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# Executive Orders

## EXECUTIVE ORDER MJF 02-1

### Uniform Payroll Insurance Commission

WHEREAS, Executive Order No. MJF 2001-40, signed on September 17, 2001, established the Uniform Payroll Insurance Commission (hereafter "Commission") within the executive branch, Office of the Governor; and

WHEREAS, it is necessary to amend Executive Order No. MJF 2001-40 in order to extend the reporting period of the Commission;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: Subsection 3 of Executive Order No. MJF 2001-40, signed on September 17, 2001, is amended to provide as follows:

The Commission shall submit a comprehensive written report to the governor by March 12, 2002, which addresses the issues set forth in Section 2 of this Order.

SECTION 2: All other sections, subsections, and/or paragraphs of Executive Order No. MJF 2001-40 shall remain in full force and effect.

SECTION 3: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 30th day of January, 2002.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0202#001

## EXECUTIVE ORDER MJF 02-2

### Super Bowl XXXVI

WHEREAS, on February 3, 2002, the state of Louisiana, the city of New Orleans, and the Louisiana Superdome, will host Super Bowl XXXVI, one of America's foremost sporting events;

WHEREAS, pursuant to Act No. 541 of the 1976 Regular Session of the Louisiana Legislature, as amended, the state of Louisiana, through the governor, has all power and authority over the management of the Louisiana Superdome and the New Orleans Arena;

WHEREAS, the state, through the governor and with the legislature's approval, has contracted with a professional

management organization for the management of the Louisiana Superdome and the New Orleans Arena; and

WHEREAS, by letter of October 20, 1998, the governor authorized the professional management organization that manages the Louisiana Superdome to offer the National Football League various financial incentives in the bid for Super Bowl XXXVI;

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 professional management organization that manages the Louisiana Superdome and the New Orleans Arena is authorized to:

1. waive the rental charges for the National Football League's use of the Louisiana Superdome and/or the New Orleans Arena from January 21, 2002, through February 4, 2002, for conducting Super Bowl XXXVI and game related activities at those sites;

2. allow the National Football League all net revenues from parking, concessions, and novelty sales at the Louisiana Superdome on the game day of Super Bowl XXXVI; and

3. pay staffing expenses of the Louisiana Superdome and/or New Orleans Arena on game day of Super Bowl XXXVI.

SECTION 2: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate in implementing the provisions of this Order.

SECTION 3: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 1st day of February, 2001.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0202#002

## EXECUTIVE ORDER MJF 02-3

### Anesthesiologist Assistant Legislation Commission

WHEREAS, Executive Order No. MJF 2001-31, issued on August 16, 2001, established the Anesthesiologist Assistant Legislation Commission within the executive department, Office of the Governor;

WHEREAS, Executive Order No. MJF 2001-45, issued on September 27, 2001, extended the date for

submitting the draft legislation to the governor and the Louisiana Legislature; and

WHEREAS, it is necessary to amend Executive Order No. MJF 2001-31, as amended by Executive Order No. MJF 2001-45, in order to further extend the date for submitting the draft legislation to the governor and the Louisiana Legislature;

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: Section 3 of Executive Order No. MJF 2001-31, issued on August 16, 2001, as amended by Executive Order No. MJF 2001-45, issued on September 27, 2001, is amended to provide as follows:

On or before March 1, 2003, the Commission shall submit draft legislation to the governor and the Louisiana Legislature which addresses the issues set forth in Section 2 of this Order.

SECTION 2: Executive Order No. MJF 2001-45, issued on September 27, 2001, is hereby terminated and rescinded.

SECTION 3: All other sections, subsections, and paragraphs of Executive Order No. MJF 2001-31, shall remain in full force and effect.

SECTION 4: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 1st day of February, 2002.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0202#003

**EXECUTIVE ORDER MJF 02-4**

**Executive Branch-Limited Hiring Freeze**

WHEREAS, pursuant to R.S. 42:375, the governor may issue executive orders which prohibit or regulate the filling of any new or existing vacancies in positions of employment in the executive branch of state government (hereafter "hiring freeze"); and

WHEREAS, to ensure that the state of Louisiana will not suffer a budget deficit due to appropriations and emergency expenditures for fiscal year 2001-2002 exceeding the actual revenues of the fiscal year and to prepare for decreased revenues and reduced appropriations for fiscal year 2002-2003, prudent money management practices dictate that the best interests of the citizens of the state of Louisiana will be served by implementing a limited hiring

freeze in the executive branch of state government for the remainder of the 2001-2002 fiscal year that prohibits a specified number of vacancies in currently authorized positions of employment from being filled, to achieve a state general fund dollar savings of at least nine million seven hundred fifty-eight thousand eight hundred twenty-seven dollars (\$9,758,827.00), and a total, exclusive of federal funding, state fisc savings of at least twenty-three million one hundred ninety-three thousand six hundred seventy-one dollars (\$23,193,671.00);

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 following departments, agencies, and/or budget units in the executive branch of the state of Louisiana, as described in and/or funded by appropriations through Act No. 12 of the 2001 Regular Session of the Louisiana Legislature (hereafter "Act 12"), (hereafter "Unit" and/or "Units"), shall not fill the following specified number of existing vacancies in authorized positions of employment within the Unit in order to achieve the following state general fund savings and total, exclusive of federal funding, state fisc savings (hereafter "limited hiring freeze"):

<u>Unit</u>	<u>Vacancies</u>	<u>State General Fund</u>	<u>Total State Fisc</u>
Executive Department, Schedule 01	24 of 164	\$ 194,603	\$ 356,199
Secretary of State, Budget Unit 04-139	5 of 13	\$ 13,016	\$ 79,312
Office of the Attorney General, Budget Unit 04-141	12 of 17	\$ 60,907	\$ 247,547
Commissioner of Elections, Budget Unit 04-144	3 of 6	\$ 52,288	\$ 52,288
State Treasurer, Budget Unit 04-147	1 of 3	\$ 554	\$ 27,805
Agriculture and Forestry, Budget Unit 04-160	17 of 17	\$ 217,291	\$ 227,258
Commissioner of Insurance, Budget Unit 04-165	7 of 14	\$ -0-	\$ 128,965
Department of Culture, Recreation and Tourism, Schedule 06	17 of 46	\$ 204,184	\$ 206,877
Department of Transportation and Development, Schedule 07	78 of 135	\$ -0-	\$ 1,260,826
Department of Public Safety and Corrections, Correction Services only, Schedule 08	130 of 463	\$ 2,176,699	\$ 2,176,699

Department of Public Safety and Corrections, Public Safety Services only, Schedule 08	23 of 112	\$ -0-	\$ 472,193
Department of Health and Hospitals, Schedule 09	406 of 1,091	\$ 2,817,871	\$ 4,543,036
Department of Social Services, Schedule 10	287 of 469	\$ 2,072,516	\$ 2,525,437
Department of Natural Resources, Schedule 11	11 of 16	\$ 35,878	\$ 198,981
Department of Revenue, Schedule 12	26 of 76	\$ 57,442	\$ 413,931
Department of Environmental Quality, Schedule 13	56 of 110	\$ -0-	\$ 1,113,508
Department of Labor, Schedule 14	3 of 25	\$ 69,974	\$ 69,974
Department of Wildlife and Fisheries, Schedule 16	9 of 51	\$ -0-	\$ 86,887
Department of Civil Service, Schedule 17	5 of 12	\$ 14,039	\$ 101,681
Louisiana School for the Visually Impaired, Budget Unit 19-651	3 of 5	\$ 46,791	\$ 46,791
Louisiana School for the Deaf, Budget Unit 19-653	9 of 18	\$ 130,424	\$ 130,424
Louisiana Special Education Center, Budget Unit 19-655	2 of 5	\$ 27,717	\$ 27,717
Louisiana School for the Math, Science, and Arts, Budget Unit 19-657	1 of 1	\$ 18,120	\$ 18,120
Office of Student Financial Assistance, Budget Unit 19-661	5 of 11	\$ 10,243	\$ 10,243
Louisiana Educational Television Authority, Budget Unit 19-662	2 of 3	\$ 52,546	\$ 52,546
Department of Education, Schedule 19	26 of 118	\$ 258,255	\$ 352,642
Louisiana State University Medical Center Health Care Services Division, Budget Unit 19-610 and Medical Vendor Payments Budget Unit 09-306	332 of 988	\$ -0-	\$ 4,132,892
	0	\$ 1,227,469	\$ 4,132,892

SECTION 2:

A. After the effective date of this Order, employee transfers, promotions, and re-allocations within a Unit listed in Section 1 of this Order, and the creation of any new positions of employment within a Unit listed in Section 1 of this Order, shall not, in any manner, increase the aggregate number of positions of employment in the Unit beyond the number filled as of the effective date of this Order combined with the number permitted to be filled by Section 1 of this Order, unless otherwise authorized by a mid-year budget adjustment in accordance with Section 6(A) of Act 12.

B. If, by implementing the limited hiring freeze in Section 1 of this Order, a statewide elected official would not be able to perform and/or fulfill his or her constitutional function and/or duties, the commissioner of administration (hereafter "commissioner") is authorized to grant a statewide elected official an exemption to the extent necessary.

C. If, by implementing the limited hiring freeze in Section 1 of this Order, the secretary of the Department of Public Safety and Corrections (hereafter "secretary") or the superintendent of State Police (hereafter "superintendent") would not be able to perform and/or fulfill his statutory function and/or duties, the commissioner is authorized to grant the secretary or superintendent an exemption to the extent necessary.

SECTION 3:

A. No later than February 15, 2002, the head of each Unit listed in Section 1 of this Order shall submit to the commissioner a mid-year budget adjustment plan, on the BA-7 form and questionnaire revised January 30, 2001, which reflects the Unit's proposed allocation of the limited hiring freeze ordered in Section 1 of this Order (hereafter "mid-year budget adjustment plan"), and a description of the methodology used to formulate the mid-year adjustment plan.

B. The description of the methodology used to formulate the mid-year adjustment plan shall include, at a minimum, the following information for each proposed frozen position:

1. the type of position of employment to remain vacant, including job title;
2. the job function of the position of employment and an analysis of how it meets or serves the role, scope, and/or mission of the Unit; and
3. a description of why the particular position of employment was selected to remain vacant.

D. No Unit shall implement the limited hiring freeze mandated in Section 2 of this Order without the commissioner's prior written approval of the Unit's proposed mid-year budget adjustment plan.

E. Following receipt of the commissioner's written approval, any deviation from, or change to, a mid-year budget adjustment plan shall require the commissioner's prior written approval.

SECTION 4: The commissioner is authorized to develop additional guidelines to facilitate the administration of this Order.

SECTION 5: All departments, commissions, boards, offices, entities, agencies, and officers of the state of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate in the implementation of the provisions of this Order.

SECTION 6: This Order is effective upon signature and shall remain in effect through June 30, 2002, unless amended, modified, terminated, or rescinded prior to that date.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of

Louisiana, at the Capitol, in the city of Baton Rouge, on this 4th day of February, 2002.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0202#004

# Emergency Rules

## DECLARATION OF EMERGENCY

**Office of the Governor  
Division of Administration  
Office of Group Benefits**

EPO Plan of Benefits CPrescription Drug  
Dispense Limits (LAC 32:V.325)

Pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB, hereby invokes the Emergency Rule provisions of La R. S. 49:953(B).

OGB finds that it is necessary to revise and amend provisions of the EPO Plan Document relative to prescription drug benefits. Failure to adopt this rule on an emergency basis may result in disruption of prescription drug therapy for covered employees, retirees, and their dependents, adversely affecting the health and welfare of the public workforce responsible for delivery of vital services to the citizens of the state.

Accordingly, the following Emergency Rule, revising and amending the EPO Plan of Benefits relative to prescription drug benefits, is effective February 1, 2002, and shall remain in effect for a maximum of 120 days, or until the final rule is promulgated, which ever occurs first.

### Title 32

### EMPLOYEE BENEFITS

#### Part V. Exclusive Provider (EPO) Plan of Benefits

#### Chapter 3. Medical Benefits

#### §325. Prescription Drug Benefits

A. - C.4. ...

5. Prescription drug dispensing and refills will be limited in accordance with protocols established by the prescription benefits manager, including the following limitations:

a. up to a 34-day supply of drugs may be dispensed upon initial presentation of a prescription or for refills dispensed more than 120 days after the most recent fill;

b. for refills dispensed within 120 days of the most recent fill, up to a 102-day supply of drugs may be dispensed at one time, provided that co-payments shall be due and payable as follows:

i. for a supply of 1-34 days the plan member will be responsible for payment of 50 percent of the cost of the drug, up to a maximum of \$40 per prescription dispensed;

ii. for a supply of 35-64 days the plan member will be responsible for payment of 50 percent of the cost of the drug, up to a maximum of \$80 per prescription dispensed;

iii. for a supply of 69-102 days the plan member will be responsible for payment of 50 percent of the cost of

the drug, up to a maximum of \$120 per prescription dispensed;

iv. once the out-of-pocket threshold for eligible prescription drug expenses is reached, the Plan Member's co-payment responsibility will be \$15 for a 1-34 days supply, \$30 for a 35-64 days supply, and \$45 for a 69-102 days supply, with no co-pay for up to a 102 days supply of generic drugs.

6. - 7. ...

8. Drugs prescribed for treatment of diabetes together with over-the-counter diabetic supplies including, but not limited to, strips, lancets and swabs, shall be consider as one prescription for the purposes of this section; and

9. Refills will be available only after 75 percent of drugs previously dispensed should have been consumed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1835 (October 1999), amended LR 27:721 (May 2001), LR 27:1887 (November 2001), LR 28:

A. Kip Wall  
Chief Executive Officer

0202#008

## DECLARATION OF EMERGENCY

**Office of the Governor  
Division of Administration  
Office of Group Benefits**

PPO Plan of Benefits CPrescription Drug  
Dispense Limits (LAC 32:III.323)

Pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB, hereby invokes the Emergency Rule provisions of R.S. 49:953(B).

OGB finds that it is necessary to revise and amend provisions of the PPO Plan Document relative to prescription drug benefits. Failure to adopt this rule on an emergency basis may result in disruption of prescription drug therapy for covered employees, retirees, and their dependents, adversely affecting the health and welfare of the public workforce responsible for delivery of vital services to the citizens of the state.

Accordingly, the following Emergency Rule, revising and amending the PPO Plan of Benefits relative to prescription drug benefits, is effective February 1, 2002, and shall remain in effect for a maximum of 120 days, or until the final rule is promulgated, which ever occurs first.



**Title 32  
EMPLOYEE BENEFITS**

**Part III. Preferred Provider (PPO) Plan of Benefits  
Chapter 3. Medical Benefits**

**§323 Prescription Drug Benefits**

A. - C.4. ...

5. Prescription drug dispensing and refills will be limited in accordance with protocols established by the prescription benefits manager, including the following limitations.

a. Up to a 34-day supply of drugs may be dispensed upon initial presentation of a prescription or for refills dispensed more than 120 days after the most recent fill;

b. For refills dispensed within 120 days of the most recent fill, up to a 102-day supply of drugs may be dispensed at one time, provided that co-payments shall be due and payable as follows:

i. for a supply of 1-34 days the Plan Member will be responsible for payment of 50 percent of the cost of the drug, up to a maximum of \$40 per prescription dispensed;

ii. for a supply of 35-64 days the Plan Member will be responsible for payment of 50 percent of the cost of the drug, up to a maximum of \$80 per prescription dispensed;

iii. for a supply of 69-102 days the Plan Member will be responsible for payment of 50 percent of the cost of the drug, up to a maximum of \$120 per prescription dispensed;

iv. once the out-of-pocket threshold for eligible prescription drug expenses is reached, the Plan Member's co-payment responsibility will be \$15 for a 1-34 days supply, \$30 for a 35-64 days supply, and \$45 for a 69-102 days supply, with no co-pay for up to a 102 days supply of generic drugs.

6. - 7. ...

8. Drugs prescribed for treatment of diabetes together with over-the-counter diabetic supplies including, but not limited to, strips, lancets and swabs, shall be considered as one prescription for the purposes of this section; and

9. Refills will be available only after 75 percent of drugs previously dispensed should have been consumed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1815 (October 1999), amended LR 27:720 (May 2001), LR 27:1886 (November 2001), LR 28:

A. Kip Wall  
Chief Executive Officer

0202#009

**DECLARATION OF EMERGENCY**

**Department of Revenue  
Policy Services Division**

In-State Tax Liabilities Collection  
(LAC 61:I.4913)

The Louisiana Department of Revenue is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), to adopt this Emergency Rule to authorize

the secretary to enter into contracts with debt collection agencies for the collection of in-state tax liabilities.

R.S. 47:1516.1 authorizes the secretary to enter into contracts with debt collection agencies for the collection of certain in-state tax liabilities. This Rule is being adopted under the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), in order to immediately issue a request for proposal to award a contract for the collection of in-state tax liabilities. The in-state debt collection contract request for proposal will be advertised in the official journal of the state and in one or more newspapers for at least 30 days before the last day that proposals will be accepted. A proposer's conference will be held two weeks after the request for proposal is released. The deadline for inquiries is one week after the proposer's conference and the due date for submission of the proposals is three weeks after the proposer's conference. The secretary will select a committee to evaluate the proposals and make a recommendation and applicants will be notified of the selection in a timely manner.

This Emergency Rule shall be effective February 15, 2002 and remain in effect for a period of 120 days or until a final rule is adopted, whichever occurs first.

**Title 61**

**REVENUE AND TAXATION**

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

**Chapter 49. Tax Collection**

**§4913. Collection of In-State Tax Liabilities by Debt  
Collection Agencies or the Attorney General's  
Office**

A. Definitions. For purposes of this rule, the following terms shall have the meaning ascribed to them:

*Attorney General*—the attorney general of the state of Louisiana.

*Collection Contractor*—the attorney general or one or more private persons, companies, associations, or corporations who provide debt collection services inside the state.

B.1. The secretary is authorized to enter into contracts with collection contractors to facilitate the collection of taxes, interest, penalties, and fees due the department after an obligation has become collectible by distraint and sale.

2. The secretary may only enter into a collection contract after notice by certified mail has been transmitted to the taxpayer at the address given in the last report filed by the taxpayer, or to any address obtainable from any private entity that will provide such address free of charge or from any federal, state, or local government entity, including but not limited to the United States Postal Service or from United States Postal Service certified software.

3. The taxpayer will be informed of the following:

a. that the obligation is a final judgment;

b. all the actions the secretary is authorized to take in order to collect the debt; and

c. that if the debt is not paid within 60 days of the date of the notice, a collection fee not to exceed 25 percent of the total liability will be charged to the account.

4. The taxpayer must pay the full amount of any additional charge for the collection of any taxes, interest, penalties, or fees. If an account is referred to a collection

contractor, the additional charge will be paid to the collection contractor.

C. The secretary will consider the following criteria in selecting collection contractors:

1. fees charged;
2. organizational structure;
3. experience with government accounts;
4. computer capabilities including the ability to generate reports and formatting;
5. collection methodology;
6. financial stability; and,
7. personnel resources.

D. Prior to entering into any contract, the secretary will require a performance bond, cash, or securities from the collection contractor in an amount not to exceed \$100,000.

E. Once the collection contract is entered into, the secretary will provide information to the collection contractors concerning the accounts of individual taxpayers only to the extent necessary for the collection contractor to fulfill his contractual obligation.

a. The information furnished by the secretary will be considered confidential and privileged by the collection contractor and members of his staff, as provided by R.S. 47:1508.

b. Collection contractors may not take any action that exceeds the authority of the secretary and must follow the Fair Debt Collection Practices Act.

F. With the approval of the secretary, the collection contractor may file suit, at his expense, in the name of the secretary in the courts of this state for the purpose of collecting the tax debt.

G.1. Nothing contained in this rule shall be construed to affect in any manner any rights and remedies available to the taxpayer.

2. This rule does not apply to a spouse who qualifies for liability relief under the innocent spouse provisions of R.S. 47:101.B.(7).

H. The attorney general will have a right of first refusal for all accounts selected to be sent to a collection contractor.

1. A list of accounts selected will be compiled by the secretary and forwarded to the attorney general for the exercise of his right of first refusal.

2. The right of first refusal shall be exercised within 30 days of the date of mailing or electronic transmission of the list.

3. If the attorney general fails to exercise his right of first refusal within 30 days or refuses to accept an account, the secretary may send the account to any collection contractor meeting the requirements of Subsection C.

4. When the attorney general accepts an account for collection, the collection fee may not exceed 15 percent of the total liability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 47:1516.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of the Secretary, LR 28:

Cynthia Bridges  
Secretary

0202#007

## DECLARATION OF EMERGENCY

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

#### Prohibition of Certain Unfair Business Practices (LAC 55:VII.317)

The Office of Alcohol and Tobacco Control, under the authority of R.S. 26:792 and 26:150 and in accordance with the emergency rule provisions of the Administrative Procedure Act, R.S. 49:953(B), is adopting this emergency rule, LAC 55:VII.317 pertaining to the prohibition of certain unfair business practices in the marketing of alcoholic beverages.

Adoption of this Emergency Rule is necessary to ensure equal enforcement of the unfair practice laws for all industry members. This Declaration of Emergency shall be effective on February 20, 2002, and shall remain in effect for 120 days or until adoption of the final rule, whichever occurs first.

#### Title 55

#### PUBLIC SAFETY

#### Part VII. Alcohol and Tobacco Control

#### Chapter 3. Alcoholic Beverages

#### § 317. Prohibition of Certain Unfair Business Practices

##### A. Definitions

*Alcoholic Beverages* Any fluid or any solid capable of being converted into fluid, suitable for human consumption, and containing more than one-half of one percent alcohol by volume, including malt, vinous, spiritous, alcoholic or intoxicating liquors, beer, porter, ale, stout, fruit juices, cider, or wine.

*Beverages of High Alcoholic Content* Alcoholic beverages containing more than six percent alcohol by volume.

*Beverages of Low Alcoholic Content* Alcoholic beverages containing not more than six percent alcohol by volume.

*Brewer* Any person who, directly or indirectly, personally or through any agency, engages in the making or production of malt beverages.

*Bureau* The Bureau of Alcohol, Tobacco and Firearms of the United States Treasury Department.

*Commissioner* The Louisiana Commissioner of Alcohol and Tobacco Control.

*Cost to Industry Member* The invoice cost, or the replacement cost, of the merchandise to the industry member, whichever is lower:

a. less all trade discounts except customary discounts for cash and discounts from the state or any governmental agency allowed for the payment of collection of any taxes;

b. plus, in the following order:

i. freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise;

ii. cartage cost that shall be three-fourths of one percent of the cost to the industry member after adding freight charges but before adding cartage, any existing tobacco stamp excise tax, and markup;

- iii. any existing tobacco stamp excise tax; and
- iv. a markup to cover a proportionate part of the cost of doing business which markup, in the absence of proof of a lesser cost, shall be two percent of the cost to the industry member after adding freight charges, cartage, and any existing tobacco stamp excise tax.

*Exclusive Outlet* Cthe requirement, by agreement or otherwise, that any retailer engaged in the sale of distilled spirits, wine, or malt beverages, purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons.

*Handle* Csell, use, distribute, store, consume, or otherwise handle.

*Importer* Cany dealer who imports alcoholic beverages from any state, territory, possession, or foreign country for handling in Louisiana.

*Industry Member* Cany person engaged in business as a distiller, brewer, rectifier, blender or other producer, or as an importer or wholesaler, of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, but shall not include an agency of a state or political subdivision thereof, or an officer or employee of such agency.

*Malt Beverages* or *Malt Liquors* Ca beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

*Manufacturer* Cany person who, directly or indirectly, personally or through any agency, engages in the making, blending, rectifying, or other processing of alcoholic beverages in Louisiana.

*Person* Cany individual, municipality, industry, public or private corporation, partnership, firm, or any other entity.

*Retail Dealer* or *Retailer* Cany person who offers for sale, exposes for sale, has in their possession for sale or distribution, or sells alcoholic beverages in any quantity to persons other than licensed wholesale or retail dealers.

*Tied House* Cwhen any retailer, engaged in the sale of distilled spirits, wine, or malt beverages, is induced to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons through any of the following means:

- a. by acquiring or holding after the expiration of any existing license any interest in any license with respect to the premises of the retail dealer;
- b. by acquiring any interest in real or personal property owned, occupied, or used by the retail dealer in the conduct of his business;
- c. by furnishing, giving, renting, lending, or selling to the retail dealer, any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to such exceptions as the commissioner of alcoholic beverage control shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved,

established trade customs not contrary to the public interest and the purposes of this Section;

- d. by paying or crediting the retail dealer for any advertising, display, or distribution service;
- e. by guaranteeing any loan or the repayment of any financial obligation of the retail dealer;
- f. by extending to the retail credit; or
- g. by requiring the retail dealer to take and dispose of a certain quota of any of such products.

