contemplates any public or private securities offerings, prior to the certification of any tax benefits resulting from the certified capital raised through such offerings, the CAPCO shall have a securities attorney provide a written opinion that the company is in compliance with Louisiana securities laws, federal securities laws, and the securities laws of any other states where the offerings have closed. Copies of all offering materials to be used in investor

solicitations must be submitted to the office prior to investor solicitation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1925 and 1929.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:

### **§313. Requirements for Continuance of Certification and Decertification**

A. In calculating the percentage requirements for continued certification of an investment pool under Subsection A of R.S. 51:1926, decertification of an investment pool under R.S. 51:1927 and voluntary decertification of an investment pool under R.S. 51:1928:

1. The numerator for the investment pool shall be:

a. 100 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are held or intended to be held for a minimum of one year; and

b. 50 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are intended to be held less than one year.

2. For purposes of the calculation of the numerator, no qualified investment may be counted more than once.

3. If a CAPCO invests a portion of its total certified capital in a majority-owned BIDCO, the qualified investments made by the majority-owned BIDCO shall be added to the numerator under §311.A.1.a and b.

4. The denominator shall be total certified capital of the investment pool.

B. Compliance with requirements for continuance of certification and voluntary or involuntary decertification (collectively referred to as compliance) of each investment pool will be determined on a first-in, first-out basis: a CAPCO's first investment pool will be evaluated for compliance before any succeeding pools. Only those qualified investments made after the investment date of each investment pool are considered in determining compliance for that particular investment pool. No qualified investments made prior to an investment pool's investment date may be used in determining that particular investment pool's compliance. However, if more than one investment pool operates simultaneously, a CAPCO may allocate its qualified investments to all open investment pools, provided such allocations are reasonable.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1926, 1929 and 1933.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:

### **§315. Information Required from Qualified Louisiana Businesses**

Prior to making an investment in a business, a CAPCO shall obtain, from an authorized representative of the business, a signed affidavit, the original of which shall be maintained by the CAPCO in its files. The affidavit shall contain all of the following:

1. full and conclusive legal proof of the representative's authority to act on behalf of the business.

For example: a board resolution;

2. a binding waiver of rights and consent agreement sufficient to allow the CAPCO, upon request to the business, full access to all information and documentation of the business which is in any way related to the investment of the CAPCO in the business;

3. completed forms, certifications, powers of attorney, and any other documentation, as determined by the commissioner, sufficient to allow acquisition by the CAPCO of any of the information and/or records of the business in the possession of any other business or entity, including but not limited to, financial institutions and state and federal governmental entities;

4. a statement certifying the intended use of proceeds, and that the business will provide to the CAPCO, documentation of the use of proceeds; and

5. an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, certifying all of the above and foregoing as being true and correct.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1926, 1927, 1928 and 1929.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:

### **§317. CAPCO Report and Record Requirements**

A. Reporting Requirements. Pursuant to R.S. 51:1926(F)(2), CAPCOs are required to submit to the department reports of selected information for each qualified investment made in the previous calendar year. Senate Concurrent Resolution Number 40 of the 1996 Regular Session also requires that the department determine the economic development impact of the CAPCO Program on the state. In order to provide such a report to the Senate, economic information for each company in which a CAPCO has invested shall be obtained and reported to the department by each CAPCO. Such reports shall be submitted on forms provided or approved by OFI.

B. Record Requirements. In order for the commissioner to properly review and analyze a CAPCO's compliance with this rule and all relevant statutes, each CAPCO shall obtain from each business in which the CAPCO has invested, and maintain in its possession for review, any and all records deemed necessary by the commissioner.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1926 and 1929.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:

### **§319. Premium Tax Reductions for Insurance Companies**

A. The Allowable Annual Premium Tax Credit (AAPTC) that may be taken during any year shall be the lesser of:

1. 10 percent of premium tax reduction allowable; or

2. 25 percent of the gross premium tax liability for the base year of investment. Furthermore, the credit taken in any

year shall not exceed the net premium tax liability for that year.

B. The Premium Tax Reduction Allowable (PTRA) is 120 percent of the investment in a CAPCO.

C. The Gross Premium Tax Liability in the Base year of Investment (GPTLB) is the gross premium tax liability in the year of investment, before any credits.

D. The Gross Premium Tax Liability (GPTL) is the gross premium tax liability during any year for which the CAPCO credit may be taken, before any credits.

E. The Net Premium Tax (NPT) is the GPTL, reduced by credits provided in R.S. 22:1068(A), (B), (C) and (D), and credits for Louisiana Insurance Guaranty Association (LIGA) and Louisiana Life and Health Insurance Guaranty Association (LHIGA) assessments. If the AAPTC ever exceeds the NPT in any year, the excess may be carried forward until utilized.

**Example**

Base (taxable) years of investment, assuming multiple investments of \$2,000,000 and \$1,000,000, respectively, by an insurer in CAPCOs.

	1993	1994
Investment by Insurer *	2,000,000	1,000,000
Premium Tax Reduction Allowable PTRA (120 percent of Investment)	2,400,000	1,200,000
Gross Premium Tax Liability GPTL of Insurer	1,000,000	1,100,000
Credits from R.S. 22:1068 (A), (B), (C), (D), LIGA or LHIGA	(600,000)	(540,000)
Net Premium Tax Before CAPCO Credits NPT	400,000	560,000
Allowable Annual Premium Tax Credit AAPTC for the Base Year of Investment is the Lesser of:		
(1) 10 percent of PTRA	240,000	120,000
(2) 25 percent of GPTLB	250,000	275,000
And Further limited to		
100 percent of NPT	400,000	560,000
For subsequent years, the AAPTC for each investment is the lesser of:		
(1) The Base Year Reduction	240,000	120,000
(2) 100 percent of NPT for the Subsequent Years		

If Net Premium Tax liabilities of \$500,000 per year are estimated for the period of 1993 through 2003, the following amount of AAPTC may be taken:

YEAR	1993	1994	AAPTC
1993	(240,000 +	0)	\$ 240,000
1994	(240,000 +	120,000)	360,000

1995	(240,000 +	120,000)	360,000
1996	(240,000 +	120,000)	360,000
1997	(240,000 +	120,000)	360,000
1998	(240,000 +	120,000)	360,000
1999	(240,000 +	120,000)	360,000
2000	(240,000 +	120,000)	360,000
2001	(240,000 +	120,000)	360,000
2002	(240,000 +	120,000)	360,000
2003	(0 +	120,000)	120,000
TOTAL			\$3,600,000

\* NOTE: The amount of investment by an insurer in a CAPCO, in any one year, that would maximize the use of premium tax credits is calculated as follows:

$$\frac{(\text{GPTLB} \times 25 \text{ percent} \times 10 \text{ years})}{1.20}$$

In this example, the formula would yield an investment amount of \$2,083,333 in 1993 and \$2,291,666 in 1994.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1068(E) and R.S. 51:1924 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:

**§321. Severability**

If any section, term, or provision of any of the foregoing rules, LAC 10:XV.301-320, is for any reason declared or adjudged to be invalid, such invalidity shall not affect, impair, or invalidate any of the remaining rules, or any term or provision thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), amended by the Office of Financial Institutions, LR 23:

If required, a public hearing will be held at 10 a.m. on July 28, 1997, at the Office of Financial Institutions at 8660 United Plaza Boulevard, Baton Rouge, LA 70809.

Written comments regarding this rule shall be submitted no later than July 20, 1997 to John P. Ducrest, Deputy Chief Examiner, Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095, or by delivery to 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809-7024.

Larry L. Murray  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Capital Companies Tax Credit Program**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Implementation costs are estimated at \$1,600 and are composed of the following: publishing fees for the *Louisiana Register* of \$1,500, and \$100 for copies of the rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Examination fee revenue is expected to increase by \$9,600 in FYE 96/97; \$8,000 in FYE 97/98; and \$6,400 in FYE 98/99.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Individual CAPCOs can expect to pay \$800 in additional examination fees for FYE 96/97, 97/98, and 98/99. This will result in the CAPCO industry, as a whole, paying increased examination fees of \$9,600 in FYE 96/97; \$8,000 in FYE 97/98; and \$6,400 in FYE 98/99.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
Competition and employment are not expected to be affected by this rule.

Larry L. Murray  
Commissioner  
9706#072

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

**Bulletin 746—Driver/Traffic  
Safety Education**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Board of Elementary and Secondary Education approved for advertising a revision to the certification requirements in driver and traffic safety education. This is an amendment to Bulletin 746, Louisiana Standards for State Certification of School Personnel.

**Driver and Traffic Safety Education**

- A. a valid Louisiana teaching certificate;
- B. a valid Louisiana driver's license;
- C. a driving record free of conviction of major accidents and/or repeated traffic violations.
- D. Specialized Education
  1. General Safety Education—3 semester hours  
Basic safety information (home, school, traffic, community, and industrial safety) and general information on psychology of accident prevention.

2. Basic Information Course in Driver Education—3 semester hours

Investigation of the problems facing drivers such as those of pedestrians, cycles, alcohol and drugs, traffic engineering problems, and study of the philosophy of driver education as it exists in our society.

3. Curricular Innovations and Instructional Devices—3 semester hours

In-depth study of driver education and traffic safety curricular materials and familiarization with related instructional devices.

4. First Aid—1 semester hour

E. Revocation basis: being convicted of repeated traffic violations or any major crime or accident involved in or related to the operation of a motor vehicle.

Interested persons may submit written comments until 4:30 p.m., August 8, 1997 to Jeannie Stokes, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.  
HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 23:

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 746—Driver/Traffic  
Safety Education**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The adoption of this proposed rule will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.  
BESE's estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$60. Funds are available.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed rule will have no effect on revenue collection.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There will be no costs to directly affected persons or nongovernmental groups. The proposed rule will provide increased opportunities for teachers to become certified to teach driver and traffic safety education.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed rule may result in an increase in the number of certified teachers available for employment in the field of driver and traffic safety education.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
9706#032

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

**Board Advisory Councils (LAC 28:I.105)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Board of



Elementary and Secondary Education approved for advertisement an amendment to the *Louisiana Administrative Code*, Title 28, Section 28:I.105.A as follows:

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education**

**Chapter 1. Organization**

**§105. Board Advisory Councils**

A.1. - 11. ...

12. Louisiana Proprietary School Commission  
(R.S. 17:3141)

\* \* \*

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

HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 23:

Interested persons may submit written comments until 4:30 p.m., August 8, 1997 to Jeannie Stokes, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

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

**RULE TITLE: Board Advisory Councils**

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

There will be no cost of implementation of this change to either the licensed proprietary schools or the Department of Education.

BESE's estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$20. Funds are available.

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

There will be no effect on revenue collections.

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

There will be no cost and/or economic benefits which directly affect persons or nongovernmental groups.

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

There will be no effect on competition or employment.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
9706#031

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

**Crude Oil and Condensate (LAC 33:III.2104)(AQ151)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.2104. The proposed rule applies to any oil and gas production facility that has a potential to emit more than 50 Tons Per Year (TPY) of flash gas. Flash gas emitted to the atmosphere from tanks, reservoirs, process vessels, separators, or other containers is subject to this regulation. Subject facilities shall install a vapor recovery system that directs vapors to a fuel gas system, a sales gas system, an underground gas injection system, or a control device. Emissions shall be reduced by a minimum of 95 percent or reduced to less than 50 TPY potential flash gas emissions at the facility. Flash gas emissions from oil and gas production operations have been recognized as a significant source of VOC emissions. Recently reported emissions indicate individual sites emitting up to 4000 TPY of VOC due to flash gas and indicate total statewide VOC emissions due to flash gas of over 16000 TPY. These emissions have a significant impact on ambient air quality.

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

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part III. Air**

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

**Subchapter A. General**

**§2104. Crude Oil and Condensate**

A. Applicability. This Section applies to any oil and gas production facility that has a potential to emit more than 50 Tons Per Year (TPY) of flash gas to the atmosphere.

B. Definitions

*Flash Gas*—VOC emissions from depressurization of crude oil or condensate when it is transferred from a higher pressure to a lower pressure tank, reservoir, or other container. Flash gas emitted to the atmosphere from tanks, reservoirs, process vessels, separators, or other process equipment is subject to this Section.

C. Control Requirements. Any facility to which this Section is applicable under Subsection A of this Section shall

install a vapor recovery system that directs vapors to a fuel gas system, a sales gas system, an underground gas injection system, or a control device. Aggregated facility flash gas emissions shall be reduced by a minimum of 95 percent or reduced to a potential to emit of less than 50 TPY.

D. Exemptions. Reserved.

E. Compliance Schedule. For equipment located in Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge or for emission points with the potential to emit 100 TPY or more of volatile organic compounds, compliance shall be achieved as soon as practicable, but no later than July 1, 1998. For all other facilities compliance shall be achieved as soon as practicable, but no later than January 1, 1999.

F. Test Methods

1. Flares. Flares will be considered in compliance with Subsection C of this Section if the heat content of the gas is above 300 BTU/scf and the flare is equipped with an automatic flare relighting device, is equipped with a heat sensing device, or is visually checked daily to detect the presence of a flame.

2. Other Control Devices. The following test methods shall be used, where appropriate, to measure control device compliance:

a. test methods 1-4 (40 CFR part 60, appendix A, as incorporated by reference in LAC 33:III.3003) for determining flow rates, as necessary;

b. test method 18 (40 CFR part 60, appendix A, as incorporated by reference in LAC 33:III.3003) for measuring gaseous organic compound emissions by gas chromatographic analysis;

c. test method 21 (40 CFR part 60, appendix A, as incorporated by reference in LAC 33:III.3003) for determination of volatile organic compound leaks;

d. test method 25 (40 CFR part 60, appendix A, as incorporated by reference in LAC 33:III.3003) for determining total gaseous nonmethane organic emissions, such as carbon; and

e. additional performance test procedures, or equivalent test methods, approved by the administrative authority.

G. Monitoring/Recordkeeping/Reporting. The owner/operator of any oil and gas production facility shall maintain records to verify compliance with or exemption from this Section. The records shall be maintained on the premises, or at an alternative location approved by the administrative authority, for at least two years, and will include, but not be limited to, the following:

1. the potential to emit flash gas from emission points that vent to the atmosphere, determined by using generally acceptable engineering calculation techniques or test methods. The method of calculation or testing must be approved by the administrative authority;

2. the following information for control devices required under Subsection C of this Section:

a. for flares:

i. the heat content of the gas; and

ii. documentation of daily visual observations to detect the presence of a flame, if required by Subsection F.1 of this Section;

b. for other control devices:

i. daily measurements of the inlet and outlet gas temperature of a chiller or catalytic incinerator; or

ii. results of monitoring outlet VOC concentration of carbon adsorption bed to detect breakthrough;

3. the date and reason for any maintenance and repair of the applicable control devices and the estimated quantity and duration of volatile organic compound emissions during such activities;

4. the results of any testing conducted in accordance with the provisions specified in Subsection F of this Section; and

5. all operating parameters required to verify the validity of the flash gas emissions, as calculated in Subsection G.1 of this Section.

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:

A public hearing will be held on July 25, 1997, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ151. Such comments must be received no later than August 1, 1997, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (504) 765-0486.

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

Gus Von Bodungen  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Crude Oil and Condensate**

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

There will be no costs or savings to state or local governmental units for this proposal.

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

There will be no effect on revenue collections of state or local governmental units as a result of this rule.

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

The total cost to the oil and gas industry will be less than \$875,000. The benefits to the oil and gas industry will be recovered flash gas which has economic value as fuel or for sales.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

Gus Von Bodungen  
Assistant Secretary  
9706#052

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Solid and Hazardous Waste  
Hazardous Waste Division**

Financial Assurance and Cleanup  
(LAC 33:V.Chapters 1,13,19,37,43, and 49)  
(HW052)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste Division regulations, LAC 33:V.Chapters 1, 13, 19, 37, 43, and 49 (HW052).

This rule seeks to make Louisiana's regulations on hazardous waste financial assurance to be equivalent to federal regulations (40 CFR 264.140-151 and 265.140-150). A review of state regulations for financial assurance showed that they were inconsistent with the federal regulations.

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

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental  
Quality—Hazardous Waste**

**Chapter 1. General Provisions and Definitions**

**§105. Program Scope**

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including "solid waste" and "hazardous waste," appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

\* \* \*

[See Prior Text in A-D.1]

2. A generator who temporarily stores hazardous wastes in an environmentally safe container, tank, or containment building (see LAC 33:V.1109.E) on-site for 90 days or less is exempt from the permitting regulations except for the requirements of LAC 33:V.Chapter 11. Generators must record the date that storage began by proper marking of the container or by other methods acceptable to the administrative authority. Such temporary storage shall be in an environmentally sound manner in compliance with the technical requirements of LAC 33:V.1505, 1509.A, 1513—1517, 1525, and as applicable, with LAC 33:V.1903.A and B, 1905—1913, 1919, 2103—2109.C, and 2111—2115.

\* \* \*

[See Prior Text in D.3-M.10]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), amended by the Office of the Secretary LR 23:298 (March 1997), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

**Chapter 13. Transporters**

**§1305. Transfer Facility Requirements**

\* \* \*

[See Prior Text in A]

B. If hazardous wastes from different generators or separate wastes from the same generator become mixed after being accepted by the transporter, the transporter shall also comply with applicable federal or state generator standards unless the transporter shows that the information on the manifests still identifies the hazardous waste.

\* \* \*

[See Prior Text in 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), repromulgated LR 18:1256 (November 1992), amended LR 23:

**Chapter 19. Tanks**

**§1915. Closure and Post-closure Care**

\* \* \*

[See Prior Text in A-B]

C. If an owner or operator has a tank system that does not have secondary containment that meets the requirements of LAC 33:V.1907.B-F and is not exempt from the secondary containment requirements in accordance with LAC 33:V.1907.G, then:

\* \* \*

[See Prior Text in C.1-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 13:651 (November 1987), amended LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 23:

### 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 LAC 33:V.3707.A-F, which choice the administrative authority must find acceptable based on the application and the circumstances.

\* \* \*

[See Prior Text in A-A.9]

10. After beginning partial or final closure, an owner or operator, or any other person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the administrative authority. 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 operating life. Within 60 days after receiving bills for partial or final 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 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 this Section, 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 the owner or operator with a detailed written statement of reasons.

\* \* \*

[See Prior Text in A.11-C.2]

3. The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. This standby trust must meet the requirements specified in Subsection A of this Section except that:

\* \* \*

[See Prior Text in C.3.a-D.5]

6. The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in Subsection G of this Section.

\* \* \*

[See Prior Text in D.7-D.8]

9. 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 administrative authority 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.

\* \* \*

[See Prior Text in D.10-F.1.a]

i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

\* \* \*

[See Prior Text in F.1.b-F.1.b.i]

ii. tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in Subsection F.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (see LAC 33:V.3719.F). The phrase "current plugging and abandonment cost estimates" used in Subsection F.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70.f)

\* \* \*

[See Prior Text in F.3-F.10.b]

c. If the owner or operator fails to provide alternate financial assurance as specified in this Section and obtain the written approval of such alternate assurance from the administrative authority within 90 days after receipt by the owner or operator and the administrative authority of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

G. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds

guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in Subsections A, B, D, and E of this Section, respectively, except that it is the combination of mechanisms, rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanism. A single trust fund may be established for two or more mechanisms. The administrative authority may use any or all of the mechanisms to provide for closure of the facility.

\* \* \*

[See Prior Text in H-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), LR 23:

### **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.

\* \* \*

[See Prior Text in A-A.4]

5. If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in this Section or in LAC 33:V.4407, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and if annual payments were made according to specifications of this Subsection and LAC 33:V.4407, as applicable.

\* \* \*

[See Prior Text in A.6 - 12.a]

b. the administrative authority releases the owner or operator from the requirements of this Section in accordance with Subsection I of this Section.

\* \* \*

[See Prior Text in B-C.4.b]

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination by the administrative authority pursuant to R.S. 30:2025 that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements, or will deposit the amount of the penal sum into the standby trust fund.

\* \* \*

[See Prior Text in C.6-E.8.b]

c. closure is ordered by the administrative authority or a U.S. District Court or other court that can exercise jurisdiction; or

\* \* \*

[See Prior Text in E.8.d-F.1.a]

i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. net working capital and tangible net worth each at least six times the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

b. The owner or operator must have:

i. a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by *Standard and Poor's* or Aaa, Aa, A, or Baa as issued by *Moody's*; and

ii. tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in LAC 33:V.3707.F.1 refers to the cost estimates required to be shown in paragraphs 1- 4 of the letter from the owner's or operator's chief financial officer (see LAC 33:V.3719.F). The phrase "current plugging and abandonment cost estimates" used in LAC 33:V.3707.F.1 refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70.f).

\* \* \*

[See Prior Text in F.3-F.11.c]

G. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in Subsections A, B, D, and E of this Section, respectively, except that it is the combination of mechanisms, rather than the single mechanism, that must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The administrative authority may use any or all of the mechanisms to provide for post-closure care of the facility.

\* \* \*

[See Prior Text in H-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), LR 23:

#### **Subchapter D. Insurance Requirements**

##### **§3715. Liability Requirements**

\* \* \*

[See Prior Text in A-A.1.b]

2. An owner or operator may meet the requirements of this Section by passing a financial test or using the corporate guarantee for liability coverage as specified in Subsections F and G of this Section.

\* \* \*

[See Prior Text in A.3-B.7.c]

C. Request for Variance. If an owner or operator can demonstrate to the satisfaction of the administrative authority that the levels of financial responsibility required by Subsections A and 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 owner or operator may obtain a variance from the administrative authority. The request for a variance must be submitted to the administrative authority as part of the application under LAC 33:V.Chapter 5 for a facility that does not have a permit, or pursuant to the procedures for permit modification under LAC 33:V.Chapter 3 for a facility that has a permit. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to 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. The administrative authority may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the administrative authority to determine a level of financial responsibility other than that required by Subsections A and B of this Section. Any request for a variance for a permitted facility will be treated as a request for a permit modification under LAC 33:V.321.

\* \* \*

[See Prior Text in D-F.1.a]

i. net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by the test; and

ii. tangible net worth of at least \$10 million; and

iii. assets located in the United States amounting to either at least 90 percent of his total assets or at least six times the amount of liability coverage to be demonstrated by this test.

b. The owner or operator must have:

i. a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by *Standard and Poor's* or Aaa, Aa, A, or Baa as issued by *Moody's*; and

ii. tangible net worth of at least \$10 million; and

iii. tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

iv. assets located in the United States amounting to either at least 90 percent of total assets or at least six times the

amount of liability coverage to be demonstrated by this test.

\* \* \*

[See Prior Text in F.2-3]

a. a letter signed by the owner's or operator's chief financial officer and worded as specified in LAC 33:V.3719.G. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by LAC 33:V.3707.F, 3711.F, 4403.E, and 4407.E, and liability coverage, he must submit the letter specified in LAC 33:V.3719.G to cover both forms of financial responsibility; a separate letter as specified in LAC 33:V.3719.F is not required;

\* \* \*

[See Prior Text in F.3.b-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 LR 23:

#### **Subchapter F. Financial and Insurance Instruments**

##### **§3719. Wording of the Instruments**

A. A trust agreement for a trust fund as specified in LAC 33:V.3707.A or 3711.A or 4403.A or 4407.A must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

###### **Trust Agreement**

Trust Agreement, the "agreement," entered into as of [date] by and between [name of the owner or operator], 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 an owner or operator of a hazardous waste management 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 A.Trust Agreement.Section 1- Section 1.(d)]

###### **Section 2. Identification of Facilities and Cost Estimates**

This agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA identification number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this agreement].