*Wholesale Dealer* or *Wholesaler* Cpersons who sell alcoholic beverages to licensed wholesale dealers or licensed retail dealers exclusively within the state or to any person for delivery beyond the borders of the state and who conduct a bona fide wholesale business and maintain a warehouse or warehouses for the storage and warehousing of alcoholic beverages in the area where domiciled and licensed by the state, and conduct and maintain systematic and regular solicitations, distribution, deliveries and sales of the alcoholic beverages to licensed retail dealers located within the boundary of each parish and municipality in which the wholesale dealer makes any sale or delivery.

B. Prohibition against certain business practices in the alcoholic beverage industry.

1. The Bureau of Alcohol, Tobacco and Firearms of the United States Treasury prohibits exclusive outlet and tied house arrangements with respect to the marketing and sale of beverages of both high and low alcoholic content as authorized by the Federal Alcohol Administration Act (FAA Act), 27 U.S.C., Section 205.

2. The bureau's enforcement of this federal law requires Louisiana to have a similar law that imposes similar requirements for similar transactions.

3. The bureau enforces the provisions of the FAA Act, prohibiting exclusive outlets and tied house arrangements in the marketing and sale of alcoholic beverages in Louisiana under the authority of R.S. 51:422, the Louisiana Unfair Sales Law, and R.S. 26:287.A.(9) and (10), which provide for additional causes for suspension and revocation of permits.

4. Prohibitions against exclusive outlets and tied house arrangements with respect to the marketing and sale of alcoholic beverages in Louisiana has stabilized the industry and prevented unlawful and unfair inducements for the retail purchase of alcohol and unlawful coercion, bribery, kickback demands, and other unfair and unlawful business practices.

5. It is in the best interest of the state's citizens that fair business dealings and unfettered competition govern the alcohol beverage industry in Louisiana, that it remain an industry dominated by fairness and integrity, and that it be safeguarded against the threat of corrupt and unfair business practices.

C. Marketing and Sale of Alcoholic Beverages in Louisiana

1. Exclusive outlet and tied house arrangements are unfair inducements to purchase goods or services by wholesalers or retailers, and it is unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, manufacturer, or other producer, or as an importer or wholesaler of distilled spirits, wine, malt beverages or malt liquors, directly or indirectly or through an affiliate, to have exclusive outlet or tied house arrangements.

## 2. Exceptions

### a. Equipment

i. To provide proper dispensing of alcoholic beverages by retail dealers, industry members may provide, without charge, coil cleaning service, tap markers that show brand, and tapping equipment such as rods, vents, taps, hoses, washers, couplings, vent tongues and check valves.

ii. Accessories such as carbon dioxide gas tanks, regulators and other draught equipment accessories with a reasonable open market price of more than \$5 but less than \$200 per item must be sold to retailers at a price no less than the cost to the industry member as in this Section. These sales must be made for cash only.

iii. Draught equipment accessories with a reasonable open market value of \$200 or more per item are not included under this exception.

### b. Inside Signs

i. An industry member may furnish, give, rent, loan, or sell to a retailer inside signs that bear advertising matter. Inside signs include such things as mechanical devices, illuminated devices, clocks, neon signs, and other devices that are designed for permanent use in a retail account. These items may be furnished to an industry member if the total value of the materials in use at any one time for any one brand does not exceed \$225 for any one retail establishment, including all expenses incurred directly or indirectly by any industry member in connection with the purchase, manufacture, transportation, and assembly of the items and accessories. The industry member shall not directly or indirectly pay or credit the retailer for displaying the materials or any expense incidental to their operation. In determining the value of these items for purposes of the limitation, value shall be the cost attributable to them at the time of their installation in the retail establishment.

ii. Display stackers, pricing cards, shelf talkers, rail strips, posters, and other such items constructed of paper, cardboard, and similar materials that are designed and installed as point-of-sale material for temporary use in a retail outlet are not included under this Section and may be provided without limitation. Approval of point-of-sale material is not required.

iii. Product displays may be furnished by an industry member to a retailer, if the total value of all product displays furnished by an industry member do not exceed \$155 per brand in use at any one time in any one retail establishment. Product display are racks, bins, barrels, casks, shelving, and the like from which alcoholic beverages are displayed or sold. Product displays shall bear conspicuous and substantial advertising matter.

c. Outside Signs. The furnishing of outside signs by an industry member to licensed retail dealers is prohibited.

d. Advertising Specialties, Utility Items, Merchandise, and Supplies

i. Trays, coasters, paper napkins, clothing, groceries, snack foods, paper, and plastic bags, cups, pitchers, glasses, menu covers, menu sheets, meal checks, match books, ash trays, ice, and other items that are primarily of utility value to a retailer cannot be given away but may be sold to retailers by industry members. The price charged for these items must be no less than the cost to the industry member as defined in this Section.

ii. Other retailer advertising specialties and novelty items, such as form scrapers, thermometers, litter bags, pencils, bottle openers, balloons, lapel pins, and key rings that bear advertising matter and are primarily valuable to the retailer as point-of-sale advertising media but have no utility value to the retailer, may be furnished, given, or sold to a retailer if the total cost to any industry member of the retailer advertising specialty items furnished, given, or sold in connection with any one retail establishment in any one calendar year does not exceed \$50.

iii. After the delivery of the retailer advertising specialties with a total cost to an industry member of \$50 has been made by the industry member to a particular retail establishment during any one calendar year, all future deliveries of these items to that particular retail establishment by the respective industry member during the remainder of the calendar year must be effected by the sale of the items at their reasonable open market price in the locality where sold. Any items sold, furnished, or given away under this Section must be itemized separately on the industry member's invoice and other records.

iv. Carbon dioxide gas or ice may be sold to a retailer at a reasonable open market price in the locality where sold.

### e. Sponsorships

i. Wholesalers and manufacturers may sponsor events relating to or on the premises of retail dealers if nothing of value is given to retail dealers except as allowed elsewhere in this Section:

(a). t-shirts, caps, and similar items may be given to event contestants or patrons of the retail establishment but the total cost of these items may not exceed \$150 per event;

(b). an industry member shall not sponsor an event on the premises of a retail dealer within 60 days of their last sponsored event;

(c). alcoholic beverage sales must be incidental to the event being sponsored; and

(d). industry members shall not directly or indirectly require that the sponsor's product be the exclusive product offered for sale at the event.

ii. Manufacturer or wholesaler may donate alcohol and trophies of nominal value to unlicensed civic, religious or charitable organizations.

iii. In conjunction with events held on regular licensed retail premises, all restrictions on advertising and signage will remain in full force and effect, except that temporary paper signs and posters may be used inside the premises to advertise the event for not more than 21 days.

### f. Trade Calls

i. Bar spending during trade calls, wherein the alcohol purchased by a manufacturer or wholesaler for a consumer is consumed on retail licensed premises in the presence of the giver, shall be lawful so long as the state's laws regulating retail establishments such as the legal drinking age, etc., are observed and not more than \$150 is expended during the trade call.

ii. No trade calls may occur on college campuses.

iii. Manufacturers and wholesalers may be accompanied by entertainers, sports figures and other personalities during trade calls.

iv. Trade calls may be preannounced to consumers in the retail account through table tents, posters and other inside signs.

v. No outside advertising of such events through signs or any media is allowed.

g. Except as otherwise provided by law, the gift of beer, wine or beverage alcohol as a purely social courtesy to unlicensed persons by a manufacturer or wholesaler is not prohibited.

h. Sampling. Beer, wine or beverage alcohol sampling for the purpose of allowing a customer to taste a brand of beverage alcohol must be conducted on any premises holding a permit as designated in R.S. 26:75.C.(1) and 275.B.(1) in accordance with the following restrictions:

i. A retail dealer, wholesaler or manufacturer may furnish the beer, wine, or beverage alcohol to be sampled and the cups to hold the beverages. The wholesaler or manufacturer may also provide and display point-of-sale material in an amount not to exceed \$150 in value. The display materials shall only be placed inside of the facility and shall not block the aisles or other points of ingress or egress.

ii. No retail dealer, wholesaler, or manufacturer shall furnish a sampling of beverage alcohol in a greater quantity than two ounces per brand of beverage alcohol to each individual and no individual shall consume more than two ounces of each brand of beverage alcohol provided at the sampling. The sampling of a beverage alcohol having an alcoholic content of more than 23 percent by volume shall be limited to one-half ounce per serving per individual.

iii. All samplings shall be limited in duration to one day.

iv. No more than two samplings per brand of beverage alcohol shall be conducted on the same licensed premises in any month.

v. The retail dealer, wholesaler, or manufacturer shall provide the Office of Alcohol and Tobacco Control with written notice of the date, time, place, permit number and brand of beverage alcohol to be sampled at least one week prior to the date of the sampling.

i. Tubs and Other Single Containers. Tubs, ice chests, and other containers designed to hold single units of product and display them for sale in retail establishments may be furnished by manufacturers and wholesalers, provided that no more than two containers per retail location may be furnished by an industry member and the value of the items furnished shall not exceed \$155.

j. Consignment Sales and Returns

i. It is unlawful for an industry member to sell, offer for sale, or contract to sell to any retailer, or for any retailer to purchase or contract to purchase any products:

(a). on consignment;

(b). under conditional sale;

(c). with the privilege of return;

(d). on any basis other than a bona fide sale;

(e). if any part of the sale involves, directly or indirectly, the acquisition by such person of other products from the trade buyer or the agreement to acquire other products from the trade buyer; or

(f). if the return or exchange of a product is solely because it overstocked or slow-moving.

ii. Transactions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product had been sold are not prohibited, but the industry member is under no obligation to accept such returns. "Ordinary and usual commercial reasons" include:

(a). the exchange of product for products that are unmarketable because of product deterioration, leaking containers or damaged labels;

(b). the correction of any discrepancy between products ordered and products delivered within a one-week period; or

(c). products on hand at the time a retail dealer closes a business or terminates business operations, in which case the return may be for cash or credit against outstanding indebtedness. This also includes a temporary seasonal event or temporary shutdown or slowdown where the industry member is able to show that the products are likely to spoil during the off season.

ii. Out-dated product or product that is within 21 days of date code expiration may be exchanged for other products. Products for which there is only a limited seasonal demand, such as holiday decanters and distinctive containers, may only be exchanged for non-distinctive like products.

D. Penalty. The commissioner of the Office of Alcohol and Tobacco Control may seek a suspension or revocation of the permit or permits of a violator and may impose such other penalties or administrative remedies against violators as are prescribed by law for violations of the Alcoholic Beverage Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:32, 26:793, 26:792, and 26:150.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Alcoholic Beverage Control, LR 4:463 (November 1978), amended LR 5:11 (January 1979), amended by the Department of Public Safety and Corrections, Office of Alcoholic Beverage Control, LR 17:607 (June 1991), LR 20:671 (June 1994), amended by the Department of Revenue and Taxation, Office of Alcoholic Beverage Control, LR 22:116 (February 1996), amended by the Department of Revenue, Office of Alcohol and Tobacco Control LR 26:2631 (November 2000), LR 28:

Murphy J. Painter  
Commissioner

0202#067

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

Child Care Assistance Program Providers and Payment  
(LAC 67:III.5107 and 5109)

The Department of Social Services, Office of Family Support has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to adopt the following changes in the Child Care Assistance Program effective March 1, 2002. This Emergency Rule will remain in effect for a period of 120 days.

The agency implemented cost-saving measures effective January 1, 2001, and the effects of this action have now made more funding available. The low-income families who

are eligible for Child Care Assistance need as much help as possible with those costs because of the declining economy and the negative impact on employment. This action will allow the eligibility of more applicants and eliminate or decrease the co-payments required from participants by increasing the percentages paid by DSS.

Whereas the health and safety of the children of working families is entrusted to child care environments and the goal of this program and the federal Child Care and Development Fund is to serve as many families as possible, a Declaration of Emergency is necessary to effect changes in these regulations.

Programmatic eligibility will increase from 60 percent to 75 percent of the State Median Income. The sliding fee scale has been adjusted to reflect this change and to provide that families at or below the federal poverty level will not be required to contribute to the cost of child care up to the State Maximum Rate. Due to the time and action required to program these changes, March 1 is the earliest implementation date possible.

In addition to this change, because Family Child Day Care Home providers are having difficulty obtaining pediatric first-aid training, these providers will now only be required to have current training in first aid, eliminating the need for it to be specifically "pediatric."

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 12. Child Care Assistance**

**Chapter 51. Child Care Assistance**

**Subchapter B. Child Care Assistance Program**

**§5107. Child Care Providers**

A. - B.1.b. ...

c. furnish verification of 12 clock hours of training in job-related subject areas approved by the Department of Social Services and current verification of first aid training by the provider's renewal date each year.

B.1.d. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:

**§5109. Payment**

A. The sliding fee scale used for non-FITAP recipients is subject to adjustment based on the state median income and poverty levels which are published annually. A non-FITAP household may pay a portion of its child care costs monthly in accordance with the sliding fee scale, and this shall be referred to as a "copayment." The sliding fee scale is based on a percentage of the state median income.

Sliding Fee Scale for Child Care Assistance Recipients C5 Percent of Projected Median Income

Number in Household	2	3	4	5	6	DSS %
Monthly Household Income	0 - 968	0 - 1219	0 - 1471	0 - 1723	0 - 1974	100%
	969 - 1535	1220 - 1908	1472 - 2281	1724 - 2654	1975 - 3027	95%
	1536 - 2101	1909 - 2596	2282 - 3090	2655 - 3585	3028 - 4079	85%
	ABOVE 2101	ABOVE 2596	ABOVE 3090	ABOVE 3585	ABOVE 4079	0%

Number in Household	7	8	9	10	11	DSS %
Monthly Household Income	0 - 2226	0 - 2478	0 - 2729	0 - 2981	0 - 3233	100%
	2227 - 3199	2479 - 3372	2730 - 3543	2982 - 3716	3234 - 3888	95%
	3200 - 4172	3373 - 4265	3544 - 4357	3717 - 4450	3889 - 4543	85%
	ABOVE 4172	ABOVE 4265	ABOVE 4357	ABOVE 4450	ABOVE 4543	0%

Number in Household	12	13	14	15	16	DSS %
Monthly Household Income	0 - 3484	0 - 3736	0 - 3988	0 - 4239	0 - 4491	100%
	3485 - 4060	3737 - 4232	3989 - 4405	4240 - 4577	4492 - 4749	95%
	4061 - 4636	4233 - 4728	4406 - 4821	4578 - 4914	4750 - 5006	85%
	ABOVE 4636	ABOVE 4728	ABOVE 4821	ABOVE 4914	ABOVE 5006	0%

Number in Household	17	18	19	20		DSS %
Monthly Household Income	0 - 4743	0 - 4994	0 - 5246	0 - 5498		100%
	4744 - 4921	4995 - 5093	5247 - 5266			95%
	4922 - 5099	5094 - 5192	5267 - 5285			85%
	ABOVE 5099	ABOVE 5192	ABOVE 5285			0%

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445(December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:

Gwendolyn P. Hamilton  
Secretary

0202#056

# DECLARATION OF EMERGENCY

## Department of Social Services Office of Family Support

Substance Abuse Treatment Program  
(LAC 67:III.1291 and 5391)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953.B, to adopt §1291 in the Family Independence Temporary Assistance Program (FITAP) and §5391 in the Kinship Care Subsidy Program (KCSP).

These regulations are implemented pursuant to the Temporary Assistance for Needy Families (TANF) Initiatives provided for in Act 12 of the 2001 Regular Session of the Louisiana Legislature.

This Emergency Rule is effective January 26, 2002, and will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule of September 28, 2001, since it is effective for 120 days and will expire before the final rule takes effect. (The final rule will be published in June 2002.)

Whereas it has been shown that providing substance abuse treatment to drug and/or alcohol-dependent individuals can lead to more responsible behavior which contributes to educational training and job preparation and promotes self-sufficiency, the agency proposes to continue the necessary funding for payment for the cost of substance abuse screening, assessment, testing, and non-medical treatment of KCSP and FITAP recipients and certain post-KCSP and FITAP recipients. Funding for these services was previously provided for by the Department of Health and Hospitals, Office for Addictive Disorders. Medical services provided during treatment will continue to be paid for by the Department of Health and Hospitals, Office for Addictive Disorders.

Authorization for emergency action is also contained in Act 12 of the 2001 Regular Session of the Louisiana Legislature.

### Title 67

### SOCIAL SERVICES

#### Part III. Office of Family Support

#### Subpart 2. Family Independence Temporary Assistance Program (FITAP)

#### Chapter 12. Application, Eligibility, and Furnishing Assistance

#### Subchapter D. Special Initiatives

#### §1291. Substance Abuse Treatment Program

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Office for Addictive Disorders (OAD) wherein OFS shall fund the cost of substance abuse screening and testing and the non-medical treatment of FITAP recipients as well as certain post-FITAP recipients.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by providing needy families with substance abuse treatment so that they may become self-sufficient in order to promote job preparation, work, and marriage.

C. Eligibility for services is limited to needy families, specifically, family members who receive FITAP benefits. A

needy family member who loses eligibility for FITAP benefits for any reason shall continue to be eligible for these services for the one-year period following the loss of FITAP benefits.

D. Services are considered non-assistance by the agency.

E. A pilot project will be conducted in the following parish offices: Orleans (Uptown District), Jefferson (West Bank), East Baton Rouge (North District), Terrebonne, St. Landry, Calcasieu, Rapides, Caddo, Ouachita, and Tangipahoa. OAD will assume responsibility for the screening and referral process provided below.

1. Compliance. All adult recipients of FITAP must be free from the use of or dependency on illegal drugs or abuse of or dependency on alcohol. All applicants for and recipients of FITAP benefits, age 18 and over, must satisfactorily comply with the requirements of the substance abuse screening, testing, education and rehabilitation process. An illegal drug is a controlled substance as defined in R.S. 40:961, Controlled Dangerous Substance, et seq..

2. Screening and Referral Process. All adult applicants for and recipients of FITAP will be screened for the use of or dependency on illegal drugs or abuse of or dependency on alcohol, at initial application and redetermination of eligibility using a standardized substance abuse screening test approved by the Department of Health and Hospitals, Office for Addictive Disorder (OAD).

a. When the screening process indicates that there is reason to suspect that a recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, or when there is other evidence that a recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, the recipient will be referred to OAD to undergo appropriate substance abuse assessment which may include urine testing. The referral will include a copy of the screening form, a copy of the Release of Information Form, and a photograph of the individual for identification purposes.

b. Additionally, if at any time OFS has reasonable cause to suspect that a recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, based on direct observation or if OFS judges to have reliable information of use or dependency on illegal drugs or abuse or dependency on alcohol received from a reliable source, the caseworker will refer the recipient to OAD to undergo appropriate substance abuse assessment which may include urine testing. All such referrals will require prior approval by the supervisor of the caseworker.

c. OAD will advise OFS of the results of the formal assessment. If the formal assessment determines that the recipient is not using or dependent on illegal drugs and not abusing or dependent on alcohol, no further action will be taken unless subsequent screening or other evidence indicates a reasonable suspicion of substance abuse. If the formal assessment determines that the recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, OAD will determine the extent of the problem and recommend the most appropriate and cost effective method of education and rehabilitation. The education or rehabilitation plan will be provided by OAD or by a contract provider and may include additional testing and monitoring. The OAD assessment will include a determination of the recipient's ability to participate in activities outside of the rehabilitation program.

3. Child care and transportation costs required for participation in the substance abuse screening, testing, education, and rehabilitation program will be paid by the Office of Family Support.

4. If residential treatment is recommended by OAD and the recipient is unable to arrange for the temporary care of dependent children, OFS and/or OAD will coordinate with the Office of Community Services to arrange for the care of such children.

5. Failure to Cooperate. Failure or refusal of a recipient to participate in substance abuse screening, testing, or participation in the education and rehabilitation program, without good cause, will result in the following.

a. The recipient's needs will be removed from the FITAP cash benefits for three months. Eligibility of the other family members will continue during this three-month period.

b. If the recipient cooperates during this three-month period, the recipient will regain eligibility for cash benefits effective the fourth month.

c. If the recipient does not cooperate during this three-month period, the FITAP cash case for the entire family will be closed effective the fourth month and will remain closed until the individual cooperates.

d. A subsequent failure to cooperate will result in case closure until the recipient cooperates. Cooperation is defined as participating in the component in which the recipient previously failed to cooperate. This includes substance abuse screening, testing, or satisfactory participation for two weeks in an education and rehabilitation program.

6. If after completion of education and rehabilitation, the recipient is subsequently determined to use or be dependent on illegal drugs or abuse or be dependent on alcohol, the recipient will be ineligible for FITAP cash benefits until such time that OAD determines that the individual has successfully completed the recommended education and rehabilitation program and is substance abuse free. The eligibility of other family members will not be affected as long as the individual participates in the education and rehabilitation program.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

**Subpart 13. Kinship Care Subsidy Program (KCSP)  
Chapter 53. Application, Eligibility, and Furnishing Assistance**

**Subchapter D. Special Initiatives**

**§5391. Substance Abuse Treatment Program**

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Office for Addictive Disorders (OAD) wherein OFS shall fund the cost of substance abuse screening and testing and the non-medical treatment of KCSP recipients as well as certain post-KCSP recipients.

B. These services meet the TANF goal to end the dependence of needy families on government benefits by providing them with substance abuse treatment so that they may become self-sufficient in order to promote job preparation, work, and marriage.

C. Eligibility for services is limited to needy families, specifically, family members who receive KCSP benefits. A needy family member who loses eligibility for KCSP benefits for any reason shall continue to be eligible for these services for the one-year period following the loss of KCSP benefits.

D. Services are considered non-assistance by the agency.

E. A pilot project will be conducted in the following parish offices: Orleans (Uptown District), Jefferson (West Bank), East Baton Rouge (North District), Terrebonne, St. Landry, Calcasieu, Rapides, Caddo, Ouachita, and Tangipahoa. OAD will assume responsibility for the screening and referral process provided below:

1. Compliance. All recipients of KCSP benefits, age 18 and over, must satisfactorily comply with the requirements of the substance abuse screening, testing, education, and rehabilitation process.

2. Screening and Referral Process. All applicants for and recipients of KCSP age 18 and over will be screened for the use of or dependency on illegal drugs or abuse of or dependency on alcohol, at initial application and redetermination of eligibility using a standardized substance abuse screening test approved by the Department of Health and Hospitals, Office for Addictive Disorders (OAD). An illegal drug is a controlled substance as defined in R.S. 40:961, Controlled Dangerous Substance, et seq.

a. When the screening process indicates that there is a reason to suspect that a recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, or when there is other evidence that a recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, the recipient will be referred to OAD to undergo appropriate substance abuse assessment which may include urine testing. The referral will include a copy of the screening form, a copy of the Release of Information Form, and a photograph of the individual for identification purposes.

b. Additionally, if at any time OFS has reasonable cause to suspect that a recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, based on direct observation or if OFS judges to have reliable information of use or dependency on illegal drugs or abuse of or dependency on alcohol, received from a reliable source, the caseworker will refer the recipient to OAD to undergo appropriate substance abuse assessment which may include urine testing. All such referrals will require prior approval by the supervisor of the caseworker.

c. OAD will advise OFS of the results of the formal assessment. If the formal assessment determines that the recipient is not using or dependent on illegal drugs or not abusing or dependent on alcohol, no further action will be taken unless subsequent screening or other evidence indicates a reasonable suspicion of substance abuse. If the formal assessment determines that the recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, OAD will determine the extent of the problem and recommend the most appropriate and cost-effective method of education and rehabilitation. The education or rehabilitation plan will be provided by OAD or by a contract provider and may include additional testing and monitoring. The OAD assessment will include a determination of the recipient's ability to participate in activities outside of the rehabilitation program.



3. If inpatient treatment is recommended by OAD and the recipient is unable to arrange for the temporary care of dependent children, OFS and/or OAD will coordinate with the Office of Community Services to arrange for the care of such children.

4. Failure to Cooperate. Failure or refusal of a recipient to participate in substance abuse screening, testing, or participation in the education and rehabilitation program, without good cause, will result in ineligibility of the recipient until he/she cooperates. Cooperation is defined as participating in the component in which the recipient previously failed to cooperate. This includes substance abuse screening, substance abuse testing, or satisfactory participation for two weeks in an education and rehabilitation program.

5. If after completion of education and rehabilitation, the recipient is subsequently determined to use or be dependent on illegal drugs or abuse or be dependent on alcohol, the recipient will be ineligible for KCSP benefits until such time that OAD determines that the individual has successfully completed the recommended education and rehabilitation program and is substance abuse free.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

Gwendolyn P. Hamilton  
Secretary

0202#010

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

Citizenship and Alien Eligibility  
(LAC 67:III.1223, 1931, 1932, and 5323)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953.B, to amend §1223 in the Family Independence Temporary Assistance Program (FITAP), §§1931 and 1932 in the Food Stamp Program, and §5323 in the Kinship Care Subsidy Program (KCSP). This Emergency Rule is effective February 5, 2002, and will remain in effect for a period of 120 days.