###### **Section 3. Establishment of Fund**

The grantor and the trustee hereby establish a trust fund, the "fund," for the benefit of the Department of Environmental Quality. The grantor and the trustee intend that no third party have access to the fund except as herein provided. The fund is established initially as consisting of the property, which is acceptable to the trustee, described in Schedule B attached hereto. [Note: standby trust agreements need not be funded at the time of execution. In the case of standby trust agreements, Schedule B should be blank but for a statement that the agreement is not presently funded, but shall be funded by the financial assurance document used by the grantor in accordance with the terms of that document.] Such property and any other property

subsequently transferred to the trustee is referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the trustee pursuant to this agreement. The fund shall be held by the trustee, IN TRUST, as hereinafter provided. The trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the grantor, any payments necessary to discharge any liabilities of the grantor established by the administrative authority.

\* \* \*

[See Prior Text in A.Trust Agreement.Section 4-Section 5]

#### Section 6. Trustee Management

The trustee shall invest and reinvest the principal and income of the fund and keep the fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the grantor may communicate in writing to the trustee from time to time, subject, however, to the provisions of this part. In investing, reinvesting, exchanging, selling, and managing the fund, the trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

A. securities or other obligations of the grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

B. the trustee is authorized to invest the fund in time or demand deposits of the trustee, to the extent insured by an agency of the federal or state government; and

C. the trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

#### Section 7. Commingling and Investment

The trustee is expressly authorized in its discretion:

A. to transfer from time to time any or all of the assets of the fund to any common, commingled, or collective trust fund created by the trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

B. to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the trustee. The trustee may vote such shares in its discretion.

#### Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretion conferred upon the trustee by the other provisions of this agreement or by law, the trustee is expressly authorized and empowered:

A. to sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

B. to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

C. to register any securities held in the fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the trustee shall at all times show that all such securities are part of the fund;

D. to deposit any cash in the fund in interest-bearing accounts maintained or savings certificates issued by the trustee, in its separate corporate capacity, or in any other banking institution affiliated with the trustee, to the extent insured by an agency of the federal or state

government; and

E. to compromise or otherwise adjust all claims in favor of or against the fund.

#### Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the fund shall be paid from the fund. All other expenses incurred by the trustee in connection with the administration of this trust, including fees for legal services rendered to the trustee, the compensation of the trustee to the extent not paid directly by the grantor, and all other proper charges and disbursements of the trustee shall be paid from the fund.

#### Section 10. Annual Valuation

The trustee shall annually, at least 30 days prior to the anniversary date of establishment of the fund, furnish to the grantor and to the administrative authority a statement confirming the value of the trust. Any securities in the fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the fund. The failure of the grantor to object in writing to the trustee within 90 days after the statement has been furnished to the grantor and the administrative authority shall constitute a conclusively binding assent by the grantor, barring the grantor from asserting any claim or liability against the trustee with respect to matters disclosed in the statement.

\* \* \*

[See Prior Text in A.Trust Agreement.Section 11-Section 12]

#### Section 13. Successor Trustee

The trustee may resign or the grantor may replace the trustee, but such resignation or replacement shall not be effective until the grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the trustee hereunder. Upon the successor trustee's acceptance of the appointment, the trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the fund. If for any reason the grantor cannot or does not act in the event of the resignation of the trustee, the trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the grantor, the administrative authority, and the present trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the trustee as a result of any of the acts contemplated by this part shall be paid as provided in Section 9.

\* \* \*

[See Prior Text in A.Trust Agreement.Section 14-Section 20]

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this agreement is identical to the wording specified in LAC 33:V.3719.A.1 as such regulations were constituted on the date first above written.

WITNESSES: GRANTOR:

By:

Its:

(SEAL)

TRUSTEE:

By:

Its:

(SEAL)

THUS DONE AND PASSED in my office in \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_, in the presence of \_\_\_\_\_ and \_\_\_\_\_, competent witnesses, who hereunto sign their names with the said appearers and me, notary, after reading the whole.

NOTARY PUBLIC

2. The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in LAC 33:V.3707.A.2 or 3711.A.2 or 4403.A or 4407.A.2.





1. a sight draft, bearing reference to the letter of credit number \_\_\_ drawn by the secretary or his or her designated representative, together with;

2. a statement signed by the secretary or his or her designated representative, reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq."

This letter of credit is effective as of \_\_\_\_, 19\_\_, and shall expire on \_\_\_\_, 19\_\_ [date at least one year later], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [\_\_\_\_, 19\_\_] and on each successive expiration date thereafter, unless, at least 120 days before the then current expiration date, we notify both you and [name of owner/operator] by certified mail that we have decided not to extend this letter of credit beyond the then current expiration date. In the event we give such notification, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [name of owner/operator], as shown on the signed return receipts.

Whenever this letter of credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of owner/operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in LAC 33:V.3719.D as such regulations were constituted on the date shown immediately below.

[Signature(s) and Titles of Official(s) of issuing institutions]

[DATE]

This credit is subject to [insert "the most recent edition of the uniform customs and practice for documentary credits, published and copyrighted by the international chamber of commerce," or "the uniform commercial code"].

E. A certificate of insurance, as specified in LAC 33:V.3707.E or 3711.E or 4403.D or 4407.D, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**Certificate of Insurance for Closure or Post-closure Care**

Name and Address of Insurer

(herein called the "insurer"): \_\_\_\_\_

Name and Address of Insured

(herein called the "insured"): \_\_\_\_\_

Facilities Covered: [List for each facility: EPA identification number, name, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below).]

Face Amount: \$ \_\_\_\_\_

Policy Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

The insurer hereby certifies that it has issued to the insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The insurer further warrants that such policy conforms in all respects with the requirements of LAC 33:V.3707.E, 3711.E, 4403.D, and 4407.D as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in LAC 33:V.3719.E as such regulations were constituted on the date shown immediately below and that insurer is authorized to conduct insurance business in the state of Louisiana.

[Authorized signature for insurer]

[Name of person signing][Title of person signing]

Signature of witness or notary: \_\_\_\_\_ [Date]

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**

Secretary

Louisiana Department of Environmental Quality

P.O. Box 82263

Baton Rouge, LA 70884-2263

Dear [Sir or Madam]:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in LAC 33:V.Chapters 37 and 43.

[Fill out the following five paragraphs. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number, name, address, and current closure and/or post-closure cost estimates. Identify each cost as to whether it is for closure or post-closure.]

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure costs is being demonstrated through the financial test specified in LAC 33:V.Chapters 37 and 43. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: \_\_\_\_\_.

2. This firm guarantees, through the guarantee specified in LAC 33:V.Chapters 37 and 43, financial assurance for closure or post-closure costs at the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is [insert one or more: (1) the direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing each relationship to this letter].

3. In states other than Louisiana, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in LAC 33:V.Chapters 37 and 43. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to the U.S. Environmental Protection Agency or to a state through the financial test or any other financial assurance mechanism specified in LAC 33:V.Chapters 37 and 43 or equivalent or substantially equivalent state mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: \_\_\_\_\_.

This firm [insert "is required" or "is not required"] to file a Form 10K with the securities and exchange commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the first criteria of LAC 33:V.3707.F.1 or 3711.F.1 or the first criteria of LAC 33:V.4403.E.1 or 4407.E.1 are used. Fill in Alternative II if the second criteria of LAC 33:V.3707.F.1 or 3711.F.1 or the second criteria of LAC 33:V.4403.E.1 or 4407.E.1 are used.]

**Alternative I**

1. Sum of current closure and post-closure estimates [total of all cost estimates shown in the five paragraphs above]: \$ \_\_\_\_\_

\*2. Total liabilities [if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]: \$ \_\_\_\_\_

\*3. Tangible net worth: \$ \_\_\_\_\_

\*4. Net worth: \$ \_\_\_\_\_

\*5. Current assets: \$ \_\_\_\_\_

\*6. Current Liabilities: \$ \_\_\_\_\_

7. Net working capital [line 5 minus line 6]: \$ \_\_\_\_\_
- \*8. The sum of net income plus depreciation, depletion, and amortization: \$ \_\_\_\_\_
- \*9. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.): \$ \_\_\_\_\_
- |  |       |       |
|--|-------|-------|
|  | YES   | NO    |
| 10. Is line 3 at least \$10 million      | _____ | _____ |
| 11. Is line 3 at least six times line 1? | _____ | _____ |
| 12. Is line 7 at least six times line 1? | _____ | _____ |
- \*13. Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 14.
- |   |       |       |
|---|-------|-------|
| 14. Is line 9 at least six times line 1?          | _____ | _____ |
| 15. Is line 2 divided by line 4 less than 2.0?    | _____ | _____ |
| 16. Is line 8 divided by line 2 greater than 0.1? | _____ | _____ |
| 17. Is line 5 divided by line 6 greater than 1.5? | _____ | _____ |

**Alternative II**

1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the five paragraphs above]: \$ \_\_\_\_\_
2. Current bond rating of most recent issuance of this firm and name of rating service: \_\_\_\_\_

3. Date of issuance of bond: \_\_\_\_\_
4. Date of maturity of bond: \_\_\_\_\_

\*5. Tangible net worth [if any portion of the closure and post-closure cost estimate is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line]: \$ \_\_\_\_\_

- \*6. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.): \$ \_\_\_\_\_

- |   |       |       |
|---|-------|-------|
|   | YES   | NO    |
| 7. Is line 5 at least \$10 million?         | _____ | _____ |
| 8. Is line 5 greater than six times line 1? | _____ | _____ |
- \*9. Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 10.
- |  |       |       |
|--|-------|-------|
| 10. Is line 6 at least six times line 1? | _____ | _____ |
|--|-------|-------|

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:V.3719.F as such regulations were constituted on the date shown immediately below.

[Signature]  
[Name]  
[Title]  
[Date]

**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:

Secretary  
Louisiana Department of Environmental Quality  
P.O. Box 82263  
Baton Rouge, LA 70884-2263

Dear [Sir or Madam]:

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in LAC 33:V.Chapter 37 or 43.

[Fill out the following paragraph regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "none" in the space indicated. For each facility, include its EPA identification number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in LAC 33:V.Chapter 37 or 43.

The firm identified above guarantees, through the guarantee specified in LAC 33:V.Chapter 37 or 43, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: \_\_\_\_\_

The firm identified above is [insert one or more: (1) the direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving

the following value in consideration of this guarantee \_\_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following five paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "none" in the space indicated. For each facility, include its EPA identification number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in LAC 33:V.Chapters 37 and 43. The current closure and/or post-closure cost estimates covered by the test are shown for each facility:

2. The firm identified above guarantees, through the guarantee specified in LAC 33:V.Chapters 37 and 43, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility:

3. In states other than Louisiana, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in LAC 33:V.Chapters 37 and 43. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility:

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to the U.S. Environmental Protection Agency or to a state through the financial test or any other financial assurance mechanism in LAC 33:V.Chapters 37 and 43 or equivalent or substantially equivalent state mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under the applicable regulations of the Louisiana Department of Natural Resources and is assured through a financial test. The current closure cost estimates as required by LDNR are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements under LAC 33:V.Chapters 37 and 43.]

**Part A. Liability Coverage for Sudden and Nonsudden Occurrences**

[Fill in Alternative I if the first criteria of LAC 33:V.3707.F.1 or 4411.F.1 are used. Fill in Alternative II if the second criteria of LAC 33:V.3707.F.1 or 4411.F.1 are used.]

**Alternative I**

1. Amount of annual aggregate liability coverage to be demonstrated: \$ \_\_\_\_\_
- \*2. Current assets: \$ \_\_\_\_\_
- \*3. Current liabilities: \$ \_\_\_\_\_
- \*4. Net working capital (line 2 minus line 3): \$ \_\_\_\_\_
- \*5. Tangible net worth: \$ \_\_\_\_\_
- \*6. Total assets in the U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.): \$ \_\_\_\_\_
- |  |       |       |
|--|-------|-------|
|  | YES   | NO    |
| 7. Is line 5 at least \$10 million?      | _____ | _____ |
| *8. Is line 4 at least six times line 1? | _____ | _____ |
| 9. Is line 5 at least six times line 1?  | _____ | _____ |

10. Are at least 90 percent of assets located in the U.S.? If not, complete line 11. \_\_\_\_\_

11. Is line 6 at least six times line 1? \_\_\_\_\_

**Alternative II**

1. Amount of annual aggregate liability coverage to be demonstrated: \$ \_\_\_\_\_

2. Current bond rating of most recent issuance and name of rating service: \_\_\_\_\_

3. Date of issuance of bond: \_\_\_\_\_

4. Date of maturity of bond: \_\_\_\_\_

\*5. Tangible net worth: \$ \_\_\_\_\_

\*6. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.): \$ \_\_\_\_\_

YES NO

7. Is line 5 at least \$10 million? \_\_\_\_\_

\*8. Is line 5 at least six times line 1? \_\_\_\_\_

9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10. \_\_\_\_\_

10. Is line 6 at least six times line 1? \_\_\_\_\_

[Fill in Part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care.]

**Part B. Closure or Post-closure Care and Liability Coverage**

[Fill in Alternative I if the first criteria of LAC 33:V.3707.F.1, 3711.F.1, and 3715.F.1 or if the first criteria of LAC 33:V.4403.E.1 or 4407.E.1 and 4411.F.1 are used. Fill in Alternative II if the second criteria of LAC 33:V.3707.F.1, 3711.F.1, and 3715.F.1 or if the second criteria of LAC 33:V.4403.E.1 or 4407.E.1 and 4411.F.1 are used.]

**Alternative I**

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above): \$ \_\_\_\_\_

2. Amount of annual aggregate liability coverage to be demonstrated: \$ \_\_\_\_\_

3. Sum of lines 1 and 2: \$ \_\_\_\_\_

\*4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6): \$ \_\_\_\_\_

\*5. Tangible net worth: \$ \_\_\_\_\_

\*6. Net worth: \$ \_\_\_\_\_

\*7. Current assets: \$ \_\_\_\_\_

\*8. Current liabilities: \$ \_\_\_\_\_

9. Net working capital (line 7 minus line 8): \_\_\_\_\_

10. The sum of net income plus depreciation, depletion, and amortization: \$ \_\_\_\_\_

\*11. Total assets in the U.S. (required only if less than 90 percent of firm's assets are located in the U.S.): \$ \_\_\_\_\_

YES NO

12. Is line 5 at least \$10 million? \_\_\_\_\_

13. Is line 5 at least six times line 3? \_\_\_\_\_

14. Is line 9 at least six times line 3? \_\_\_\_\_

\*15. Are at least 90 percent of assets located in the U.S.? If not, complete line 16. \_\_\_\_\_

16. Is line 11 at least six times line 3? \_\_\_\_\_

17. Is line 4 divided by line 6 less than 2.0? \_\_\_\_\_

18. Is line 10 divided by line 4 greater than 0.1? \_\_\_\_\_

19. Is line 7 divided by line 8 greater than 1.5? \_\_\_\_\_

**Alternative II**

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above): \$ \_\_\_\_\_

2. Amount of annual aggregate liability coverage to be demonstrated: \$ \_\_\_\_\_

3. Sum of lines 1 and 2: \$ \_\_\_\_\_

4. Current bond rating of most recent issuance and name of rating service: \_\_\_\_\_

5. Date of issuance of bond: \_\_\_\_\_

6. Date of maturity of bond: \_\_\_\_\_

\*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line): \$ \_\_\_\_\_

\*8. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.): \$ \_\_\_\_\_

YES NO

9. Is line 7 at least \$10 million? \_\_\_\_\_

\*10. Is line 7 at least six times line 3? \_\_\_\_\_

11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12. \_\_\_\_\_

12. Is line 8 at least six times line 3? \_\_\_\_\_

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:V.3719.G as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

\*\*\*

[See Prior Text in H-L Bond Premium:\$]

**M. Trust Agreement**

1. A trust agreement, as specified in LAC 33:V.3715 and 4411, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**Trust Agreement**

Trust Agreement, the "agreement," entered into as of [date] by and between [name of the owner or operator] 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"], the "trustee."

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities 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:

Section 1. Definitions. As used in this agreement:

a. The term "grantor" means the owner or operator who enters into this agreement and any successors or assigns of the grantor.

b. The term "trustee" means the trustee who enters into this agreement and any successor trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached Schedule A [on Schedule A, for each facility list the EPA identification number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this agreement].

Section 3. Establishment of Fund. The grantor and the trustee hereby establish a trust fund, hereinafter the "fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of \_\_\_\_\_ [up to \$5 million] per occurrence and \_\_\_\_\_ [up to \$10 million] annual aggregate for sudden accidental occurrences, exclusive of legal defense costs and \_\_\_\_\_ [up to \$3 million] per occurrence and \_\_\_\_\_ [up to \$6 million] annual aggregate for nonsudden occurrences exclusive of legal defense costs, except that the fund is not established for the benefit of third parties for the following:

a. Bodily injury or property damage for which [insert grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert grantor] would be obligated to pay in the absence of the contract or agreement.

b. Any obligation of [insert grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

c. Bodily injury to:

i. an employee of [insert grantor] arising from, and in the course of, employment by [insert grantor]; or

ii. the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert grantor].

This exclusion applies:

(a). whether [insert grantor] may be liable as an employer or in any other capacity; and

(b). to any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in Clauses i and ii above.

d. Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

e. Property damage to:

- i. any property owned, rented, or occupied by [insert grantor];
- ii. premises that are sold, given away, or abandoned by [insert grantor] if the property damage arises out of any part of those premises;
- iii. property loaned to [insert grantor];
- iv. personal property in the care, custody, or control of [insert grantor];
- v. that particular part of real property on which [insert grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The fund is established initially as consisting of the property, which is acceptable to the trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the trustee is referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the trustee pursuant to this agreement. The fund shall be held by the trustee, in trust, as hereinafter provided. The trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the grantor, any payments necessary to discharge any liabilities of the grantor established by EPA.

\*\*\*

[See Prior Text in M.1.Trust Agreement.Section 4 - Section 20]

In witness whereof the parties have caused this agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this agreement is identical to the wording specified in LAC 33:V.3719 as such regulations were constituted on the date first above written.

[Signature of grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of trustee]

Attest:

[Title]

[Seal]

2. The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in LAC 33:V.3715 or 4411.

State of Louisiana  
Parish of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that she/he signed her/his name thereto by like order.

Witness:

THUS DONE AND SIGNED before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_.

NOTARY PUBLIC

\*\*\*

[See Prior Text in N-N.2]

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), LR 23:

**Chapter 43. Interim Status**  
**Subchapter E. Groundwater Monitoring**  
**§4375. Recordkeeping and Reporting**

\*\*\*

[See Prior Text in A]

1. keep records throughout the active life of the facility of the analyses required in LAC 33:V.4371.C and E, the associated groundwater surface elevations required in LAC 33:V. 4371.F, and the evaluations required in LAC 33:V.4373.B, and, for disposal facilities, throughout the post-closure care period as well; and

\*\*\*

[See Prior Text in A.2-B.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 18:723 (July 1992), LR 23:

**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 LAC 33:V.4403.A-E.

\*\*\*

[See Prior Text in A-E.1.a]

i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.10; and a ratio of current assets to current liabilities greater than 1.5; and

ii. net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

\*\*\*

[See Prior Text in E.1.b-E.1.b.i]

ii. tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates the current plugging and abandonment cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in Subsection E.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (see LAC 33:V.3719.F). The phrase "current plugging and

abandonment cost estimates" as used in Subsection E.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer [40 CFR 144.70(f)].

\* \* \*

[See Prior Text in E.3-E.10.a.iii]

F. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in Subsections A-F of this Section, respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The administrative authority may use any or all of the mechanisms to provide for closure of the facility.

\* \* \*

[See Prior Text in G - 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), LR 23:

#### §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.

\* \* \*

[See Prior Text in A-E.1.a]

i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.10; and a ratio of current assets to current liabilities greater than 1.5; and

ii. net working capital and tangible net worth each at least six times the sum of the current closure and post-closure costs estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

\* \* \*

[See Prior Text in E.1.b-E.1.b.i]

ii. tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the

current plugging and abandonment cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in Subsection E.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (see LAC 33:V.3719.F). The phrase "current plugging and abandonment cost estimates" as used in Subsection E.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer [40 CFR 144.70(f)].

\* \* \*

[See Prior Text in E.3-E.11.c]

F. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this Subsection by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in Subsections A, B, C, and D of this Section, respectively, except that it is the combination of mechanisms rather than the single mechanism which must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The administrative authority may use any or all of the mechanisms to provide for post-closure care of the facility.

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 administrative authority 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.

\* \* \*

[See Prior Text in 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), LR 23:

#### §4411. Liability Requirements

\* \* \*

[See Prior Text in A-F.1.a]

i. net working capital and tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

- ii. tangible net worth of at least \$10 million; and
- iii. assets located in the United States amounting to either at least 90 percent of his total assets or at least six times the amount of liability coverage to be demonstrated by this test.

\* \* \*

[See Prior Text in F.1.b-F.1.b.i]

- ii. tangible net worth of at least \$10 million; and
- iii. tangible net worth at least six times the amount of liability coverage to be demonstrated by this test ; and
- iv. assets located in the United States amounting to either at least 90 percent of his total assets or at least six times the amount of liability coverage to be demonstrated by this test.

\* \* \*

[See Prior Text in F.2-F.3]

- a. A letter signed by the owner's or operator's chief financial officer and worded as specified in LAC 33:V.3719.G. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by LAC 33:V.3707.F, 3711.F, 4403.E, and 4407.E, and liability coverage, he must submit the letter specified in LAC 33:V.3719.G to cover both forms of financial responsibility; a separate letter as specified in LAC 33:V.3719.F is not required.

\* \* \*

[See Prior Text in F.3.b-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 LR 23:

**Chapter 49. Lists of Hazardous Wastes**  
**§4901. Category I Hazardous Wastes**

\* \* \*

[See Prior Text in A-B.3]

- a. Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of Subsection B.3.b and c of this Section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

\* \* \*

[See Prior Text in B.3.b.iv]

- c. The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:
  - i. the name and address of the facility;
  - ii. formulations previously used and the date on which their use ceased in each process at the plant;
  - iii. formulations currently used in each process at the plant;
  - iv. the equipment cleaning or replacement plan;
  - v. the name and address of any persons who conducted the cleaning and replacement;
  - vi. the dates on which cleaning and replacement were accomplished;
  - vii. the dates of sampling and testing;

- viii. a description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

- ix. a description of the tests performed, the date the tests were performed, and the results of the tests;

- x. the name and model numbers of the instrument(s) used in performing the tests;

- xi. QA/QC documentation; and

- xii. the following statement signed by the generator or his authorized representative:

"I certify under penalty of law that all process equipment required to be cleaned or replaced under LAC 33:V.4901.B was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment."

\* \* \*

[See Prior Text in C-G.Table 6]

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 12:320 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:790 (November 1988), LR 15:182 (March 1989), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829 (September 1996), LR 22:840 (September 1996), LR 23:

A public hearing will be held on July 25, 1997, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by HW052. Such comments must be received no later than August 1, 1997, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or FAX to (504) 765-0486.