These changes are corrections being made at the direction of the U.S. Department of Health and Human Services, Administration for Children and Families, following a review of the FITAP State Plan. Since federal regulations regarding citizenship and alien eligibility apply to the Kinship Care Subsidy and Food Stamp Programs, review of LAC regulations and program policy revealed that corrections were also needed regarding food stamps and KCSP. Whereas, these errors or omissions may impact eligibility and could result in federal penalties and sanctions against the state, an Emergency Rule is necessary to effect these corrections.

## Title 67 SOCIAL SERVICES

### Part III. Office of Family Support

#### Subpart 2. Family Independence Temporary Assistance Program (FITAP)

#### Chapter 12. Application, Eligibility, and Furnishing Assistance

#### Subchapter B. Conditions of Eligibility

#### §1223. Citizenship

A. Each FITAP recipient must be a United States Citizen, a non-citizen national, or a qualified alien. A non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. A qualified alien is:

1. - 4. ...

5. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of Division C of Public Law 104-208);

6. - 8.b....

c. cancellation of removal under §1229b of the INA (as in effect prior to April 1, 1997); or

d. ...

e. cancellation of removal pursuant to §1229b(b)(2) of the INA.

9. an alien child of a battered parent or the alien parent of a battered child as described in §1223.A.8.; or

10. an alien who is a victim of a severe form of trafficking in persons.

B. Time-Limited Benefits. A qualified alien who enters the United States on or after August 22, 1996, is ineligible for five years from the date of entry into the United States unless:

1. - 2. ...

3. the alien's deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by §305(a) of Division C of Public Law 104-208);

4. ...

5. the alien is an *Amerasian* immigrant admitted pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 as amended;

6. - 7. ...

8. the alien is a victim of a severe form of trafficking in persons.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B., P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2448 (December 1999), amended LR 26:1342 (June 2000), LR 27:2263 (December 2001), LR 28:

**Subpart 3. Food Stamps**

**Chapter 19. Certification of Eligible Households**

**Subchapter D. Citizenship and Alien Status**

**§1931. Qualified Aliens**

A. In addition to U.S. citizens, the following qualified aliens are eligible for benefits:

1. - 4. ...

5. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of Division C of Public Law 104-208);

6. - 8.b....

c. cancellation of removal under §1229b of the INA (as in effect prior to April 1, 1997); or

d. ...

e. cancellation of removal pursuant to §1229b(b)(2) of the INA.

9. an alien child of a battered parent or the alien parent of a battered child as described in §1931.A.8.; or,

10. an alien who is the victim of a severe form of trafficking in persons.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 104-208, P.L. 105-33, P.L. 105-185, and P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 7:265 (May 1981), amended by the Department of Social Services, Office of Family Support, LR 22:286 (April 1996), LR 25:710 (April 1999), LR 28:

**§1932. Time Limitations for Certain Aliens**

A. The following qualified aliens are eligible for benefits for a period not to exceed seven years after they obtain designated alien status:

1. - 2. ...

3. an alien whose deportation is withheld under §243(h) of such ACT (as in effect immediately before effective date (April 1, 1997) of §307 of Division C of P.L. 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of division C of P.L. 104-208);

4. - 5. ...

6. an alien who is the victim of a severe form of trafficking in persons.

B.1. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 105-33, P.L. 105-185, and P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711(April 1999), amended LR 28:

**Subpart 13. Kinship Care Subsidy Program (KCSP)**

**Chapter 53. Application, Eligibility, and Furnishing Assistance**

**Subchapter B. Conditions of Eligibility**

**§5323. Citizenship**

A. Each KCSP recipient must be a United States Citizen, a non-citizen national, or a qualified alien. A non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. A qualified alien is:

1. - 4. ...

5. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of Division C of Public Law 104-208);

6. - 8.b....

c. cancellation of removal under §1229b of the INA (as in effect prior to April 1, 1997); or

d. ...

e. cancellation of removal pursuant to §1229b(b)(2) of the INA.

9. an alien child of a battered parent or the alien parent of a battered child as described in §1223A.8.; or

10. an alien who is a victim of a severe form of trafficking in persons.

B. Time-Limited Benefits. A qualified alien who enters the United States on or after August 22, 1996, is ineligible for five years from the date of entry into the United States unless:

1. - 2. ...

3. the alien's deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by §305(a) of Division C of Public Law 104-208);

4. ...

5. the alien is an *Amerasian* immigrant admitted pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 as amended;

6. - 7. ...

8. the alien is a victim of a severe form of trafficking in persons.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:352 (February 2000), amended LR 27:2264 (December 2001), LR 28:

Gwendolyn P. Hamilton  
Secretary

0202#006

**DECLARATION OF EMERGENCY**

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

Family Independence Temporary Assistance Program (FITAP) (LAC 67:902, 1207,2902, 5203, 5305, and 5407)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953.B, to amend §§902 and 1207 in the Family Independence Temporary Assistance Program (FITAP); §2902 in the Family Independence Work Program (FIND Work); §5203 in the Wrap-Around Child Care Program; §5305 in the Kinship Care Subsidy Program (KCSP); and §5407 in the Teen Pregnancy Prevention Program. This emergency rule is effective February 5, 2002, and will remain in effect for a period of 120 days.

These changes are corrections being made at the direction of the U.S. Department of Health and Human Services, Administration for Children and Families, following a review of the State Plan for these programs, all of which are funded by the Temporary Assistance for Needy Families (TANF) block grant to Louisiana. Whereas, these errors or omissions may impact eligibility and could result in federal penalties and sanctions against the state, an emergency rule is necessary to effect these corrections.

Although the agency adopted its state plan as it existed on October 1, 1996, in order to begin the process of welfare reform, the agency failed to elect a date under the federal grandfather provision. Therefore, the state plan adoption date is being corrected for FITAP and FIND Work.

Federal review found that language at §§1207 and 5305 failed to address a client's right to a fair hearing. Therefore, the text is being expanded.

The review also found that language at §5203 in the Wrap-Around Child Care Program did not conform with the Federal TANF statute. This language is being corrected.

The review noted that the Teen Pregnancy Prevention Program does not address the problem of statutory rape. This language is being added to §5407.

#### **Title 67**

### **SOCIAL SERVICES**

#### **Part III. Office of Family Support**

#### **Subpart 2. Family Independence Temporary Assistance Program (FITAP)**

#### **Chapter 9. Administration**

#### **§902. State Plan**

A. The Title IV-A State Plan as it existed on August 21, 1996, is hereby adopted to the extent that its provisions are not in conflict with any emergency or normal rules adopted or implemented on or after August 21, 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474, R.S. 46:233 and P.L. 104-193.

HISTORICAL NOTE; Promulgated by the Department of Social Services, Office of Family Support, LR 23:448 (April 1997), amended LR 28:

#### **Chapter 12. Application, Eligibility, and Furnishing Assistance**

#### **Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance**

#### **§1207. Certification Period and Reapplication**

A. Certification periods of a set duration will be assigned. In order to continue to receive benefits, the household must timely reapply and be determined eligible. In the month preceding the final month of certification, a notice of expiration and Application for Continued Assistance will be provided to the household. The notice shall inform the household that failure to timely reapply will result in closure and include the right to a fair hearing. If the payee fails, without good cause, to keep a scheduled appointment, the case will be closed without further notification. Also, if during the application process, a change is reported which results in a determination of ineligibility or a reduction in benefits, this change will be made effective the following month.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2447 (December 1999), amended LR 28:

#### **Subpart 5. Family Independence Work Program (FIND Work)**

#### **Chapter 29. Organization**

#### **Subchapter A. Designation and Authority of State Agency**

#### **§2902. State Plan**

A. The Title IV-F and IV-A/F State Plan as it existed on August 21, 1996, is hereby adopted to the extent that its provisions are not in conflict with any emergency or normal rules adopted or implemented on or after August 21, 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474, R.S. 46:233 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:450 (April 1997), amended LR 28:

#### **Subpart 12. Child Care Assistance**

#### **Chapter 52. Wrap-Around Child Care Program**

#### **§5203. Conditions of Eligibility**

A. - D. ...

E. The household must provide the information and verification necessary for determining eligibility and payment amount. Required verification includes:

1. proof of social security numbers, that is, each applicant for, or recipient of, Wrap-Around Child Care is required to furnish a Social Security number or to apply for a Social Security number if such a number has not been issued or is not known;

E.2. - G ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:429 (March 2001), amended LR 27:1560 (September 2001), amended LR 28:

#### **Subpart 13. Kinship Care Subsidy Program (KCSP)**

#### **Chapter 53. Application, Eligibility, and Furnishing Assistance**

#### **Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance**

#### **§5305. Certification Period and Reapplication**

A. Certification periods of a set duration will be assigned. In order to continue to receive benefits, the household must timely reapply and be determined eligible. In the month preceding the final month of certification, a notice of expiration and Application for Continued Assistance will be provided to the household. The notice shall inform the household that failure to timely reapply will result in closure and include the right to a fair hearing. If the payee fails, without good cause, to keep a scheduled appointment, the case will be closed without further notification. Also, if during the re-application process, a change is reported which results in a determination of ineligibility the case will be closed.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:351 (February 2000), amended LR 28:

**Subpart 14. Teen Pregnancy Prevention**  
**Chapter 54. Teen Pregnancy Prevention Program**  
**§5407. Program Activities**

A. The following program activities shall be used to coordinate the teen-oriented programs in Louisiana. These activities allow for expanding, redeveloping, and refining of these programs to ensure that the goals and objectives will be met:

1. - 7. ...

8. outreach and education on the problems of statutory rape directed towards law enforcement, education, and counseling services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:

Gwendolyn P. Hamilton  
Secretary

0202#005

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries**  
**Wildlife and Fisheries Commission**

**2002 Oyster Season Extension**  
**CBay Gardene**

In accordance with emergency provisions of the Administrative Procedure Act, R.S. 49:953.B and 49:967, and in accordance with R.S. 56:433.B.(1), which authorizes the Wildlife and Fisheries Commission to extend the taking of oysters on natural reefs by setting the last day of the season to be no later than May 15, notice is hereby given that the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission declares that the oyster season in the portion of the public oyster seed reservation in Bay Gardene as described below shall be extended and shall close one-half hour after sunset May 15, 2002.

Beginning at the western end of Bayou Lost at latitude 29E 36' 03.9" N and longitude 89E 37' 49.9" W, thence in an easterly direction along the northern shoreline of Bayou Lost to the eastern most point at Black Bay at latitude 29E 36' 00.8" N and longitude 89E 36' 58.7" W and continuing ESE to the easterly most point of the island which borders Black Bay at latitude 29E 35' 49.2" N and longitude 89E 36' 30.7 W; then SSE to the most southeasterly point of an island (bordering Bay Crabe) at latitude 29E 34' 56.5" N, longitude 89E 36' 06.5" W; then WSW to a point along the southern shore of Bay Gardene at latitude 29E 34' 19.7" N, longitude 89E 37' 17.3" W; and continuing WSW to the south shore of Triple Pass at latitude 29E 33' 56.3" N, longitude 89E 38' 42.5" W; thence northerly across Triple Pass to 29E 34' 15.8" N, longitude 89E 38' 42.7" W; and continuing NNW to the northern most part of an island at latitude 29E 35' 12.9" N, longitude 89E 39' 04.6" W; then NE to a point near Pintail Point and bordering Bay la Fourche at latitude 29E 35' 45.6" N, longitude 89E 38' 15.0" W; then east to a point in northern Bay Gardene at latitude 29E 35' 47.5" N, longitude 89E 37' 44.2" W; and continuing northerly back to the point on the

western end of Bayou Lost at latitude 29E 36' 03.9" N, longitude 89E 37' 49.9" W.

Thomas M. Gattle, Jr.  
Chairman

0202#045

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries**  
**Wildlife and Fisheries Commission**

**2002 Turkey Hunting Seasons**  
**CTensas National**  
**Wildlife Refuge**

In accordance with the emergency provisions of R.S. 49:953.B and 967.D of the Administrative Procedure Act, and under the authority of R. S. 56:115, the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopts the following Declaration of Emergency amending the 2002 Turkey Hunting Seasons.

**Federal Lands Turkey Hunting Schedule**

Kisatchie National Forest (KNF) turkey hunting schedule: Caney Ranger District, March 23-April 7; all remaining KNF lands, March 23-April 14 (including Catahoula and Red Dirt National Wildlife Management Preserves).

Indian Bayou Area (U.S. Army Corps of Engineers), turkey hunting schedule: March 23B31, lottery hunt only on March 23-24 and March 25-27. Contact USCOE at 337-585-0856 for further information.

National Wildlife Refuges: Bogue Chitto NWR, March 23BApril 21; Lake Ophelia NWR, March 23-25 (lottery only), March 30BApril 1 (lottery only), April 67; Tensas NWR, March 16-17 (youth lottery only), March 23BApril 21. Contact the U.S. Fish and Wildlife Service for information regarding NWR hunts.

A Declaration of Emergency is necessary because the youth turkey hunt on Tensas National Wildlife Refuge was not included in the 2002 Turkey Hunting Regulations, and the proposed date is prior to the opening of the regular turkey hunting season for Tensas National Wildlife Refuge.

Thomas M. Gattle, Jr.  
Chairman

0202#043

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries**  
**Wildlife and Fisheries Commission**

**Shrimp Closure**  
**CTerritorial Waters**

In accordance with the emergency provisions of R.S. 49:953.B and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close the State's offshore waters to shrimping, the Wildlife and Fisheries Commission hereby orders a closure to shrimping in that portion of the State's Territorial Waters, south of the

Inside/Outside Shrimp Line as described in R.S. 56:495, from the eastern shore of Freshwater Bayou to the U.S. Coast Guard navigational light off the northwest shore of Caillou Boca at latitude 29E 03' 10" N and longitude 90E 50' 27" W. This closure is effective at 6 a.m., Monday, February 11, 2002. The Commission also hereby orders that that portion of the State's Territorial Waters, south of the Inside/Outside Shrimp Line as described in R.S. 56:495, from the U.S. Coast Guard navigational light off the northwest shore of Caillou Boca at latitude 29E 03' 10" N and longitude 90E 50' 27" W to the Atchafalaya River Ship Channel at Eugene Island as delineated by the Channel Buoy Line, shall reopen to shrimping at 6 a.m. on Monday, April 15, 2002.

R.S. 56:498 provides that the minimum legal count on white shrimp is 100 (whole shrimp) count per pound after the third Monday in December. Current biological sampling conducted by the Department of Wildlife and Fisheries has indicated that white shrimp in this portion of the State's outside waters do not average 100 count minimum legal size and additional small white shrimp are expected to recruit to

these waters. This action is being taken to protect these small white shrimp and allow them the opportunity to grow to a more valuable size.

The Wildlife and Fisheries Commission authorizes the Secretary of the Department of Wildlife and Fisheries to close to shrimping, if necessary to protect small white shrimp, any part of the remaining Territorial Waters, if biological and technical data indicates the need to do so, and to reopen any area closed to shrimping when the closure is no longer necessary; and hereby authorizes the Secretary of the Department of Wildlife and Fisheries to open special seasons for the harvest of white shrimp in any portion of the state's inshore waters where such a season would not detrimentally impact small brown shrimp.

Thomas M. Gattle, Jr.  
Chairman

0202#044

# Rules

## RULE

### Department of Agriculture and Forestry Office of Forestry

Forestry Productivity Program  
(LAC 7:XXXIX.Chapter 13)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Office of Forestry, has amended rules and regulations regarding the Louisiana Forest Productivity Program.

This Rule establishes increased maximum cost-share rates for two practices related to reforestation. These increases will allow the department to comply with the intent of the legislation and reimburse landowners with a full 50 percent of the cost of these practices. This Rule also increases the initial implementation period for approved practices from 18 months to 24 months, and eliminates the procedure for requesting an additional 6-month extension. This change will reduce the paperwork and confusion among program participants, and assure that landowners have two full tree planting seasons to complete their approved practices.

These rules comply with and are enabled by R.S. 3:4412 and R.S. 3:4413.

#### Title 7

#### AGRICULTURE AND ANIMALS

#### Part XXXIX. Forestry

#### Chapter 13. Forestry Productivity Program

#### §1307. Extent of State Participation

A. Financial assistance by the state to any one landowner participating in this program shall be limited to a total value of \$10,000 during a fiscal year.

B. The state's participation under any cooperative agreement shall be limited to either or both of the following types of assistance:

1. a direct grant, for the purpose of assisting the landowner in implementing an approved forestry practice authorized by a cooperative agreement through the use of the landowner's resources or through the landowner's contacts with private firms; or

2. utilization of the state's personnel, equipment, or materials to implement an approved forestry practice authorized by a cooperative agreement, if private sector services are unavailable.

C. A direct grant shall not exceed 50 percent of the cost of implementing the cooperative agreement or the maximum cost share rates established by these regulations, whichever is less. In the event that state personnel, equipment or materials are utilized to implement an approved forestry practice the landowner shall be invoiced by the department for the cost of implementing the forestry practice. The landowner shall promptly pay such invoice and may subsequently submit the paid invoice for reimbursement under this program and these rules and regulations.

D. The maximum cost share rates are established as follows:

Maximum Cost-Share Rates 50 Percent of the Cost Not to Exceed the Following Rates		
<b>FPP1</b>	<b>Artificial Regeneration Component</b>	
<b>Code</b>	<b>Tree Planting</b>	<b>Maximum C/S Rate</b>
01	Pine (loblolly or slash, planting and seedling cost)	\$40/acre
02	Hardwood (planting and seedling cost)	\$70/acre
03	Labor Only (pine or hardwood)	\$23/acre
04	Longleaf Pine (planting and seedling cost)	\$65/acre
<b>Direct Seeding</b>		
05	Pine (seed and labor cost)	\$12/acre
06	Hardwood (seed and labor cost)	\$28/acre
<b>Site Preparation</b>		
11	Light (discing, mowing, or sub-soiling)	\$10/acre
12	Burn Only (cut-over areas or agricultural lands)	\$8/acre
13	Chemical and Burn (aerial, ground, or injection)	\$60/acre
14	Mechanical and Burn	\$75/acre
15	Post -site Preparation (aerial, ground, or injection)	\$45/acre
<b>FPP2</b>	<b>Site Preparation for Natural Regeneration</b>	
21	Burning Only	\$8/acre
22	Chemical or Mechanical	\$45/acre
23	Chemical and Burning	\$60/acre
<b>FPP3</b>	<b>Control of Competing Vegetation</b>	
31	Chemical Release (aerial, ground, or injection)	\$45/acre
32	Precommercial Thinning (mechanical)	\$45/acre
33	Burning Only (longleaf pine)	\$4/acre

E. The commissioner, with the advice of the State Forester's Forestry Planning Committee, shall review annually the cost share rates established in this Section and determine if any of the rates require adjustment.

F. The state shall not provide reimbursement under this program for any forestry practice implemented by a landowner unless a cooperative agreement is on file with the department prior to implementation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:4412 and R.S. 3:4413.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:1679 (September 1998), amended by the Office of Forestry, LR 28:267 (February 2002).

#### §1315. Forestry Practice Implementation Period

A. Each landowner shall have 24 months to complete the forestry practice or practices authorized by the cooperative agreement.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:4413 and R.S. 3:4415.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:1680

(September 1998), amended by the Office of Forestry, LR 28:267 (February 2002).

Bob Odom  
Commissioner

0202#064

**RULE**

**Board of Elementary and Secondary Education**

BESE Standing Committee Restructuring  
and Study Group for Board Development  
(LAC 28:I.103)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended the standing and special committees of the board. The committees and charges have been revised to reflect adjustments made in order to better address critical initiatives.

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education**

**Chapter 1. Organization**

**§103. Board Committees**

A. ...

B. Standing committees composed of not less than three members of the Board and appointed by the President are:

1. 8(g) Committee. Charge: to allocate funds to any or all constitutional categories to enhance elementary and secondary education; to consider all administrative matters of the 8(g) program; and to establish expectations of academic excellence and require accountability of performance.

2. Accountability and Assessment Committee. Charge: to consider all matters relating to student, school, and district accountability; to consider all student assessment issues; to determine necessary student and school level interventions based on results of established assessment; to coordinate resources for school improvement; to monitor the performance of student and schools; to align the school approval process with the accountability system; and to provide for remediation related to high stakes testing.

3. Board Administration/Relations Committee. Charge: to improve the credibility and visibility of the Board and communicate the problems and needs of education through activities of the Board and Superintendent, Department, and Regional Service Centers; to consider routine administrative matters of the Board; to administer the Superintendent's evaluation; to receive updates on the benefits of the Department's reorganization; to consider program and personnel issues impacting the state Special Schools; to develop policies and procedures for charter school approval and implementation; and to administer loan fund activities of charter schools.

4. Finance/Audit Review Committee. Charge: to provide for a budget process; to annually develop and adopt a formula to equitably allocate education funds to parish and city school systems; to formally review operational plans developed by BESE, SDE, and Special Schools prior to submission to the Office of Planning and Budget; to approve grant allocations; to grant budget approval and any revisions

for the SDE, BESE, Special Schools, and local districts; to review and approve all contracts and leases with agencies under its jurisdiction; to review and address SDE, BESE, and Special Schools audit reports and plans to correct irregularities; to consider payment of invoices submitted for approval; and to serve as liaison with the LCTCS Board to oversee the administration of Carl Perkins funds.

5. Legal/Due Process Committee. Charge: to consider legal issues and matters of litigation; to serve as an Administrative court of last resort prior to adjudication in the judicial court system (usually revocation/reinstatement of teaching certificates, employee grievances involving property rights, and all due process matters); and to approve nonpublic schools in compliance with *Brumfield v. Dodd*.

6. Legislative/Policy Oversight Committee. Charge: to study the impact of current and proposed state and federal legislation; to identify the Board's role in new legislation; to develop position statements and/or white papers on education related legislation pending before the Legislature and to develop committee/floor strategies for proposed legislation; to draft legislative education reform recommendations; and to receive reports/studies on program results and/or evaluations of grant allocations to local systems.

7. Quality Educators Committee. Charge: to make recommendations regarding teacher certification standards, including course studies and teacher licensing tests; to consider waivers and/or appeals to standards in special circumstances; to provide for teacher evaluation and assistance, including mentoring; to provide for professional development and leadership development designed to improve teaching and learning; to review the impact of professional development activities on teaching and learning; to coordinate activities of the Technology Center; and to coordinate partnerships between secondary and post-secondary institutions.

8. Student and School Standards/Instruction Committee. Charge: to consider all matters relative to school and student standards; to set standards for high school graduation options; to monitor technical assistance in local curriculum development to align with the State content standards; to monitor curriculum based initiatives; to provide for the education needs of special populations; to provide for adequate textbooks and materials of instruction; to consider matters related to secondary career training programs, such as JTPA; to monitor Department activities related to secondary vocational education; to build an articulated framework from 916; to consider school support matters such as nutrition and transportation services, parental involvement, community based learning, school safety, migrant education, child welfare and attendance; to make recommendations for community support in the area of adult/parental education and training; and to organize issues-related information to guide Board decisions.

C. Special Committees. The Board may establish short-term committees with a specified focus area to study selected strategic initiatives. Each special committee shall be terminated when the purpose for which it was created has been considered and finally acted on by the Board.

1. Special Early Childhood Committee. Charge: to consider all matters pertaining to Pre-K - Grade 3 instruction, including early childhood instruction,

kindergarten screening, early math, and literacy initiatives; and to receive results of reading and math assessments.

2. Strategic Planning Study Group. Charge: to provide opportunity for dialogue before deliberation on pre-selected topics/initiatives in a more informal setting; to provide for strategic planning; and to review goals, implementation, and appropriate performance indicators for education initiatives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3.D and R.S. 17:6.A(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 16:297 (April 1990), amended LR 24:1496 (August 1998), LR 27:283 (March 2001), LR 28:268 (February 2002).

Weegie Peabody  
Executive Director

0202#025

**RULE**

**Department of Education  
Board of Elementary and Secondary Education**

Bulletin 741C Louisiana Handbook for School  
Administrators CBESE Test Security Policy  
(LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). Test scores from the Louisiana Educational Assessment Program are included in school and district accountability. Investigation of testing irregularities that may impact the test scores must be conducted at the same level of diligence in each district. In addition, student level data is now available to districts electronically through the LDE website. The security of data is critical. The BESE Test Security Policy was changed to clarify procedures for investigating testing irregularities, monitoring of test administration and security, the addition of investigation requirements for erasure analysis, and the security of electronic data.