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

H. M. Strong  
 Assistant Secretary



**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Financial Assurance and Cleanup**

**Title 33  
ENVIRONMENTAL QUALITY  
Part VII. Solid Waste  
Subpart 1. Solid Waste  
Chapter 1. General Provisions and Definitions  
§115. Definitions**

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

\* \* \*

[See Prior Text]

*Municipal Solid Waste Landfill* or *MSW Landfill*—an entire disposal facility in a contiguous geographical space where residential solid waste or commercial solid waste is placed in or on land.

\* \* \*

[See Prior Text]

**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), LR 23:

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

**§315. Mandatory Provisions**

All persons conducting activities regulated under these regulations shall comply with the following provisions:

\* \* \*

[See Prior Text in A-G.9]

10. Municipal solid waste landfills that commenced construction, reconstruction, or modification or began accepting waste on or after May 30, 1991, are subject to 40 CFR part 60, subpart WWW - Standards of Performance for Municipal Solid Waste Landfills. Described landfills may be required to have an operating permit from the Air Quality Division of the department.

11. Municipal solid waste landfills that accepted waste on or after November 8, 1987, or for which construction, reconstruction, or modification was commenced before May 30, 1991, may be subject to 40 CFR part 60, subpart Cc - Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. Described landfills may be required to have an operating permit from the Air Quality Division of the department.

\* \* \*

[See Prior Text in H-R.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 LR 19:1143 (September 1993), LR 19:1315 (October 1993), repromulgated LR 19:1421 (November 1993), amended LR 22:279 (April 1996), LR 23:

A public hearing will be held on July 25, 1997, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504) 765-0399.

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

No costs to state or local governments are anticipated as a result of the implementation of this rule.

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

There should be no effect on revenue collections of state or local governments as a result of the implementation of this rule.

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

Facilities will not have to use a unique financial test for Louisiana, streamlining their accounting methods and reducing the amount of paperwork to meet Louisiana's more stringent financial assurance requirements.

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

There should be no effect on competition and employment as a result of the implementation of this rule.

H. M. Strong  
Assistant Secretary  
9706#053  
Officer

Richard W. England  
Assistant to the  
Legislative Fiscal

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Solid and Hazardous Waste  
Solid Waste Division**

**Municipal Solid Waste Landfills  
(LAC 33:VII.115 and 315) (SW025)**

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 Solid Waste Division regulations, LAC 33:VII.115 and 315 (SW025).

The Solid Waste Division proposes to incorporate the definition of municipal solid waste landfill or MSW landfill found in 40 CFR part 60, subparts Cc and WWW into LAC 33:VII.115, as well as notifying municipal solid waste (MSW) landfill owners/operators of additional requirements needed to fulfill 40 CFR part 60, subparts Cc and WWW. This action is required to adjust the existing language in the solid waste regulations in response to new standards promulgated by the U.S. EPA.

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

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Water Resources  
Water Pollution Control Division**

Louisiana Pollutant Discharge  
Elimination System (LPDES) Program  
(LAC 33:IX.2341, 2443, 2531, 2533, 2709  
and Appendix N)(WP024\*)

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by SW025. Such comments must be received no later than August 1, 1997, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (504) 765-0486.

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

H. M. Strong  
Assistant Secretary

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 Water Pollution Control Division regulations, (LAC 33:IX.2341, 2443, 2531, 2533, 2709, and Appendix N) (WP024\*).

This proposed rule is identical to a federal law or regulation, 40 CFR part 136, 1996; 40 CFR chapter 1, subchapter N, parts 401-402, 404-471, 1996; 60 FR 40230, August 7, 1995 (parts 122 and 124); 60 FR 54764, October 25, 1995 (part 403 only); and 61 FR 15566, April 8, 1996 (part 403 only), which is applicable in Louisiana. For more information regarding the federal requirement, contact the Investigations and Regulation Development Division at the address or phone number given below. No fiscal or economic impact will result from the proposed rule. Therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4). This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953 (G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

The proposed rule establishes application procedures for phase II storm water discharges (point source discharges from commercial, retail, and institutional facilities and from municipal separate storm sewers systems serving populations less than 100,000). The dates for adoption by reference of 40 CFR part 136 and 40 CFR chapter 1, subchapter N, parts 401-402 and 404-471 are updated from 1994 to 1996. The proposed rule also removes chromium in sewage sludge that is land applied from the list of regulated pollutants for which a removal credit may be available, and adds it to the list of unregulated pollutants that are eligible for a removal credit. Additionally, the rule includes new language and references to recent changes in land disposal restrictions as they apply to development of specific limits by POTWs and to local limits.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part IX. Water Quality**

- Chapter 23. The Louisiana Pollutant Discharge Elimination System (LPDES) Program**
- Subchapter B. Permit Application and Special LPDES Program Requirements**
- §2341. Storm Water Discharges**
  - A. Permit Requirement**

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Municipal Solid Waste Landfills**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There are no implementation costs anticipated for either state or local governmental units as a result of the proposed revisions to Solid Waste Division regulations. Although the Office of Air Quality and Radiation Protection incorporated the identical federal rule, the Solid Waste Division is revising portions of its regulations to match certain definitions found in 40 CFR part 60, subparts Cc and WWW and to notify Municipal Solid Waste (MSW) landfill owners/operators of additional requirements needed to fulfill 40 CFR part 60, subparts Cc and WWW.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no anticipated effect on revenue collections on either state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no anticipated estimated costs and/or economic benefits to directly affected persons or nongovernmental groups because this regulation is merely notifying owners of municipal solid waste landfills that they must comply with certain sections of 40 CFR part 60, subparts Cc and WWW.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There will be no estimated effect on competition or employment to facilities or individuals within the state.

H. M. Strong  
Assistant Secretary  
9706#029

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

1. Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain an LPDES permit except:

\* \* \*

[See Prior Text in A.1.a - A.8]

9. On and after October 1, 1994, dischargers composed entirely of storm water, that are not otherwise already required by Subsection A.1 of this Section to obtain a permit, shall be required to apply for and obtain a permit according to the application requirements in Subsection G of this Section. The state administrative authority may not require a permit for discharges of storm water as provided in Subsection A.2 of this Section or agricultural storm water runoff which is exempted from the definition of point source at LAC 33:IX.2313 and 2315.

\* \* \*

[See Prior Text in B - D.2.h]

E. Application Deadlines Under Subsection A.1 of this Section

\* \* \*

[See Prior Text in E.1-1.a]

b. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant, or uncontrolled sanitary landfill, permit application requirements are contained in Subsection G of this Section.

\* \* \*

[See Prior Text in E.2 - F.5]

G. Application Requirements for Discharges Composed Entirely of Storm Water Under Clean Water Act Section 402(p)(6). Any operator of a point source required to obtain a permit under Subsection A.9 of this Section shall submit an application in accordance with the following requirements.

1. Application Deadlines. The operator shall submit an application in accordance with the following deadlines:

a. a discharger which the state administrative authority determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the state shall apply for a permit to the state administrative authority within 180 days of receipt of notice, unless permission for a later date is granted by the state administrative authority (see LAC 33:IX.2443.C); or

b. all other dischargers shall apply to the state administrative authority no later than August 7, 2001.

2. Application Requirements. The operator shall submit an application in accordance with the following requirements, unless otherwise modified by the state administrative authority:

a. individual application for nonmunicipal discharges (the requirements contained in Subsection C.1 of this Section);

b. application requirements for municipal separate storm sewer discharges (the requirements contained in Subsection D of this Section);

c. notice of intent to be covered by a general permit issued by the state administrative authority (the requirements contained in LAC 33:IX.2345.B.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 LR 23:

#### **§2443. Permits Required on a Case-by-Case Basis**

\* \* \*

[See Prior Text in A - B]

C. Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this Section (see LAC 33:IX.2341.A.1.e, C.1.e, and G.1.a), the state administrative authority may require the discharger to submit a permit application or other information regarding the discharge under section 308 of the CWA. In requiring such information, the state administrative authority shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under LAC 33:IX.2341.A.1.e and C.1.e within 60 days of notice or under LAC 33:IX.2341.G.1.a within 180 days of notice, unless permission for a later date is granted by the state administrative authority. The question whether the initial designation was proper will remain open for consideration during the public comment period under LAC 33:IX.2417 and in any subsequent 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 LR 23:

#### **Subchapter N. Adoption by Reference**

The Louisiana Department of Environmental Quality adopts by reference the following federal requirements.

#### **§2531. 40 CFR Part 136**

Title 40 (Protection of the Environment) *Code of Federal Regulations* (CFR) part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, revised July 1, 1996, in its entirety.

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:

#### **§2533. 40 CFR Subchapter N**

Title 40 (Protection of the Environment) CFR, chapter 1, subchapter N (Effluent Guidelines and Standards), revised July 1, 1996, parts 401 and 402, and parts 404 - 471 in their entirety.

(Note: General Pretreatment Regulations for Existing and New Sources of Pollution found in part 403 of subchapter N have been included in these regulations as Subchapter T.)

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:

#### **Subchapter T. General Pretreatment Regulations for Existing and New Sources of Pollution**

#### **§2709. National Pretreatment Standards: Prohibited Discharges**

\* \* \*

[See Prior Text in A - B.8]

C. Development of Specific Limits by POTW

1. Each POTW developing a POTW pretreatment program pursuant to LAC 33:IX.2715 shall develop and

enforce specific limits to implement the prohibitions listed in Subsections A.1 and B of this Section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits. In addition, the POTW may establish such limits as necessary to address the land disposal restrictions at 40 CFR 268.40 (40 CFR, July 1, 1996, as amended in 61 FR 36419, July 9, 1996, and 61 FR 43927, August 26, 1996).

\*\*\*

[See Prior Text in C.2 - C.3]

D. Local Limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with Subsection C of this Section, including those standards established to address land disposal restrictions at 40 CFR 268.40 (40 CFR, July 1, 1996, as amended in 61 FR 36419, July 9, 1996, and 61 FR 43927, August 26, 1996), such limits shall be deemed pretreatment standards for the purposes of section 307(d) of the Act.

\*\*\*

[See Prior Text in 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 23:

**Appendix N**

**Pollutants Eligible for a Removal Credit**

I. Regulated Pollutants in 40 CFR Part 503 Eligible for a Removal Credit

Pollutants	Use or Disposal Practice		
	LA	SD	I
Arsenic	X	X	X
Beryllium			X
Cadmium	X		X
Chromium		X	X
Copper	X		
Lead	X		X
Mercury	X		X
Molybdenum	X		
Nickel	X	X	X
Selenium	X		
Zinc	X		
Total hydrocarbons			X <sup>1</sup>

Key:

LA = land application

SD = surface disposal site without a liner and leachate collection system

I = firing of sewage sludge in a sewage sludge incinerator

<sup>1</sup> = The following organic pollutants are eligible for a removal credit if the requirements for total hydrocarbons in

subpart E in 40 CFR part 503 are met when sewage sludge is fired in a sewage sludge incinerator: Acrylonitrile, Aldrin/Dieldrin (total), Benzene, Benzidine, Benzo(a)pyrene, Bis(2-chloroethyl)ether, Bis(2-ethylhexyl)phthalate, Bromodichloromethane, Bromoethane, Bromoform, Carbon tetrachloride, Chlordane, Chloroform, Chloromethane, DDD, DDE, DDT, Dibromochloromethane, Dibutyl phthalate, 1,2-dichloroethane, 1,1-dichloroethylene, 2,4-dichlorophenol, 1,3-dichloropropene, Diethyl phthalate, 2,4-dinitrophenol, 1,2-diphenylhydrazine, Di-n-butyl phthalate, Endosulfan, Endrin, Ethylbenzene, Heptachlor, Heptachlor epoxide, Hexachlorobutadiene, Alpha-hexachlorocyclohexane, Beta-hexachlorocyclohexane, Hexachlorocyclopentadiene, Hexachloroethane, Hydrogen cyanide, Isophorone, Lindane, Methylene chloride, Nitrobenzene, N-Nitrosodimethylamine, N-Nitrosodi-n-propylamine, Pentachlorophenol, Phenol,

Polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzo-p-dioxin, 1,1,2,2,-tetrachloroethane, Tetrachloroethylene, Toluene, Toxaphene, Trichloroethylene, 1,2,4-Trichlorobenzene, 1,1,1-Trichloroethane, 1,1,2-Trichloroethane, and 2,4,6-Trichlorophenol.

II. Additional Pollutants Eligible for a Removal Credit (milligrams per kilogram—dry weight basis)

Pollutant	Use or Disposal Practice			
	LA	SD		I
		Un-lined <sup>1</sup>	Lined <sup>2</sup>	
Arsenic			<sup>3</sup> 100	
Aldrin/Dieldrin (Total)	2.7			
Benzene	<sup>3</sup> 16	140	3400	
Benzo(a)pyrene	15	<sup>3</sup> 100	<sup>3</sup> 100	
Bis(2-ethylhexyl)phthlate		<sup>3</sup> 100	100	
Cadmium		<sup>3</sup> 100	<sup>3</sup> 100	
Chlordane	86	<sup>3</sup> 100	<sup>3</sup> 100	
Chromium	4		<sup>3</sup> 100	
Copper		<sup>3</sup> 46	<sup>3</sup> 100	1400
DDD, DDE, DDT (Total)	1.2	2000	2000	
2,4 Dichlorophenoxy-acetic acid		7	7	
Fluoride	730			
Heptachlor	7.4			
Hexachlorobenzene	29			
Hexachlorobutadiene	600			
Iron	<sup>3</sup> 78			
Lead		<sup>3</sup> 100	<sup>3</sup> 100	
Lindane	84	<sup>3</sup> 28	<sup>3</sup> 28	
Malathion		0.63	0.63	

NOTICE OF INTENT

Firefighters' Pension and Relief Fund  
City of New Orleans and Vicinity

Domestic Relations Orders

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity (the "fund") pursuant to R.S. 11:3363(F), proposes to amend rules and regulations for determining qualified status of domestic relations orders.

Determining Qualified Status of  
Domestic Relations Orders

1. Intent and Construction

These procedural rules are adopted in order to satisfy the requirements of Subsection 206(d) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1056(d) and Section 414(p) of the *Internal Revenue Code*, 26 U.S.C. §414(p), and shall be construed consistently with this purpose.

The trustees are aware that §401(a)(13)(A) of the code provides that benefits under a qualified plan may not be assigned or alienated. Section 401(a)(13)(B) establishes an exception to the anti-alienation rule for assignments made pursuant to domestic relations orders that constitute Qualified Domestic Relations Orders ("QDROs") within the meaning of §414(p)(1)(B) and of Paragraph 2 hereof. In view of the trustees' intent to administer the fund as a qualified plan, as well as their awareness that R.S. 11:291 and 292 to similar effect, the purpose of these rules is to establish the trustees' willingness to recognize and enforce any QDRO that meets the requirements set forth herein.

It is further intended that the provisions of §414(p)(3) of the code and R.S. 11:291 and 292 be strictly observed. Therefore, the trustees shall not honor the terms of any QDRO that purports to require the fund to provide any type or form of benefit, or any option, not otherwise provided under the fund; that requires the fund to provide increased benefits (determined on the basis of actuarial value); or that requires the payment of benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a QDRO.

However, the trustees shall not treat a domestic relations order as failing to meet the requirements of §414(p)(3)(A) and thus to constitute a QDRO solely because the order requires payment of benefits to an alternate payee on or after the participant's earliest retirement age, even if the participant has not separated from service at that time.

Finally, it is the trustees' intent to honor the provision of any QDRO that the participant's former spouse shall be treated as the participant's surviving spouse for purposes of the right to receive all or part of any survivor benefits payable, and that any other spouse of the participant shall not be treated as a spouse of the participant for these purposes, except as to portions of the survivor benefits not assigned to the former spouse via the QDRO. In the event the participant's former spouse is required by the provisions of a QDRO to be treated as a surviving spouse for these purposes, the former spouse must be accorded the same rights that would otherwise accrue to the surviving spouse.

Mercury		<sup>3</sup> 100	<sup>3</sup> 100	
Molybdenum		40	40	
Nickel			<sup>3</sup> 100	
N-Nitrosodimethylamine	2.1	0.088	0.088	
Pentachlorophenol	30			
Phenol		82	82	
Polychlorinated biphenyls	4.6	<50	<50	
Selenium		4.8	4.8	4.8
Toxaphene	10	<sup>2</sup> 26	<sup>2</sup> 26	
Trichloroethylene	<sup>3</sup> 10	9500	<sup>3</sup> 10	
Zinc		4500	4500	4500

Key:

LA = land application

SD = surface disposal

I = incineration.

<sup>1</sup> = Sewage sludge unit without a liner and leachate collection system.

<sup>2</sup> = Sewage sludge unit with a liner and leachate collection system.

<sup>3</sup> = Value expressed in grams per kilogram—dry weight basis.

<sup>4</sup> = Value to be determined on a case-by-case basis.

A public hearing will be held on July 25, 1997, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810.

Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by WP024\*. Such comments must be received no later than July 25, 1997, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (504)765-0486. The comment period for this rule ends on the same date as the public hearing.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 31st Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaereg.htm>.

Linda Korn Levy  
Assistant Secretary

9706#086

## 2. Definitions

As used in these procedural rules, unless the context indicates otherwise, the following terms shall have the following meanings:

*Alternate Payee*—the participant's spouse (or former spouse, child, or other dependent) who is entitled to receive some or all of the fund's benefit payments with respect to the participant under the terms of the QDRO. The same QDRO may identify more than one alternate payee; and several alternate payees may be identified in multiple QDROs. However, the trustees shall not recognize the entitlement of any alternate payee, even if specified in a domestic relations order, if the benefits assigned therein have already been assigned by reason of an earlier QDRO validly served upon the fund.

*Domestic Relations Order*—any judgment, decree, or order (including approval of a property settlement or community property partition) that:

(i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant; and

(ii) is made pursuant to a state domestic relations law (including a community property law).

A state court shall actually issue an order or formally approve a proposed property settlement in order for it to be recognized by the trustees as a domestic relations order. A property settlement or community property partition signed by a participant and the participant's former spouse, or a draft order to which both parties consent, shall not be considered a domestic relations order until the state authority has adopted it as an order or formally approved it and made it part of the domestic relations proceeding.

*Earliest Retirement Date*—the earlier of:

(i) the date on which the participant is entitled to a distribution under the fund; or

(ii) the later of:

(A) the date the participant attains age 50; or

(B) the earliest date on which the participant could begin receiving benefits under the fund if the participant separated from service.

*Participant*—any employee or former employee of an employer in relation to the fund, who is or may become eligible to receive a benefit of any type from the fund, and who is the individual whose benefits under the fund are being divided by the QDRO.

*Qualified Domestic Relations Order*—a domestic relations order that creates or recognizes the existence of an alternate payee's right (or assigns to an alternate payee the right) to receive all or a portion of the benefits payable with respect to a participant in the fund, provided that the order:

(i) clearly specifies:

(A) the name and last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order or, in the event the alternate payee is a minor or legally incompetent, the name and address of the alternate payee's legal representative;

(B) the amount or percentage of the participant's or the survivor benefits to be paid by the fund to each such alternate payee, or the manner in which such amount or percentage is to be determined;

(C) the number of payments or the period to which such order applies; and

(D) the name and identity of the fund;

(ii) does not require:

(A) the fund to provide any type or form of benefits, or any option, not otherwise provided under the fund;

(B) the fund to provide increased benefits (determined on the basis of actuarial value); or

(C) the payment of benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

*Trustees*—the Board of Trustees for the Firefighters' Pension and Relief Fund for the City of New Orleans, or such person or entity to whom the board has delegated responsibility to make determinations on its behalf under these rules.

## 3. QDRO Language

Many factors should be taken into account by the drafters of a QDRO in determining which benefits to assign to an alternate payee and how these benefits are to be assigned. Because of the complexity and variety of the factors that should be considered and the need to tailor the assignment of benefits under a QDRO to the individual circumstances of the parties, it would be inappropriate for the trustees to propose specific sample language for inclusion in a QDRO. Instead, individual participants and alternate beneficiaries, and their respective attorneys, are directed to collaborate jointly upon the drafting of orders that meet their individual needs. Nevertheless, if so requested, the trustees shall review any proposed order submitted to the fund prior to its submission to the appropriate court for execution and entry, with a view to indicating the trustees' probable determination concerning its status as a QDRO. The trustees are required by law to honor and enforce the terms of any QDRO which meets the conditions specified in these rules and as may subsequently be determined by the applicable statutes and the courts' interpretations thereof.

For further guidance concerning those matters that should be considered when drafting a QDRO (e.g., types of benefits, approaches to dividing retirement benefits, form and commencement of payment to alternate payees, survivor benefits and treatment of former spouse as participant's spouse, and tax treatment of benefit payments made pursuant to a QDRO) the parties are encouraged to consult Notice 97-11 issued by the Internal Revenue Service and appearing in *Internal Revenue Bulletin* 1997-2 dated January 13, 1997. Additional guidance may be found in the Pension Benefit Guaranty Corporation's booklet entitled *Divorce Orders and PBGC*, which discusses the special QDRO rules that apply for plans that have been terminated and are trustee by PBGC, and provides model QDROs for use with those plans. The publication may be obtained by calling PBGC's Customer Service Center at 1-800-400-PBGC, or electronically via the PBGC Internet site at "<http://www.pbgc.gov>." However, some or all of the principles there set forth may not apply to this fund by reason of its status as a statutory governmental plan and/or the types of benefits payable under R.S. 11:3361 et seq.

#### 4. Notice

Upon the fund's receipt of a domestic relations order with respect to a participant, the trustees shall promptly give notice of these procedural rules to the participant and to each person specified in the order as entitled to payment of any fund benefits under the order, at the address the order specifies.

#### 5. Determination

(a) The trustees shall determine whether a domestic relations order is a qualified domestic relations order within a reasonable time after it is received, and shall have the right to require such evidence as he may reasonably need to make the determination.

(b) The trustees shall notify the participant and the alternate payee of the determination no less than 30 days before making any payment pursuant to the order, if it is determined to be a qualified order, or within a reasonable time if it is determined not to be a qualified order.

(c) The participant may appeal such a determination to the trustees upon written application to the trustees. The participant may review any documents pertinent to the appeal and may submit issues and comments in writing to the trustees. No appeal shall be considered unless it is received by the trustees within 90 days after receipt by the participant of written notice of the determination.

(d) The trustees shall decide the appeal within 60 days after it is received. If special circumstances require an extension of time for processing, however, a decision shall be rendered as soon as possible, but not later than 120 days after the appeal is received. If such an extension of time for deciding the appeal is required, written notice of the extension shall be furnished to the participant prior to the commencement of the extension.

(e) The trustees' decision shall be in writing and shall include specific reasons for the decision, expressed in a manner calculated to be understood by the participant and the alternate payee.

#### 6. Payments Pending Determination

During any period in which the issue whether a domestic relations order is a qualified domestic relations order is being determined (by the trustees, by a court of competent jurisdiction, or otherwise), the trustees shall segregate in a separate account in the fund the amounts that would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(a) To the extent that the domestic relations order is determined to be qualified, the fund shall pay the segregated amounts (plus any interest on them) to the person or persons entitled to them according to the terms of the order. In the case of determinations appealed under these procedural rules, the payment shall be made not less than 10 days nor more than 30 days after the issuance of the trustees' disposition of the appeal.

(b) To the extent that the domestic relations order is determined not to be qualified, the fund shall pay the segregated amounts (plus any interest on them) to the person or persons who would have been entitled to such amounts

without regard to the terms of the order. In the case of determinations appealed under these procedures, the payment shall take place not less than 10 days nor more than 30 days after the issuance of the trustees' disposition of the appeal.

(c) To the extent that the issue whether the domestic relations order is qualified is not resolved within 18 months after the fund receives notice of the order, the trustees shall pay the segregated amounts (plus any interest on them) to the person or persons who would have been entitled to these amounts without regard to the terms of the order.

#### 7. Representative of Alternate Payee

An alternate payee, by written notice to the trustees, may designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

A public hearing will be conducted by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity at 10 a.m. on July 23, 1997 at 329 South Dorgenois Street, New Orleans, LA 70119.

Any interested party may submit data, views or arguments orally or in writing concerning these rules or may make inquiries concerning the adoption of these rules to Richard J. Hampton, Jr., Secretary-Treasurer of the Board of Trustees, 329 South Dorgenois Street, New Orleans, LA 70119. Comments will be accepted through the date of the public hearing.

William M. Carrouché  
President

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Domestic Relations Orders

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There are no estimated costs or savings to the state or local governmental units as a result of this measure.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Adoption and implementation of the amended rules and regulations for determining qualified status of domestic relations orders will have no effect on revenue collection of state or local government units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Adoption and implementation of the amended rules and regulations will have no cost impact or provide an economic benefit to any person or nongovernmental group.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
Adoption and implementation of the amended rules and regulations for determining qualified status of domestic relations orders will have no effect on competition and employment.

Marie Healey  
Fund Counsel  
9706#038

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office



## NOTICE OF INTENT

### Office of the Governor Office of Elderly Affairs

#### State Plan on Aging (LAC 4:VII.1301-1323)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to repeal LAC 4:VII.1031-1321, and promulgate LAC 4:VII.1301-1323, in order to adopt the FY 1998-1999 State Plan on Aging, effective October 1, 1997 to September 30, 1999.

The state plan on aging is the document submitted by the state to the U.S. Department of Health and Human Services, Administration on Aging, to receive grants from its allotments under Title III of the Older Americans Act of 1965, as amended (the Act). Title III authorizes formula grants to state agencies on aging to assist states and local communities to develop comprehensive and coordinated systems for the delivery of services to older persons. The plan contains all provisions required by Section 307 of the Act and commitments that the state agency will administer or supervise the administration of activities funded under Title III in accordance with all federal requirements. It includes goals and objectives to be pursued by the state agency during the plan period. A state may expend Older Americans Act funds only under an approved state plan. The current plan expires September 30, 1997.

The full text of this proposed rule may be obtained by contacting the Governor's Office of Elderly Affairs at the address below or by contacting the Office of the State Register, 1051 North Third Street, Room 512, Baton Rouge, LA 70802, telephone (504) 342-5015.

Inquiries concerning the proposed State Plan on Aging may be directed in writing to the Governor's Office of Elderly Affairs, Din LeBlanc, Box 80374, Baton Rouge, LA 70898-0374. Written comments must be received by 5 p.m., August 29, 1997.

GOEA will conduct a public hearing to receive comments on the proposed state plan on Monday, July 28, 1997. The hearing will be held in the State Group Benefits Board Room, Second Floor, State Department of Agriculture Building, 5825 Florida Boulevard, Baton Rouge, LA. The hearing will begin at 1 p.m. All interested parties will be afforded an opportunity to submit oral or written comments at the hearing.

Larry Kinlaw  
Appointing Authority

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: State Plan on Aging

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

There are no estimated implementation costs (savings) to state or local governmental units.

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

The proposed rule will not affect revenue collections of state or local governmental units.

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

This proposed rule change will allow services currently provided through the Governor's Office of Elderly Affairs to continue for another two years. There will be no additional costs to the Governor's Office of Elderly Affairs contractors and subcontractors, including area agencies on aging, parish councils on aging and other service providers, or to the elderly residents of the state.

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

Older Americans Act Title V program participants will be placed in subsidized or unsubsidized paid positions.

Larry Kinlaw  
Appointing Authority  
9706#092

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

## NOTICE OF INTENT

### Department of Health and Hospitals Board of Pharmacy

#### Education (LAC 46:LIII.701 and 737)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and Pharmacy Law, R.S. 37:1178, the Board of Pharmacy hereby gives notice to amend LAC 46:LIII.701 and 737.

#### Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS Part LIII. Pharmacists

#### Chapter 7. Pharmacy Education

##### §701. Pharmacy College or Equivalent

A. Approved College of Pharmacy. Colleges or schools of pharmacy which are accredited by the American Council of Pharmaceutical Education (ACPE); or

B. Equivalent College. World Health Organization's (WHO) "World Directory of School of Pharmacy" or other board recognized foreign college or school of pharmacy graduate who has attained equivalency status approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 23:

##### §737. Continuing Pharmacy Education Requirements

Minimum Requirements. A minimum of one and one-half CPE units, or 15 hours, shall be required each year as a prerequisite for pharmacist re-licensure. When deemed appropriate and necessary by the board, some or all of the 15 hours may be required on specific pharmacy subjects. Implementation of this Section would require notification to

all Louisiana pharmacists prior to January 1 of the year in which the CPE is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 23:

Any person may submit data, views, or positions orally or in writing to the Executive Director, Board of Pharmacy, 5615 Corporate Boulevard, Suite 8E, Baton Rouge, LA 70808-2537 through 4:30 p.m. on Tuesday, July 22, 1997.

Under the provisions of the Administrative Procedure Act, a public hearing will be held at 3:30 p.m., Saturday, July 26, 1997, in Salon A, Second Floor, at the Hilton Hotel on Pinhook Road in Lafayette, LA.

Howard B. Bolton  
Executive Director

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

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

The only cost associated with the implementation of the proposed pharmacy education regulation will be the cost of printing and distribution of the new regulation. It is estimated that the Register cost of \$250, printing cost of \$500, and postage for distribution at \$640, or a total of \$1,390 will be expended in FY 97/98.

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

This proposed regulation would have no effect on any revenue collections for this board or any state or local governmental entity.

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

There are no economic benefits to be gained by this regulation.

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

During the last three years, the Board of Pharmacy has received less than 30 inquiries into the licensure of qualified foreign pharmacy graduates. Since we average licensing over 200 pharmacists per year, it is felt that any effect on competition and employment will be minimal.

Howard B. Bolton  
Executive Director  
9706#078

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Pharmacy**

**Licensure Renewal and Status (LAC 46:LIII.507)**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and Pharmacy Law,

R.S. 37:1178, the Board of Pharmacy hereby gives notice to amend LAC 46:LIII.507.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS  
Part LIII. Pharmacists**

**Chapter 5. Pharmacists**

**§507. Pharmacists Licensure Renewal and Status**

A. Renewal. The annual pharmacist license renewal application shall be mailed prior to November 1 each year, by the board, to all currently licensed Louisiana pharmacists. The completed application along with the necessary fee must be submitted to the board by December 31 of each year.

B. Renewal Fee. The annual renewal fee for licensure shall be determined by the legislature and/or the board.

**C. Licensure Status**

1. Active. Pharmacist applicant actively engaged in the practice of pharmacy must pay annual fee, attain minimum CPE as required, complete and file annual renewal form with the board office before December 31 of each year.

2. Military. Louisiana pharmacists may request waiver of annual renewal fees while in the active military service of the United States or any of its allies. Pharmacist must provide proof of military service and request waiver of fees and notify the board in writing when the waiver is no longer applicable. The military pharmacist must complete and return the annual renewal form to the board before December 31 of each year.

3. Gold Certificate. Pharmacist has practiced pharmacy and/or maintained pharmacist license in good standing for 50 years and has received a gold certificate from the board. Gold certificate holders are exempt from CPE and annual renewal fee, however, they are requested to complete the annual renewal form in order for the board office to maintain current records.

4. Inactive. A pharmacist who is not actively practicing pharmacy in the state may request in writing an inactive status license from the board. The inactive pharmacist must complete the annual renewal form furnished by the board and return it with the proper fee to the board before December 31 of each year. The inactive pharmacist would not have to obtain CPE. Inactive pharmacists must petition the board and meet requirements of the reinstatement committee and the board to upgrade an inactive license to active status. The board may set the requirements necessary to assure competency for each individual. Inactive pharmacists receiving a gold certificate must remain on inactive status unless active status has been obtained as listed above.

5. Retired. Louisiana pharmacists who do not wish to renew their license may notify the board office in writing that they have retired from the profession. Retired pharmacists will not remain on the mailing list of the board. Retirement for a period not exceeding five years shall not deprive the pharmacist of the right to renew the registration upon written application to the board and by payment of lapsed fees, without penalty.

6. Expired. A license which has not been renewed annually shall be null and void.

a. The holder of a license which has expired may be reinstated only upon written application to the board and upon payment of all lapsed fees and a penalty to be fixed by the board at not more than 50 percent of the original fee. Other conditions of reinstatement may be required at the discretion of the board.

b. A renewal application for a lapsed license must be requested by the pharmacist in writing and the completed application may be referred to the board's reinstatement committee for disposition in accordance with R.S. 37:1187.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 23:

Any person may submit data, views, or positions orally or in writing to the Executive Director, Board of Pharmacy, 5615 Corporate Boulevard, Suite 8E, Baton Rouge, LA 70808-2537 through 4:30 p.m., Tuesday, July 22, 1997.

Under the provisions of the Administrative Procedure Act, a public hearing will be held at 3:30 p.m., Saturday,

July 26, 1997, in Salon A, Second Floor, at the Hilton Hotel on Pinhook Road in Lafayette, LA.

Howard B. Bolton  
Executive Director

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

**RULE TITLE: Licensure Renewal and Status**

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

The only cost associated with the implementation of the proposed pharmacist licensure renewal and status regulation will be the cost of printing and distribution of the new regulation. It is estimated that the Register cost of \$250, printing cost of \$500 and postage for distribution is estimated at \$640, or a total of \$1,390 will be expended in FY 97/98.

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

This proposed regulation would have no effect on any revenue collections for this board or any state or local governmental entity.

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

There are no economic benefits to be gained by this regulation.

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

There will be no effect on competition or employment.

Howard B. Bolton  
Executive Director  
9706#075

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Pharmacy**

Parenteral/Enteral Pharmacy (LAC 46:LIII.2107)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and Pharmacy Law,

R.S. 37:1178, the Board of Pharmacy hereby gives notice to amend LAC 46:LIII.2107.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIII. Pharmacists**

**Chapter 21. Parenteral/Enteral Pharmacy**

**§2107. General Requirements**

A. Expiration Date. Individualized sterile preparations of Total Parenteral Nutrition (TPN), Hyperalimentation (Hyperal), and Total Enteral Nutrition (TEN) shall be prepared extemporaneously for immediate utilization and shall not have an expiration date beyond seven days. Other sterile parenteral and epidural therapy preparations or admixtures shall be prepared extemporaneously and, unless specified by the manufacturer, shall not have an expiration date beyond seven days.

B. - K.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 23:

Any person may submit data, views, or positions orally or in writing to the Executive Director of the Board of Pharmacy, 5615 Corporate Boulevard, Suite 8E, Baton Rouge, LA 70808-2537 through 4:30 p.m. on July 22, 1997.

Under the provisions of the Administrative Procedure Act, a public hearing will be held at 3:30 p.m., Saturday, July 26, 1997, in Salon A, Second Floor, at the Hilton Hotel on Pinhook Road in Lafayette, LA.

Howard B. Bolton  
Executive Director

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

**RULE TITLE: Parenteral/Enteral Pharmacy**

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

The only cost associated with the implementation of the proposed parenteral/enteral pharmacy regulation will be the cost of printing and distribution of the change. It is estimated that the Register cost of \$250 will be incurred in FY 96/97 and printing cost of \$500 and postage for distribution at \$640, or a total of \$1,140 will be expended in FY 97/98.

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

This proposed regulation would have no effect on any revenue collections for this board or any state or local governmental entity.

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

There are no economic benefits to be gained by this regulation.

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

There will be no effect on competition or employment.

Howard B. Bolton  
Executive Director  
9706#074

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Board of Pharmacy

#### Pharmacy Practice (LAC 46:LIII.Chapters 9 and 11)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and Pharmacy Law, R.S. 37:1178, the Board of Pharmacy hereby gives notice to amend LAC 46:LIII.Chapters 9 and 11 as follows:

1. Existing text in §§901-917 will be recodified in Chapter 11; and new text pertaining to Pharmacy Practice will be promulgated in Chapter 9.
2. Existing text in §919 (Pharmacy Support Staff and Supportive Personnel) is being replaced with entirely new text.
3. Existing text in §1101 is being replaced by a portion of the existing Chapter 9 text.
4. New Chapter 9 is entitled "Pharmacy Practice."
5. New Chapter 11 is entitled "Pharmacies."

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LIII. Pharmacists

#### Chapter 9. Pharmacy Practice

##### §901. Pharmacy

The practice of pharmacy in the state of Louisiana is, and has been declared, a professional practice, affecting the public health, safety and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of pharmacy merit and receive the confidence of the public, and that only qualified persons be permitted to practice pharmacy in the state of Louisiana. (R.S. 37:1221)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), repromulgated LR 19:1024 (August 1993), amended LR 23:

##### §903. Definition

*Practice of Pharmacy or Practice of the Profession of Pharmacy*—the compounding, filling, dispensing, exchanging, giving, offering for sale, or selling drugs, medicines, or poisons, pursuant to prescriptions or orders of physicians, dentists, veterinarians, or other licensed practitioners, or any other act, services operation or transaction incidental to or forming a part of any of the foregoing statements, requiring, involving or employing the science or art of any branch of the pharmacy profession, study or training. (R.S. 37:1222)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), repromulgated LR 19:1025 (August 1993), amended LR 23:

##### §905. Practice of Pharmacy

The practice of pharmacy means the holding out of one's self to the public as being engaged in the business of, or the actual engagement in the practice of pharmacy which includes, but is not necessarily limited to, the implementation

of medical orders; interpretation, evaluation, dispensing of prescription drug orders; and the delivery of pharmacist care to assure optimum patient outcome. It also includes participation in drug and device selection; drug administration; drug regimen reviews; drug use evaluation; drug or drug-related research; provisions of patient counseling; those acts or services necessary to provide pharmacist care including drug therapy management; the responsibility for compounding and labeling of drugs and devices; and proper and safe storage of drugs and devices, and maintenance of proper records for them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), repromulgated LR 19:1025 (August 1993), amended LR 23:

##### §907. Pharmacy Primary Care

Pharmacy primary care is bringing health care as close as possible to where people live and work and constitutes the first element of a continuing health care process in an effort to enhance optimum therapeutic outcomes. Often, pharmacy primary care is the first level of contact of individuals, the family, and the community with the health care delivery system, which may ensure total pharmacy care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), repromulgated LR 19:1025 (August 1993), amended LR 23:

##### §909. Pharmacy Collaborative Practice

Pharmacy collaborative practice is that practice whereby a pharmacist has agreed to work in conjunction with one or more practitioners under written protocol. Any collaborative practice protocol shall adhere to established guidelines which have been approved by the Louisiana State Board of Medical Examiners and the Louisiana Board of Pharmacy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 17:779 (August 1991), repromulgated LR 19:1025 (August 1993), amended LR 23:

##### §911. Practice of Pharmacy by Louisiana Licensed Pharmacists

The practice of pharmacy in the state of Louisiana shall be limited to pharmacist licensed by the Louisiana Board of Pharmacy and holding a current renewal. Nothing in this Chapter or these regulations shall prevent any exceptions as listed in R.S. 37:1204.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 17:779 (August 1991), repromulgated LR 19:1025 (August 1993), amended LR 23:

##### §913. Pharmacy Practices

The stocking, storing, compounding and dispensing of legend drug medications shall be performed in a Louisiana permitted pharmacy or licensed facility. The practice of pharmacy is not limited to the physical facility. The practice of pharmacy may include any and all or a combination of the

following listed practices although not necessarily limited to those listed as follows:

1. dispensing pharmacy practice;
2. compounding pharmacy practice;
3. clinical pharmacy practice;
4. community pharmacy practice;
5. hospital pharmacy practice;
6. industrial clinic pharmacy practice;
7. nuclear pharmacy practice;
8. parenteral/enteral pharmacy practice;
9. institutional pharmacy practice;
10. manufacturing pharmacy practice;
11. teaching pharmacy practice;
12. regulatory pharmacy practice;
13. consultant pharmacy practice;
14. administrative pharmacy practice;
15. collaborative pharmacy practice;
16. governmental pharmacy practice;
17. research pharmacy practice;
18. informational pharmacy practice;
19. primary care pharmacy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 17:779 (August 1991), LR 18:1379 (December 1992) effective January 1, 1993, repromulgated LR 19:1025 (August 1993), amended LR 23:

#### **§915. Dispensing Pharmacy Practice**

Louisiana licensed pharmacists prescription dispensing is the receiving and interpretation of the prescription, and the issuance of one or more doses of medication in a suitable container properly labeled for subsequent administration with the necessary counseling provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 18:1379 (December 1992) effective January 1, 1993, repromulgated LR 19:1026 (August 1993), amended LR 23:

#### **§917. Compounding Pharmacy Practice**

Compounding by a Louisiana licensed pharmacist means the preparation or mixing of one or more ingredients for dispensing as a result or in anticipation of a practitioner's prescription order or initiative based on a practitioner/pharmacist/patient relationship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 18:1379 (December 1992) effective January 1, 1993, repromulgated LR 19:1026 (August 1993), amended LR 23:

#### **§919. Clinical Pharmacy Practice**

Clinical pharmacy practice is that division of pharmacy primarily associated with patient care with particular emphasis on drug regimen selection and treatment. Clinical pharmacy as a part of total pharmacist care may be extended to other classifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 18:1380 (December 1992) effective April 1, 1993, repromulgated LR 19:1026 (August 1993), amended LR 23:

#### **§921. Community Pharmacy Practice**

For community pharmacy practice requirements and regulations refer to Chapter 13 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 17:780 (August 1991), LR 19:1027 (August 1993), LR 23:

#### **§923. Hospital Pharmacy Practice**

For hospital pharmacy practice requirements and regulations refer to Chapter 25 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 17:780 (August 1991), LR 19:1027 (August 1993), LR 23:

#### **§925. Industrial Clinic Pharmacy Practice**

For industrial clinic pharmacy practice requirements and regulations refer to Chapter 17 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 17:780 (August 1991), LR 19:1027 (August 1993), LR 23:

#### **§927. Nuclear Pharmacy Practice**

For nuclear pharmacy practice requirements and regulations refer to Chapter 19 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 17:780 (August 1991), LR 19:1028 (August 1993), LR 23:

#### **§929. Parenteral/Enteral Pharmacy Practice**

For parenteral/enteral pharmacy practice requirements and regulations refer to Chapter 21 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 17:780 (August 1991), LR 19:1028 (August 1993), LR 23:

#### **§931. Institutional Pharmacy Practice**

For institutional pharmacy practice requirements and regulations refer to Chapter 15 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

#### **§933. Manufacturing Pharmacy Practice**

Manufacturing pharmacy practice is that practice devoted to the selection of raw materials, proper storage, processing, production, assaying, labeling and distribution of pharmaceutical products for proper resale or dispensing in accordance with all laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

#### **§935. Teaching Pharmacy Practice**

Teaching pharmacy practice includes those pharmacists who hold themselves as instructors, educators or disseminators of pharmacy information to students of pharmacy, medical or allied health care colleges, or provide continuing pharmacy education to Louisiana licensed pharmacists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

#### **§937. Regulatory Pharmacy Practice**

Regulatory pharmacy practice includes those pharmacists who are engaged in promoting, promulgating, or enforcing official rules which govern the practice of pharmacy in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

#### **§939. Consultant Pharmacy Practice**

A. Consultant pharmacy practice is practiced by pharmacists who perform Drug Regimen Review (DRR) as the systematic evaluation of medication therapy view within the context of patient-specific data, as a quality assurance process oriented towards enhancing therapeutic outcome of pharmacologic agents and optimizing medication therapy of patients.

B. Consultant pharmacists shall be familiar with the requirements of pharmaceutical services and medication use as well as proper utilization, indications, contraindications, allergies, treatment rationale, therapeutic plans and laboratory findings as they relate to the overall pharmacist care of the patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

#### **§941. Administrative Pharmacy Practice**

Administrative pharmacy practice includes documentation and proper recordkeeping required in the various practices as required by federal and state law as well as regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

#### **§943. Collaborative Pharmacy Practice**

For collaborative pharmacy practice requirements see §909 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

#### **§945. Governmental Pharmacy Practice**

Governmental pharmacy practice occurs and includes the employment of any person who holds himself to be a pharmacist in the employment of any federal, state, local government or any part thereof or regarding the practice of

pharmacy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

#### **§947. Research Pharmacy Practice**

Research pharmacy practice includes the engagement of a pharmacist in the research and development of new drugs or new dosage forms; or the conduction of clinical or toxicological trials or the development of new entities or new usages in the industrial, clinical or public health sectors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

#### **§949. Informational Pharmacy Practice**

Informational pharmacy practice primarily includes but is not necessarily limited to pharmacists practicing in drug information centers, poison control centers or medical information networks where medication information is communicated and disseminated by the pharmacist to professional practitioners, patients or concerned persons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

#### **§951. Primary Care Pharmacy**

For primary care pharmacy practice refer to §907 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

### **Chapter 11. Pharmacies**

#### **§1101. Pharmacy**

##### **A. Definition**

*Pharmacy*—an establishment licensed as such by the board where the profession of pharmacy may be practiced.

B. Qualification. Individuals, partnerships, associations, or corporations desiring to operate a pharmacy establishment in Louisiana, or outside the state when prescription drugs and medications are dispensed and delivered to Louisiana consumers, shall have the pharmacist who is pharmacist-in-charge complete and sign the application to the board for the particular classification of pharmacy. Each application shall contain satisfactory proof of good moral and temperate habits of the owner(s) or major stockholders. The applicants, including the responsible pharmacist-in-charge, may be requested to personally appear before the board prior to a decision on the permit application.

##### **C. Pharmacy Permit**

1. Initial. A pharmacy permit application shall be available from the board and shall be submitted to the board for approval. The licensed pharmacist who will be the pharmacist-in-charge shall complete the form and include the following information:

- a. name and address of pharmacy;
- b. specialty classification of pharmacy;
- c. type of ownership;
- d. name and address of all owners. If a partnership or corporation, the name, title and address of managing officers;

e. a copy of the lease agreement; or, if the location of the pharmacy is owned by the pharmacy, a statement certifying such location ownership; and

f. a signature and license number of the pharmacist-in-charge; and

i. if the pharmacist-in-charge is not the owner, a signature of the owner; or

ii. if a partnership or corporation, the signature of an executive officer.

g. date of opening;

h. name and license number of other pharmacists employed; and

i. notarization of application and/or supporting documents which may be required at the discretion of the board.