**Title 28**

**EDUCATION**

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

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

A. Bulletin 741

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A.(10), (11), (15), R.S. 17:7(5), (7), (11); R.S. 17:10, 11; R.S. 17:22.(2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education, LR 26:635 (April 2000), LR 26:1260 (June, 2000), LR 26:1260-1261 (June 2000), LR 28:269 (February 2002).

**Board of Elementary and Secondary Education  
Test Security Policy**

The Board of Elementary and Secondary Education holds the test security policy to be of utmost importance and deems any violation of test security to be serious.

**Test Security**

1. Tests administered by or through the State Board of Elementary and Secondary Education shall include, but not be limited to:

- a. all criterion-referenced tests (CRTs) and norm-referenced tests (NRTs);
- b. all alternate assessments.

2. For purposes of this policy, school districts shall include local education agencies, Special School Districts, approved special schools such as the Louisiana School for the Visually Impaired and Louisiana School for the Deaf, laboratory schools, charter schools, Louisiana School for Math, Science and the Arts; and participating nonpublic/other schools that utilize tests administered through the State Board of Elementary and Secondary Education or the Louisiana Department of Education.

3. It shall be a violation of test security for any person to do any of the following:

- a. administer tests in a manner that is inconsistent with the administrative instructions provided by the Louisiana Department of Education (LDE) that would give examinees an unfair advantage or disadvantage;
- b. give examinees access to test questions prior to testing;
- c. examine any test item at any time (except for students during the test or test administrators while providing the accommodations "Tests Read Aloud" or "Communication Assistance" for students determined to be eligible for those accommodations);
- d. copy, reproduce, discuss, or use at any time in a manner inconsistent with test regulations all or part of any secure test booklet, answer document, or supplementary secure materials (e.g., writing prompts, science tasks);
- e. coach examinees in any manner during testing or alter or interfere with examinees' responses in any manner;
- f. provide answers to students in any manner during the test, including provision of cues, clues, hints, and/or actual answers in any formC written, printed, verbal, or nonverbal;

g. administer published parallel, previously administered, or current forms of any statewide assessment (e.g., Louisiana Educational Assessment Program for the 21st Century [LEAP 21], Graduation Exit Examination for the 21st Century [GEE 21], Graduation Exit Examination ["old" GEE], LEAP Alternate Assessment [LAA], or Forms K, L, M, and all new forms of The Iowa Tests) as a practice test or study guide;

h. fail to follow security regulations for distribution and return of secure test booklets, answer documents, supplementary secure materials (e.g., writing prompts, science tasks), as well as overages as directed; or fail to account for and secure test materials before, during, or after testing;



i. conduct testing in environments that differ from the usual classroom environment without prior written permission from the Louisiana Department of Education, Division of Student Standards and Assessments;

j. fail to report any testing irregularities to the District Test Coordinator (a "testing irregularity" is any incident in test handling or administration that leads to a question regarding the security of the test or the accuracy of the test data), who must report such incidents to the Division of Student Standards and Assessments;

k. participate in, direct, aid, counsel, assist in, encourage, or fail to report any of the acts prohibited in this section.

4. Each school district as described in this policy shall develop and adopt a district test security policy that is in compliance with the state's test security policy. A "Statement of Assurance" regarding the LEA's test security policy must be submitted annually to the Louisiana Department of Education, Division of Student Standards and Assessments. This statement must include the name of the individual designated by the district superintendent or institution to procure test materials. The policy shall provide:

a. for the security of the test materials during testing, including test booklets, answer documents, supplementary secure materials (e.g., writing prompts, science tasks), video tapes, and completed observation sheets;

b. for the storage of all test materials, except district and school test coordinator manuals and test administration manuals, in a predetermined, secure, locked area before, during, and after testing; all secure materials, including any parallel forms of a test, must be kept in locked storage at both the district and school levels; secure materials must never be left in open areas or unattended;

c. a description and record of professional development on test security, test administration, and security procedures for individual student test data provided for all individuals with access to test materials or individual student test data ("access" to test materials by school personnel means any contact with or handling the materials but does not include reviewing tests or analyzing test items, which are prohibited);

d. a list of personnel authorized to have access to the locked, secure storage area;

e. procedures for investigating any testing irregularities, including violations in test security, such as plagiarism and excessive wrong-to-right erasures identified through erasure analysis;

f. procedures for the investigation of employees accused of irregularities or improprieties in the administration of standardized tests, as required by the amended R.S. 17:81.6;

g. procedures for the investigation of any missing test booklets, answer documents, or supplementary secure materials (e.g., writing prompts, science tasks);

h. procedures for ensuring the security of individual student test data in electronic and paper formats.

5. Procedures for investigating missing secure materials, any testing irregularity (including cheating), and any employees accused of improprieties must, at a minimum, include the following.

a. The district test coordinator shall initiate the investigation upon the district's determination of an irregularity or breach of security or upon notification by the State Department of Education. The investigation shall be conducted by the district test coordinator and other central office staff as designated by the district superintendent.

b. The location of the predetermined, locked, secure area for storage of materials shall be examined, and the individuals with access to secure materials shall be identified.

c. Interviews regarding testing administration and security procedures shall be conducted with the principal, school test coordinator(s), test administrator(s), and proctor(s) at the identified schools. All individuals who had access to the test materials at any time must be interviewed.

d. Interviews shall be conducted with students in the identified classes regarding testing procedures, layout of the classroom, access to test materials before the test, and access to unauthorized materials during testing.

e. After completion of the investigation, the district shall provide a report of the investigation and a written plan of action to the state superintendent within 30 calendar days of the initiation of the investigation. At a minimum, the report shall include the nature of the situation, the time and place of occurrence, and the names of the persons involved in or witnesses to the occurrence. Officials from the Louisiana Department of Education are authorized to conduct additional investigations.

6. Test materials, including all test booklets, answer documents, and supplementary secure materials (e.g., writing prompts, science tasks) containing secure test questions, shall be kept secure and accounted for in accordance with the procedures specified in the test administration manuals and other communications provided by the Louisiana Department of Education. Secure test materials include test booklets, answer documents, and any supplementary secure materials (e.g., writing prompts, science tasks). Procedures described in the test manuals shall include, but are not limited to, the following.

a. All test booklets, answer documents, and supplementary secure materials (e.g., writing prompts, science tasks) must be kept in a predetermined, secure, locked storage area prior to and after administration of any test; test administrators are to be given access to the tests and any supplementary secure materials only on the day the test is to be administered, and these are to be retrieved immediately after testing is completed for the day and stored in a locked, secure location each day of testing.

b. All test booklets, answer documents, and supplementary secure materials (e.g., writing prompts, science tasks) must be accounted for and written documentation kept by test administrators and proctors for each point at which test materials are distributed and returned.

c. Any discrepancies noted in the serial numbers of test booklets, answer documents, and any supplementary secure materials (e.g., writing prompts, science tasks), or the quantity received from contractors must be reported to the Division of Student Standards and Assessments (LDE) by the designated institutional or school district personnel prior to the administration of the test.

d. In the event that test booklets, answer documents, or supplementary secure materials (e.g., writing prompts, science tasks) are determined to be missing while in the possession of the institution or school district or in the event of any other testing irregularities or breaches of security, the designated institutional or school district personnel must immediately notify by telephone the Division of Student Standards and Assessments (LDE) and follow the detailed procedures for investigating and reporting specified in this policy.

7. Only personnel trained in test security and administration shall be allowed to have access to or administer any standardized tests.

8. Each district superintendent or institution must annually designate one individual in the district or institution as district test coordinator who is authorized to procure test materials that are utilized in testing programs administered by or through the State Board of Elementary and Secondary Education or the Louisiana Department of Education. The name of the individual designated must be provided in writing to the Division of Student Standards and Assessments (LDE) and included on the "Statement of Assurance."

9. Testing shall be conducted in class-sized groups. *Bulletin 741* (2.038.01-.02) states that K-3 classroom enrollment should be no more than 26 students, and in grades 4-12, no more than 33, "except in certain activity types of classes in which the teaching approach and the materials and equipment are appropriate for large groups." For grades K-8, the maximum class size for Health and Physical Education classes may be no more than 40. Class size for exceptional students is generally smaller (*Bulletin 741*, 2.038.05). Permission for testing in environments that differ from the usual classroom environment must be obtained in writing from the Louisiana Department of Education, Division of Student Standards and Assessments, at least 30 days prior to testing. If testing outside the usual classroom environment is approved by the Division of Student Standards and Assessments, the LEA must provide at least one proctor for every 30 students.

10. The State Superintendent of Education may disallow test results that may have been achieved in a manner that is in violation of test security.

11. The Louisiana Department of Education shall establish procedures to identify:

- a. improbable achievement of test score gains in consecutive years;
- b. situations in which collaboration between or among individuals may occur during the testing process;
- c. a verification of the number of all tests distributed and the number of tests returned;
- d. excessive wrong-to-right erasures for multiple-choice tests;
- e. any violation to written composition or open-ended responses that involves plagiarism;
- f. any other situation that may result in invalidation of test results.

12. In cases in which test results are not accepted because of a breach of test security or action by the Louisiana Department of Education, any programmatic, evaluative, or graduation criteria dependent upon the data shall be deemed not to have been met, but individuals will be allowed to retake the test at the next test administration.

13. Individuals shall adhere to all procedures specified in all manuals that govern mandated testing programs.

14. Any individual who knowingly engages in any activity during testing that results in invalidation of scores derived from the Louisiana Educational Assessment Program for the 21st Century (LEAP 21), Graduation Exit Examination for the 21st Century (GEE 21), or Graduation Exit Examination ("old" GEE) shall forfeit the test results but will be allowed to retake the test at the next test administration.

15. Anyone known to be involved in the presentation of forged, counterfeit, or altered identification for the purposes of obtaining admission to a test administration site for any test administered by or through the State Board of Elementary and Secondary Education or the Louisiana Department of Education shall have breached test security. Any individual who knowingly causes or allows the presentation of forged, counterfeit, or altered identification for the purpose of obtaining admission to any test administration site must forfeit all test scores but will be allowed to retake the test at the next test administration.

16. School districts must ensure that individual student test data are protected from unauthorized access and disclosure. District Test Coordinators and other authorized users of the LEAP Web Reporting System must ensure the security of passwords, any disks or CDs with downloaded individual student test data, and student-level test data open on a computer screen. District Test Coordinators are responsible for providing training regarding the security and confidentiality of individual student test data (in paper and electronic format) and of aggregated data of fewer than ten students.

17. Louisiana Department of Education staff will conduct site visits during testing to observe test administration procedures and to ensure that appropriate test security procedures are being followed. Schools with prior violations of test security or other testing irregularities will be identified for visits. Other schools will be randomly selected.

18. Any teachers or other school personnel who breach test security or allow breaches in test security shall be disciplined in accordance with the provisions of R.S. 17:416 et seq., R.S. 17:441 et seq., R.S. 17:81.6 et seq., policy and regulations adopted by the Board of Elementary and Secondary Education, and any and all laws that may be enacted by the Louisiana Legislature.

Weegie Peabody  
Executive Director

0202#023

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 741C Louisiana Handbook For School Administrators  
Policy for Louisiana's Public Education  
Accountability System (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). Act 478 of the 1997 Regular Legislative Session called for the development of an Accountability System for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The State's Accountability System is an evolving system with different components. The changes more clearly explain and refine the existing policy as follows:

- 1) the process to be used to evaluate any instance of irregularity or unusual data results reported for indicators used to calculate a school's SPS; and
- 2) clarification of the process to be used for allocating rewards based on the findings of the irregular or unusual data.

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education  
Chapter 9. Bulletins, Regulations, and State Plans  
Subchapter A. Bulletins and Regulations  
§901. School Approval Standards and Regulations**

Bulletin 741

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, 11; R.S. 17:22 (2), (6).

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education LR 26:635 (April, 2000); LR 26:1260 (June, 2000), LR 26:1260-1261 (June, 2000), LR 28:272 (February 2002).

**The Louisiana School and District  
Accountability System**

**Data Collection and Data Verification**

**2.006.04** A test score shall be entered for all eligible students within a given school. For any eligible student who does not take the test, including those who are absent, a score of "0" on the CRT and NRT shall be calculated in the school's SPS. (See Standard 2.006.18 for students participating in out-of-level testing.) To assist a school in dealing with absent students, the Louisiana Department of Education shall provide an extended testing period for test administration. The only exception to this policy is a student who was sick during the test and re-testing periods and who has formal medical documentation for that period.

The Districts and the LDE shall evaluate any instance of Irregularity or Unusual Data in the following respects:

<p>For Attendance and Dropout data:</p> <ul style="list-style-type: none"> <li>• The LDE shall identify a statistically valid sample of all schools included in the accountability system. All schools included in this sample shall be audited.</li> <li>• Additionally, the LDE shall audit all schools included in the accountability system that have an Irregularity or Unusual Data Result (UDR), as defined below. The LDE may have an outside team conduct the audit.</li> <li>• The findings of the audit shall be reported to the SBESE, the local district and local school. If the audit findings cannot be resolved, the Superintendent shall recommend to the SBESE, who shall approve the appropriate data to be used in the calculation of the School Performance Score.</li> </ul> <p>For NRT and CRT data:</p> <ul style="list-style-type: none"> <li>• If there is evidence of an Irregularity or UDR, the LEA shall be required to investigate using a process as determined by the LDE and approved by the SBESE. The LEA shall report the results of its investigation to the State Superintendent of Education.</li> <li>• If the State Superintendent of Education determines that the results of the investigation do not sufficiently explain the data, s/he shall designate a team to visit the school and conduct its own investigation.</li> <li>• If the gains are validated by the visit, the school will be designated a "pacesetter" school. If the gains cannot be validated, the State Superintendent of Education may initiate further action.</li> </ul> <p>Reported Irregularities:</p> <ul style="list-style-type: none"> <li>• The LDE will determine and the SBESE shall approve a process for the public to report possible Irregularities.</li> <li>• Anonymous complaints may be investigated.</li> <li>• All signed complaints shall be investigated.</li> </ul> <p>Allocation of Rewards (See Standard 2.006.08)</p> <ul style="list-style-type: none"> <li>• If Irregularities are resolved and the data is corrected before rewards are provided, then the rewards will be based upon the corrected data.</li> <li>• If the Irregularities are resolved and the data is corrected after rewards have been distributed, then the school shall be required to repay any rewards for which it was ineligible as determined by the audit findings or the SBESE will subtract the reward amount from future funds to be awarded to the district or from some other source.</li> </ul>
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An Unusual Data Result (UDR) shall be defined as any CRT, NRT, attendance or dropout data which exceeds a parameter, or a range of parameters, which shall be determined by the LDE and approved by the SBESE. An Irregularity shall be defined as any data which appears to contradict results which are otherwise expected; unrealistic information; or data generated as a result of defective data collection or processing.

**Rewards/Recognition**

**2.006.08** A school shall receive recognition and monetary awards (as appropriated by the Legislature) when it meets or surpasses its Growth Target and when it shows growth in the performance of students who are classified as high poverty and special education students. For Cycle 1 only, the SBESE shall determine distribution of rewards based on a school's SPS and on the amount of growth (at least 0.1 points) shown in the performance of students who are classified as high poverty.

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

Districts and the LDE shall evaluate any instance of Irregularity or Unusual Data (See Standard 2.006.04) in the following respects for determining the allocation of rewards:

- If Irregularities are resolved and the data is corrected before rewards are provided, then the rewards will be based upon the corrected data.
- If the Irregularities are resolved and the data is corrected after rewards have been distributed, then the school shall be required to repay any rewards for which it was ineligible as determined by the audit findings or the SBESE will subtract the reward amount from future funds to be awarded to the district or from some other source.

Weegie Peabody  
Executive Director

0202#026

## RULE

### Board of Elementary and Secondary Education

#### Bulletin 746C Louisiana Standards for State Certification of School Personnel C Full-Time/Part-Time Noncertified School Personnel

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This Rule extends until July 1, 2002, the interim emergency policy for hiring full-time/part-time noncertified school personnel. There is no change proposed in the content of the policy which allows school systems to employ noncertified teachers when there is no certified teacher available.

### Title 28 EDUCATION

#### Part I. Board of Elementary and Secondary Education

#### Chapter 9. Bulletins, Regulations, and State Plans

#### Subchapter A. Bulletins and Regulations

#### §903. Teacher Certification Standards and Regulations Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183 (April 1975), amended LR 1:311 (July 1975), LR 1:399 (September 1975), LR 1:435 (October 1975), LR 1:541 (December 1975), LR 26:459 (March 2000); LR 26:635-638 (April 2000), LR 26:638, 639 (April 2000), LR 28:273 (February 2002).

#### Interim Emergency Policy for Hiring Full-Time/Part-Time Noncertified School Personnel

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

- a signed affidavit by the local superintendent that the position could not be filled by a certified teacher,
- submission of names, educational background, subject matter and grade levels being taught as an addendum to the annual School Report.

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

1. hold a minimum of a baccalaureate degree from a regionally accredited institution;
2. take all appropriate areas of the PRAXIS/NTE at the earliest date that it is offered during the first year of employment and in all appropriate areas at least once each year during subsequent years of employment; and
3. earn six semester hours of college course work each year as indicated below.

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

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

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

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

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

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

1. Official transcripts showing a minimum of a baccalaureate degree from a regionally accredited institution.
2. Documentation that the teacher has been officially admitted to a teacher education program, if applicable.
3. An outline by the college or university of the course work required for certification, or an outline of courses to help achieve the appropriate PRAXIS/NTE scores for persons who have completed a teacher education program.
4. Official transcripts showing successful completion of the six semester hours as prescribed by the college or university since the last employment under this policy.

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

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

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

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

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

E. To be eligible for re-employment under this policy, a teacher who has not met the requirement of having earned six semester hours of college credit or who has not taken the PRAXIS/NTE must meet one or more of the following conditions:

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

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

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

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

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

This policy does not apply to university laboratory schools.

Note: This interim emergency policy will remain in effect until July 1, 2002. Revised 7/26/01

Weegie Peabody  
Executive Director

0202#022

## RULE

### Board of Elementary and Secondary Education

Bulletin 1934C Starting Points Preschool Regulations  
(LAC 28:XXI.Chapters 1, 3, and 5)

Editor's Note: Bulletin 1934 was promulgated as a rule in LR 19:1549 (December 1993), amended in LR 21:1220 (November 1995), LR 24:295 (February 1998), and LR 25:254 (February 1999) in uncodified format. The historical notes will reflect the first time this bulletin was printed in a codified format in the *Louisiana Register*.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 1934, *Starting Points*

*Preschool Regulations*, referenced in LAC 28:I.906.B. In July, 2001, the Department of Social Services changed the primary funding to the Starting Points Preschool Program. The funding was changed from the Child Care Block Grant to the Temporary Assistance to Needy Families (TANF) Block Grant. Because of this change in funding, the eligibility requirements for program participation also changed. These changes necessitate revisions in Bulletin 1934, *Starting Points Preschool Regulations*. Changes in the rule include deletion of a minimal co-pay by parents; change in eligibility requirements to include only that the student meet the requirements for free or reduced lunch; and deletion of all references to parental employment or attendance in a job training/educational program. This requires the repealing of text and adopting of new language in §303. §§305, 307, 309, 311, and 507 are also repealed. Other sections are being amended.

## Title 28

### EDUCATION

#### Part XXI. Bulletin 1934

#### Starting Points Preschool Regulations

#### Chapter 1. General Provisions

##### §101. Purpose

A. The Department of Social Services, lead agency for the Temporary Assistance to Needy Families Block Grant, has allocated a portion of these funds to the Louisiana Department of Education for program development. The purpose of this program is to assist low income families by providing quality early childhood programs.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:274 (February 2002).

##### §103. Program Philosophy

A. Local Starting Points Preschool Programs will adhere to the developmental philosophy as outlined by the National Association for the Education of Young Children. Developmentally appropriate practices have proven to be effective in early childhood education. Inherent in this philosophy is the provision of a child-centered program directed toward the development of cognitive, social, emotional, communication and motor skills in a manner and at a pace consistent with the needs and capabilities of the individual child.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:274 (February 2002).

#### Chapter 3. Eligibility

##### §301. Eligibility Criteria

A. In order to qualify for the Starting Points Preschool Program, participants must:

1. be one year younger than the age eligible for kindergarten;

2. meet the requirements of law for immunization and documentation required for regular school enrollment; and

3. qualify for free or reduced price meals pursuant to the federal child nutrition program.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:274 (February 2002).

**§303. Eligibility Verification**

A. School systems must maintain, at each program site, documentation of the student or his family's eligibility to receive free or reduced price meals pursuant to the federal child nutrition program.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:275 (February 2002).

**§305. Screening**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), repealed LR 28:275 (February 2002).

**§307. Income Verification**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), repealed LR 28:275 (February 2002).

**§309. Employment Verification**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), repealed LR 28:275 (February 2002).

**§311. Job Training/ Educational Program Verification**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), repealed LR 28:275 (February 2002).

**§313. Changes in Eligibility Requirements**

A. The parent(s) or guardian(s) must report any changes in their eligibility criteria within ten working days of the change.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:275 (February 2002).

**Chapter 5. Program Structure**

**§501. Class Size Limitation**

A. The class assignment of teachers and aides for the program shall be as follows.

Enrollment	Teacher	Aide
10-12	1	0
13-15	1	1/2 time
16-20	1	1

B. The class size may not exceed 20 students.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:275 (February 2002).

**§503. Teacher Qualifications**

A. Each classroom teacher must be certified in one of the following areas:

1. early childhood education;
2. nursery school education;
3. Kindergarten; or
4. early intervention.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:275 (February 2002).

**§505. Length of School Day and School Year**

A. The length of the school day and the school year shall follow the provision established in R.S. 17:154.1. The school day that systems operate shall be a full day with a minimum of 360 minutes of instructional time per day. Instructional days will be based upon the school calendar of each local school system/nonpublic school with a minimum of 177 days of instruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:154.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:275 (February 2002).

**§507. Program Location**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), repealed LR 28:275 (February 2002).

**§509. Health Requirements**

A. All children enrolled in the Starting Points Preschool Program will comply with the immunization requirements as established by the Department of Health and Hospitals. All local nonpublic schools/school systems will administer a vision and hearing screening test to each student.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:275 (February 2002).

**§511. Curriculum**

A. The curriculum for the Starting Points Preschool Program shall be developmentally appropriate and address all areas of development:

1. social;
2. emotional;
3. cognitive; and
4. physical.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:275 (February 2002).

**§513. Yearly Report**

A. Each local school system/nonpublic school will be required to report annually to the Louisiana Department of Education documenting the effectiveness of the program. The school system/nonpublic school must also submit a final budget detailing exactly how the allocated funds were spent.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:275 (February 2002).

#### §515. Monitoring

A. Programs Coordinators from the Elementary Standards Section will monitor records at each program site annually to ensure that federal requirements are being met. The *Early Childhood Environment Rating Scale-Revised (ECERS-R)* will be used to measure the quality of the program. Each new teacher and those teachers scoring below 5.0 on the ECERS-R will be monitored on a yearly basis until an average score of 5.0 is attained on the scale. All continuing sites serving ten or more Starting Points children will be evaluated on a three-year cycle.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:276 (February 2002).

#### §517. Religious Activities

A. According to the federal regulations for the Temporary Assistance to Needy Families Block Grant, funds provided "under grant or contract may not include sectarian worship or instruction."

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:276 (February 2002).

#### §519. Adherence to Regulations

A. Local school systems/nonpublic schools must adhere to all state and federal regulations and guidelines. Failure to do so will result in withdrawal of program funds.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:276 (February 2002).

Weegie Peabody  
Executive Director

0202#024

### RULE

#### Board of Elementary and Secondary Education

Bulletin 1943C Policies and Procedures for Louisiana  
Teacher Assistance and Assessment  
(LAC 28:XXXVII.Chapters 1 - 35)

Editors Note: Bulletin 1943 was promulgated as a rule in LR 21:164 (February 1995), amended LR 21:463 (May 1995), repromulgated LR 21:676 (July 1995), amended LR 22:98 (February 1996), LR 22:277 (April 1996), LR 24:2088 (November 1998). The historical notes will reflect the first time this bulletin was printed in a codified format in the *Louisiana Register*.

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., the State Board of Elementary and Secondary Education has adopted an amendment to Bulletin 1943C Policies and Procedures for Louisiana Teacher Assistance and Assessment, referenced in LAC 28:1.917.C.

The State Board of Elementary and Secondary Education (SBESE) approved the Louisiana Teacher Assessment Programs, Bulletin 1943C Policies and Procedures for Louisiana Teacher Assistance and Assessment, at their August 2001 meeting based on SBESE action in April 2001. Bulletin 1943 had to be revised in order to be in conformity with R.S. 17:3881-3884, 17:3891-3896, and 17:3901-3904, Act 838 of the Regular Session of the 1997 Louisiana Legislature. These revisions include: the services of a mentor or mentor support team; identification of the provisions of the two-year assistance period; identification of assessment procedures for year two of employment; and the revisions to the out-of-state exclusion procedures for experienced teachers. The *Policies and Procedures for Louisiana Teacher Assistance and Assessment* are the criteria by which new teachers will be assessed under the Louisiana Teacher Assistance and Assessment Program.