2. **Renewal.** A pharmacy permit shall be renewed annually by January 1 and, if not renewed, shall be null and void on January 15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 23:

### §1103. Pharmacy Operation

A licensed pharmacist, in good standing, shall be on duty at all times during regular open hours of the pharmacy which shall total a minimum of 40 hours per week and consist of a minimum of five days per week with a minimum of six hours per day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

### §1105. Pharmacist Absence/Disclosure

When a licensed pharmacist is absent from the prescription department the prescription department must be securely closed and made nonaccessible to unauthorized personnel. A sign, the size of 8½ x 11 inches with the following wording in black letters one-inch high, "PRESCRIPTION DEPARTMENT CLOSED," shall be displayed in a conspicuous position in front of the prescription department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

### §1107. Pharmacist-in-Charge

An initial and renewal pharmacy permit application shall be timely submitted to the board and designate and identify the licensed pharmacist-in-charge who shall be a full-time employee providing sufficient time in supervising to protect the public health, safety, and welfare.

1. **Authority.** The designated pharmacist-in-charge of the pharmacy shall be responsible for complete supervision, management, and compliance with all federal and state pharmacy laws and regulations pertaining to the practice of pharmacy of the entire prescription department.

2. **Circumvention.** It is a violation of the pharmacy permit for any person to subvert the authority of the pharmacist-in-charge by impeding the management of the prescription department in the compliance of federal and state

pharmacy laws and regulations.

3. **Termination.** Notice shall be required when the pharmacist-in-charge resigns, retires, is terminated or transferred, and this disclosure must be afforded the board in writing by the permit holder and the new pharmacist-in-charge within 10 days of the departure or transfer.

4. **Resignation or Retirement.** A pharmacist-in-charge, practicing in Louisiana, must give 10 days written notice of resignation or retirement to his employer unless replaced in a shorter time period. An employer may excuse any pharmacist for failure to give notice for sickness or for other emergencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

### §1109. Prescription

*Prescription*—an order for a drug, chemical, device or a combination thereof, either written, given orally or otherwise transmitted to a licensed pharmacist by a licensed physician, dentist or veterinarian, to be dispensed or compounded in a permitted pharmacy and dispensed by a licensed pharmacist to the patient or agent, along with necessary and appropriate patient counseling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

### §1111. Transmission of Prescriptions

#### A. Receipt of a Prescription

1. **Written.** A pharmacist may receive and dispense a bona fide prescription which has been written and/or signed by the practitioner.

2. **Oral.** A pharmacist may receive and dispense a bona fide prescription which has been orally communicated by the practitioner when the prescription has been reduced to hard copy.

3. **Electronic Transmission.** A pharmacist may receive and dispense a bona fide prescription communicated from a practitioner, via facsimile or other means, and then the prescription must be reduced to hard copy. When receiving a prescription transmitted in this manner the pharmacist must indicate on the hard copy the mode of transmission as well as the phone number of the practitioner making the transmission.

B. **Verification.** Verification of the accuracy and authenticity of any prescription is the responsibility of the pharmacist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

### §1113. Prescription Dispensing

*Prescription Dispensing*—the issuance, by a licensed pharmacist, of one or more doses of medication in a suitable container, properly labeled for subsequent administration, and shall consist of the following procedures or practices:

1. receiving and interpretation of the written or oral prescription order; and

2. assembling the drug products and an appropriate container; and



3. preparing the prescription by compounding, mixing, counting, or pouring; and
4. affixing the proper label to the final container; and
5. patient counseling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**§1115. Patient Counseling**

A. *Patient Counseling*—the effective communication by the pharmacist of information, as defined in this regulation, to the patient or caregiver, in order to improve therapeutic outcomes by maximizing proper use of prescription medications and devices.

B. Sign. The use of a sign to alert patients that patient counseling services are available may be appropriate for informing patients of this service, but does not satisfy the requirements for counseling, since many patients may not be able to read or understand the sign.

C. Waiver. No pharmacist or pharmacy may solicit or encourage blanket waivers for patient counseling; however, nothing in this regulation shall prohibit the patient or caregiver from refusing counseling on each prescription.

D. Minimum Requirements. At a minimum, the pharmacist should be convinced that the patient or caregiver, as a result of counseling, is informed of the following:

1. the name and description of the medication;
2. the dosage form, dosage, route of administration, and duration of drug therapy;
3. special directions and precautions for preparation, administration, and use by the patient;
4. common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
5. techniques for self-monitoring drug therapy;
6. proper storage;
7. prescription refill information; and
8. action to be taken in the event of a missed dose.

E. The pharmacist may supplement oral information with written information but may not use written information alone to fulfill the counseling requirement.

F. Patient Information

1. In order to effectively counsel patients, the pharmacist shall be responsible to ensure that a reasonable effort is made to obtain, record, and maintain the following patient information, if significant, but not limited to:

- a. name, address, telephone number;
- b. date of birth (age), gender;
- c. medical history;
  - i. disease state(s);
  - ii. allergies/drug reactions;
  - iii. current list of medications and devices.

2. This information may be recorded in the patient's manual or electronic profile, or in any other system of records and may be considered by the pharmacist in the exercise of his professional judgment concerning both the offer to counsel and content of counseling.

3. The absence of any record of a failure to accept the pharmacist's offer to counsel shall be presumed to signify that

such offer was accepted and that such counseling was provided.

G. Communication to the Patient

1. A pharmacist should counsel the patient or caregiver "face-to-face" when possible or appropriate. If it is not possible or appropriate to counsel the patient or caregiver "face-to-face," then a pharmacist should counsel the patient or caregiver by using alternative methods. The pharmacist must exercise his professional judgment in the selection of an alternative method.

2. Patient counseling, as described in this regulation, should also be provided for outpatient and discharge patients of hospitals and institutions where applicable.

3. Patient counseling, as described herein, shall not be required for inpatients of a hospital or institution where a nurse or other licensed health care professional is authorized to administer the medication(s); and

4. The pharmacist shall maintain appropriate patient-oriented reference materials for use by the patient upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**§1117. Prospective Drug Review**

A. When professionally relevant, a pharmacist shall review the patient record and each prescription drug order presented for dispensing for purposes of enhancing pharmaceutical care and therapeutic outcomes by identifying:

1. over-utilization or under-utilization;
2. therapeutic duplication;
3. drug-disease contraindications;
4. drug-drug interactions;
5. incorrect drug dosage or duration of drug treatment;
6. drug-allergy interactions;
7. clinical abuse/misuse.

B. Upon recognizing any of the above, the pharmacist using professional judgment shall take appropriate steps necessary to avoid or resolve the problem.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**§1119. Labeling**

An appropriate label shall be affixed to a proper container with the following information:

1. pharmacy's name;
2. pharmacy's address and telephone number;
3. prescription serial number;
4. authorized prescriber's name;
5. patient's name;
6. date dispensed;
7. directions for use, as indicated;
8. drug name and strength;
9. pharmacist's last name and initial; and
10. cautionary auxiliary labels, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

### **§1121. Pharmacy Prepackaging**

A. Prepackaging is the packing of medications in a unit of use container, by a licensed pharmacist, in a Louisiana permitted pharmacy prior to the receipt of a prescription for ultimate prescription dispensing by a pharmacist in Louisiana.

B. Labeling. The label on the prepackaged container shall contain the following information:

1. drug name;
2. dosage form;
3. strength;
4. quantity;
5. name of manufacturer and/or distributor;
6. manufacturer's lot or batch number;
7. date of preparation;
8. pharmacist's last name and initial;
9. expiration date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

### **§1123. Drug Administration**

Drug administration is the providing of a single unit final dose form of medication for a patient upon orders and directions for use by a licensed pharmacist in compliance with an authorized prescriber's order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

### **§1125. Mechanical Drug Dispensing Devices**

Dispensing of prescription legend drugs directly to a patient by mechanical devices or machine is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

### **§1127. Prescription Department Requirements**

A pharmacy commencing operation after January 1, 1989, or an existing operation continuing at a new or remodeled location, must meet the following minimum requirements.

1. Structure. A prescription department must provide sufficient and adequate structural space for safe and appropriate drug dispensing and compounding.

2. Prescription Department Area. The prescription department is a restricted area that shall be not less than 200 total square feet that is inaccessible to the public.

3. Prescription Counter. A prescription counter on which to compound or dispense medications must have a free working surface of not less than 2 feet in width nor less than 12 feet in length or a minimum of 24 total square feet. The minimum unobstructed free working surface must be kept clear at all times for the compounding or dispensing of prescriptions.

4. Prescription Aisle Space. The aisle space behind the prescription counter shall not be less than 30 inches in width.

5. Prescription Department Plumbing. The prescription department shall have, in close proximity of the prescription counter, a sink equipped with available hot and cold running water.

6. Drug Inventory/Fixtures. The pharmacy shall provide sufficient shelf and drawer or cabinet space for proper storage of labels, prescription containers, and an adequate prescription inventory in order to compound and dispense prescription orders.

7. Pharmacy Security. The board requires that adequate protection of the prescription and drug department be secured by the installation of partitions and secured entrances, which shall be locked by a pharmacist when the prescription department is closed in order to avoid the diversion of dangerous drugs; and shall be inaccessible to the public; and the key shall be maintained by the pharmacist-in-charge or a pharmacist designee.

a. For emergency access only, a key to the prescription department may be available elsewhere. When this emergency key is utilized, the name of the person entering the prescription department, the date and time of entry, as well as the nature of the emergency shall be entered in a log maintained in the pharmacy department. At the next available opportunity, the pharmacist-in-charge shall sign and date the log verifying the emergency.

b. Storage. Adequately secured storage is required for legend drugs to avert diversion or theft.

8. Contents. The following references, equipment, and supplies shall be required.

a. Reference. Current editions with supplements of the following:

i. Louisiana Board of Pharmacy laws, rules, and regulations;

ii. United States Pharmacopoeia Dispensing Information: Advice for the Patients;

iii. one of the following is required: Pharm-Index or Facts and Comparisons.

b. Equipment Minimum Requirements

i. suitable Class "A" balance;

ii. accurate set of weights;

iii. set of graduates;

iv. mortars and pestles;

v. spatulas;

vi. funnels;

vii. ointment slab; and

viii. typewriter, or equivalent.

c. Supplies

i. prescription files;

ii. bottles, vials, and other suitable containers;

iii. labels;

iv. empty capsules;

v. powder papers; and

vi. filter papers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

Any person may submit data, views, or positions orally or in writing to the Executive Director, Board of Pharmacy, 5615 Corporate Boulevard, Suite 8E, Baton Rouge, LA 70808-2537 through 4:30 p.m. on Tuesday, July 22, 1997.

Under the provisions of the Administrative Procedure Act, a public hearing will be held at 3:30 p.m., Saturday, July 26, 1997, in Salon A, Second Floor, at the Hilton Hotel on Pinhook Road in Lafayette, LA.

Howard B. Bolton  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Pharmacy Practice**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The only cost associated with the implementation of the proposed pharmacy practice regulation will be the cost of printing and distribution of the new regulation. It is estimated that the *Louisiana Register* cost of \$250, printing cost of \$2,500 and postage for distribution at \$1,000, or a total of \$3,750 will be expended in FY 97/98.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
This proposed regulation would have no effect on any revenue collections for this board or any state or local governmental entity.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no economic benefits to be gained by this regulation.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There will be no effect on competition or employment.

Howard B. Bolton  
Executive Director  
9706#077

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Pharmacy**

**Pharmacy Technicians (LAC 46:LIII.Chapter 8 and §2535)**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and Pharmacy Law, R.S. 37:1178, the Board of Pharmacy hereby gives notice to adopt LAC 46:LIII.Chapter 8, Pharmacy Technicians and amend LAC 46:LIII.2535, Pharmacy Technicians (performing in a hospital pharmacy).

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIII. Pharmacists**

**Chapter 8. Pharmacy Technicians**

**§801. Definition**

*Pharmacy Technician*—person who assists in the practice of pharmacy under the direct and immediate supervision of a licensed Louisiana pharmacist and is qualified by the Board of Pharmacy.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1178.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**§803. Qualifications**

A. To qualify as a Louisiana pharmacy technician a candidate shall meet the following conditions.

- 1. Age—at least 18 years of age.
- 2. Character—good moral character and be nonimpaired.
- 3. Citizenship—candidate shall be a citizen of the United States, or hold proof of lawful permanent residence (green card).
- 4. Education—high school graduate or equivalent and successfully complete a board-approved didactic pharmacy technician program.
- 5. Experience—obtain the necessary on-site training hours in board-approved programs.
- 6. Examination—successfully complete the board-approved pharmacy technician examination.

B. Exception. A licensed Louisiana pharmacist whose license has been denied, revoked, suspended or restricted for disciplinary reasons shall not be eligible to be a Louisiana pharmacy technician.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1178.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**§805. Education**

A pharmacy technician applicant shall meet all the following minimal education standards. These minimal standards are to ensure the protection of the public's health, safety and welfare.

- 1. Didactic Program. The applicant shall successfully complete a board-approved didactic pharmacy technician program and during this program may obtain structured on-site experience under an authorized on-site training work permit.
- 2. On-Site Training
  - a. The applicant shall successfully complete the board-approved on-site training pharmacy technician program. This program is an integral part of the permit process and training hours can only be credited after the completion of the didactic program.
  - b. Training Hours
    - i. A minimum of 200 training hours of structured on-site experience.
    - ii. A maximum of 40 hours per week.
    - iii. The pharmacy technician applicant shall within a 90-day period from date of completion of a didactic program successfully complete an on-site training program.
- 3. Completion. The didactic and on-site training program as well as the board-approved pharmacy technician examination shall be successfully completed within one year.
- 4. Pharmacy Technician On-site Training Work Permit. An on-site training work permit listing the pharmacy technician applicant, the pharmacist-in-charge and the on-site training location (name and complete address), shall be issued by the Board of Pharmacy, in order for the pharmacy technician applicant to perform pharmacy technician

functions, providing this work is performed only under the personal, direct, and immediate supervision of a licensed Louisiana pharmacist and in a setting not to exceed a one-to-one, on-duty ratio.

a. On-site Training Work Permit. The pharmacist-in-charge shall apply to the board for an on-site training work permit. The application shall contain the pharmacy technician applicant's name; the name and the license number of the pharmacist-in-charge; the name, complete address, and permit number of the pharmacy; and shall be signed and dated by the pharmacist-in-charge and the pharmacy technician applicant.

b. Scope of On-site Training Work Permit. On-site training work permits are issued for a specific site and specific pharmacy technician applicant.

c. Expiration. On-site training work permits shall expire 180 days from date of issue by the board or upon termination of employment of the pharmacy technician applicant or failure of any listed person or site to meet requirements.

d. Any licensed Louisiana pharmacist may be a supervising pharmacist for the pharmacy technician on-site training program provided that said pharmacist is not on probation.

e. Pharmacy technician on-site training may be authorized at any permitted Louisiana pharmacy not on probation.

f. The pharmacist-in-charge shall provide to the board a properly executed affidavit of completion when the necessary on-site training is achieved.

g. Issuance of On-site Training Work Permits. The board shall reserve the right to refuse to issue or to recall on-site training work permits for due cause or if necessary requirements are not met.

h. On-site training work permit shall be on display in the pharmacy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

### §807. Pharmacy Technician Examination

Initial Application. After completion of the didactic and on-site training program the board shall furnish to the pharmacy technician applicant an application for a pharmacy technician examination upon request. An application for the pharmacy technician examination shall be completed and signed by the candidate, notarized, accompanied by the examination fee as established by the board, and submitted to the board office for processing at least 30 days prior to examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

### §809. Examination

A. The Board of Pharmacy approved technician examination shall consist of integrated subject disciplines as the board may deem appropriate.

B. The technician examination will be offered when necessary as determined by the board.

C. A minimum score of 75 shall be obtained for an applicant to meet minimum examination requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

### §811. Pharmacy Technician Certificate

The board may issue a pharmacy technician certificate to an applicant successfully completing all board requirements.

1. Technician Certificate Duplication. In the event of a loss or destruction of a certificate, the board may issue a duplicate of the original certificate upon receipt of a notarized application and fee for reproduction.

2. Technician Certificate Display. The technician certificate shall be displayed in a conspicuous place in or near the prescription department in such a manner that said certificate can be seen by the public. The annual pharmacy technician renewal shall be attached to the front of or posted next to the certificate.

3. Identification. Pharmacy technicians shall be identified by a name badge and "Pharmacy Technician" designation while working in the pharmacy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

### §813. Implementation

A. It is anticipated that this regulation will be promulgated no later than September 1, 1997.

B. Those persons previously completing a support staff training program and having worked a minimum of 200 hours as a support staff person in a Louisiana pharmacy under §919 or §2535 as of September 1, 1997, or before, shall be considered to have met the requirements of the didactic program and the on-site technician training program required in this Chapter. An affidavit, signed by the pharmacist-in-charge and the support staff person, properly notarized and attesting to the necessary facts shall accompany the application for the pharmacy technician examination in order to obtain this exemption.

C. All support staff persons shall apply for and pass the pharmacy technician examination in order to obtain a pharmacy technician certificate.

D. Support staff persons will have until March 30, 1998 to meet the requirements and obtain a pharmacy technician certificate. After March 30, 1998, all persons practicing as pharmacy technicians shall hold a current pharmacy technician certificate issued by the Louisiana Board of Pharmacy.

E. Pharmacy technician certificates issued prior to June 30, 1998, will be considered current until the first required renewal date of June 30, 1998. Thereafter, in order to remain current, each pharmacy technician shall renew their certificate annually as required in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**§815. Annual Pharmacy Technician Renewal**

A. The board shall mail a renewal application to all pharmacy technicians holding a current renewal no later than May 1 of each year. The properly completed renewal application and fee shall be submitted annually to the board 30 days prior to expiration which shall be June 30 of each calendar year.

B. Delinquent Technician Certificate. A certificate which is not renewed by July 15 of each year shall be null and void, and the certificate holder shall not be in good standing as a pharmacy technician in the state of Louisiana.

C. Lapsed Certificate. A renewal application and all outstanding fees and penalties, to be fixed by the board, for a lapsed technician certificate may be referred to the board for consideration.

D. Renewal Fee. The annual renewal fee for certificate shall be determined by the legislature and/or the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**§817. Address Change**

A pharmacy technician holding a certificate in Louisiana shall notify the board, in writing, within 10 days of any change of mailing and/or home address, giving old and new address and certificate number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**§819. Employment Change**

A pharmacy technician shall notify the board, in writing, within 10 days of a change in employment, listing technician name and certificate number, the name, address, and permit numbers of old and new employment pharmacies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**§821. Duties**

A. The pharmacy technician may perform certain functions and duties as assigned by the supervising pharmacist while under his/her personal, direct and immediate supervision.

**B. Prohibitive Acts**

1. The pharmacy technician shall not interpret the prescription.

2. The pharmacy technician shall not receive original oral, telephone, or facsimile prescription orders.

3. The pharmacy technician shall not compound high-risk preparations. Under written protocol the pharmacy technician may reconstitute and perform low-risk manipulation of sterile preparations limited to closed-system transfers.

4. The pharmacy technician shall not counsel patients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**§823. Pharmacist-Only Functions**

**A. Dispensing Responsibilities**

1. The pharmacist shall interpret, evaluate, and implement all prescriptions: written, oral, or otherwise.

2. The pharmacist shall review the completed prescription for accuracy and compliance before the prescription is released from the prescription department.

3. The pharmacist shall provide patient counseling and drug information, as necessary.

**B. Supervising Responsibilities**

1. All tasks performed by pharmacy technicians in the pharmacy shall be accomplished under the direct and immediate supervision and responsibility of a licensed Louisiana pharmacist.

2. Ratio. A ratio of no more than one pharmacy technician per supervising pharmacist on duty shall be maintained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**§825. Impaired Pharmacy Technician**

An impaired pharmacy technician is a pharmacy technician unable to perform duties with reasonable skills or safety necessary to protect the public because of:

1. chemical dependence—repeated alcohol and/or drug use culminating in a pattern of chemical need manifested by:

a. alcoholism—a chronic, progressive disease which involves the use of alcohol to a degree of impeding functional competence of the permittee; or

b. drug abuse—improper or excessive nontherapeutic use of a drug to the detriment of the public and/or the individual; or

2. mental illness; or

3. physical deterioration; or

4. neurologic degeneration; or

5. central nervous system disease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**§827. Impaired Technician Reporting**

A pharmacy technician or pharmacist who has knowledge that a pharmacy technician or pharmacist is impaired shall report relevant confidential information to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**§829. Revocation, Suspension or Probation**

A. After due notice and opportunity for a hearing, the board may revoke, suspend, or place on probation a pharmacy technician certificate for any of the following causes:

1. when the pharmacy technician certificate or qualification is found to have been obtained by fraudulent means;

2. when the pharmacy technician has been convicted of felony or is found by the board to be guilty of gross immorality or impaired to such a degree as to render him unfit to complete technician duties;

3. when the pharmacy technician is found to have violated the pharmacy laws and regulations of the board;

4. when sufficient evidence is obtained and the interlocutory committee by an affirmative majority decision and in the committee's judgement the technician poses a danger to the respondent and/or to the health, safety and welfare of the public, the interlocutory committee of the board may summarily suspend the certificate of a pharmacy technician prior to a formal administrative board hearing.

**B. Notice of Decision of Board; Appeal**

1. If an applicant for any pharmacy technician certificate, or renewal thereof, is refused, or, if any certificate is suspended or revoked, the board shall notify the applicant in writing of its decision and the reasons therefor.

2. Any person to whom the board has refused to issue a pharmacy technician certificate, or whose certificate has been suspended or revoked, may appeal from the decision and order of the board to any court of competent jurisdiction, within 30 days after the refusal, suspension, or revocation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1178.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**§831. Injunction**

The board may apply to a court of competent jurisdiction over the parties and subject matter, for a writ of injunction to restrain violations of the provisions of this Chapter. This injunction shall not be released upon bond.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1178.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:

**Chapter 25. Hospital Pharmacy**

**§2535. Pharmacy Technicians**

Pharmacy personnel performing pharmacy technician functions in a hospital pharmacy shall hold a current pharmacy technician certificate from the Louisiana Board of Pharmacy and adhere to the requirements of Chapter 8 of these regulations.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1178.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 23:

Any person may submit data, views, or positions orally or in writing to the Executive Director of the Board of Pharmacy, 5615 Corporate Boulevard, Suite 8E, Baton Rouge, LA 70808-2537 through 4:30 p.m., Tuesday, July 22, 1997.

Under the provisions of the Administrative Procedure Act, a public hearing will be held at 3:30 p.m., Saturday, July 26, 1997, in Salon A, Second Floor of the Hilton Hotel on Pinhook Road in Lafayette, LA.

Howard B. Bolton  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Pharmacy Technicians**

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

The implementation of the pharmacy technician regulation will cost approximately \$153,000 to the Louisiana Board of Pharmacy for preparing and providing a didactic correspondence course for pharmacy technicians; developing, providing and administering a proper examination; and issuing a certificate and current renewal to successful candidates. It is anticipated that Xavier's and NLU's colleges of pharmacy faculty will contract with the board in preparing a correspondence course and a proper examination. In addition, it is anticipated that additional employees will be necessary for the board as well as computer software changes, computer hardware additions, additional office space, printing and postage.

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

The fees estimated and approved by the board for providing the services necessary in the implementation of the pharmacy technician program will increase the collections by the board by approximately \$153,000 the first year and approximately \$85,000 thereafter.