### Title 28 EDUCATION

#### Part XXXVII. Bulletin 1943C Policies and Procedures for Louisiana Teacher Assistance and Assessment

##### Chapter 1. Philosophy

##### §101. Goals of the Program

A. Goals of the Louisiana Teacher Assistance and Assessment Program are:

1. to enhance learning and improve teaching;
2. to ensure that teachers certified in Louisiana are competent professionals;
3. to provide new teachers a system of support and assistance that will result in strengthened instructional knowledge and skills.

B. Educators throughout Louisiana have been instrumental in carefully planning and coordinating efforts to ensure that these goals will be reached. The coordinated efforts of all aspects of the Louisiana education community have resulted in the passage of Act 1 of the 1994 Third Extraordinary Session of the Louisiana Legislature and its amendments in 1997.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:276 (February 2002).

##### §103. Beliefs and Principles

A. Assessment of programs and practices is essential to any ongoing effort to improve any profession. Assessment is not *apart from* but *a part of* the educational process. However, sound assessment practices must be based on a set of beliefs and principles which are congruent with the outcomes desired.

B. Stated below are the fundamental beliefs about the Louisiana Teacher Assistance and Assessment Program, the new teachers, the mentors, the assessors, the assistance and assessment processes, and the assessment instruments. It is hoped that they are reflective of what educators across Louisiana believe and desire to accomplish, just as they are reflective of the beliefs and goals of the many educators who have contributed to the development of this assessment program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:276 (February 2002).

**§105. The Program**

A. The primary goal of the assistance and assessment program is the improvement of teaching and learning.

B. An equally important goal is to ensure that teachers certified in Louisiana are competent professionals.

C. A sound personnel assessment program focuses on performance as well as credentials.

D. To be useful, the Louisiana Teacher Assistance and Assessment Program must be coupled with a strong professional development program, tailored to the needs of each teacher.

E. To be useful, the Louisiana Teacher Assistance and Assessment Program must be coupled with strong programs of student assessment and program assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28: 277 (February 2002).

**§107. The Teacher**

A. Teachers want to be competent professionals.

B. All teachers can improve performance.

C. All new teachers want and need the advice and assistance of competent, experienced colleagues.

D. It is possible to assess differences in levels of quality of teacher performance.

E. Essential to competent performance in any position is a nucleus of practices and behaviors which can be identified, assessed, and improved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:277 (February 2002).

**§109. The Mentor Teacher**

A. Those who serve as mentors to Louisiana's new teachers must themselves be competent, caring teachers.

B. Rigorous and comprehensive training as mentors and assessors is essential for the mentor.

C. The mentor must have excellent communication and interpersonal skills and be fair, objective, honest, and ethical.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:277 (February 2002).

**§111. The Assessor**

A. Rigorous and comprehensive training is essential for the assessor.

B. The assessor must have a commitment to improving education and to assisting others to improve.

C. The assessor must be fair, objective, honest, and ethical.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:277 (February 2002).

**§113. The Process**

A. The assistance and assessment processes should encourage diversity in professional teaching behavior.

B. Multiple data sources and data collection procedures are necessary to obtain a reliable picture of professional practice and behavior.

C. Effectiveness of educational practices and teacher behavior must be assessed in light of learner characteristics and needs. School and/or school system characteristics, needs, and organizational structures will also be considered.

D. The assessment process should focus on the identification of patterns of behavior.

E. The assistance process should focus on improvement of teaching performance as defined by the Louisiana Components of Effective Teaching.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:277 (February 2002).

**§115. The Assessment Instruments**

A. No single assessment instrument is adequate for assessing teacher performance.

B. Assessment instruments must be developed from the criteria upon which teachers are to be assessed.

C. Instruments should be understood by all professional educators in the school system.

D. Instruments must assess the knowledge and skills considered important to effective teaching.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:277 (February 2002).

**Chapter 3. Purpose**

**§301. Purposes of the Program**

A. The Louisiana Teacher Assistance and Assessment Program is a uniform statewide program of assessment for new teachers entering service for the first time in a Louisiana Public School System. The program has two basic purposes.

1. It is the purpose of the teacher assistance and assessment program to provide new teaching employees of the public school systems in this state with a planned program of leadership and support from experienced educators during the most formative stages of a teacher's experience in Louisiana schools.

2. It is further the purpose of the assistance and assessment program to provide assurance to the state, prior to the issuance of a permanent Louisiana teacher certificate, that the new teaching employee demonstrates competency in the understanding and use of the Louisiana Components of Effective Teaching, determined by the state to be the basis for effective professional performance.

B. To accomplish the first purpose, data regarding the new teacher's strengths and weaknesses will be collected during the first year by the mentor and principal, and a professional development plan designed, which when implemented can lead to improvement. In addition, each new teacher during the first semester and throughout two school years shall be provided a mentor who will lead professional development activities designed to enhance teacher competencies found to be essential to student learning. During the second year of employment, data shall be collected by an assessment team as the basis for recommendations to the Louisiana Department of Education



(LDE) and the State Board of Elementary and Secondary Education (SBESE) regarding the teacher's certification. In addition, the mentor teacher will continue to provide a program of encouragement, support, and professional development.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:277 (February 2002).

## **Chapter 5. Assessment**

### **§501. Meeting Assessment Standards**

A. Should a new teacher not meet the assessment standards for certification during the first assessment period, the teacher may continue for a second assessment period in the assistance and assessment program, following a process parallel to that of the first assessment period.

B. A teacher who does not meet the assessment standards for certification defined in this document within two years must leave teaching in the public schools of Louisiana for at least two years and undertake activities defined by the Year Two assessment team before re-entry into the teaching profession and the Louisiana Teacher Assistance and Assessment Program. Upon re-entry into teaching in Louisiana Public Schools, the teacher shall also re-enter the Louisiana Teacher Assistance and Assessment Program. If, after another two years in the program, the teacher cannot meet the assessment standards for certification, the teacher will be denied all authority to teach in Louisiana Public Schools according to R.S. 17:3893.C of Act 1 of the 1994 Louisiana Legislature, Third Extraordinary Session and its amendments in 1997.

C. Additional statements of beliefs and principles that undergird this program appear in Chapter 1 of this bulletin.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:278 (February 2002).

### **§503. Teachers Subject to the Program**

A. New teachers subject to this assistance and assessment program, as specified by Act 1 of the 1994 Third Extraordinary Session of the Louisiana Legislature and its 1997 amendments, include general education teachers, vocational education teachers, special education teachers, and "any person employed as a full-time employee of a local board who is engaged to directly and regularly provide instruction to students." Teachers required to participate in this program include those who hold Type C certificates, those who hold temporary authorization to teach (TTA, 665), teachers moving for the first time from Louisiana nonpublic schools to public schools, and new teachers from out-of-state who do not meet the conditions outlined in Part B of this Section.

B. Beginning August 1, 1998, experienced teachers from other states who enter Louisiana public schools for the first time and provide appropriate evaluation results from their immediate previous teaching assignment are excluded from participation in the Louisiana Teacher Assistance and Assessment Program. (Section 3891 of R.S. 17:3881-3895 Amended 1997). To implement this legislation, the following definitions and guidelines have been established.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:278 (February 2002).

### **§505. Definitions**

**Appropriate Evaluation Results** shall be defined as satisfactory annual evaluation results as defined by and certified by the immediate previous out-of-state school district(s).

**Experienced in Other States** shall be defined as two or more years of creditable experience in a public school approved/accredited by the state or regional accreditation agency.

**Immediate Previous Teaching Assignment** as it pertains to assessment shall be defined as the teaching assignment last held by the applicant for a period of two creditable years or more within a 5-year period immediately preceding employment in a Louisiana public school.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:278 (February 2002).

### **§507. Procedures to Request Exclusion**

A. To request exclusion from the Teacher Assistance and Assessment Program, the teacher must have submitted to the Louisiana Department of Education (LDE), Office of Quality Educators, Division of Teacher Standards, Assessments, and Certification, Bureau of Professional Accountability the following materials:

1. a completed exclusion request form forwarded by the employing Louisiana school system. Each teacher applying for exclusion shall sign a release to solicit needed personnel evaluation information from the previous school system. The request form and release must be sent to the LDE within six weeks of the date of employment to be considered for exclusion.

B. The request for exclusion will be reviewed by an appropriate LDE staff member, and a copy of the request form indicating approval or denial of the request will be returned to the employing LEA submitting the request.

Note: Approval of requests for exclusion will be granted if the completed exclusion request form contains the signature(s) of the administrative authority(ies) responsible for authorizing the results of the evaluation(s).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:278 (February 2002).

### **§509. Timely Implementation of the Program**

A. To ensure fair and timely assistance to and assessment of every new teacher, a yearly schedule of activities must be maintained. Failure of a local school system to meet these timelines will result in State Board review and could result in loss of State funding.

1. Report to the LDE by the dates set in the deadline schedule established by the LDE new teacher names and required information about new teachers employed.

Note: New teachers employed after the established dates will begin the Assistance and Assessment Program the following semester.

2. Report to the LDE names and other necessary information about persons to be trained as assessors or mentors by the dates set in the deadline schedule established by the LDE.

3. The activities listed below shall be completed within the specified time frames for each scheduled activity. Note that a teacher may enter the Assistance and Assessment Program during the first semester of employment, either Fall or Spring.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:278 (February 2002).

**§511. Timelines for Activities**

Activity	Fall Semester Entry	Spring Semester Entry
Assignment of Mentor	Upon employment or entry to the school	
New Teacher Orientation to Assistance and Assessment Program (LEA)	First 2-3 weeks of employment	
Mentor/Teacher Activities	August-June	January-December
Preconference Interviews and "Full" Observations of New Teacher by Principal or Designee and Mentor	February-April	September-November
Professional Development Plan and Conference (Mentor, Principal, and New Teacher)	After "full" observation	
Assignment of Assessor Team	August-Year Two	January-Year Two
First Assessor Visit	September-October	January-February
Second Assessor Visit	October-November	February-March
Assessor-Team Consensus Meeting	November-Early December	March-Early April
Teacher Summary Conference	By Mid-December	By Mid-April
Assessment Results and Recommendations Forwarded to LDE	By Mid-January	By Mid-May

Note: This is a general schedule for a typical school year. The LDE will prepare a recommended assessment schedule for each school year, outlining exact dates for completion of Assistance and Assessment Program activities.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:279 (February 2002).

**Chapter 7. Glossary**

**§701. Assessment Terminology**

A. The Louisiana Teacher Assistance and Assessment Program makes use of specific terminology related to the practices and procedures of the assessment process. In order for consistency to be maintained on a statewide basis, the following list of terms is provided so that all parties involved with the process have a clear and common understanding of assessment terminology most frequently used.

**Assessment**—the process by which the state determines whether a new teacher who is seeking to retain or to acquire a regular teaching certificate can sufficiently demonstrate the Louisiana Components of Effective Teaching to qualify for the teaching credential being sought.

**Assessment Standards for Certification**—levels of competence in the Louisiana Components of Effective

Teaching to be demonstrated by a participant in the Louisiana Teacher Assistance and Assessment Program as prerequisites to obtaining the regular/permanent teaching credential being sought.

**Assessment Team**—a team of two highly qualified, experienced educators assigned to the new teacher for assessment purposes. One member is the new teacher's immediate supervisor; and the other is an external assessor. (See other definitions.) The new teacher's mentor cannot also serve as his/her assessor.

**Assessor**—a trained supervisor, experienced teacher, or external assessor who gathers data on the performance of a new teacher. Performance is measured by the Louisiana Components of Effective Teaching.

**Assistance and Assessment Period**—the time frame established for new teacher participation in the Louisiana Teacher Assistance and Assessment Program. The assistance period in which the new teacher is assigned a mentor or mentor support team covers two years (four semesters). The assessment period covers the third and possibly the fourth semester(s) of teaching.

**Experienced Teacher**—a qualified educator who holds a permanent teaching certificate and is nominated by his/her school faculty to serve as a member of the assessment team in another school. It is suggested that the experienced teacher have five years of teaching experience.

**External Assessor**—an active faculty member of a college or university, a central office administrator, retired educator, experienced teacher, or other educators as deemed appropriate.

**Immediate Supervisor**—the new teacher's principal (or designee), or a special education or vocational supervisor to whom the new teacher directly reports.

**Mentor Teacher**—an experienced teacher assigned to a new teacher to provide assistance as a coach, model, and professional development specialist. To be eligible for assignment as a mentor, the teacher must have a permanent teaching certificate and a minimum of three years of teaching experience, a minimum of one complete year of experience in the school system, and training as both an assessor and a mentor.

**Mentor Support Team**—a group of educators led by a teacher of record who has completed the Louisiana Teacher Assistance and Assessment Program (i.e., assessor and mentor training). A mentor support team may support no more than five new teachers at the district or building level.

**New Teacher**—any full-time employee of a local board who is engaged to directly and regularly provide instruction to students in any elementary, secondary, or special education school setting, one who is not an administrator and who is employed for the first time in a public school in this state after August 1, 1994; and one who holds a regular teaching certificate which when issued was valid for three years, or who is authorized under law or board regulation to teach temporarily while seeking a regular teaching certificate.

**Observation**—the process of collecting information about teaching performance through watching and listening in the classroom; the data collected during the observation process.

**Postobservation Conference**—a discussion between the new teacher and the assessor or mentor for the purpose of

reviewing the Observation, discussing congruency with the Preobservation Interview, and sharing commendations, insights, and ratings.

*Preobservation Interview*—A discussion between the assessor or mentor and the new teacher which occurs prior to the classroom observation; the purposes are to share information about the lesson/classroom to be observed and to conduct a planning and student assessment interview; the interview is structured so that all new teachers are asked the same basic questions in the same order.

*Professional Development Plan*—A written plan for improvement, based on the new teacher's self-assessment of areas for refinement and the mentor's and/or assessor's identification of areas for growth during the assistance and assessment cycles.

*Summary Conference*—A summary session in which ratings and information from the assessment instruments are provided to the new teacher by the assessors.

*Summary Report*—The report used to record final Attribute and Component scores and documentation summarizing the results of the assessment. The report is completed by all assessors at the end of the assessment cycle. The report is also used to record the status of the teacher with regard to accomplishment of the assessment standards for certification.

AUTHORITY NOTE: Promulgated in accordance with RS. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:279 (February 2002).

## **Chapter 9. Responsibilities**

### **§901. Duties and Responsibilities of Each Party**

A. An important factor in the success of any process depends largely on making certain that all involved parties have a clear understanding of the duties and responsibilities of each party. The Louisiana Teacher Assistance and Assessment Program divides responsibility among seven groups. These seven groups are the State Board of Elementary and Secondary Education (SBESE); the Louisiana Department of Education (LDE); the Local Education Agency (LEA); mentor teachers or mentor support teams; principals; assessor teams; and the new teachers.

1. Responsibilities of the State Board of Elementary and Secondary Education:

a. establish the Louisiana Components of Effective Teaching which shall be periodically reviewed and revised as becomes appropriate with increased experience and knowledge;

b. establish high and rigorous standards which assessors will meet;

c. set assessment standards for certification based upon the recommendations of a standards setting panel, reputable technical consultants, and available assessment data;

d. approve all assistance/mentor program procedures and all changes in those procedures;

e. approve all assessment program procedures and all changes in those procedures;

f. provide for the training of all trainers for the teacher assistance and assessment program as well as provide for the training of mentors or mentor support teams

and assessors who implement the Louisiana Teacher Assistance and Assessment Program;

g. require the LDE to monitor the assistance and assessment program. The method used in monitoring the program shall be established by the Department with the approval of the Board and shall be sufficient to determine whether such program has been implemented, to what extent it has been implemented, and whether such program complies with the provisions of the legislation;

h. approve panels and consultants to be engaged in formulating recommendations to the Board;

i. receive and approve recommendations for regular/permanent certification and denial of regular/permanent certification.

2. Responsibilities of the Louisiana Department of Education:

a. oversee implementation of the assistance and assessment program;

b. prepare training and orientation materials;

c. train trainers and oversee training of mentors and assessors to ensure that all meet high and rigorous standards so that there will be fairness and consistency of assessment statewide;

d. train local education agency personnel to conduct new teacher orientation;

e. assist local education agencies in developing assessment teams in accordance with procedures outlined in this bulletin;

f. monitor the state assistance and assessment process at the local level to ensure validity, consistency, fairness, and credibility;

g. Recommend modifications of the Assistance and Assessment Program to the Board, as needed, based on analysis of assessment data and input from persons conducting the Program and subject to it;

h. recommend assessment standards for certification to the Board.

3. Responsibilities of Local Education Agencies:

a. identify and report to the LDE the names and positions (content areas and grade levels) of all new teachers subject to the Louisiana Teacher Assistance and Assessment Program no later than the deadline dates established by the LDE (New teachers employed after the established dates will begin the Assistance and Assessment Program in the following semester.);

b. inform teachers experienced in other states, but newly employed in Louisiana of the conditions and procedures for exclusion from the Assistance and Assessment Program;

c. identify and report to the LDE the names and positions of all persons to be trained as mentors and/or assessors for the coming year no later than the deadline dates established by the LDE;

d. establish mentors or mentor support teams and assessor teams in accordance with guidelines, and report the names and positions of all persons in those capacities for the current year by the deadline dates established by the LDE;

e. conduct the assessment process in accordance with the policies and procedures set forth in this bulletin and report to the LDE the names of those persons recommended for regular/permanent certification and the names of those denied regular/permanent certification together with

appropriate documentation for the recommendations by a mid-January date established by the LDE, if the assistance and assessment process is completed within a regular school year (August-May schedule), or by a mid-May date established by the LDE, if the assistance and assessment process is completed during a January-December schedule;

f. provide whatever released time from classroom or other duties as necessary for mentors, mentor support team members, assessors, and new teachers to be trained and to perform their respective duties and activities;

g. inform each teacher of the assistance/assessment provisions such as the assignment of a mentor teacher or mentor support team and conditions/procedures for deferring assessment when reassigned (see Sections XII and XIII);

h. implement a process for the nomination of persons to serve on assessment teams.

#### 4. Responsibilities of Mentor Teachers or Mentor Support Teams:

##### a. coach:

i. coach the new teacher in analysis of the instructional process and in determining how well students are learning;

ii. coach the new teacher in expanding effective teaching strategies;

iii. conduct advisory interviews and observations with feedback using Louisiana Components of Effective Teaching;

iv. conduct advisory observations with feedback using the observation instrument used in the assessment program;

##### b. model:

i. demonstrate effective planning, instruction, and adjustment of instruction based on content knowledge;

ii. guide management of professional responsibilities;

iii. provide encouragement and support;

##### c. Professional Development Specialist:

i. assist the new teacher in analyzing and resolving problems;

ii. direct the new teacher to needed assistance and resources;

iii. confer with the new teacher and principal to formulate a formal Professional Development Plan (PDP) for the new teacher and to revise it as needed;

iv. assist the new teacher in the analysis of student performance data and student records to plan instruction consistent with student needs and the school improvement plan;

v. assist the new teacher in exploring a variety of methods to obtain representative samples of student work.

#### 5. Responsibilities of Principals or Principal Designees:

a. introduce the new teacher to school and system policies and procedures, to faculty and staff, to teaching responsibilities, the school improvement plan, the school accountability program, to the availability of district resources, and the Teacher Assistance and Assessment Program;

b. assist the new teacher and mentor or mentor support team in arranging necessary coverage of his or her class for classroom observation purposes;

c. ensure that new teachers and their mentors or mentor support team members meet weekly and observe each other's classroom on at least eight occasions during the first year of the Assistance Program;

d. conduct at least one structured interview and an observation during the teacher's second semester of assistance and give feedback on his/her performance;

e. work with the new teacher and mentor or mentor support team members to create and revise, as needed, a formal Professional Development Plan (PDP);

f. serve as the leader of the assessor team which will visit the new teacher during his/her third semester;

g. assist the mentor and new teacher in securing necessary resources for the completion of professional development activities;

h. assign mentors or mentor support teams, monitor their activities and evaluate mentor performance (if required by LEA policy);

i. assign mentors from the available, trained pool of teachers unless the LEA has another established procedure.

#### 6. Responsibilities of Assessors:

a. meet high and rigorous performance standards established by the LDE;

Note: No person shall be allowed to function as an assessor who does not meet the established performance standards for assessors.

b. perform assessor responsibilities in a timely manner and in accordance with the Code of Ethics appearing in the appendices of this bulletin;

c. develop a comprehensive Professional Development Plan for and with each teacher assessed at the conclusion of the assessment semester.

#### 7. Responsibilities of New Teachers:

a. perform new teacher responsibilities in accordance with the Code of Ethics for new teachers appearing in the appendices of this bulletin;

b. meet regularly with his/her mentor at agreed upon times;

c. take responsibility for his/her own professional growth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:280 (February 2002).

### **Chapter 11. Procedures for Selection of Mentor Teachers and Mentor Support Teams**

#### **§1101. Qualifications for Selection as a Mentor**

A. The building principal shall assign a mentor teacher to each new teacher (teachers entering Louisiana public schools for the first time who do not meet the conditions for exclusion from the Louisiana Teacher Assistance and Assessment Program described in §503.B of this Bulletin). To qualify as a mentor teacher, an experienced teacher must have:

1. a permanent teaching certificate and a minimum of three years of teaching experience (five years preferred);

2. a minimum of two years of experience in the school system where he/she will serve as a mentor (preferably in the building in which the new teacher is located);

3. evidence of excellence in teaching (type of evidence left to the LEA and building principal);

4. evidence of continuing professional development (type of evidence left to the LEA and building principal);
5. successful completion of the Louisiana teacher assessor and mentor training programs. (Teacher met standards for knowledge and performance in these training programs.);
6. ability to model effective instruction and to communicate effectively.

B. To qualify as a mentor support team member, a candidate may be:

1. a trained mentor, including full or part-time teachers, resource teachers, subject area coordinators, teachers on special assignment, teachers on leave or sabbatical, Regional Service Center coordinators with appropriate experiences, and retired teachers who have been retired no more than five years prior to becoming a member of the mentor support team;
2. a principal or other administrator;
3. one or more members who may not have attended Mentor training, but who can offer special expertise such as subject area specialists or key resource teachers (team members need not be in the same building as the new teacher);
4. a new teacher who has successfully completed the Louisiana Teacher Assistance and Assessment Program.

C. The mentor team leader is the teacher of record responsible for reporting placement information and for planning mentor team activities. At minimum, the mentor team leader must have completed the Louisiana Teacher Assistance and Assessment Training Programs (i.e., Assessor and Mentor Training).

Note: A new teacher being mentored shall not be assigned a department supervisor or administrator who will participate in his/her evaluation or assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:281 (February 2002).

### **§1103. Guidelines for the Assignment of Mentor Teachers and Mentor Support Teams**

A. Local school systems and building principals should adhere as closely as possible to the following guidelines in assigning mentors or mentor support teams to new teachers.

1. Mentors and new teachers should be matched by grade level and subject areas, if at all possible; at minimum, regular education teachers should be paired, and special education teachers should be paired.
2. The building principal will make the mentor assignment for the new teachers, unless the school system has another procedure in place.
3. A mentor teacher who is teaching full-time should be assigned no more than one new teacher to mentor, unless he/she willingly accepts a second mentee. Maximum assignment of new teachers to a full-time teacher is two. However, this does not preclude a teacher serving as a mentor also serving on an assessor team for a different new teacher than the one(s) he/she mentors, if he/she is willing to do so.
4. A teacher can be assigned as a mentor to several new teachers as a full-time or part-time responsibility. Or, as indicated in item 3, a teacher can remain in the classroom,

serving as a mentor to one or two new teachers as an additional responsibility.

5. A teacher who is employed as a full-time mentor may serve in that position for no more than three years consecutively. A full-time teacher who mentors one or two new teachers as an additional responsibility is not subject to this provision.

6. A mentor support team shall be assigned no more than five new teachers to mentor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:282 (February 2002).

## **Chapter 13. Procedures for Selection of Assessment Teams**

### **§1301. Qualifications for Assessment Team Member**

A. The new teacher shall be assessed by a team of two highly qualified, experienced educators who have completed their assessor training and have met all requirements thereof. This team shall consist of the immediate supervisor (principal or designee) and an assessor external to the building who meets the qualifications defined in the following paragraphs. Each team member will each conduct one visit to the new teacher's classroom during the assessment semester. The requirements for selection as a team member are outlined below.