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

Pharmacy technicians are persons who may assist the pharmacist in the practice of pharmacy under the direct and immediate supervision of the pharmacist. It is estimated that there will be approximately 1,530 individuals who will apply for a pharmacy technician certificate. Once they have met the requirements and have received their certificate, they will be qualified to perform assistant tasks for the pharmacist in the permitted pharmacies in Louisiana.

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

Support staff persons are presently performing these assistant functions and after June 30, 1998 all support staff persons must hold a pharmacy technician certificate. There should be no effect on competition or employment.

Howard B. Bolton  
Executive Director  
9706#076

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Continuing Veterinary Education  
(LAC 46:LXXXV.403 and 405)

The Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.403 and 405 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 seq., the Veterinary Practice Act, R.S. 37:1518 et seq.

The proposed amendments to Chapter 4 include allowing limited use of video-tape, self-test programs with third-party grading and on-line instruction with third-party grading; requiring that proof of attendance shall include specific subjects attended; limiting to four the maximum number of hours that can be earned in practice management courses; and removing the requirement that an affidavit of retirement must be submitted annually for retirees to be exempt from continuing education requirements.

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

**Part LXXXV. Veterinarians**

**Chapter 4. Continuing Veterinary Education**

**§403. Continuing Veterinary Education Requirements**

A. A minimum 16 actual hours is required each fiscal year (July 1 through June 30) as a prerequisite for licensure. Hours may be taken from:

1. any pre-approved organization as described in §409;
2. a maximum of four hours of credit may be obtained in approved video-tape, self-test program(s) with third-party grading, and/or self-help instruction, including on-line instruction with third-party grading;
3. a maximum of four hours of practice management courses may be taken.

B. Proof of attendance, which shall include the name of the course, date(s) of attendance, hours attended, and specific subjects attended, shall be attached to the annual re-registration form.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated as §405 by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:224 (March, 1990), amended LR 19:1427 (November, 1993), LR 23:

**§405. Exceptions and Exemptions**

A. - B. ...

C. Exemptions from these requirements may be made for persons in the following categories:

1. ...
2. licensees who have returned a notarized affidavit of retirement as provided by the board for this purpose;
3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:224 (March 1990), amended LR 19:1428 (November, 1993), LR 23:

Interested parties may submit written comments to Charles B. Mann, Executive Director, Board of Veterinary Medicine, 200 Lafayette Street, Suite 604, Baton Rouge, LA 70801-1203. Comments will be accepted through the close of business on July 25, 1997.

A public hearing on the proposed changes will be held on Monday, July 28, 1997, at 9:00 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. All interested

persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at said hearing.

Charles B. Mann  
Executive Director

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

**RULE TITLE: Continuing Veterinary Education**

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

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendments (estimated \$80). The veterinary profession will be informed of this rule change via the board's regular newsletter, which is already a budgeted cost of the board.

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

There will be no effect on revenue collections of state or local governmental units. There will be no revenue impact as no increase in fees will result from these amendments.

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

Veterinarians licensed by the Board of Veterinary Medicine will be affected by these rule changes. However, no additional costs or workload adjustments are anticipated. The proposed amendments reflect the current practices of the board and should not require additional costs or work by licensees. Retired licensees will no longer be required to submit the annual affidavit for continuing education purposes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on employment and competition.

Charles B. Mann  
Executive Director  
9706#009

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals**  
**Office of the Secretary**

Maternal and Child Health Block  
Grant Application FY 1997-1998

The Department of Health and Hospitals (DHH) intends to apply for Maternal and Child Health (MCH) Block Grant Federal Funding for FY 1997-98 in accordance with Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, and with federal regulations as set forth in the *Federal Register*, Volume 47, Number 129, Tuesday, July 6, 1982, pages 29472-29493.



## NOTICE OF INTENT

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

#### Adult Day Health Care

DHH will continue to administer programs funded under the MCH Block Grant in accordance with provisions set forth in Public Law 97-35 and the federal regulations. The Office of Public Health is the office responsible for program administration of the grant.

The full text of this proposed rule may be obtained by contacting the Office of Public Health at the address below or by contacting the Office of the State Register, 1051 North Third Street, Room 512, Baton Rouge, LA 70802, telephone (504)342-5015.

Written comments will be accepted through August 30, 1997. Comments may be addressed to Jimmy Guidry, M.D., Assistant Secretary, Office of Public Health, 1201 Capitol Access Road, Baton Rouge, LA. The application is available for review at any regional OPH facility.

Bobby P. Jindal  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Maternal and Child Health Block Grant Application FY 1997-1998

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
This federal block grant was implemented in FY 82. Neither an increase nor a decrease in implementation costs is expected, as DHH will continue to administer these programs in accordance with existing federal and state laws and regulations. No workload change is anticipated, as the same amounts and kinds of services are expected to be delivered. Publication costs should be included (\$40).
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No effect on revenue collections is anticipated. Naturally, if the federal allotment to Louisiana for this federal block decreases, the state will be required to subsequently decrease the allotment to all programs covered under the block grant, but this is a factor beyond our control. The amount of the allocation for Louisiana for FY 97-98 is expected to be \$14,509,008, which is the same amount as FY 96-97.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
No direct effect is anticipated on patients, groups, units of local government or state agencies other than DHH.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No effect is anticipated on competition and employment, as the same kinds and amounts of services are to be offered. Should the amount of federal funds eventually appropriated be at such a decreased level as to warrant reductions in staff, unemployment will result.

Jimmy Guidry, M.D.  
Assistant Secretary  
9706#084

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to amend the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed amendment is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing administers Adult Day Health Care Services as one of four Home and Community Based Services Waiver Programs. Participation in each home and community based services waiver is limited to a specific number of participants based on the approval of the waiver application by the Health Care Financing Administration. Home and community based services waiver programs are based on federal criteria which allows services to be provided in a home or community based setting for a recipient who would otherwise require institutional care. The regulations include requirements for the determination of both medical and financial eligibility. Federal regulations contained at 42 CFR 441.302 (e)(1) state that the agency will provide for an evaluation of the need for the level of care provided in a hospital, a Nursing Facility (NF), or an Intermediate Care Facility/Mentally Retarded (ICF/MR), when there is a reasonable indication that a recipient might need the services in the near future (one month or less), unless he or she receives home or community based services. A determination of medical necessity cannot be made by Health Standards, the section responsible for the determination of medical eligibility for institutional and home and community based services, until all evaluative material is received. In order to assure timely, appropriate determinations of medical necessity and that the department is in compliance with federal requirements pertaining to all admission screenings, the bureau proposes to adopt a rule to establish a uniform provider protocol for the medical certification process for the Adult Day Health Care Waiver Program. Although the medical eligibility documentation requirements have not been previously promulgated, these procedures have been utilized by the bureau to facilitate the administration of the medical eligibility determination process.

*(Editor's Note: The following rule was published in full in the July 20, 1985 Louisiana Register, pages 623-637. Upon final adoption of the proposed amendment, the complete rule will be codified into the Louisiana Administrative Code under LAC 50:II.Subpart 3, and will be published in full, with the cost absorbed by the Office of the State Register.)*

#### Proposed Rule

#### Adult Day Health Care Services Standards for Payment

\* \* \*

- XVIII. Vendor Payment  
A. - H. ...

**I. Medical Eligibility Determination Requirements for Vendor Payment**

The adult day health care provider must submit a complete admissions packet to Health Standards within 20 working days of the date of admission. The date of admission or the date of the plan of care, whichever is later, is the effective date of certification. If the admission packet is incomplete, Health Standards will issue a denial of certification notice indicating the reason(s) for denial. If the missing information is subsequently received within the 20-day time frame and the applicant meets all eligibility criteria, certification shall be issued retroactive to the date of admission. If the missing information is received after the 20-day time frame, and the applicant meets all eligibility criteria, certification shall be issued with an effective date no earlier than the date that all required documents were received by the Health Standards Section.

A complete admission packet must contain the following forms:

1. a form 148 which includes the date of Medicaid application if the date of application is later than the date of admission;

2. a form 90-L which:

a. is signed and dated by a physician licensed to practice in Louisiana and include a level of care recommendation;

b. is not completed more than 30 days prior to the date of admission or the date of application if the residents applies for Medicaid after admission.

3. Level I PAS/RAS (Pre-admission Screening/ Re-admission Screening):

a. signed and dated by a physician licensed to practice in Louisiana;

b. if a second level screen is indicated due to a diagnosis or suspected diagnosis of mental illness or mental retardation, it must be completed prior to admission;

c. diagnosis and medication on the 90-L must be consistent with PAS/RAS.

4. Adult Day Health Care Social Assessment (ADHC I) which:

a. shall not be completed more than 30 days prior to admission;

b. is completed, signed and dated by a master's degreed social worker.

5. Adult Day Health Care Nursing Assessment (ADHC 2) which:

a. shall not be completed more than 30 days prior to admission;

b. if completed by a licensed practical nurse, it must be countersigned by a registered nurse who must also provide recommendations if necessary;

6. plan of care:

a. shall not be completed more than 30 days prior to admission;

b. shall include problems and needs identified in the assessments; approaches/services to be used for each problem; discipline or job title of staff member responsible for each approach; frequency of each approach/service; review/resolution dates; and include discharge as a goal.

Note that the diagnosis should not be used as a problem;

7. when an individual presents with a psychiatric disorder, a psychiatric evaluation is required and includes the following components:

a. history of present illness;

b. mental status;

c. diagnostic impression;

d. assessment of strengths and weaknesses;

e. recommendations for therapeutic interventions;

f. prognosis;

8. when there is a diagnosis of mental retardation/developmental disability, a psychological evaluation is required and includes the following components:

a. intellectual quotient;

b. adaptive level functioning.

\* \* \*

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 Human Resources, Office of Family Security, LR 11:633 (June 1985), amended by the Department of Health and Hospitals, Office of the Secretary, LR 23:

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing will be held on this matter on Tuesday, July 29, 1997 at 9:30 a.m. in the Auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day following the public hearing.

Bobby P. Jindal  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Adult Day Health Care**

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

There is no fiscal impact resulting from the implementation of this proposed rule for SFY 1997, 1998, and 1999. However, the cost of promulgating this rule is \$160 and will be incurred in SFY 1997.

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

Federal revenue collections will reflect \$80 for the promulgation of this proposed rule.

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

It is anticipated that there will be no fiscal impact from this proposed rule on currently enrolled adult day health care

providers as this proposed rule does not revise provider reimbursement or recipient eligibility criteria.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9706#080

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

### NOTICE OF INTENT

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

##### Home Health Services—Homebound Criteria

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to amend the following rule under the Administrative Procedure Act, R.S. 49:950 et seq., and as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act.

The Bureau of Health Services Financing published a rule in March of 1996 that established homebound criteria for the delivery of home health services under the Medicaid Program (*Louisiana Register*, Volume 22, Number 3). The department now proposes to amend the March 1996 rule to clarify the definition of homebound status in that all three components of the criteria must be met for a recipient to be considered homebound.

#### Rule

The Bureau of Health Service Financing amends the following rule to clarify the homebound criteria for the provision of home health services to Medicaid recipients.

Homebound status is determined by the recipient's illness and functional limitations. A recipient is considered to be homebound if the individual:

- 1) experiences a normal inability to leave home; and
- 2) is unable to leave home without expending a considerable and taxing effort; and
- 3) whose absences from the home are either infrequent, of short duration, or to receive medical services which may be unavailable in the home setting such as outpatient kidney dialysis, outpatient chemotherapy, outpatient radiation therapy or minor surgical interventions.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing will be held on this matter on Tuesday, July 29, 1997 at 9:30 a.m. in the Auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the

receipt of all comments is 4:30 p.m. on the day following the public hearing.

Bobby P. Jindal  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Home Health Services—Homebound Criteria

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no fiscal impact resulting from the implementation of this proposed rule for SFYs 1997, 1998, and 1999. However, the cost for promulgating this rule is \$80 and will be incurred in SFY 1997.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Federal revenue collections will reflect \$40 for the promulgation of this proposed rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
It is anticipated that there will be no fiscal impact from this proposed rule. This rule amends the definition of homebound status to clarify that all of the conditions listed in the criteria must be met in order to establish homebound status for home health services.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no known impact on competition and employment.

Thomas D. Collins  
Director  
9706#081

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

### NOTICE OF INTENT

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

##### Hospital Program—Out-of-State Services

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

The Bureau of Health Services Financing adopted a rule to reduce reimbursement for out-of-state inpatient hospital services to the lower of 50 percent of billed charges or the Medicaid per diem rate of the state where the services are provided and reduce out-of-state outpatient hospital services to 50 percent of billed charges (*Louisiana Register*, Volume 22, Number 1). Reimbursement for out-of-state hospital services had previously been set at 72 percent of billed charges. After a review of our prior authorization process and the difficulties experienced in arranging for out-of-state care, the bureau has determined it is necessary to revise the reimbursement methodology for out-of-state

inpatient hospital services rendered to recipients under the age of 21 by increasing the payment to 72 percent of billed charges. Outpatient services will continue to be reimbursed at 50 percent of billed charges except for ambulatory surgical procedures and outpatient laboratory procedures which are reimbursed in accordance with a fee schedule.

#### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing shall increase reimbursement to out-of-state hospitals to 72 percent of billed charges for inpatient services provided to recipients under the age of 21.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquires regarding this proposed rule.

A public hearing on this proposed rule is scheduled for Tuesday, July 29, 1997 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bobby P. Jindal  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Hospital Program—Out-of-State Services

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

It is anticipated that implementation of this proposed rule will result in increased expenditures for inpatient out-of-state hospital services by approximately \$1,281,542 for the remainder of SFY 1996-1997 (3 months); \$4,477,204 for SFY 1997-1998; \$4,521,976 for SFY 1998-1999; and \$4,561,196 for SFY 1999-2000. An expenditure of \$80 is not included for promulgation of this proposed rule.

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

It is anticipated that federal revenue collections for inpatient out-of-state hospital services will increase by approximately \$1,043,944 for the remainder of SFY 1996-1997; \$3,150,161 for SFY 1997-1998; \$3,181,662 for SFY 1998-1999; and \$3,213,479 for SFY 1999-2000.

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

It is anticipated that the providers of out-of-state hospital services will experience an increase in reimbursements for the provision of inpatient services to Medicaid recipients under age 21.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9706#073

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

#### Medical Assistance Program—Nursing Facilities Vendor Payments (LAC 50:II.10146)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides Medicaid reimbursement for services to Medicaid eligible residents of nursing facilities, and hospice services in nursing facilities in accordance with Title XIX regulations of the Social Security Act. These regulations include requirements for the determination of both medical and financial eligibility. Federal regulations contained at 42 CFR 456.370 (a) state that before admission and authorization for payment an interdisciplinary team of health professionals must make a comprehensive medical and social evaluation and, where appropriate, a psychological evaluation of each applicant's or recipient's need for care in the facility. A determination of medical necessity cannot be made until all evaluative material is received by the Health Standards Section. In order to assure timely, appropriate determination of medical necessity and that the department is in compliance with federal requirements pertaining to all admission screenings, the bureau proposes to adopt a rule to establish a uniform provider protocol for medical certification for nursing facilities services and hospice services in nursing facilities. The Medicaid Program has not previously promulgated these medical eligibility documentation requirements even though these procedures have been utilized by the bureau to facilitate its administration of the medical eligibility determination function.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

##### Part II. Medical Assistance Program

##### Subpart 3. Standards for Payment

##### Chapter 101. Nursing Facilities

##### Subchapter F. Vendor Payments

##### §10146. Medical Eligibility Determination Requirements

A. The following documentation requirements and procedures are required in order to obtain medical certification for vendor payment for services in nursing facilities and hospice in nursing facilities.

B. Timely Request for Medical Certification for Nursing Facility New Admissions Time Frames. The following time frames must be met when requesting medical certification for persons entering nursing facilities. Conversion from Medicare status to Medicaid vendor payment is considered a new admission.

1. The Health Standards Section must receive a complete packet of admission information within 20 working days of admission.

2. If an incomplete admission packet is received, certification will be denied. The reason for denial will be given as incomplete information provided.

3. If additional information is subsequently received within the initial 20 working day time frame, and the residents meets all requirements, the effective date of certification is the date of admission.

4. If the additional information is received after the initial 20-day time frame, and the residents meets all requirements, the effective date of certification is no earlier than the date all completed requirements are received by the Health Standards Section.

**C. Forms to Submit for New Admissions**

1. Form 148 (Notice of Admission or Change) which:  
a. verifies the individual's admission as a private pay resident or indicates that Medicaid or Medicare certification is being requested;

b. provides the date of the resident's application for Medicaid if later than the date of admission.

2. Form 90-L (Request for Level of Care Determination) which:

a. is signed and dated by a physician licensed in Louisiana and specifies the level of care being requested;

b. is completed fully and includes prior living arrangements and previous institutional care;

c. is completed not more than 30 days prior to admission or application if the resident applies for Medicaid after admission.

3. Level I PAS/RAS (Pre-admission Screening/Readmission Screening) Form which:

a. is signed and dated by a physician licensed in Louisiana;

b. if a second level screen is indicated due to a diagnosis of or suspected diagnosis of mental illness or mental retardation, is completed prior to admission unless approved by Health Standards under a categorical determination;

c. lists diagnosis and medication on the 90-L consistent with PAS/RAS.

**D. Forms to Submit for Readmission From the Hospital**

1. Form 148 which indicates:

a. the date Medicaid billing was discontinued if the bed was held; or

b. the date the resident was discharged to the hospital if the bed was not held;

c. the date of the resident's readmission to the facility and whether they are readmitted as Medicare or Medicaid status;

2. Form 90-L or transfer form or discharge summary or physician's orders which must specify diagnosis, medication regime, level of care, and must include a dated physician's signature.

3. A newly completed PAS/RAS is required under the following conditions:

a. if the resident was in a psychiatric hospital or unit;

b. if the resident is now receiving psychotropic medication, due to a mental illness not previously treated, and

was not prior to hospitalization;

c. if there was a significant change in behavior, related to the mental illness diagnosis, that precipitated the hospital admission.

NOTE: A significant change in behavior will require that the resident be referred for second level screening.

**E. Forms to Submit for Facility to Facility Transfer**

1. The discharging facility must complete Form 148 with the date of discharge and destination.

2. The receiving facility must complete:

a. Form 148 indicating date of admission; and

b. Form 90-L or transfer form or physician's orders which includes diagnosis, medication regime, level of care, physician's signature and date.

**F. Forms to Submit for New Admission to SNF 18 (Medicare) With Medicaid Co-Insurance**

1. Form 148 which:

a. clearly specifies that Medicare coverage is claimed; and

b. indicates whether or not the facility is seeking Medicaid coverage for co-insurance and if so, gives an effective date for co-insurance to begin;

2. Form 90-L completed within 30 days of admission;

3. Level I PAS/RAS (Pre-admission Screening/Readmission Screening) Form.

NOTE: A three-day qualifying hospital stay (not counting the date of discharge from the facility) is required by Medicare before a resident is eligible to receive benefits on a Medicare skilled unit. A facility cannot claim hospital leave days covered by Medicaid during a Medicare benefit period. If the resident is in a Medicare bed at the time of transfer to the hospital, the facility may not claim bed hold days covered by Medicaid.

**G. Forms to submit for Readmission From the Hospital Directly to SNF 18 (Medicare).** Submit Form 148 which indicates the date that Medicaid co-insurance will be effective. No further information is required until the resident converts to Medicaid vendor payment.

**H. Forms to Submit for Termination of Medicare With Change From Medicaid Co-insurance to Medicaid Vendor Payment**

1. Form 148 which indicates the date the Medicare benefit period ends and first date of Medicaid coverage;

2. New or updated Form 90-L. An updated 90-L may be submitted in lieu of having a new one completed. An updated 90-L is one that has been reviewed by the attending physician, includes any changes in diagnosis or treatment regimen, and has been re-signed and dated by the physician. This is viewed as a new admission because Medicare is a different payment source and the resident must be considered discharged from Medicare status in order to convert from Medicare to Medicaid. For this reason, another 90-L is required and must be submitted within 20 working days of admission.

3. If utilization review by the facility initiates a status change, attach a copy of the facility's denial form. If Medicare covers the full 100 days, then attach verification of this.

NOTE: Medicaid vendor payment cannot be claimed until a resident has reached maximum benefits under Medicare.

**I. Forms to Submit for Death of a Resident.** Submit Form 148 which must specify whether the death of the resident occurred in the nursing facility or in the hospital and the date of death.

**J. Forms to Submit for Admission to LOC Skilled Nursing/Infectious Disease (SN-ID)**

**1. Certification Criteria for SN-ID AIDS**

a. Residents must meet a severity of illness and require an intensity of service which includes comprehensive skilled nursing care provided by staff who have specialized training and skills in caring for persons with AIDS.

b. Documentation submitted by the facility must reflect that this level of service is required and is being provided.

c. Payment or reimbursement is not made solely on the basis of an individual's diagnosis of AIDS or being HIV+. Reimbursement is not intended to be approved on a long-term basis but may be considered for time limited periods in order to meet the fluctuating medical needs of this population.

d. Medical certification will be considered by Health Standards upon receipt of the following information:

i. For all new admissions, Forms 148, 90-L, and PAS/RAS must be completed as required for other nursing facility admissions. When requesting level of care change, Form 149-B may be submitted in lieu of the 90-L.

ii. Sufficient information to support the need for extraordinary services must be submitted, including but not limited to:

(a). intermittent or continuous IV therapy, respiratory therapy, nutritional therapy, or other intervention;

(b). administration of highly toxic pharmaceutical and/or experimental drugs which include close monitoring of side effects;

(c). continuous changes in treatment plan for symptom control;

(d). daily medical/nursing assessment for highly unstable condition;

(e). continuous monitoring for tolerance level, skin integrity, bleeding, persistent diarrhea, pain intensity, mental status, nutritional status, tuberculosis (monthly sputum for acid fast bacteria).

**2. Certification Criteria for SN-ID MRSA (Methicillin Resistant *Staph aureus*)**

a. Payment or reimbursement is not made solely on the basis of a diagnosis of MRSA or on the need for isolation as there are other types of infections that require isolation procedures but are not reimbursed at the SN-ID rate. It is intended to provide reimbursement for the additional registered nurse hours required for the administration of IV antibiotics in the facility.

b. The enhanced rate will be approved only for the days that IV therapy is actually administered.

c. Medical certification will be considered by Health Standards upon receipt of the following information:

i. For all new admissions Forms 148, 90-L, and PAS/RAS must be completed the same as for other nursing facility admissions. When requesting level of care change, Form 149-B may be submitted in lieu of the 90-L.

ii. The following additional information is required to support this level of care:

(a). the date of an onset of the MRSA infection;

(b). physician's orders, specific to each resident's care relating to the MRSA infection, to include an order for IV therapy;

(c). laboratory reports verifying the diagnosis of MRSA;

(d). a detailed description including measurements of any lesions or other tissue involvement;

(e). documentation that appropriate isolation procedures were carried out (description) from the date of the level of care request.

**K. Timely Requests for Medical Certification for Hospice Care in Nursing Facilities.** These requirements are in addition to those previously published January 20, 1996 in the Medicaid Standards for Payment for Nursing Facilities (§10157, Subchapter H, Admission Review and Pre-admission Screen).