#### **1. Immediate Supervisor**

a. Usually the new teacher's principal or principal's designee. In some unique situations, the immediate supervisor may be a director of vocational education, special education supervisor, or person in another position to whom the new teacher directly reports.

#### **2. External Assessor**

a. The external assessor can be appointed from the ranks of five specific groups of educators who are qualified to serve as an assessor by virtue of completing the assessor training program and meeting all requirements thereof.

i. Faculty members in colleges/departments of education and other colleges/departments who have training, experience, and teaching assignments in pedagogy and teacher education.

ii. Experienced teachers currently employed within the LEA but outside the new teachers' school who:

- (a). have a minimum of three years of experience (five years suggested);
- (b). ideally, possess training and experience in the content fields/grade levels taught by the new teacher;

Note: It will not always be possible to obtain a teacher for the team who is currently serving at exactly the same grade level.

Therefore, this requirement is interpreted to mean that a teacher assigned to a new kindergarten teacher shall have training or experience at this level and be teaching currently in grades Pre-K through 2. Teachers in grades 3 through 5 shall be eligible to serve as assessors for new teachers in those grades. Teachers representing appropriate content areas in grades 5 through 8 can be assigned to teams for new teachers serving at any of those grade levels. Teachers in grades 9 through 12 can be assigned to teams in their content field(s) at any of those grade levels. Teachers who serve as assessors of new special education teachers should have experience within the special education area.

- (c). ideally, possess a master's degree;
- (d). qualified to serve as an assessor by virtue of exemplary teaching practice;

(e). nominated to serve as an assessor by the faculty of the school in which he/she teaches;

(f). qualified to serve as an assessor by virtue of completing the assessor training program and meeting all requirements thereof;

(g). selected by agreement of the principals of the two schools (assessors' school, new teachers' school) from the pool of nominees presented and trained;

(h). an experienced teacher should not be asked to serve as an assessor for more than two new teachers in a given year, unless the LEA makes provisions for that teacher to be released from an appropriate portion of his/her other responsibilities or unless extenuating circumstances prevail. The teacher has the option of refusing to take on the additional responsibilities.

Note: A full-time experienced teacher who is also serving as a mentor to two new teachers cannot serve on more than one assessor team.

iii. Central office administrators (e.g., supervisors, directors of curriculum) with appropriate educational background and experience who are employed by the new teacher's LEA.

iv. Retired teachers, administrators, or higher education faculty members nominated by teachers and administrators within the LEA. It is suggested that these individuals be retired no more than five years prior to becoming an assessor.

v. Other educators as deemed appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:282 (February 2002).

## **Chapter 15. Compensation**

### **§1501. Persons Eligible for Compensation**

A. Only retired educators, college faculty, other educators as deemed appropriate, and experienced teacher assessors and mentors shall receive compensation for their assistance/assessment activities. When and if the State makes additional funding for this program available, the Board and LDE shall determine, with input from LEAs, how to best utilize those resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:283 (February 2002).

## **Chapter 17. Assessment Criteria**

### **§1701. Louisiana Components of Effective Teaching**

A. The criteria for the assessment of new teachers are the Louisiana Components of Effective Teaching.

#### 1. Definitions

a. In the Louisiana Components of Effective Teaching:

*Domain* is defined as a major area of teaching responsibilities;

*Component* is a critical function within a Domain;

*Attribute* is a behavior that relates to and helps to define a Component.

b. The Domains, Components, and Attributes form a hierarchy that represents skills and knowledge of effective teaching.

B. The Components of Effective Teaching shall be reviewed annually by the LDE, educators administering the assessment program, and appropriate consultants to determine need for modifications and their continuing utility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:283 (February 2002).

## **Chapter 19. Assessment Standards for Certification**

### **§1901. Standards for Certification**

A. The assessment standards for certification recommended by a Standards Setting Panel convened by the State Superintendent of Education in June, 1994, and adopted by the SBESE in the same month are:

1. achievement of a "competent", "2" rating on each of the eight components of the Louisiana Components of Effective Teaching.

B. A teacher who does not meet this standard during semester three of employment in Louisiana public schools may be re-employed by the local school system for a fourth semester, during which time the teacher shall again participate in the Louisiana Teacher Assistance and Assessment Program. This second assessment period shall be treated as a second opportunity to meet the assessment standards for certification. No data or ratings from the first assessment period shall be used in determination of the teacher's ratings during this second year. Only the information from the Professional Development Plan will be used during the second assessment period to assist the teacher.

C. Failure of the teacher to meet the assessment standards for certification during the fourth semester of assistance and assessment shall result in a prohibition to teach in Louisiana Public Schools for a period of at least two years. During this period, the individual should complete the Professional Development Plan formulated with the assessment team at the conclusion of the second assessment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:283 (February 2002).

### **§1903. Reapplication for Entry into the Program**

A. To reapply for entry into the assistance and assessment program after absence from teaching due to failure to meet the assessment standards for certification, a teacher must document to the employing school system and the Louisiana Department of Education that the last Professional Development Plan outlined by/with the previous support/assessment team has been completed to the extent possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:283 (February 2002).

### **§1905. Loss of State Funding**

A. Local school systems which continue to employ teachers who have been denied regular certificates or other authority to teach, due to failure to meet the assessment standards for certification, shall be subject to loss of State funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:283 (February 2002).

### **§1907. Previous Requirements**

A. Nothing in this bulletin supersedes or changes additional, previously established requirements for certification (e.g., passing scores on the PRAXIS/National Teacher Examination, completion of required college/university course work, and degrees).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:284 (February 2002).

## **Chapter 21. Grievance Procedures for the Louisiana Teacher Assistance and Assessment Program**

### **§2101. Due Process**

A. Teachers will be afforded due process in all aspects of the Louisiana Teacher Assistance and Assessment Program. The due process rights include the following.

1. The assessed teacher shall receive copies of all teacher-signed documents: the Postobservation Conference Record, the Teacher Summary Report, and the Professional Development Plan.

2. The assessed teacher may request, in writing, copies of any additional records used during the assessment process at the conclusion of the Professional Development Conference, within 20 working days.

3. A Postobservation Conference must be held within two working days of the completion of the observation.

4. The assessed teacher may, in either semester, file a written response (that may or may not lead to a formal grievance process) to the assessment as represented in the Teacher Summary Report and supporting assessment records. This response may be filed at the end of the Postobservation Conference or the Teacher Summary Conference, but no later than 10 working days after the receipt of the Professional Development Plan during the Professional Development Conference. This response shall be permanently attached to the Teacher Summary Report.

5. The assessed new teacher has the right to receive proof, by documentation, of any item contained in the assessment documents that the teacher believes to be inaccurate, invalid, or misrepresented. If documentation does not exist, the item in question must be amended or removed from the Teacher Summary Report.

6. Confidentiality of assessment results must be maintained as prescribed by law.

7. A grievance procedure and an appeals procedure that follow the proper lines of authority have been established and must be followed.

8. The assessed teacher shall be assured of due process in all aspects of the assessment grievance procedures. The hearing officer required to conduct a hearing on a grievance shall be an employee of or contracted by the Office of the Attorney General. The assessed new teacher may retain representation of his/her choice and at his/her own expense.

9. The assessment team shall initially assume the burden of proof at Steps 1 and 2 of the grievance procedures.

Upon appeal at Step 3, the burden of proof shifts to the assessed new teacher.

10. At any point in the grievance procedures when either party fails to appear for a properly scheduled grievance hearing, a remedy may be fashioned within the discretion of the hearing officer.

11. Grievance hearings shall be conducted during the working day with the assessed teacher suffering no loss of pay or benefits for attending grievance hearings. However, in the event the hearing officer determines that the grievance is frivolous, or if the appeal is unsuccessful, the assessed teacher shall be reimbursed for no more than two days pay. Should the assessed teacher's appeal be successful, then he/she shall be paid for the full length of the hearing. Grievance hearings may be conducted during the summer.

12. The aggrieved teacher may choose to retain representation at any and all stages in the grievance procedure. The assessment team leader shall be notified of this decision by the aggrieved teacher five days prior to the scheduled hearing or prehearing. The assessment team shall be provided with a legal representative, upon request, at all stages of the grievance procedure, at no charge to the assessor(s). If any or all assessors choose to retain their own attorneys rather than the state appointed attorney, then the assessor(s) will be responsible for all legal fees.

13. In the event a lawsuit is filed against the assessment team or any individual assessor in his/her official capacity in a court of competent jurisdiction, the assessor shall be represented by the Louisiana Department of Education (LDE) at no charge to the individual assessor or the assessment team. The assessors shall be indemnified both as individuals and as assessment team members should there be judgment for any cost incurred. Indemnification may be denied if the court finds the assessor's actions were willful, intentional, or malicious.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:284 (February 2002).

### **§2103. Grievance**

A. A grievance is a claim by an assessed teacher that the assessment is inaccurate, invalid, or misrepresented. The grievance shall be based upon assessor bias, omission, or error. Any other issues are to be handled as administrative complaints (i.e., receipt of implementation guide, teacher orientation, teacher notification, etc.).

#### **1. Step 1**

a. Any assessed teacher who believes that he/she has a grievance may file the grievance at any time during the assessment process but not later than 20 working days after the Professional Development Conference. The grievance must be in writing and shall state:

i. the precise factual basis on which it is based; and

ii. the specific relief requested by the teacher. The grievance shall be presented to the principal or the immediate supervisor who served on the assessment team. That principal, or the immediate supervisor, shall acknowledge receipt of the grievance in writing and keep a record of its filing. That principal or that immediate supervisor shall forward a copy of the grievance to all assessment team members.

b. Within 10 working days of receipt of the written grievance, the assessment team shall schedule a conference with the assessed teacher and/or the teacher's representative to discuss the specific terms of the grievance. If the conference must be delayed (i.e., illness, prior scheduling, holidays, etc.), the conference shall be mutually rescheduled within 20 working days. Any other extensions would be considered only in the case of documented illness or severe emergency.

c. Within 10 working days of the conference, the assessment team must confer concerning the specifics of the grievance, arrive at a mutually agreeable decision, and render a signed written response specifically addressing each area in which relief has been requested. If no mutually agreeable decision can be reached by the assessment team, the grievance shall be handled as prescribed in Step 2. Within the above stated 10-day limit, the principal or immediate supervisor from the assessment team shall hand deliver or send by certified mail, the assessment team's written response to the assessed teacher.

## 2. Step 2

a. If an assessed teacher is not satisfied with the decision rendered at Step 1, he/she shall institute a written request for a formal hearing within 10 working days of receipt of the response from the assessment team. The assessed teacher must complete an official form to request a formal hearing and submit it to the Louisiana Teacher Assistance and Assessment Program Contact Person at the appropriate Local Education Agency (LEA). The official request must be hand delivered or mailed by certified mail. If mailed, the official request must be postmarked on or before the tenth day after receipt of the response from the assessment team.

i. The Request for Formal Hearing shall contain the following:

(a). the name of the assessed teacher and the LEA in which the teacher is employed;

(b). the name and position of each member of the assessment team;<sup>1</sup>

(c). the name, address and telephone number of the teacher's representative, if designated;

(d). the date the Postobservation Conference was conducted;

(e). the date on which the grievance was filed;

(f). the date on which the assessed teacher and the assessment team met to discuss the grievance (see Step 1B);

(g). the date on which the assessed teacher received the assessment team's response.

ii. Attached to the Request for Formal Hearing shall also be:

(a). a copy of the original assessment team's report on the assessed teacher's classroom performance (the Teacher Summary Report);

(b). a copy of the original grievance;

(c). a copy of the Assessment Team's response to the specific grievance(s);

(d). any other pertinent documents or relevant information.

b.i. The Louisiana Teacher Assistance and Assessment Program Contact Person shall notify within 5 days a Regional Hearing Officer, appointed by the Attorney

General, of the assessed teacher's appeal. The Regional Hearing Officer shall review the allegation(s) of the appeal, compile all evidence relevant to the allegation(s) and :

(a). dismiss the appeal for failing to have the official Request for Formal Hearing and/or the attachments required above<sup>1</sup>;

(b). notify, by certified mail, all persons directly involved, as to the date, time, and place of the formal hearing and of the prehearing conference, if any.

ii. The hearing must be conducted within 35 working days of the filing of the appeal. The Regional Hearing Officer may grant an extension upon appropriate written request of the assessed teacher or assessor(s) for good cause shown, or upon his own motion to grant an extension.

c. The assessed teacher or his/her representative, or the assessment team, may add to the grievance any additional evidence relevant to the hearing. The Regional Hearing Officer shall decide if the evidence is relevant and material.

d. The Regional Hearing Officer may schedule any prehearing conferences as he/she feels may be necessary for the exchange of evidence, or for any other purposes set forth in these rules.

i. The prehearing conference must be held not less than 5 working days prior to the formal hearing.

ii. At least 10 working days prior to the prehearing conference, all parties shall exchange and deliver copies of exhibits, documentary evidence, offerings, and a list of proposed witnesses. Failure to exchange documentary evidence and/or witness lists will result in those witnesses and evidence being excluded from the hearing.

iii. The Regional Hearing Officer, at the prehearing conferences or otherwise, may determine what material or relevant facts or issues exist without substantial controversy, and which should be deemed stipulated or proven and what material facts and issues actually, and in good faith, are contested.

iv. The Regional Hearing Officer may, prior to the hearing, issue an order which specifies the action(s) taken at the prehearing conference, and the agreements made by the parties as to any of the matters considered and/or which limit the issues to be considered at the hearing to those which are actually, and in good faith, contested. This order shall control the subsequent course of the proceedings, unless modified during the formal hearing to prevent manifest injustice.

v. All parties to the proceedings shall be given notice of any prehearing conference, and any party who fails to attend or participate in such a conference may be found to be in default. If a party is found to be in default, the Regional Hearing Officer may limit the party's participation in the hearing or evidence sought to be introduced, dismiss the proceeding, continue the hearing at a later date, proceed with the hearing and render a decision, or order appropriate action based on the evidence submitted at the hearing.

vi. The Regional Hearing Officer may issue subpoenas upon the request of the assessed teacher, his/her representative, or the assessment team. The request for subpoenas must be in writing and shall be submitted to the Hearing Officer 15 days prior to the scheduled formal hearing. Further discovery will not be required nor shall



subpoenas be issued for public records within the Louisiana Department (LDE) of Education which are available under the Public Records Law (R.S. 44:1).

e. Failure by the assessed teacher to submit relevant evidence and failure to attend the hearing may result in a dismissal of the hearing with prejudice at the discretion of the Regional Hearing Officer. (In the event persons directly involved in the assessment process fail to submit evidence, then the teacher shall be granted the specific relief he/she has requested.)

f. The Regional Hearing Officer may affirm, reverse, modify or set aside the decision of the assessment team. The Regional Hearing Officer shall render a decision in writing within 15 working days of the date of the hearing.

3. Step 3

a. If the assessed teacher is not satisfied with the Regional Hearing Officer's decision, he/she may appeal to the Attorney General's Office within 10 working days of the receipt of the Regional Hearing Officer's decision. The appeal is deemed timely if it is postmarked within the 10 working day period. The State Hearing Officer appointed by the Attorney General shall review the allegation(s) of the appeal, compile all evidence relevant to the allegation(s), and:

i. dismiss the appeal for failing to have an official Request for Formal Hearing and/or the attachments required above; or

ii. notify, by certified mail, all persons directly involved, as to the date, time, and place of the formal appeal hearing and of the prehearing conference, if any. The formal appeal hearing must be conducted within 35 working days of the filing of the appeal. Additional evidence may be introduced by the involved parties.

b. The State Hearing Officer at his discretion may:

i. grant a limited hearing/argument of the issue with no oral testimony;

ii. require an appeal through briefs;

iii. grant a new formal hearing;

iv. allow the introduction of new evidence that was not available and/or accessible at Step 2.

c. The State Hearing Officer may affirm, reverse, modify, or set aside the decision of the Regional Hearing Officer.

d. If the State Hearing Officer affirms the Regional Hearing Officer's decision and also determines the assessed teacher's appeal to be based upon a personal grudge, harassment, frivolous complaint, or made solely for the purpose of delay, he shall dismiss the appeal with prejudice. If the State Hearing Officer determines that an assessment team member has committed a procedural violation during the assessment of the teacher, or it is determined that it is in the best interest of the assessment process and procedures, then the State Hearing Officer shall notify the IED and make recommendations for that assessor to:

i. be reprimanded of the assessment process and procedures;

ii. be retrained;

iii. have his assessment certification revoked;

iv. be reassigned to another assessment team.

e. The State Hearing Officer shall render a decision in writing within 25 working days of the date of the hearing.

<sup>1</sup> The principal or the teacher's immediate supervisor shall supply the teacher with all pertinent names and addresses, upon request by the teacher, within 2 working days.

<sup>2</sup> If a Professional Development Plan is in progress for the teacher, the Regional Hearing Officer may suspend the Plan, based on relevant evidence.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:284 (February 2002).

### **§2105. Glossary of Terminology**

**A.** In order that consistency in terminology be maintained on a statewide basis, a list of terms and definitions is being established to provide the reader with a clear and common understanding of the due process components and grievance procedures.

**Appeal** A challenge of a decision rendered by an Regional Hearing Officer appointed by the Attorney General.

**Assessment Program Contact Person** A person employed by the local education agency to provide/facilitate Louisiana Teacher Assistance and Assessment Program activities. These persons are also involved in the grievance procedures at Step 2.

**Assessor Bias** A preference or inclination that inhibits impartial assessment by an assessor.

**Assessor Error** Intentional or unintentional deviation(s) by an assessor from the prescribed procedures set by the *Policies and Procedures for Louisiana Teacher Assistance and Assessment*, Bulletin 1943, June 1994, Revised April 1998, 2001.

**Assessor Omission** To fail to include or to leave out those steps necessary by an assessor for a procedurally accurate assessment of a teacher.

**Day(s)** Shall be the assessed teacher's working days during the school calendar year adopted by the local school board except during the summer months when days shall be working days as observed by the LDE.

Note: If the hearing decision is rendered during a period of a school holiday, and the teacher does not have direct access to his/her mail because he/she is away from his/her residence, out of the city, or state, then the period of appeal shall be extended upon verified affidavit for an additional 5 working days upon his/her return to the residence. The affidavit shall be attached to the appeal.

It is the obligation of the assessed teacher or his/her representative to inform the Hearing Officer that he/she will be away from his/her residence during said holiday period. Should the teacher commute daily to and from the place of residence during the holiday season, then the 5-day extension does not apply.

**Documentation** Copies of the official and signed forms related to the assessment process

**Due Process** Fair and impartial treatment as guaranteed under the law including, but not limited to, the 1st, 5th, and 14th amendments to the Constitution of the United States, Section 1983 of the Civil Rights Act of 1971, Title VII of the Civil Rights Act of 1964, and Title IX of the Educational Amendment of 1972, relative to procedural requirements.

**Formal Hearing** A meeting wherein arguments, proofs, and evidence are presented and testimony is heard.

**Grievance** A claim by an assessed teacher that the assessment is inaccurate, invalid or misrepresented. The grievance shall be based upon assessor bias, omission or

error. Any other issues are to be handled as administrative complaints (i.e., receipt of implementation guide, teacher orientation, teacher notification, etc.).

**Hearing Officer**Ca legally trained person specifically contracted and trained by the attorney general's office to conduct a formal investigation or hearing at either the regional or state level and to report his findings of fact and render decisions based on those facts. No person who has a personal or professional interest which conflicts with his/her objectivity may be contracted to serve as a Hearing Officer.

**Indemnification**Cto provide to assessor(s) legal exemption from liability during the Assessment Process.

**Teacher's Representative**Cany person selected by the aggrieved teacher to represent him/her during the course of the grievance procedures.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:286 (February 2002).

## **Chapter 23. Assistance Program Procedures**

### **§2301. Period of Mentor Assignment**

A. Mentors or mentor support teams will be assigned to new teachers for the duration of two years. During these two years of assistance and support, the mentor or mentor support team and new teacher should meet both frequently and regularly to carry out the activities outlined below. Building principals will need to facilitate these meetings and the activities described below by scheduling common free time for the two parties, supplying substitute teachers on occasion, and otherwise promoting the giving and receiving of support wherever and whenever possible.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:287 (February 2002).

### **§2303. Mentor/New Teacher Activities**

A. There is sometimes a tendency to "load" new teachers with extra-curricular duties and responsibilities. A concerted effort should be made to minimize these responsibilities during a teacher's first two years in the classroom. It is to the benefit of students, learning, and the new teacher to focus the new teacher's attention primarily and specifically on the delivery of quality instruction.

B. During the new teacher's first year, it is expected that mentor or mentor support team/new teacher activities will include:

1. familiarization of the new teacher with school routines, procedures, and resources;
2. discussions around new teacher questions and needs;
3. mentor or mentor support team observations of the new teacher with appropriate feedback, including one or more observations that parallel those which will be conducted by assessors during the third (assessment) semester;
4. new teacher observations of the mentor or mentor support team and other teachers as appropriate;
5. one or more interviews conducted by the mentor or mentor support team that parallel those which will be conducted by assessors during the third (assessment) semester;

6. at least one visit to the new teacher by the building principal like that which will be conducted by assessors during the third assessment semester; i.e., observation, interview, feedback;

7. collaborative formulation by the mentor or mentor support team, principal, and new teacher of a formal professional development plan for the new teacher. Said plan should be formulated after both mentor and principal have conducted classroom observations and interviews;

8. provision of assistance to the new teacher by the mentor or mentor support team and others in understanding the characteristics of students, school, and community that can/will influence teaching and learning;

9. provision of assistance to the new teacher by the mentor or mentor support team and others in interpretation and use of student assessment data in improving instruction;

10. provision of assistance to the new teacher by the mentor or mentor support team and others in forming meaningful collaborative relationships with colleagues, parents, and the community.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:287 (February 2002).

### **§2305. Second Semester Mentor/New Teacher Activities**

A. During the new teacher's second year, it is expected that mentor or mentor support team and new teacher activities will include:

1. additional observations and interviews;
2. additional new teacher observations of the mentor or mentor support team and other teachers, as appropriate;
3. additional mentor assistance in resolving problems and issues confronting the new teacher;
4. mentor or mentor support team assistance in expanding the new teacher's repertoire of effective teaching practices and student assessment techniques;
5. continuing mentor or mentor support team assistance in gathering, analyzing, and using information that will increase student learning and effective instruction.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:287 (February 2002).

## **Chapter 25. Assessment Procedures**

### **§2501. Semester of Assessment**

A. During the assessment semester, the two person assessment teams will carry out the following processes.

1. Each assessor shall visit the new teacher and conduct a Preobservation Interview, Observation, and Postobservation conference, in that order.

2. The Preobservation interview may be conducted one day prior to the scheduled Observation, if that procedure is agreeable to both the assessor and the new teacher.

3. The Postobservation Conference shall be held within 48 hours following the completion of the Observation. However, it can be held on the same day that the Observation is conducted, if that procedure is agreeable to both the assessor and the new teacher.

4. An assessor should complete all responsibilities (Preobservation Interview, Observation, Postobservation

conference) with one teacher before beginning assessment of another.

5. During each Postobservation Conference, the assessor and the new teacher will formulate improvement plans in accordance with the assessment data available. Professional development is a continuous process which should not wait until all visits for assessment are completed.

6. At the conclusion of each Postobservation Conference, the new teacher shall be provided a copy of the Postobservation Conference record. Copies of the Observation and Preobservation Interview Records shall also be provided, if the teacher requests them.

7. At the end of the semester, when both members of the assessment team have completed their visits, they shall compare and combine their findings, share their consensus findings with the teacher being assessed, and prepare a comprehensive Professional Development Plan. Both members of the assessment team shall be present for this conference with the new teacher.

8. The assessment team will combine Attribute ratings into Component ratings in order to determine if the teacher being assessed has met the assessment standards for certification. In the event the two members of the assessment team are in disagreement over the certification recommendation and the disagreement cannot be resolved, the principal/designee shall notify the LEA contact person of the impasse within two working days after the assessor team consensus meeting. Within five working days of this notification, the LEA contact person shall appoint a third assessor external to the school, who will conduct a third visit and participate in the certification decision. The assessment ratings, the resultant recommendations pertaining to the assessment standards for certification, and identified instructional strengths and needs of the teacher, will be shared at the Summary Conference and used to develop with the new teacher a new or modified Professional Development Plan.

9. At the conclusion of the Summary Conference, the new teacher shall be provided copies of the Teacher Summary Report and the Professional Development Plan. If the teacher desires copies of Observation and Preobservation Interview Records not previously received, these records can also be requested in writing at this time.

10. The rating scale to be used in the Louisiana Teacher Assistance and Assessment Program shall be a 2-point scale where a rating of "2" is defined as "Competent" and a rating of "1" is defined as "Needs Improvement." However, the utility of this rating scale shall be reviewed annually by the LDE with input from educators using the scale to complete new teacher assessments. (Assessment standards for certification based on this 2point scale are explicated in Section X of this bulletin.)