1. All required admission information and all completed forms must be received within 20 working days of admission to the facility or transfer to hospice care if the recipient is already a resident in the facility.

2. The assessment by the hospice RN and the hospice plan of care shall be completed not more than 30 days prior to the date hospice care was initiated.

3. If an incomplete admission packet is received, certification will be denied. The reason for denial will be given as incomplete information provided.

4. If additional information necessary to make a determination is subsequently received within the initial 20 working day time frame and the residents meets all requirements, the effective date of certification is the date of admission to hospice care.

5. If additional information necessary to make a determination is received after the initial 20-day time frame, the effective date is no earlier than the date all completed requirements are received by the Health Standards Section.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:153.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing will be held on this matter on Tuesday, July 29, 1997 at 9:30 a.m. in the Auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day following the public hearing.

**Bobby P. Jindal**  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Medical Assistance Program—Vendor  
Payments**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no fiscal impact resulting from the implementation of this proposed rule for SFY 1997, 1998, and 1999. However, the cost for promulgating this rule is \$320 and will be incurred in SFY 1997.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Federal revenue collections for medical eligibility requirements for vendor payment reflect \$160 for the promulgation of this proposed rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
It is anticipated that there will be no fiscal impact from implementation of this proposed rule on currently enrolled providers or recipients of institutional services as this proposed rule does not revise provider reimbursement or recipient eligibility criteria. This rule establishes the process and documentation requirements for the determination of medical eligibility under the Medicaid Program.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no known effect on competition. However, surveyors employed to review medical eligibility documentation for providers seeking vendor payments will experience a decrease in the amount of hours spent re-reviewing admissions packets.

Thomas D. Collins  
Director  
9706#082

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

**Reimbursement for Portable X-Ray Crossover Claims**

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

The Bureau of Health Services Financing provides reimbursement to providers enrolled in the Medicaid and the Medicare Part B Programs for professional services furnished to dually eligible Medicare/Medicaid recipients. The bureau's reimbursement methodology for professional services has been revised effective July 1, 1997 to reimburse the full co-insurance and deductible on Medicare Part B crossover claims for services rendered to Medicare/Medicaid recipients. The department has determined that it is necessary to revise

the reimbursement methodology for portable x-ray services to also pay full co-insurance and deductible in order to be consistent with its reimbursement methodology for other professional services. The bureau is now proposing to pay the full co-insurance and deductible on Medicare Part B Portable X-Ray crossover claims for services rendered to dually eligible Medicare/Medicaid recipients.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing shall reimburse the full co-insurance and deductible on Medicare Part B Portable X-Ray crossover claims for services rendered to dually eligible Medicare/Medicaid recipients.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, 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, July 29, 1997 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the day following the public hearing.

Bobby P. Jindal  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Reimbursement for Portable  
X-Ray Crossover Claims**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is anticipated that implementation of this proposed rule will increase state program costs by approximately \$261,216 for SFY 1997-1998; \$269,052 for SFY 1998-1999; and \$277,124 for SFY 1999-2000. An expenditure of \$80 for promulgation of this proposed rule is not included.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is anticipated that federal revenue collections for portable x-ray services will increase by approximately \$212,827 for SFY 1997-1998; \$189,305 for SFY 1998-1999 and \$194,984 for SFY 1999-2000.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
It is anticipated that the providers of portable x-ray services will experience the increase in reimbursement shown above for the provision of these services.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9706#083

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office



## NOTICE OF INTENT

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

**Surveillance and Utilization Review  
Systems (SURS) (LAC 50:II.Chapter 41)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to revise and expand its existing regulations regarding prepayment and postpayment review of claims made to or submitted to the department and/or its fiscal intermediary by a provider(s) of goods, services and/or supplies who seek or may attempt to seek payment or reimbursement from the Louisiana Medicaid program for the providing of or claiming to provide goods, services or supplies to recipient(s) and/or nonrecipient(s) and administrative sanctions of providers and others who violate the laws, regulations, rules, policies, and/or procedures governing the Louisiana Medicaid program. The regulations to be revised were previously published in the October, 1978, Volume 4 Number 10, page 306 and the July 20, 1980, Volume 6 Number 7, pages 381-385, issues of the *Louisiana Register*. This regulation is being revised and adopted in accordance with R.S. 49:950 et seq. This revision is to replace the prior provisions in its entirety.

The full text of this proposed rule may be obtained by contacting the Bureau of Health Services Financing at the address below or by contacting the Office of the State Register, 1051 North Third Street, Room 512, Baton Rouge, LA 70802, telephone (504) 342-5015.

Interested persons may submit written comments to Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing will be held on this matter at 9:30 a.m., Tuesday July 29, 1997 in the DOTD Auditorium, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. of the day following the public hearing.

**Bobby P. Jindal**  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Surveillance and Utilization  
Review Systems (SURS)**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
- There is no fiscal impact resulting from the implementation of this proposed rule for SFYs 1997, 1998, and 1999; however, the cost of promulgating this rule is \$1,360 and will be incurred on SFY 1997.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
- The federal revenue collection is \$680 for the shared expense of promulgating this 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 nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
- There is no effect on competition and employment.

Thomas D. Collins  
Director  
9706#085

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

## NOTICE OF INTENT

**Department of Public Safety and Corrections  
Gaming Control Board**

**Delivery of Documents, Petition for Agency Review of Rules (LAC 42:III.111 and 112); Video Poker (LAC 42:XI.2405, 2413, 2415); Riverboat Gaming—Standard Financial Statements (LAC 42:XIII.2709)**

The Gaming Control Board hereby gives notice that it intends to adopt LAC 42:III.111 and 112 and amend LAC 42:XI.2405, 2413, 2415, and LAC 42:XIII.2709 in accordance with R.S. 27:1 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

### Title 42

### LOUISIANA GAMING

#### Part III. Gaming Control Board

#### Chapter 1. General Provisions and Scope

##### §111. Delivery of Documents

A. All new applications, renewal applications, notices and any other written communication or documentation required to be furnished to the board or the division, by any statutory provision, regulation or rule, shall be submitted via delivery by the United States Postal Service, or a private or commercial interstate carrier.

B. Documentation delivered by any means other than as provided in §111.A shall not be accepted.

C. Upon written request, the provisions of this Section may be waived by the chairman in writing and upon a showing of good cause.

D. This Section shall not apply to gaming employee permit applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:

##### §112. Petition for Agency Review of Rule

A. All petitions for agency review made pursuant to R.S. 49:953(C) shall be in writing and shall contain the following information:

1. a copy of the rule change proposed, whether for adoption, amendment, or repeal;

2. a statement of the proposed action requested, whether the rule change is proposed for adoption, amendment, or repeal; a brief summary of the content of the rule change proposed if for adoption or repeal; and a brief summary of the change in the rule if proposed for amendment;

3. the specific citation of the enabling legislation purporting to authorize the adoption, amending, or repeal of the rule;

4. a statement of the circumstances which require adoption, amending, or repeal of the rule.

B. Petitions for agency review shall be submitted in writing to the Gaming Control Board at its office in Baton Rouge.

C. The petition shall be considered at a scheduled meeting of the Gaming Control Board.

D. The decision of the board relative to recommendations for rule changes in accordance with this section may be made in any lawful manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:

#### Part XI. Video Poker

### Chapter 24. Video Draw Poker

#### §2405. Application and License

##### A. Initial and Renewal Applications

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3. All new applications or renewals shall be submitted to the division via delivery by the United States Postal Service certified or registered mail, return receipt requested or a private or commercial interstate carrier.

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##### B. Requirements for Licensing

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12.a. All licensees shall continue to operate the business described in the application during the term of the license. In the event either the business or the video draw poker devices at the location are not in operation for a period of 30 consecutive calendar days during which the business would normally operate, the licensee and device owner shall immediately notify the division of such fact and the licensee shall immediately surrender its license to the board of division.

b. If surrendered in accordance with this Section, no gaming activities may be conducted at the premises, however the license may be returned to the licensee upon continuance of business operations during the unexpired term of the license.

c. Licenses surrendered in accordance with §2405.A shall not be subject to renewal unless returned to the licensee during the unexpired term of the license.

d. Failure to surrender the license as provided in §2405.A shall constitute grounds for revocation or suspension of the license.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq. and R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:  
**§2413. Devices**

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##### H. Devices Permanently Removed from Service

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2. The completed device transfer report shall be submitted to the division within five business days by the United States Postal Service certified or registered mail, return receipt requested or private or commercial interstate carrier.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq. and R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:

#### §2415. Gaming Establishments

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##### D. Structural Requirements for Licensed Establishments

1. No licensed establishment shall be altered, renovated, or expanded if such alteration, renovation, or expansion is for the purpose of moving devices or installing additional devices, without first submitting to the division for approval, a written notification, via delivery by the United States Postal Service certified or registered mail, return receipt requested or a private or commercial interstate carrier, of the intent and a set of plans illustrating the projected changes.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq. and R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:

#### Part XIII. Riverboat Gaming

##### Subpart 2. State Police Riverboat Gaming Division

#### Chapter 27. Accounting Regulations

#### §2709. Standard Financial Statements

A. Each licensee, in such manner and using such forms as the division may approve or require, shall prepare a financial statement in accordance with the rules of the division and generally accepted accounting principles covering all financial activities of the licensee's establishment for each fiscal year. If the licensee or a person controlling, controlled by, or under common control with the licensee owns or operates food, beverage or retail facilities or operations on the riverboat, or any related shore terminals, facilities or buildings, the financial statement must further reflect these operational records. Licensees shall submit the signed, original financial statements to the division, postmarked by the United States Postal Service or deposited for delivery with a private or commercial interstate carrier, not later than September 15 following the end of each fiscal year covered by the statement. In the event of a license termination, change in the business

entity, or a change in the percentage of ownership of more than 20 percent, the licensee and former licensee shall, not later than 75 days thereafter submit to the division a financial statement for said period.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 33:4862.1 et seq. and R.S. 27:1 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:

Interested persons may contact Tom Warner, Deputy Director, Attorney General's Gaming Division, telephone (504)342-2465, and may submit written comments relative to these proposed rules through July 10, 1997, to 339 Florida Boulevard, Suite 500, Baton Rouge, LA 70801.

Hillary J. Crain  
Chairman

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

**RULE TITLE: Delivery of Documents, Petition for Agency Review of Rule; Video Poker; Riverboat Gaming Standard Financial Statements**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There are no implementation costs to state or local government units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no effect on revenue collections of state or local government units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
No significant costs and/or economic benefits to directly affected persons or nongovernmental groups is estimated.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No effect on competition or employment is estimated.

Hillary J. Crain  
Chairman  
9706#039

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

#### NOTICE OF INTENT

**Department of Revenue and Taxation  
Office of the Secretary**

**Electronic Filing Signature  
Alternatives (LAC 61:I.4905)**

Under the authority of R.S. 47:1520 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue and Taxation, Office of the Secretary proposes to amend LAC 61:I.4905 to provide for additional tax return signature alternatives.

The department is in the process of implementing several new alternative filing programs which will reduce the number of paper tax returns to be manually processed. Because many

of the department's tax statutes require that tax returns have a written signature or declaration, an alternative to the signature/written declaration is required for tax returns filed electronically or through other alternative nonpaper means. This amendment provides for signature alternative for sales tax returns filed via a touch-tone telephone and individual income tax returns filed by taxpayers using personal computers and software providers/transmitters.

#### Title 61

#### REVENUE AND TAXATION

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

#### Chapter 49. Tax Collection

#### §4905. Signature Alternatives; Electronic Filings

A. As authorized by R.S. 47:1520, the following alternate methods for signing, subscribing, or verifying tax returns, statements, or other documents filed by electronic means are allowed and shall have the same validity and consequence as the actual signature and/or written declaration.

B. Electronic Filing. The following alternatives, as determined by the secretary, are allowed for submitting a written signature/declaration for tax returns transmitted electronically by the taxpayer's agent:

1. the taxpayer's signature document maintained by the electronic filer on file and secure for a period of three years from December 31 of the year in which the taxes were due;
2. the taxpayer's signature on a trading partner agreement with the department; or
3. an electronic signature as determined by the secretary.

#### C. Telefiling

1. Individual Income Tax Returns. For tax returns filed by the taxpayer using a touch-tone telephone to transmit return information, a voice recording of the taxpayer, and spouse for married taxpayers filing joint returns, will serve as a signature alternative. The voice recording will be maintained by the department for a period of three years from December 31 of the year in which the taxes were due.

2. Sales Tax Returns. For tax returns filed by the taxpayer using a touch-tone telephone to transmit return information, a Personal Identification Number (PIN) will serve as the signature alternative.

D. On-line Filing. For individual income tax returns filed by the taxpayer using a personal computer and software provider/transmitter, the signature document provided by the department must be completed and filed with the department as an alternative to the signed tax return.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:1520.

**HISTORICAL NOTE:** Promulgated by the Department of Revenue and Taxation, Office of the Secretary, LR 22:35 (January 1996), amended LR 23:

Interested persons may submit data, views, or arguments in writing to Ellen Rhorer, Director of the Research and Technical Services Division, Department of Revenue and Taxation, Box 3863, Baton Rouge, LA 70821 or by FAX to (504) 925-3855. All comments must be submitted by 4:30 p.m., Monday, July 28, 1997.

A public hearing will be held on Tuesday, July 29, 1997, at 1:30 p.m., in the Department of Revenue and Taxation Secretary's Conference Room, 330 North Ardenwood Drive, Baton Rouge, LA.

John Neely Kennedy  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Electronic Filing Signature Alternatives**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
This proposed amendment will result in an indeterminable cost savings to the department based on the reduced paper processing, handling, and storage of sales and individual income tax returns.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There should be no effect on revenue collections of state or local governmental units as a result of this proposed amendment.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Taxpayers who file their sales tax returns via telephone or who file their individual income tax returns electronically via on-line transmission should realize a cost savings based on reduced paper document preparation and mailing.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This proposed amendment should have no effect on competition or employment.

John Neely Kennedy  
Secretary  
9706#021

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Revenue and Taxation  
Severance Tax Division**

**Natural Resources Severance  
Tax Payout (LAC 61:I.2903)**

Under the authority of R.S. 47:633 and R.S. 47:648.3; and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue and Taxation, Severance Tax Division, proposes to amend LAC 61:I.2903.A to define *Payout of the Well Cost*.

Revised Statutes 47:633(7)(c)(iii), R.S. 47:633(9)(d)(v), and R.S. 47:648.3 allow severance tax suspensions for horizontal, deep, and new discovery wells. The suspensions are limited to 24 months or until payout of the well cost, whichever comes first. Because payout of the well cost triggers the end of the severance tax suspension, the computation should be uniform for all taxpayers. This proposed amendment defines the term *Payout* and specifies those well costs that are considered direct operating well costs.

**Title 61**

**REVENUE AND TAXATION**

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

**Chapter 29. Natural Resources: Severance Tax**

**§2903. Severance Taxes on Oil; Distillate, Condensate  
or Similar Natural Resources; Natural Gasoline  
or Casinghead Gasoline; Liquefied Petroleum  
Gases and Other Natural Gas Liquids; and Gas**

**A. Definitions**

\*\*\*

10. *Payout*—the payout of the well cost for a horizontal well as referred to in R.S. 47:633(7)(c)(iii), a deep well as referred to in R.S. 47:633(9)(d)(v), and a new discovery well as referred to in R.S. 47:648.3 occurs when gross revenue from the well, less royalties and operating costs directly attributable to the well, equals the well cost as approved by the Office of Conservation. Operating costs are limited to those costs directly attributable to the operation of the exempt well, such as direct materials, supplies, fuel, direct labor, contract labor or services, repairs, maintenance, property taxes, insurance, depreciation, and any other costs that can be directly attributed to the operation of the well.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:633 and R.S. 47:648.

HISTORICAL NOTE: Adopted by the Department of Revenue and Taxation, Severance Tax Division, August 1974, amended and promulgated LR 3:499 (December 1977), amended LR 20:1129 (October 1994), repromulgated LR 20:1299 (November 1994), amended LR 23:

Interested persons may submit data, views, or arguments, in writing to Carl Reilly, Assistant Director of the Severance Tax Division, Department of Revenue and Taxation, Box 3863, Baton Rouge, LA 70821 or by FAX to (504) 925-3862. All comments must be submitted by 4:30 p.m., Monday, July 28, 1997.

A public hearing will be held on Tuesday, July 29, 1997, at 3 p.m. in the Department of Revenue and Taxation Secretary's Conference Room, 330 North Ardenwood Drive, Baton Rouge, LA.

Carl Reilly  
Assistant Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Natural Resources Severance Tax Payout**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no increase in state or local governmental costs to implement this proposed rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on state or local revenue collections if this rule is implemented.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
If this proposed rule is implemented, there will be no effect on the costs or economic benefits of directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This proposed rule will have no effect on competition or employment.

John Neely Kennedy  
Secretary  
9706#022

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

**Support Enforcement Services  
Recovery Action (LAC 67:III.2516)**

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

Pursuant to R.S. 36:474(B)(4) and 46:236.1 et seq., Support Enforcement Services will take all necessary steps to recover support payments that are distributed in error to individuals to whom the department is providing services.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 4. Support Enforcement Services**

**Chapter 25. Support Enforcement**

**Subchapter D. Collection and Distribution of Support Payments**

**2516. Recovery of Erroneous Child Support Payments**

Upon notification that an erroneous payment has been made, the individual will be allowed 30 days to arrange for repayment prior to SES initiating action to withhold up to 10 percent of future support payments collected to recover the loss.

**AUTHORITY NOTE:** Promulgated in accordance with 45 CFR 302.32, 302.33, 302.51 and 302.70.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Family Support, LR 23:

Interested persons may submit written comments within 30 days to Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA 70804-9065. She is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on July 30, 1997, at the Department of Social Services, Second Floor Auditorium, 755 Third Street, 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 504-342-4120 (Voice and TDD).

**Madlyn B. Bagneris  
Secretary**

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Support Enforcement Services  
Recovery Action**

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

The administrative nature of the proposed rule will require minor policy and form revisions; however, the immediate cost of implementation in FY 97/98 is negligible. The automated

child support system, LASES, currently has the capability of recouping. There are no anticipated costs or savings to local governmental units.

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

Based on the number of cases referred to the Fraud and Recovery Section, annual collections of \$2,325 can be anticipated. Automation should increase collections but no amounts can be projected at this time. There is no effect on revenue collections of local governmental units.

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

Persons to whom child support has been paid in error will lose 10 percent of future payments until the overpayment is recovered.

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

There is no estimated impact on competition and employment.

Vera W. Blakes  
Assistant Secretary  
9706#061

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Wildlife and Fisheries  
Office of Fisheries**

**Freshwater Mussel Harvest (LAC 76:VII.161)**

The secretary of the Department of Wildlife and Fisheries does hereby give notice of the intent to amend a rule to establish freshwater mussel harvest regulations.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 1. Freshwater Sport and Commercial Fishing**

**§161. Freshwater Mussel Harvest**

**\* \* \***

**D. Species for Harvest**

**1. Only the following taxa may be legally harvested:**

washboard	<i>Megaloniais nervosa</i>
pimpleback	<i>Quadrula spp.</i>
three ridge	<i>Amblema plicata</i>
bleufer	<i>Potamilus (Proptera) purpuratus</i>
Asian clam	<i>Corbicula fluminea</i>

**2. Only specimens equal to or larger than the following minimum sizes shall be harvested:**

washboard	4 inches
three ridge and bleufer	3 inches
pimpleback	2¼ inches
Asian clam	no size limit

**3. Minimum size will be measured by passing the specimen through a ring or appropriate circular measuring**

device so designed as to allow undersized mussels to pass through the opening. There is no allowance for undersized shell. All mussels must be sized (graded) immediately after each dive and undersized shell returned to the mussel bed before the harvester moves his boat or begins another dive. All mussels harvested shall be removed from the water daily during daylight hours only. All mussels harvested must be sold on a daily basis unless stored and tagged as required herein. Mussels may not be stored in the water after sunset. All mussels not sold at the end of each day shall be sacked and tagged before official sunset. The tag shall contain the following information:

- a. name;
- b. harvester permit number;
- c. date harvested;
- d. harvest location;
- e. confirmation number.

4. The mussel harvester may store mussels harvested at the end of each day in a cold storage facility prior to selling, provided the sacked mussels are properly tagged. Mussels shall not be stored longer than five days or after official sunset on Friday of each week.

5. The zebra mussel (*Dreissena polymorpha*), an introduced nuisance aquatic species, has the potential to severely clog industrial and public water intakes, deplete nutrients and consume huge amounts of dissolved oxygen in state water bodies, and potentially decimate endemic freshwater mussel populations. Therefore, the Department of Wildlife and Fisheries strongly encourages actions to prevent the spread of zebra mussels.

\* \* \*

#### G. Reporting

\* \* \*

5. Each permittee harvesting mussels for sale is responsible for department notification. The permittee shall notify the department at a designated phone number (1-800442-2511) at least four hours prior to harvesting any mussels. The permittee shall provide, at the time of notification, the parish and area to be fished. Such notification will be on a daily basis, unless the harvester fishes in the same area during a Monday through Friday period. However, even if harvesting in the same location for an extended period, weekly notification will be required. The permittee will be given a confirmation number at the time of initial notification.

\* \* \*

#### H. Special Restrictions

\* \* \*

5. Mussel shells (opened without meat) may be imported into Louisiana by properly licensed and permitted mussel buyers when accompanied by the appropriate licenses or permits, bills of lading, and proof of legality in the state of origin. The bill of lading shall include species of mussels contained in the shipment, pounds of mussels by species, the origin of the shipment, the destination of the shipment and the consignee and consignor. The buyer importing mussel shells into Louisiana must notify the Enforcement Division (toll-free

1-800-442-2511) within 24 hours prior to shipment with bill of lading information, date and time of shipment, and route to be taken to the point of destination.

6. All mussels possessed under the provisions of Subsection H.5 of this Section must be of legal size and species open to harvest in Louisiana.

7. Except under the provisions of Subsection H.5 and 6 of this Section, no mussels harvested from waters outside of Louisiana may be sold in Louisiana.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:450.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Fisheries, LR 19:510 (April 1993), amended LR 21:193 (February 1995), LR 22:374 (May 1996), LR 23:

Interested persons may submit written comments on the proposed rule to Bennie Fontenot, Jr., Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., Tuesday, August 5, 1997.

James H. Jenkins, Jr.  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Freshwater Mussel Harvest

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

The amended rule will have no implementation costs. Enforcement of the proposed rule and administration of permits will be carried out using existing staff.

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

The proposed rule amendment is expected to increase revenue collections of state and local government units. However, since the shell processing industry in Louisiana is still in the planning stages, it would be incorrect to predict future revenue to the state at this time.

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

The proposed amended rule will have long-term economic benefits directly affecting persons and nongovernmental groups involved in the harvesting and processing activities of freshwater mussels. However, it is not possible at this time to quantify these potential benefits.

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

Employment in the private sector is anticipated to increase as a result of the proposed action. However, it is not possible at this time to quantify estimated effects on competition and employment.

Ronald G. Couvillion  
Undersecretary  
9706#037

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

# Potpourri

## POTPOURRI

**Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences  
Horticulture Commission**

### Retail Floristry Examination

The next retail floristry examination will be given July 21-25, 1997, at 9:30 a.m. at the 4-H Mini Farm Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending in application and fee is June 20, 1997. No applications will be accepted after June 20, 1997.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3118, Baton Rouge, LA 70821-3118, telephone (504) 925-7772.