11. At the conclusion of the assessment process, assessment teams shall provide all completed assessment forms and instruments required by the LDE together with appropriate recommendations to the LEA assessment contact person, who in turn will forward these forms, instruments, and recommendations to the LDE.

12. The new teacher may file a response to the assessment as represented in the Teacher Summary Report and supporting assessment records. This response shall be permanently attached to the Teacher Summary Report.

13. Confidentiality of assessment results must be maintained as prescribed by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:287 (February 2002).

### **§2503. Extenuating Circumstances in the Assessment Process**

A. When extenuating circumstances in the assessment process occur, the procedures outlined below shall be followed.

1. New teachers employed or unreported to the LDE by the LDE established dates shall not enter the first phase (initial support semester) of the assistance and assessment program until the following semester.

2. If a new teacher is employed and reported by the dates specified above, but is reassigned to a new school or a new subject/grade assignment after October 1 or February 1, the teacher shall not enter the first phase (initial support semester) of the assistance and assessment program until the following semester.

3. If a new teacher who has completed the first year of teaching is reassigned to a new school or a grade/subject greatly different from the previous assignment, the teacher may request in writing that the LEA and LDE defer assessment for one semester. A written response to the request must be delivered to the teacher within 10 working days from the date that the LEA and LDE receive the request. If the assessment is deferred, the new teacher shall be assessed the following semester.

4. If a new teacher does not complete either the initial support year or the assessment semester, the new teacher shall reenter that phase of the assessment program, i.e., either support or assessment, that was incomplete.

5. If a new teacher does not meet the assessment standards for certification at the end of the first assessment period, the teacher may request changes in the mentor and/or the assessment team for the second assessment period. The written request shall be submitted to both the principal and the LEA contact person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:288 (February 2002).

## **Chapter 27. Relations to Other Existing Policies and Laws**

### **§2701. Right to Evaluate Employees or Make Employment Decisions**

A. It is important to note that nothing contained in the Louisiana Teacher Assistance and Assessment Program shall diminish the right of the local board, or of principals, or of other employees with supervisory responsibilities, to evaluate employees or to make employment decisions. The services of a teacher shall be considered the services of a fully certified teacher for all purposes of the local school system related to funding, calculation of minimum foundation funds, accreditation, or for any other purpose, administrative, substantive, or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:288 (February 2002).

**§2703. Program Relationship to Entitlement to All Benefits**

A. Participation in the Assistance and Assessment Program shall have no effect on the service of the teacher as it relates to entitlement to all benefits including retirement, accrual of leave time, progress on the salary schedule, and any other benefit calculation or consideration to which the teacher would otherwise be entitled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:289 (February 2002).

**Chapter 29. Monitoring Guidelines**

**§2901. Monitoring Procedures**

A. The LDE shall annually monitor the conduct of the assistance and assessment procedures within the LEAs. The purpose of the monitoring process shall be to determine whether this program is being carried out in compliance with the provisions set forth by legislation and this bulletin. The LDE, each year, shall schedule visits to selected LEAs for the purpose of monitoring the implementation of the process of state assessment. LEAs will be selected for visits based on a three-year rotation cycle. During the monitoring process the LDE team shall perform the following tasks:

1. notify the LEA superintendent and assistance and assessment contact person of the impending visit and establish dates of the visit;

2. review a premonitoring report prepared by the LDE;

3. visit the LEA (length of time spent in the LEA will be determined by size of the LEA) to determine compliance or failure to comply. During each visit, the monitoring team will:

a. meet with the superintendent or LEA designee to explain the nature and duration of the visit;

b. meet with the assistance and assessment contact person and/or other appropriate personnel to discuss the schedule;

c. review the premonitoring report with the assistance and assessment contact person and/or other appropriate personnel;

d. conduct a summary session with the LEA superintendent, contact person, LEA Core Team and/or other appropriate personnel;

4. inform the LEA in writing of compliance, the areas of noncompliance, and of recommendations;

5. notify the SBESE of system(s) that are in compliance and those that failed to comply;

6. make recommendations to the SBESE regarding action to be taken in situations of noncompliance;

7. Failure of local school systems to implement the procedures outlined in the bulletin according to R.S. 17:3883, can result in the Department recommending to the Board whatever sanctions against such school system the Department deems appropriate which may include withholding funds distributed pursuant to the minimum foundation program formula until the corrections are made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:289 (February 2002).

**Chapter 31. Revisions; Policy Manuals**

**§3101. Review and Revisions**

A. The SBESE shall establish the Louisiana Components of Effective Teaching. These Components and the Louisiana Teacher Assistance and Assessment Program results shall be regularly reviewed by the LDE with involvement of all segments of the education community and appropriate consultants. Necessary revisions shall be recommended to the SBESE by June of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:289 (February 2002).

**§3103. Additional Materials for Educators**

A. The Louisiana Department of Education shall produce for trainers, mentors, assessors, and new teachers subject to assistance and assessment definitive manuals which convey SBESE's policies as set forth in this bulletin and further explain each process and procedure of the assistance and assessment program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:289 (February 2002).

**Chapter 33. Appendix A**

**§3301. Assessor and Mentor Code of Ethics**

A. Assessors and mentors shall conduct themselves in a professional manner at all times during the assistance and assessment processes.

B. Assessors shall not communicate, either directly or indirectly, regarding any issue concerning the assessment process or the new teacher's personal qualifications, with any person except the new teacher's assessment team members, appropriate administrators of the LEA, and/or State Department of Education representatives to whom assessment results are reported.

C. The mentor shall maintain confidentiality regarding contacts and communications with new teachers unless such confidentiality will bring into question the safety and well-being of students. It is unlawful for any employee to withhold any information/knowledge regarding unlawful, unethical, and/or immoral activities involving students.

D. Assessors and mentors shall not knowingly misrepresent the qualifications or performance of a new teacher.

E. Assessors and mentors shall not knowingly make false statements about a new teacher.

F. Assessors and mentors shall not make malicious statements about a new teacher.

G. Assessors and mentors shall not accept any gratuity, gift, or favor that might impair or influence the assistance and assessment processes.

H. Mentors shall not act as mentors for their own immediate families, including aunts, uncles, nieces, nephews, and in-laws.

I. Assessors shall not participate in assessment teams for their own immediate families, including aunts, uncles, nieces, nephews, and in-laws.

J. Assessors shall try to optimize the assessment process and develop appropriate rapport with the new teachers to whom they are assigned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:289 (February 2002).

**Chapter 35. Appendix B**

**§3501. New Teacher Code of Ethics**

A. New teachers shall conduct themselves in a professional manner at all times during the assistance and assessment processes.

B. New teachers shall not knowingly misrepresent the qualifications or performance of a mentor or assessor.

C. New teachers shall not knowingly make false statements about a mentor or assessor.

D. New teachers shall not make malicious statements about a mentor or assessor.

E. New teachers shall try to optimize the assistance and assessment processes and develop appropriate rapport with the mentors or assessors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:290 (February 2002).

Weegie Peabody  
Executive Director

0202#021

**RULE**

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

**Control of Emissions of Nitrogen Oxides  
(LAC 33:III.2201)(AQ215)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted the Air Quality regulations, LAC 33:III.Chapter 22 (Log #AQ215).

This Rule establishes requirements for reducing emissions of nitrogen oxides (NOx) to allow the Baton Rouge nonattainment area to come into compliance with the National Ambient Air Quality Standard for ozone by May of 2005. Five parishes are defined by EPA as nonattainment. They are the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. Livingston is included even though it has no NOx emissions sources greater than 50 tons per year (tpy). Modeling has demonstrated that the nonattainment area cannot be brought into attainment without including certain outlying parishes. Therefore, the parishes of East Feliciana, Pointe Coupee, St. Helena, and West Feliciana also have been included in the Rule. The Rule establishes emission factors for reducing emissions from boilers, heaters, furnaces, turbines, and internal combustion engines at affected facilities. The Rule also establishes requirements for permits, compliance, recordkeeping and reporting. During the summer of 2000,

Louisiana experienced many days of elevated ozone levels, especially in the Baton Rouge area, as a number of the monitored readings exceeded the one-hour standard. In addition, the 5parish Baton Rouge ozone nonattainment area did not meet the 1999 statutory deadline to comply with the one-hour ozone National Ambient Air Quality Standard (NAAQS). Urban Airshed Modeling (UAM) indicates that a reduction in NOx emissions is required to lower ozone levels. Therefore, it is necessary to identify and promulgate regulations to implement emission reduction controls. LDEQ is preparing a revision to the State Implementation Plan (SIP) that will specify emission reduction control strategies so that Louisiana can comply with the NAAQS. This Rule to control emissions of NOx is only one measure identified to reduce emissions. The basis and rationale for this Rule are to protect air quality in Louisiana and comply with the NAAQS for ozone.

The department made substantive changes to the Rule as a result of comments received during the public comment period and completion of the modeling analysis for the Baton Rouge attainment plan. The changes include, but are not limited to, the following:

1. change to, or in, emission factors for some boilers;
2. addition of certain exemptions;
3. addition of monitoring alternatives;
4. move of previous Subsection C (Definitions) to Subsection B;
5. move of previous Subsection B (Exemptions) to Subsection C; and
6. clarifications and rewording.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33**

**ENVIROMENTAL QUALITY**

**Part III. Air**

**Chapter 22. Control of Emissions of Nitrogen Oxides (NO<sub>x</sub>)**

**§2201. Affected Facilities in the Baton Rouge**

**Nonattainment Area and the Region of Influence**

**A. Applicability**

1. The provisions of this Chapter shall apply to any affected facility in the Baton Rouge Nonattainment Area (i.e., the entire parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge) and the Region of Influence (i.e., affected facilities in the attainment parishes of East Feliciana, Pointe Coupee, St. Helena, and West Feliciana).

2. The provisions of this Chapter shall apply during the ozone season (May 1 to September 30) of each year.

3. All affected facilities shall be in compliance as expeditiously as possible, but by no later than the dates specified in Subsection J of this Section.

B. Definitions. Unless specifically defined in this Subsection or in LAC 33:III.111 or 502, the words, terms, and abbreviations in this Chapter shall have the meanings commonly used in the field of air pollution control. For

purposes of this Chapter only, the following definitions shall supersede any definitions in LAC 33:III.111 or 502.

**Administrator**—the administrator, or an authorized representative, of the U. S. Environmental Protection Agency (EPA).

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

**Affected Facility**—any facility within the Baton Rouge Nonattainment Area or the Region of Influence with one or more affected point sources that collectively emit or have the potential to emit 50 tons or more per year of NO<sub>x</sub>, unless exempted in Subsection C of this Section.

**Affected Point Source**—any point source located at an affected facility and subject to an emission factor listed in Paragraph D.1 of this Section or used as part of an alternative plan in accordance with Subsection E of this Section, unless exempted in Subsection C of this Section.

**Ammonia Reformer**—a type of process heater/furnace located in an ammonia production plant that is designed to heat a mixture of natural gas and steam to produce hydrogen and carbon oxides.

**Averaging Capacity**—the average actual heat input rate in MMBtu/hour at which an affected point source operated during the ozone season of the two calendar years of 2000 and 2001 (e.g., total heat input for the period divided by the actual hours of operation for the same period). Another period may be used to calculate the averaging capacity if approved by the department. For units with permit revisions that legally curtailed capacity or that were permanently shut down after 1997, the averaging capacity is the average actual heat input during the last two ozone seasons of operation before the curtailment or shutdown.

**Baton Rouge Nonattainment Area**—the entire parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge.

**Biomass**—defined as bagasse, rice-husks, wood, or other combustible, vegetation-derived material that is suitable for use as fuel.

**Boiler**—any combustion equipment fired with any solid, liquid, and/or gaseous fuel that is primarily used to produce steam, or heat water, or any other heat transfer medium for power generation or for heat to an industrial, institutional, or commercial operation. Equipment that is operated primarily for waste treatment and that incidentally produces steam shall not be regulated under this Chapter as a boiler.

**Cap**—a system for demonstrating compliance whereby an affected facility, a subset of affected sources at an affected facility, or a group of affected facilities under common control are operated to stay below a mass emission rate expressed as mass per unit of time. The allowable mass emission rate is calculated by adding the allowable emissions for each affected point source. The allowable emission is the product of the source's averaging capacity and the applicable factor in Subsection D.1 of this Section.

**Chemical Processing Gas Turbine**—a gas turbine that vents its exhaust gases into the operating stream of a chemical process.

**Coal**—all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials, Designation D388-77. For the purposes of this Chapter, coal shall also include

petroleum coke, solid carbon residues from the processing of petroleum products and coal-derived synthetic fuels, including but not limited to, solvent refined coal, coal-oil mixtures, and coal-water mixtures.

**Combined Cycle**—a combustion equipment configuration that generates electrical power with a stationary gas or liquid-fired turbine and/or a stationary internal combustion engine and that recovers heat from the discharge within equipment to heat water or generate steam.

**Continuous Emissions Monitoring System (CEMS)**—the total equipment that may be required to meet the data acquisition and availability requirements, used to sample, condition, if applicable, analyze, and provide a record of emissions.

**Daily Average**—an average of the hourly data for one calendar day starting at 12-midnight and continuing until the following 12-midnight.

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

**Elapsed Run-Time Meter**—an instrument designed to measure and record the time that an affected point source has run during a designated period.

**Electric Power Generating System**—all boilers, stationary internal combustion engines, stationary gas turbines, and other combustion equipment within an affected facility that are used to generate electric power and that are owned or operated by a municipality, an electric cooperative, an independent power producer, a public utility, or a Louisiana Public Service Commission regulated utility company, or any of its successors.

**Emergency Standby Gas Turbine or Engine**—a gas turbine or engine operated as an electrical or a mechanical power source for an affected facility when the primary source has been disrupted or discontinued during an emergency due to circumstances beyond the control of the owner or operator of the affected facility and that is operated only during such an emergency or when normal testing procedures, as recommended by the manufacturer, are being performed. The definition includes a stationary gas turbine or a stationary internal combustion engine that is used at a nuclear power plant as an emergency generator that is subject to Nuclear Regulatory Commission (NRC) regulations and a stationary internal combustion engine that is used for the emergency pumping of water for either fire protection or flood relief. This term does not include an electric generating unit in peaking service.

**Facility**—a contiguous area under common control that contains various types of equipment that emit or have the potential to emit NO<sub>x</sub>.

**Facility-Wide Averaging Plan**—an alternative emission plan whereby an affected facility (or affected facilities with a common owner or operator) with multiple affected point sources of NO<sub>x</sub> emissions achieves the required reduction by a different mix of controls from that mandated by Subsection D of this Section. Some affected point sources may be over-controlled (more restrictive than the regulation) or shut down in order to offset other affected point sources that are under-controlled (less restrictive than the regulation) or not controlled, provided the required overall NO<sub>x</sub> reduction is met.

**Facility-Wide Emission Factor**—the total average allowable NO<sub>x</sub> emission factor in pound NO<sub>x</sub>/MMBtu for

affected point sources when firing at their averaging capacities.

*F Factor*—the ratio of the gas volume of the products of combustion to the heat content of the fuel, typically expressed in dry standard cubic feet (dscf) per MMBtu.

*Flare*—a type of equipment specifically designed for combusting gaseous vents at an above-ground location.

*Fluid Catalytic Cracking Unit Regenerator*—a unit in a refinery where catalyst is recovered (regenerated) by burning off coke and other deposits with hot air. The term includes the associated equipment for controlling air pollutant emissions and for heat recovery.

*Gas*—any gaseous substance that can be used as a fuel to create heat and/or mechanical energy including natural gas, synthetically produced gas from coal or oil, gaseous substances from the decomposition of organic matter, and gas streams that are by-products of a manufacturing process.

*Heat Input*—the heat released due to fuel combustion in an affected point source, using the higher heating value of the fuel, excluding the sensible heat of the incoming combustion air.

*Higher Heating Value*—a measurement of the heat evolved during the complete combustion of a substance, including the latent heat of condensation of any water that is produced.

*Horsepower Rating*—the engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed.

*Incinerator*—same as defined in LAC 33:III.111.

*International Standards Organization (ISO) Conditions*—standard conditions of 59°F, 1.0 atmosphere, and 60 percent relative humidity.

*Kilns and Ovens*—combustion equipment used for drying, baking, cooking, and calcining. Kilns can also be used for the treatment of solid wastes.

*Lean-Burn Engine*—a spark-ignited or compression-ignited, Otto cycle, diesel cycle, or two-stroke engine that is not capable of being operated with an exhaust stream oxygen concentration equal to or less than 1.0 percent, by volume on a dry basis, as originally designed by the manufacturer. The exhaust gas oxygen concentration shall be determined from the uncontrolled exhaust stream.

*Liquid Fuel*—any substance in a liquid state that can be used as a fuel to create heat and/or mechanical energy including:

- a. crude oil, petroleum oil, fuel oil, residual oil, distillate, or other liquid fuel derived from crude oil or petroleum;
- b. liquid by-products of a manufacturing process or a petroleum refinery; and
- c. any other liquid fuel.

*Low Ozone Season Capacity Factor Boiler or Process Heater/Furnace*—a boiler or process heater/furnace with maximum rated capacity greater than or equal to 80 MMBtu/hour and ozone season heat input less than or equal to  $0.92 \times 10^{11}$  Btu.

*Malfunction*—any sudden and unavoidable failure, as defined in LAC 33:III.111.

*Maximum Rated Capacity*—the maximum annual design capacity, as determined by the equipment manufacturer or as proven by actual maximum annual

performance in the field, unless the affected point source is limited by permit condition to a lesser annual capacity, in which case the limiting condition shall be used as the maximum rated capacity. Where the capacity of a point source is limited by an operating cap applicable to a group of point sources (e.g., several units capped to a combined total firing rate), the total firing rate cap shall be divided by the number of point sources in the cap to arrive at an equivalent maximum rated capacity. This equivalent maximum rated capacity shall be used only to determine the applicability of the emission factors and monitoring provisions of this Chapter.

*Megawatt (MW) Rating*—the continuous power rating or mechanical equivalent by a stationary gas turbine manufacturer at ISO conditions, without consideration to the increase in turbine shaft output and/or decrease in turbine fuel consumption by the addition of energy recovered from exhaust heat.

*Nitric Acid Production Unit*—a facility that produces nitric acid by any process.

*Nitrogen Oxides (NO<sub>x</sub>)*—the sum of the nitric oxide and nitrogen dioxide in a stream, collectively expressed as nitrogen dioxide.

*Number 6 Fuel Oil*—fuel oil of the grade that is classified number 6, according to ASTM Standard Specification for classification of fuel oil by ASTM D396-84.

*Ozone Season*—May 1 to September 30, inclusively.

*Peaking Service*—a stationary gas turbine or stationary internal combustion engine that is operated intermittently to produce energy. To be in peaking service, the annual heat input or horsepower-hours for the affected point source shall be less than the product of 2500 hours and the MW rating of the turbine or the horsepower rating of the engine.

*Permanent Shutdown*—a shutdown of an affected point source where the owner or operator has filed a notice of permanent shutdown with the department or where the department, through a permit revision or final permit, has removed the affected point source from the applicable permit. (To maintain temporary shutdown status, a source must be maintained in good working order and not dismantled or cannibalized, must still be listed in the applicable permit, must still be listed on the department's emission inventory, and must continue to pay appropriate fees.)

*Predictive Emissions Monitoring System (PEMS)*—a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

*Process Heater/Furnace*—any combustion equipment fired with solid, liquid, and/or gaseous fuel that is used to transfer heat to a process fluid, superheated steam, or water for the purpose of heating the process fluid or causing a chemical reaction. The term process heater/furnace does not apply to any unfired waste heat recovery boiler that is used to recover sensible heat from the exhaust of any combustion equipment, or to boilers as defined in this Subsection.

*Pulp Liquor Recovery Furnace*—either a straight Kraft recovery furnace or a cross recovery furnace as defined in 40 CFR 60 subpart BB.

*Region of Influence*—an area to the north of the Baton Rouge Nonattainment Area that encompasses affected facilities in the attainment parishes of East Feliciana, Pointe Coupee, St. Helena, and West Feliciana.

*Rich-Burn Engine*—all stationary reciprocating engines that do not fit the definition of lean-burn.

*Sensible Heat*—the heat energy stored in a substance as a result of an increase in its temperature.

*Stationary Gas Turbine*—any turbine system that is gas and/or liquid fuel fired and that is either attached to a foundation at an affected facility or is portable equipment operated at a specific affected facility for more than 60 days in any ozone season.

*Stationary Internal Combustion Engine*—a reciprocating engine that is either gas and/or liquid fuel fired and that is either attached to a foundation or is portable equipment operated at a specific affected facility for more than six months at a time. This term does not include locomotive engines or self-propelled construction engines.

*Supplemental Firing Unit*—a unit with burners that is installed in the exhaust duct of a stationary gas turbine or internal combustion engine for the purpose of supplying supplemental heat to a downstream heat recovery unit.

*Thirty-Day (30-Day) Rolling Average*—an average, calculated for each day that fuel is combusted, of hourly emissions data for the preceding 30 days that fuel is combusted in an affected point source.

*Totalizing Fuel Meter*—a meter or metering system that provides a cumulative measure of fuel consumption.

*Trading Allowances*—the tons of NO<sub>x</sub> emissions that result from over-controlling, permanently reducing the operating rate of, or permanently shutting down, an affected point source located within the Baton Rouge Nonattainment Area or the Region of Influence. The allowances are determined in accordance with LAC 33:III.Chapter 6 and from the emission factors required by Subsection D of this Section for the affected point source and the enforceable emission factor assigned by the owner or operator in accordance with Subsection E of this Section. Trading allowances will be granted only for reductions that are real, quantifiable, permanent, and federally enforceable. NO<sub>x</sub> reductions that are used in a facility-wide averaging plan cannot be also used in a trading plan.

*Wood*—wood, wood residue, bark, or any derivative fuel or residue thereof in any form, including but not limited to, sawdust, sander dust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

C. Exemptions. The following categories of equipment or processes located at an affected facility within the Baton Rouge Nonattainment Area or the Region of Influence are exempted from the provisions of this Chapter:

1. boilers and process heater/furnaces with a maximum rated capacity of less than 80 million British thermal units (MMBtu) per hour;

2. stationary gas turbines with a megawatt rating based on heat input of less than 10 megawatts (MW);

3. stationary internal combustion engines as follows:  
a. rich-burn engines with a rating of less than 300 horsepower (Hp); and  
b. lean-burn engines with a rating of less than 1500 Hp;

4. low ozone season capacity factor boilers and process heater/furnaces, in accordance with Subsection H.11 of this Section;

5. stationary gas turbines and stationary internal combustion engines, that are:

a. used in research and testing;

b. used for performance verification and testing;

c. used solely to power other engines or turbines during start-ups;

d. operated exclusively for fire fighting or training and/or flood control;

e. used in response to and during the existence of any officially declared disaster or state of emergency;

f. used directly and exclusively for agricultural operations necessary for the growing of crops or the raising of fowl or animals; or

g. used as chemical processing gas turbines.

6. any point source, in accordance with Subsection H.12 of this Section, that operates less than 400 hours during the ozone season;

7. flares, incinerators, kilns and ovens as defined in Subsection B of this Section;

8. any point source during start-up and shutdown as defined in LAC 33:III.111 or during a malfunction as defined in 40 CFR section 60.2;

9. any point source used solely to start up a process;

10. any point source firing biomass fuel that supplies greater than 50 percent of the heat input on a monthly basis;

11. any point source at a sugar mill;

12. fluid catalytic cracking unit regenerators;

13. pulp liquor recovery furnaces;

14. diesel-fired stationary internal combustion engines;

15. any affected point source that is required to meet a more stringent state or federal NO<sub>x</sub> emission limitation, whether by regulation or permit. (In this case, the monitoring, reporting, and recordkeeping requirements shall be in accordance with the more stringent regulation or permit and not this Chapter. If the applicable regulation or permit does not specify monitoring, reporting, and recordkeeping requirements, the provisions of this Chapter shall apply.);

16. wood-fired boilers that are subject to 40 CFR 60, subpart Db;

17. nitric acid production units that are subject to 40 CFR 60, subpart G or LAC 33:III.2307;

18. any affected point source firing Number 6 Fuel Oil during a period of emergency and approved by the administrative authority;

19. boilers and industrial furnaces treating hazardous waste and regulated under LAC 33:V.Chapter 30 or 40 CFR part 264, 265, or 266, including halogen acid furnaces and sulfuric acid regeneration furnaces; and



20. high efficiency boilers or other combustion devices regulated under the Toxic Substance Control Act PCB rules under 40 CFR part 761.