Any individual requesting special accommodations due to a disability should notify our office prior to June 20, 1997. Please refer questions to (504) 925-7772.

Bob Odom  
Commissioner

9706#001

## POTPOURRI

**Department of Civil Service  
Board of Ethics**

### Notice of Substantive Changes Hearing

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Board of Ethics, will hold a hearing on July 31, 1997, at 9 a.m. in the Retirement Systems Board Room, 8401 United Plaza Boulevard, Fourth Floor, Baton Rouge, LA, as to the substantive changes made to the proposed rules required by the Code of Governmental Ethics (R.S. 42:1102 et seq.), the Campaign Finance Disclosure Act (R.S. 18:1463 et seq.), the Lobbyist Disclosure Act (R.S. 24:50 et seq.), the Elections Integrity Act (R.S. 18:41 et seq.), and certain provisions of the Gaming Control Act (R.S. 27:1 et seq.).

The notice of intent and proposed rules were initially published on pages 458-471 of the April 20, 1997 *Louisiana Register*.

R. Gray Sexton  
Ethics Administrator

9706#087

## POTPOURRI

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

### Air Toxics; Ozone Standard Attainment; and Mobile Sources Reports

The Department of Environmental Quality, Office of Air Quality and Radiation Protection has published the Louisiana Air Quality Report for 1996 activity. This report combines the toxic air pollutant emission control program report, the ozone standard attainment report and the motor vehicle emission control program report. In the air toxics section, the 1995 toxic air pollutant emissions are compared to the 1987 toxic air pollutant emissions baseline. The report was prepared in accordance with the requirements of R.S. 30:2060.G and R.S. 30:2054.B(8)(d).

Interested persons may obtain copies of the report by contacting Joyce Coleman of the Office of Air Quality and Radiation Protection at (504) 765-0902.

Gustave A. Von Bodungen, P.E.  
Assistant Secretary

9706#051

## POTPOURRI

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

### Clean Fuel Fleet Program—Delayed Implementation

The Office of Air Quality and Radiation Protection (OAQRP) gives notice that a regulation revision to delay implementation of the Clean Fuel Fleet Program (CFFP) will be proposed. The Clean Air Act Amendments of 1990 mandated the implementation of a fuel neutral CFFP beginning in Model Year 1998 for those nonattainment areas designated as serious, severe, or extreme for ozone. The rule for the CFFP in the Baton Rouge ozone nonattainment area was promulgated in November 1994 (LAC 33:III.1951-1973). The regulation revision will delay registration of covered fleets to not later than September 1, 1998.

A memorandum dated May 22, 1997 from the U.S. Environmental Protection Agency regarding Clean Fuel Fleet Program implementation allows a one-year delay of program implementation. The delay is being allowed due to the shortage of certified clean-fuel vehicles available to meet the current needs of some fleets in the covered areas.

Questions concerning this announcement should be directed to Teri Lanoue, Program Manager, Mobile Sources Section. Teri Lanoue may be contacted by phone at (504) 765-0905 or



by FAX at (504) 765-0222. Written questions should be mailed to Teri Lanoue's attention at Box 82135, Baton Rouge, LA 70884-2135.

Gus Von Bodungen  
Assistant Secretary

9706#062

**POTPOURRI**

**Department of Health and Hospitals  
Office of Public Health**

**Preventive Health Block Grant Hearing**

Pursuant to the provisions of the law of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, and the provisions of Statewide Order No. 29-B, notice is hereby given that the Office of Public Health will conduct a hearing at noon on July 15, 1997 at the New Orleans State Office Building, Room 511, 325 Loyola Avenue, New Orleans, LA.

At such hearing, the state health officer, and/or his designated representatives, will hear comments related to the proposed amendment of the Preventive Health and Health Services Block Grant for 1996-97. The amendment will provide for support of HIV testing and early intervention medical treatment and case management. The amendment will also provide for the support of a technical staff person to advise re-fluoridation matters.

The amendments are available for inspection by contacting Shirley Kirkconnell, Administrative Coordinator of the Preventive Health Block Grant, Office of Public Health, Box 60630, New Orleans, LA; or by FAX (504) 568-7005, or voice (504) 568-7210.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing.

Bobby P. Jindal  
Secretary

9706#070

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation  
Injection and Mining Division**

**Public Hearing—Oilfield Waste Facility**

Pursuant to the provisions of the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, and the provisions of the Statewide Order No. 29-B, notice is hereby given that the commissioner of Conservation will conduct a hearing at 6 p.m., Wednesday, August 6, 1997 at the City of Thibodaux Courthouse, Second Floor, 1309 Canal Boulevard, Thibodaux, LA.

At such hearing, the commissioner, or his designated representative will hear testimony relative to the application

of Energy Environmental, LLC, Box 82387, Lafayette, LA 70598-2387. The applicant requests authorization to operate a commercial Nonhazardous Oilfield Waste (NOW) transfer station in Port Fourchon, LA, at the existing dock developed by the Greater Lafourche Port Commission. NOW shall be received and temporarily stored onsite in certified hopper barges until transported to the applicant's licensed facility in Texas. The proposed facility will be located in Lafourche Parish, in Section 14, Township 23 South, Range 22 East.

The application is available for inspection by contacting Pierre Catrou, Office of Conservation, Injection and Mining Division, Room 257 of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA, or by visiting the Lafourche Parish Council Office in Thibodaux, LA. Verbal information may be received by calling Pierre Catrou at (504) 342-5567.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Wednesday, August 13, 1997, at the Baton Rouge Office.

Comments should be directed to Office of Conservation, Injection and Mining Division, Box 94275, Baton Rouge, LA 70804, Re: Docket No. IMD 97-10, Commercial Facility, Lafourche Parish.

George L. Carmouche  
Commissioner

9706#064

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation  
Injection and Mining Division**

**Public Hearing—Oilfield Waste Facility**

Pursuant to the provisions of the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, and the provisions of the Statewide Order No. 29-B, notice is hereby given that the commissioner of Conservation will conduct a hearing at 6 p.m., Wednesday, July 23, 1997 at the Cameron Police Jury Meeting Room, Police Jury Annex, 110 Smith Circle, Cameron, LA.

At such hearing, the commissioner, or his designated representative will hear testimony relative to the application of Energy Environmental, LLC, Box 82387, Lafayette, LA 70598-2387. The applicant requests authorization to operate a commercial Nonhazardous Oilfield Waste (NOW) transfer station in Cameron, LA, at the former Baker-Hughes Dock. NOW shall be received and temporarily stored onsite in certified hopper barges until transported to the applicant's licensed facility in Texas. The proposed facility will be located in Cameron Parish, in Sections 24 and 25, Township 14 South, Range 10 West.

The application is available for inspection by contacting Pierre Catrou, Office of Conservation, Injection and Mining

Division, Room 257 of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA, or by visiting the Cameron Parish Police Jury or the Cameron Parish Library in Cameron, LA. Verbal information may be received by calling Pierre Catrou at (504) 342-5567.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Wednesday, July 30, 1997, at the Baton Rouge Office.

Comments should be directed to Office of Conservation, Injection and Mining Division, Box 94275, Baton Rouge, LA 70804, Re: Docket No. IMD 97-09, Commercial Facility, Cameron Parish.

George L. Carmouche  
Commissioner

9706#065

### POTPOURRI

**Department of Natural Resources  
Office of Conservation  
Injection and Mining Division**

**Public Hearing—Oilfield Waste Facility**

Pursuant to the provisions of the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, and the provisions of the Statewide Order No. 29-B, notice is hereby given that the commissioner of Conservation will conduct a hearing at 6 p.m., Wednesday, August 13, 1997, at the Plaquemines Parish Council Chambers, 18039 Hwy 15, Pointe a La Hache, LA.

At such hearing, the commissioner, or his designated representative will hear testimony relative to the application of Energy Environmental, LLC, Box 82387, Lafayette, LA 70598-2387. The applicant requests authorization to operate a Commercial Nonhazardous Oilfield waste (NOW) transfer station in Venice, LA, at the existing dock of Louisiana Fruit Company. NOW shall be received and temporarily stored onsite in certified hopper barges until transported to the applicant's licensed facility in Texas. The proposed facility will be located in Plaquemines Parish, in Section 19, Township 21S, Range 31E.

The application is available for inspection by contacting Pierre Catrou, Office of Conservation, Injection and Mining Division, Room 257 of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA, or by visiting the Plaquemines Parish Council Office in Pointe a La Hache, LA, or the Parish Library in Buras, LA. Verbal information may be received by calling Pierre Catrou at (504) 342-5567.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented

at the hearing must be received no later than 4:30 p.m., Wednesday, August 20, 1997, at the Baton Rouge Office. Comments should be directed to Office of Conservation, Injection and Mining Division, Box 94275, Baton Rouge, LA 70804, Re: Docket No. IMD 97-11, Commercial Facility, Plaquemines Parish.

George L. Carmouche  
Commissioner

9706#063

### POTPOURRI

**Department of Natural Resources  
Office of Conservation  
Injection and Mining Division**

**Public Hearing—Oilfield Waste Facility**

Pursuant to the provisions of the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, and the provisions of Statewide Order No. 29-B, notice is hereby given that the commissioner of Conservation will conduct a hearing at 6:00 p.m., Wednesday, August 13, 1997, at the Plaquemines Parish Council Chambers, 18039 Hwy 15, Pointe a La Hache, LA.

At such hearing, the commissioner, or his designated representative, will hear testimony relative to the application of Environmental Operators, Inc., 339 Coast Guard Road, Venice, LA 70091. The applicant requests authorization to operate a commercial Nonhazardous Oilfield Waste (NOW) oilfield waste treatment facility. The proposed facility will be located in Plaquemines Parish, in Section 19, Township 21S, Range 31E.

The application is available for inspection by contacting Pierre Catrou, Office of Conservation, Injection and Mining Division, Room 257 of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA, or by visiting the Plaquemines Parish Council Office in Pointe a La Hache, LA, or the Parish Library in Buras, LA. Verbal information may be received by calling Pierre Catrou at (504) 342-5567.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Wednesday, August 20, 1997, at the Baton Rouge office.

Comments should be directed to the Office of Conservation, Injection and Mining Division, Box 94275, Baton Rouge, LA 70804 Re: Docket No. IMD 97-12, Commercial Facility, Plaquemines Parish.

George L. Carmouche  
Commissioner

9706#066

POTPOURRI

Department of Natural Resources
Office of the Secretary

Agreement to Facilitate West
Belle Pass Coastal Restoration Plan

Pursuant to Act 55 (R.S. 41:1702) of the 1996 Extraordinary Session of the Louisiana Legislature, the Secretary of the Department of Natural Resources proposes the following Agreement. This Agreement, affecting the West Belle Pass Coastal Restoration Plan, is proposed with The Louisiana Land and Exploration Company, and is necessary in order to facilitate the development, design and implementation of projects included in the Plan.

AGREEMENT

BETWEEN

THE LOUISIANA LAND AND EXPLORATION COMPANY UNITED STATES OF AMERICA
AND STATE OF LOUISIANA
THE STATE OF LOUISIANA PARISH OF TERREBONNE

BE IT KNOWN, by these presents, effective as of the \_\_\_\_ day of, in the year of our Lord, one thousand nine hundred and ninety-seven (the "Effective Date"), upon execution by all signatory parties indicated below (the "Parties").

BEFORE ME, the undersigned Notary Public duly commissioned and qualified in and for the Parish stated hereinbelow, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned:

PERSONALLY CAME AND APPEARED: H. Leighton Steward, Chairman, Chief Executive Officer and President of the Louisiana Land and Exploration Company ("LL&E"), Jack C. Caldwell, Secretary of the Louisiana Department of Natural Resources ("DNR"), who recited that:

WHEREAS, LL&E holds record title to certain property along and adjacent to the Gulf of Mexico and Timbalier Bay in the vicinity of West Belle Pass in Lafourche Parish, Louisiana, which property is shown in red outline on plat attached as Exhibit "A" hereto and is more particularly described on Exhibit "A-1" attached hereto (the "Property");

WHEREAS, to facilitate the development, design, and implementation of the West Belle Pass Restoration Plan (Restoration Plan), LL&E desires to donate the Property to the State of Louisiana ("State"), through the DNR, subject to the reservation of all mineral rights associated therewith, and the DNR desires to accept such donation for the state; and

WHEREAS, LL&E further desires to donate to the State, through the DNR, certain small islands which are adjacent to the Property as shown on plat attached as Exhibit "A" hereto (collectively, the "Islands"), subject to a reservation of all mineral rights associated with the Islands, and the DNR desires to accept such donation for the State;

NOW THEREFORE, LL&E and the DNR, through their undersigned representatives, in consideration of the premises, hereby make the following agreements upon, and subject to, the terms and conditions hereinafter set forth:

1. LL&E does by these presents irrevocably donate and transfer all of its right, title and interest in and to the Property and the Islands, and all rights of reclamation associated therewith, to the State of Louisiana, subject to the reservations, restrictions and limitations hereinafter noted:

- A. This donation and transfer of the Property and Islands is made without warranty of title, expressed or implied, but with full substitution in and to all rights and actions of preceding vendors;
B. LL&E expressly reserves all of the oil, gas and other minerals of every kind and character located under the Property and the Islands, together with rights of ingress and egress for the exercise of those rights;
C. The prescription of nonuse shall not run against the subsurface mineral right reserved in Paragraph B hereinabove with respect to the Property as long as any portion of the Property remains. In the event the Property completely erodes, compacts, subsides, or through sea level rise, becomes a part of the seabed, prescription will begin to run against LL&E at that time, in accordance with the provisions of Louisiana law, including the Louisiana Mineral Code;
D. The prescription of nonuse shall run against the subsurface mineral right reserved on Paragraph B hereinabove with respect to each of the Islands in accordance with the provisions of Louisiana Law, including the Louisiana Mineral Code;
E. Surface Leases and/or Permits as listed on Exhibit "B", attached hereto and made a part hereof; and
F. LL&E's execution of this instrument is conditioned upon and subject to ratification by its Board of Directors, which shall be obtained by LL&E and furnished to the DNR within forty-five (45) days of the effective date hereof, failing which execution of this instrument by the DNR on behalf of the State shall be null and void, at the DNR's option, notice of which may be delivered to LL&E at any time prior to such ratification being received by the DNR from LL&E after the expiration of the above stated forty-five (45) day period.

2. This Agreement is made and accepted with respect to the Property pursuant to and in accordance with La. R.S. 41:1702.

3. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their successors in interest and assigns.

4. This Agreement, insofar as it relates to the Property, shall be submitted for review and approval of the House and Senate committees on Natural Resources. In the event such approval is not granted within forty-five (45) days of the effective date hereof, this Agreement shall be null and void at the option of either of the Parties.

5. The plat attached as Exhibit "A" hereto is for illustrative purposes only. The property description set forth on Exhibit "A-1" establishes the coast and shoreline along the Gulf of Mexico and Timbalier Bay and the boundaries of the Property contiguous to and abutting Bayou Lafourche.

TO HAVE AND TO HOLD the hereinabove described donated property, forever; and, the DNR hereby accepts said donation on behalf of the State of Louisiana, subject to all of the foregoing reservations, restrictions and limitations.

THUS DONE AND PASSED in my office on this \_\_\_\_ day of \_\_\_\_ 1997 in the presence of the undersigned competent witnesses, who hereunder sign their names with the said appearer(s) and me, Notary, after reading of the whole.

WITNESSES: THE LOUISIANA LAND AND EXPLORATION COMPANY
H. LEIGHTON STEWARD
Chairman, Chief Executive Officer and President

\_\_\_\_\_  
NOTARY PUBLIC  
for the PARISH OF ORLEANS

THUS DONE AND PASSED in my office on this \_\_\_\_ day of \_\_\_\_\_, 1997, in sextuplicate originals, in the presence of the undersigned competent witnesses, who hereunder sign their names with the said appearer(s) and me, Notary, after reading of the whole.

WITNESSES:

\_\_\_\_\_  
JACK C. CALDWELL  
Secretary, Louisiana Department of  
Natural Resources

\_\_\_\_\_  
NOTARY PUBLIC  
for the PARISH OF EAST BATON ROUGE

Act 55 requires this proposed agreement to be published in the *Louisiana Register* prior to submittal to the House and Senate Committees on Natural Resources for review and approval.

Jack C. Caldwell  
Secretary

9706#096

**POTPOURRI**

**Department of Transportation and Development  
Louisiana Offshore Terminal Authority (LOTA)**

**License Renewal—Offshore Terminal Facility**

In accordance with the rules and regulations of the Offshore Terminal Authority, the executive director gives notice that

LOOP LLC (Louisiana Offshore Oil Port, Limited Liability Company) has applied to the authority for the renewal of the license to construct and operate offshore terminal facilities granted by the authority and accepted by LOOP Inc. on August 1, 1977. The renewal application, submitted under the Offshore Terminal Authority Act, R.S. 34:3101 etseq.(the Act) and the rules and regulations of the authority, seeks renewal of the license for a second term of 20 years as authorized by the Act, and Article V.D. of the authority's rules and regulations applicable to licensing.

Pursuant to the license, LOOP, a Delaware limited liability company with its principal office in New Orleans, LA, constructed and operates offshore terminal facilities located in the coastal waters of Louisiana and within the state of Louisiana as described in the license. LOOP operations commenced in May 1981; common carrier operations began in December 1981. No amendment to the license is requested with the renewal application.

The renewal application includes an introduction, description of the facilities, operations summary, ownership information, financial data and other information required by the rules and regulations of the authority. A copy of the renewal application is available for review at the office of the executive director of the Offshore Terminal Authority, 1201 Capitol Access Road, Room 214, Baton Rouge, LA 70802.

For 30 days from the date of publication of this notice, the public is provided the opportunity to comment on the renewal application. Written comments may be submitted to the executive director of the Offshore Terminal Authority, Box 94245, Baton Rouge, LA 70804.

Terry Gee  
Executive Director

9706#042

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**OFFICE OF THE STATE REGISTER INSERTION ORDER (eff.9/96)**

1051 North Third Street Post Office Box 94095  
Baton Rouge, LA 70804-9095 (504)342-5015 FAX 342-1057

(SUBMIT A SEPARATE INSERTION ORDER PER DOCUMENT)

EMERGENCY RULE (ER);  NOTICE OF INTENT (NOI);  RULE;  POTPOURRI

**REFER TO INSTRUCTIONS ON REVERSE SIDE**

This is your authority to publish in the (month) \_\_\_\_\_, 19 \_\_\_\_\_ Louisiana Register the document indicated above.

Office/Board/Commission promulgating this document

Department under which office/board/commission is classified

(name) (title)  
Name and title of person whose signature will appear in the publication (at the end of the document)

(name) (phone) (fax)  
Name, phone number, and FAX number of person to contact regarding this document

Provide a short descriptive listing for this document to be used in the Louisiana Register's TABLE OF CONTENTS/INDEX (note: this description should match the fiscal statement title, if sending a NOI):

\*If sending a diskette, indicate the name of the file on diskette:

**Important:** If submitting both an ER and a NOI to be published this month, AND if the rule text in the ER is identical to the rule text in the NOI, check here:

Signature of Agency Head or Designee

Print Name and Title of Agency Head or Designee

**CERTIFICATION OF AVAILABLE FUNDS**

DOCUMENT # \_\_\_\_\_

**ISIS AGENCY:** I certify the availability of fiscal year \_\_\_\_\_ appropriated funds for the payment of the above referenced publication and authorize the processing of an Interagency Billing with the following coding on the 30th of the month of the publication. Attach supplemental sheet for additional lines of coding.

AGENCY	ORGANIZATION #	OBJECT	SUB-OBJECT	REPORTING CATEGORY
--------	----------------	--------	------------	--------------------

**NON-ISIS AGENCY:** I certify the availability of fiscal year \_\_\_\_\_ appropriated funds for the payment of the above referenced publication and agree to place corresponding invoice in line for payment upon receipt.

Billing Address for Agencies:

Signature of Agency Head or Designee - Phone #

Agency Name

Street Address or Post Office Box

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**EMERGENCY RULE (ER) INSTRUCTIONS:**

1) For an ER which **HAS NOT BEEN PUBLISHED** in the *Louisiana Register* within recent months (either as a previous ER or as a NOI), send the new ER on \*diskette and include in this order: opening/introductory paragraphs containing effective date and number of days ER in effect; and rule text in LAC codified form with updated Authority and Historical Notes.

2) For an ER which **HAS BEEN PUBLISHED** in the *Louisiana Register* within recent months (either as a previous ER or as a NOI):

a) if **MINOR REVISIONS** are made, XEROX a copy of the previous ER or NOI from the *Louisiana Register*, and show changes/revisions with a red pen; or

\*b) if **MAJOR REVISIONS** are made, send a new ER on \*diskette and include in this order: opening/introductory paragraphs containing effective date and number of days ER in effect; and rule text in LAC codified form with updated Authority and Historical Notes.

**NOTICE OF INTENT (NOI) INSTRUCTIONS:**

1) For a NOI which **HAS NOT BEEN PUBLISHED** in the *Louisiana Register* within recent months (either as a previous NOI or as an ER):

a) send the new NOI on \*diskette and include, in this order: opening/introductory paragraphs; rule text in LAC codified form with updated Authority and Historical Notes; interested persons paragraph; and public hearing paragraph (if one is scheduled). **ALSO** send first page of fiscal statement containing **ORIGINAL** signatures.

2) For a NOI which **HAS BEEN PUBLISHED** in the *Louisiana Register* within recent months (either as a previous NOI or as an ER):

a) if **MINOR REVISIONS** are made, XEROX a copy of the previous NOI or ER from the *Louisiana Register*, and show changes/revisions with a red pen; send a \*diskette with opening/introductory paragraphs; interested persons paragraph; and public hearing paragraph (if one is scheduled). **ALSO** send first page of fiscal statement containing **ORIGINAL** signatures; **OR**

\*b) if **MAJOR REVISIONS** are made, send a new NOI on \*diskette and include, in this order: opening/introductory paragraphs; rule text in LAC codified form with updated Authority and Historical Notes; interested persons paragraph; and public hearing paragraph (if one is scheduled). **ALSO** send first page of fiscal statement containing **ORIGINAL** signatures.

**RULE INSTRUCTIONS:**

1) If the NOI was published in full (rule text included) XEROX the entire NOI from the *Louisiana Register* (including page numbers and document number at the end of the fiscal statement) and show changes/revisions with a red pen.

2) If the NOI referenced the reader to rule text in an ER, XEROX the entire NOI from the *Louisiana Register*(including page numbers and document number at the end of the fiscal statement) and XEROX the entire ER from the *Louisiana Register*(including page numbers and document number at the end of the document); show changes/revisions with a red pen.

3) If the NOI was referenced (rule text was not printed) xerox the entire NOI from the *Louisiana Register*(including page numbers and document number at the end of the fiscal statement) and show changes/revisions with a red pen . **IMPORTANT: if changes/revisions have been made to the unpublished rule text since it was originally proposed through the NOI, send a NEW \*diskette of the rule text with all changes incorporated into the document.**

**POTPOURRI INSTRUCTIONS:**

Send a \*diskette containing the document.