D. Emission Factors

1. The following table lists NO<sub>x</sub> emission factors that shall apply to affected point sources located at affected facilities in the Baton Rouge Nonattainment Area or the Region of Influence:

NO <sub>x</sub> Emission Factors		
Category	Maximum Rated Capacity	NO <sub>x</sub> Emission Factor <sup>a</sup>
Electric Power Generating System Boilers: Coal-fired	>= 80 MMBtu/Hour	0.21 pound/MMBtu
Number 6 Fuel Oil-fired	>= 80 MMBtu/Hour	0.18 pound/MMBtu
All Others (gaseous or liquid)	>= 80 MMBtu/Hour	0.10 pound/MMBtu
Industrial Boilers	>= 80 MMBtu/Hour	0.10 pound/MMBtu
Process Heater/Furnaces: Ammonia Reformers	>= 80 MMBtu/Hour	0.23 pound/MMBtu
All Others	>= 80 MMBtu/Hour	0.08 pound/MMBtu
Stationary Gas Turbines	>= 10 MW	0.16 pound/MMBtu <sup>b</sup>
Stationary Internal Combustion Engines: Lean-burn	>= 1500 Hp	4g/Hp-hour
Rich-burn	>= 300 Hp	2g/Hp-hour

<sup>a</sup> all factors are based on the higher heating value of the fuel.

<sup>b</sup> equivalent to 42 ppmv (15 percent O<sub>2</sub>, dry basis) with an F factor of 8710 dscf/MMBtu.

2. Any electric power generating system boiler that operates with a combination of fuels shall comply with an adjusted emission factor calculated as follows:

a. if a combination of fuels is used normally, the emission factor from Subsection D.1 of this Section shall be adjusted by the weighted average heat input of the fuels based on the ozone season average usage in 2000 and 2001, or another period if approved by the department;

b. if the boiler is normally fired with a primary fuel and a secondary fuel is available for back-up, the unit shall comply with the emission factor for the primary fuel while firing the primary fuel and with the emission factor for the secondary fuel while firing the secondary fuel. In addition, the usage of the secondary fuel shall be limited to the ozone season average usage of the secondary fuel in 2000 and 2001, or another period if approved by the department; and

c. in either case, if the secondary fuel is less than 10 percent of the weighted average, the owner or operator may choose to comply with the unadjusted limit for the primary fuel.

3. For affected point sources in an electric power generating system that fire gaseous or liquid fuels, the emission factors from Subsection D of this Section shall apply as the mass of NO<sub>x</sub> emitted per unit of heat input (pound NO<sub>x</sub> per MMBtu), on a 30-day rolling average basis. Alternatively, a facility may choose to comply with a ton per day or a pound per hour cap provided that monitoring is installed, calibrated, maintained, and operated to demonstrate compliance with the cap. The cap for a facility or for multiple facilities under common control is calculated by adding the products of the factor from Subsection D.1 of

this Section and the averaging capacity for each affected point source as follows:

Equation D-1

$$Cap (tpd) = 0.012 \times \sum_{i=1}^N (R_{li} \times HI_i)$$

Where:

HI<sub>i</sub> = the averaging capacity of each point source (MMBtu/hour)

i = each point source included in the cap

N = the total number of point sources included in the cap

R<sub>li</sub> = the limit for each point source from Subsection D of this Section (pound NO<sub>x</sub>/MMBtu)

4. For all other affected point sources, including those in a coal-fired electric power generating system, the emission factors from Subsection D of this Section shall apply as the mass of NO<sub>x</sub> emitted per unit of heat input (pound NO<sub>x</sub> per MMBtu), on a 30-day rolling average basis. Alternatively, a facility may choose to comply with a cap as detailed in Subsection D.3 of this Section provided a system, approved by the department, is installed, calibrated, maintained, and operated to demonstrate compliance.

5. If one affected point source discharges in part or in whole to another affected point source, the portion discharging into the second point source shall be treated as emanating from the second point source and shall be controlled to the same limit as that specified for the second point source, while the portion discharging directly to the atmosphere from the first point source shall be controlled to the limit of the first point source. This term shall not include a combined cycle unit that discharges into a supplemental firing unit or other type of combustion equipment. For this type of point source, the emissions shall be controlled as follows:

a. for the turbines and/or engines, at the appropriate limits for the turbines and/or engines alone; and

b. for the supplemental firing unit or other type of combustion equipment, at the appropriate limit for the supplemental firing or combustion equipment with the measured emission values adjusted for the emissions coming from the turbines and/or engines.

6. Where a common stack is used to collect vents from affected point sources or affected point sources and exempt point sources and monitoring and/or testing of individual units is not feasible, the department, upon application from the owner or operator, shall specify alternative methods to demonstrate compliance with the emission factors of this Subsection.

7. Any affected point source firing gaseous fuel that contains hydrogen and/or carbon monoxide may apply a multiplier, as calculated below, to the appropriate emission factor given in Subsection D.1 of this Section. The total hydrogen and/or carbon monoxide volume in the gaseous fuel stream is divided by the total gaseous fuel flow volume to determine the volume percent of hydrogen and/or carbon monoxide in the fuel supply. In order to apply this multiplier, the owner or operator of the affected point source shall sample and analyze the fuel gas composition for hydrogen

and/or carbon monoxide in accordance with Subsection G.5 of this Section.

Equation D-2

$$\begin{aligned} & \text{If } (\text{Vol. \% } H_2 + \text{Vol. \% } CO) = \text{or } < 50 \\ & \quad \text{Then} \\ \text{fuel multiplier} &= 1 + \frac{0.5 \times (\text{Vol. \% } H_2 + \text{Vol. \% } CO)}{100} \\ & \quad \text{Otherwise} \\ \text{fuel multiplier} &= 1.25 \end{aligned}$$

8. The owner or operator of a stationary gas turbine using a fuel that has an F factor different than 8710 dscf/MMBtu may adjust the allowable emission factor shown in Subsection D.1 of this Section. The adjustment is made by dividing the actual F factor (dscf/MMBtu) of the fuel by 8710 and multiplying the result by 0.16 to get the adjusted allowable emission factor. The use of this option shall be detailed in the permit application or in the optional compliance plan described in Subsection F.7 of this Section.

9. On a day that is designated as an Ozone Action Day by the department, a facility shall not fire an affected point source with Number 6 Fuel Oil or perform testing of emergency and training combustion units without prior approval of the administrative authority.

E. Alternative Plans

1. Facility-Wide Averaging Plan. A facility-wide averaging plan is established in this Chapter for single affected facilities and multiple affected facilities that are owned or operated by the same entity. For sources located within the Baton Rouge Nonattainment Area or the Region of Influence, an owner or operator of one or more affected facilities may use the facility-wide averaging plan as an alternative means of compliance with the emission factors from Subsection D of this Section. A request for approval to use a facility-wide averaging plan, that includes the details of the plan, shall be submitted to the department either separately or with the permit application or in the optional compliance plan described in Subsection F.7 of this Section. A facility-wide averaging plan submitted under this provision shall be approved if the department determines that it will provide emission reductions equivalent to or more than that required by the emission factors in Subsection D of this Section and the plan establishes satisfactory means for determining initial and continuous compliance, including appropriate monitoring and recordkeeping requirements. Approval of the alternative plans by the administrative authority does not necessarily indicate automatic approval by the administrator.

a. An owner or operator who elects to use a facility-wide averaging plan for compliance shall establish an emission factor for each applicable affected point source such that if each affected point source was operated at its averaging capacity, the cumulative emission factor in pounds NO<sub>x</sub>/MMBtu from all point sources in the averaging group would not exceed the facility-wide emission factor, as shown in Equation E-3. The equations below shall be used to calculate the cumulative emission rate and the facility-wide emission factor.

$$FL = \sum_{i=1}^N ( R_{li} \times f_i ) \quad \text{Equation E-1}$$

Where:

$$f_i = HI_i / \sum_{i=1}^N HI_i \quad \text{Equation E-2}$$

$$\sum_{i=1}^N ( R_{ai} \times f_i ) \leq FL \quad \text{Equation E-3}$$

Where:

- f<sub>i</sub> = fraction of total system averaging capacity for point source i
- HI<sub>i</sub> = the averaging capacity of each point source (MMBtu/hour)
- i = each point source in the averaging group
- N = the total number of point sources in the averaging group
- R<sub>ai</sub> = the limit assigned by the owner to each point source in the averaging plan (pound NO<sub>x</sub>/MMBtu)
- R<sub>li</sub> = the limit for each point source from Subsection D of this Section (pound NO<sub>x</sub>/MMBtu)
- FL = facility-wide emission factor (pound NO<sub>x</sub>/MMBtu) of all point sources included in the averaging plan

b. An owner or operator of an electric power generating system that fires gaseous or liquid fuels and that chooses to use an averaging plan shall demonstrate compliance by either of the following methods:

- i. operating such that each affected point source does not exceed its assigned individual limit in pound NO<sub>x</sub>/MMBtu on a 30-day rolling average basis; or
- ii. complying with a cap as described in Subsection D.3 of this Section, provided that a monitoring system is installed, calibrated, maintained, and operated to demonstrate compliance with the cap.

c. Owners or operators of all other affected point sources, including those in a coal-fired electric power generating system, that choose to use an averaging plan shall demonstrate compliance by either of the following methods:

- i. operating such that each affected point source does not exceed its assigned individual limit in pound NO<sub>x</sub>/MMBtu on a 30-day rolling average basis; or
- ii. complying with a cap as described in Subsection D.4 of this Section, provided a system, approved by the department, is installed, calibrated, maintained, and operated to demonstrate compliance with the cap.

d. An owner or operator that chooses to use the provisions of Subsection E.1.b.i or c.i of this Section to demonstrate compliance in an averaging plan shall include in the submitted plan a description of the actions that will be taken if any under-controlled unit is operated at more than 10 percent above its averaging capacity (HI<sub>i</sub> in Subsection E.1.a of this Section). Such actions may include a comparison of the total current emissions from all units in the averaging plan to the total emissions that would result if the units in the plan were operated in accordance with Subsection D of this Section, other reviews, reporting, and/or mitigation actions. If the department determines that

the actions are not adequate to prevent an increase of emissions over the total emissions that would result if the units were operated in accordance with Subsection D of this Section, the department shall require that the averaging plan and/or the action plan be revised or shall disallow the use of the averaging plan.

e. The owner or operator of affected point sources complying with the requirements of this Subsection can include in the plan either all of the affected point sources at the facility or select only certain sources to be included.

f.  $\text{NO}_x$  reductions accomplished after 1997 through curtailments in capacity of a point source with a permit revision or by permanently shutting down the point source may be included in the averaging plan. In order to include a unit with curtailed capacity in the averaging plan, the old averaging capacity, determined from the average of the two ozone seasons prior to the capacity curtailment or such other two-year period approved by the department, shall be used to calculate the unit's contribution to the term FL. The new averaging capacity, determined from the enforceable permit revision, shall be multiplied by the owner assigned limit to calculate the contribution of the curtailed unit to the cumulative emission factor for the averaging group.

g.  $\text{NO}_x$  reductions from exempted point sources, as defined in Subsection C of this Section, may be used in a facility-wide averaging plan. If a unit exempted in Subsection C of this Section is included in an averaging plan, the term  $R_{ij}$  in Equation E1 shall be established, in accordance with Subsection G of this Section, from a stack test or other determination of emissions approved by the department that was performed before the  $\text{NO}_x$  reduction project was implemented and the term  $R_{ai}$  shall be established from the owner-assigned emission factor in accordance with Subsection E.1.a of this Section.

h. Solely for the purpose of calculating the facility-wide emission factor, the allowable emission factor (pound  $\text{NO}_x/\text{MMBtu}$ ) for each affected stationary internal combustion engine is the applicable  $\text{NO}_x$  emission factor from Subsection D of this Section ( $\text{g}/\text{Hp}\cdot\text{hour}$ ) divided by the product of the engine manufacturer's rated heat rate (expressed in  $\text{Btu}/\text{Hp}\cdot\text{hour}$ ) at the engine's Hp rating and  $454 \times 10^6$ .

i. The owner or operator of affected point sources complying with the requirements of this Subsection in accordance with an emissions averaging plan shall carry out recordkeeping that includes, but is not limited to, a record of the data on which the determination of each point source's hourly, daily, or 30-day, as appropriate, compliance with the facility-wide averaging plan is based.

2. Trading Plan. Trading is established in this Chapter as an alternate means of compliance with the emission factors from Subsection D of this Section. Within the Baton Rouge Nonattainment Area or the Region of Influence, trading allowances, as defined in Subsection B of this Section, may be traded between affected facilities owned by different companies in accordance with the provisions of LAC 33:III.Chapter 6. The approval to use trading shall be requested in the permit application or in the optional compliance plan described in Subsection F.7 of this Section. A trading plan submitted under this provision shall be

approved if the department determines that it will provide  $\text{NO}_x$  emission reductions equivalent to or more than that required by the emission factors of Subsection D of this Section and the plan establishes satisfactory means for determining ongoing compliance, including appropriate monitoring and recordkeeping requirements. Approval of trading plans by the administrative authority does not necessarily indicate automatic approval of the administrator.

#### F. Permits

##### 1. Authorization to Install and Operate $\text{NO}_x$ Control Equipment

a. An owner or operator may obtain approval to install and operate  $\text{NO}_x$  control equipment that does not result in ammonia emissions above the minimum emission rate (MER) in LAC 33:III.Chapter 51 by submitting documentation in accordance with LAC 33:III.511. This documentation shall include an estimate of any carbon monoxide (CO), sulfur dioxide ( $\text{SO}_2$ ), particulate matter ( $\text{PM}_{10}$ ), and/or volatile organic compound (VOC) emission increases associated with the  $\text{NO}_x$  control technology. If approved, the administrative authority shall grant an authorization to construct and operate in accordance with LAC 33:III.501.C.3. Any appropriate permit revision reflecting the emission reduction shall be submitted to the department and deemed administratively complete no later than 180 days after commencement of operation and in accordance with the procedures of LAC 33:III.Chapter 5.

b. In accordance with LAC 33:III.5111.C, installation of  $\text{NO}_x$  control equipment that results in ammonia emissions above the MER in LAC 33:III.Chapter 51 shall not commence until a permit or permit modification has been approved by the administrative authority. In accordance with LAC 33:III.5107.D.1, the administrative authority shall provide at least 30 days for public comment before issuing any such permit.

2. Alternatively to Subsection F.1.a of this Section, an owner or operator of an affected facility that is operating with a Louisiana air permit may submit a completed permit modification application for the changes proposed to comply with this Chapter.

3. Any owner or operator with an affected facility that has retained grandfathered status, as described in LAC 33:III.501.B.6, shall submit an application in accordance with LAC 33:III.501.C.1 for the changes proposed to comply with this Chapter.

4. Duty to Supplement. In accordance with LAC 33:III.517.C, if an owner or operator has a permit application on file with the department, but the department has not released the proposed permit, the applicant shall supplement the application as necessary to address this Chapter.

5. Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Considerations. A significant net emissions increase in CO,  $\text{SO}_2$ ,  $\text{PM}_{10}$ , and/or VOC in accordance with LAC 33:III.504 or 509, that is a direct result of, and incidental to, the installation of  $\text{NO}_x$  control equipment or implementation of a  $\text{NO}_x$  control technique required to comply with the provisions of this Chapter shall be exempt from the requirements of LAC 33:III.509 and/or 504, as appropriate, provided the following conditions are met:

- a. the project shall not:
  - i. cause or contribute to a violation of the national ambient air quality standard (NAAQS); or
  - ii. adversely affect visibility or other air quality related value (AQRV) in a class I area;
- b. any increase in CO, SO<sub>2</sub>, PM<sub>10</sub>, and/or VOC emissions shall be:
  - i. quantified in the submittal required by Subsection F.1-4 of this Section; and
  - ii. tested in accordance with Subsection G of this Section, as applicable;
- c. notwithstanding the requirements of Table 1 of LAC 33:III.504, any increase of VOC emissions at an affected facility located in the Baton Rouge Nonattainment Area shall be offset at a ratio of at least 1:1. Offsets shall be surplus, permanent, quantifiable, and federally enforceable and calculated in accordance with LAC 33:III.Chapter 6; and
- d. a 30-day public comment period shall be provided in accordance with LAC 33:III.519.C prior to issuance of a permit or permit modification.

6. Increases above the MER in toxic air pollutant (TAP) emissions shall be subject to the applicable requirements of LAC 33:III.Chapter 51.

7. When pre-permit application approval of plans is desired by an owner or operator, a compliance plan may be submitted in accordance with this Subsection. The administrative authority shall approve the plan if it contains all of the required information to determine that the affected sources will be in compliance with this Chapter and is accurate. The compliance plan may address individual point sources, groups of point sources, or all point sources at the facility, as determined by the owner. The following information shall be submitted as appropriate:

- a. the facility designation, as indicated by the identification number, submitted to the Office of Environmental Services, Permits Division;
- b. a list of all units in the compliance plan, the emission point number as designated on the emission inventory questionnaire, the averaging capacity, and the maximum rated capacity;
- c. identification of all combustion units with a claimed exemption in accordance with Subsection C of this Section, and the rule basis for the claimed exemption;
- d. a list of any units that have been, or will be, curtailed or permanently shut down;
- e. for each unit, the actual emission factor that will be used to achieve compliance;
- f. the control technology to be applied for each unit subject to control, and an anticipated construction schedule for each control device including the dates for completion of engineering, submission of permit applications, start and finish of construction, and initial start-up; and
- g. the calculations to demonstrate that each unit will achieve the required NO<sub>x</sub> emission rate.

#### G Initial Demonstration of Compliance

1. Emissions testing to demonstrate initial compliance with the NO<sub>x</sub> emission factors of Subsection D of this Section, or with emission limits that are part of an alternative plan under Subsection E of this Section, for affected point sources operating with a CEMS or PEMS that has been certified in accordance with Subsection H of this Section is not required. The certification of the CEMS or PEMS shall

be considered demonstration of initial compliance. Testing for initial compliance is not required for an existing CEMS or PEMS that meets the requirements of Subsection H of this Section.

2. Emissions testing is required for all point sources that are subject to the emission limitations of Subsection D of this Section or used in one of the alternative plans of Subsection E of this Section. Test results must demonstrate that actual NO<sub>x</sub> emissions are in compliance with the appropriate limits of this Chapter. As applicable, CO, SO<sub>2</sub>, PM<sub>10</sub>, oxygen (O<sub>2</sub>), NH<sub>3</sub>, and VOC shall also be measured. Performance testing of these point sources shall be performed in accordance with the schedule specified in Subsection J of this Section.

3. The tests required by Subsection G.2 of this Section shall be performed by the test methods referenced in Subsection G.5 of this Section, except as approved by the administrative authority in accordance with Subsection G.7 of this Section. Test results shall be reported in the units of the applicable emission factors and for the corresponding averaging periods.

4. Emission testing conducted in the three years prior to the initial demonstration of compliance date may be used to demonstrate compliance with the limits of Subsection D or E of this Section, if the owner or operator demonstrates to the department that the prior testing meets the requirements of this Subsection. The request to waive emissions testing according to this Paragraph shall be included in the permit application. The department reserves the right to request performance testing or CEMS performance evaluation upon 60 days notice.

5. Compliance with the emission specifications of Subsection D or E of this Section for affected point sources operating without CEMS or PEMS shall be demonstrated while operating at the maximum rated capacity, or as near thereto as practicable. The stack tests shall be performed according to emissions testing guidelines located on the department website in the technology section. Three minimum one-hour tests shall be performed and the following methods from 40 CFR part 60, appendix A shall be used:

- a. Methods 1, 2, 3, and 4 or 19, with prior approval, for exhaust gas flow;
- b. Method 3A or 20 for O<sub>2</sub>;
- c. Method 5 for PM;
- d. Method 6C for SO<sub>2</sub>;
- e. Method 7E or 20 for NO<sub>x</sub>;
- f. Method 10 or 10A for CO;
- g. Method 18 or 25A for VOC;
- h. modified Method 5, or a department-approved equivalent, for NH<sub>3</sub>; and/or
- i. American Society of Testing and Materials (ASTM) Method D1945-96 or ASTM Method D2650-99 for fuel composition; ASTM Method D1826-94 or ASTM Method D3588-98 for calorific value.

6. All alternative or equivalent test methods, waivers, monitoring methods, testing and monitoring procedures, customized or correction factors, and alternatives to any design, equipment, work practices, or operational standards must be approved by both the administrative authority and the administrator, if applicable, before they become effective.

7. An owner or operator may request approval from the department for minor modifications to the test methods listed in Subsection G.5 of this Section, including alternative sampling locations and testing a subset of similar affected sources, prior to actual stack testing.

8. The information required in this Subsection shall be provided in accordance with the effective dates in Subsection J of this Section.

H. Continuous Demonstration of Compliance. After the initial demonstration of compliance required by Subsection G of this Section, continuous compliance with the emission factors of Subsection D or E of this Section, as applicable, shall be demonstrated by the methods described in this Subsection. For any alternative method, the department's approval does not necessarily constitute compliance with all federal requirements nor eliminate the need for approval by the administrator.

1. The owner or operator of boilers that are subject to this Chapter and that have a maximum rated capacity that is equal to or greater than 80 MMBtu/hour shall demonstrate continuous compliance as follows:

a. for boilers with a maximum rated capacity less than 250 MMBtu/hour:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage;

ii. install, calibrate, maintain, and operate an oxygen monitor to measure oxygen concentration; and

iii. in order to continuously demonstrate compliance with the NO<sub>x</sub> limits of Subsection D or E of this Section, implement procedures to operate the boiler within the fuel and oxygen limits established during the initial compliance run in accordance with Subsection G of this Section; and

b. for boilers with a maximum rated capacity equal to or greater than 250 MMBtu/hour:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure gas and/or liquid fuel usage. For coal-fired boilers, belt scales or an equivalent device shall be provided;

ii. install, calibrate, maintain, and operate a diluent (either oxygen or carbon dioxide) monitor. The monitor shall meet all of the requirements of performance specification 3 of 40 CFR 60, appendix B;

iii. install, calibrate, maintain, and operate a NO<sub>x</sub> CEMS to demonstrate continuous compliance with the NO<sub>x</sub> emission factors of Subsection D or E of this Section, as applicable. The CEMS shall meet all of the requirements of 40 CFR part 60.13 and performance specification 2 of 40 CFR 60, appendix B; and

iv. install, calibrate, maintain, and operate a CO monitor. The monitor shall meet all of the requirements of performance specification 4 of 40 CFR 60, appendix B; or

v. alternatively to Subsection H.1.b.ii-iv of this Section, for demonstration of continuous compliance, the owner or operator may install, calibrate, certify, maintain, and operate a PEMS to predict NO<sub>x</sub>, diluent (O<sub>2</sub> or CO<sub>2</sub>), and CO emissions for each affected point source. As an alternative to using the PEMS to monitor diluent (O<sub>2</sub> or CO<sub>2</sub>), a monitor for diluent according to Subsection H.1.b.ii of this Section or similar alternative method approved by the department may be used. The PEMS shall be certified while operating on primary boiler fuel and, separately, on any

alternative fuel. The certification shall be in accordance with EPA documents, "Example Specifications and Test Procedures for Predictive Emission Monitoring Systems" and "Predictive Emission Monitoring System to Determine NO<sub>x</sub> and CO Emissions from an Industrial Furnace" that are located on the EPA website in the emission monitoring section, both with posting dates of July 31, 1997; or

vi. alternatively to Subsection H.1.b.ii-iv of this Section, the owner or operator may request approval from the administrator for an alternative monitoring plan that uses a fuel-oxygen operating window to demonstrate continuous compliance of NO<sub>x</sub> and CO. The corners of the window shall be established during the initial compliance test required by Subsection G of this Section or similar testing at another time. The details for use of an alternative monitoring plan shall be submitted in the permit application or in the optional compliance plan described in Subsection F.7 of this Section. The plan shall become part of the facility permit and shall be federally enforceable.

2. The owner or operator of process heater/furnaces that are subject to this Chapter and that have a maximum rated capacity that is equal to or greater than 80 MMBtu/hour shall demonstrate continuous compliance as follows:

a. for process heater/furnaces with a maximum rated capacity less than 250 MMBtu/hour:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage;

ii. install, calibrate, maintain, and operate an oxygen monitor to measure oxygen concentration; and

iii. in order to continuously demonstrate compliance with the NO<sub>x</sub> limits of Subsection D or E of this Section, implement procedures to operate the process heater/furnace within the fuel and oxygen limits established during the initial compliance run in accordance with Subsection G of this Section; and

b. for process heater/furnaces with a maximum rated capacity equal to or greater than 250 MMBtu/hour:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage;

ii. install, certify, maintain, and operate an oxygen or carbon dioxide diluent monitor in accordance with the requirements of Subsection H.1.b.ii of this Section;

iii. install, certify, maintain, and operate a NO<sub>x</sub> CEMS in accordance with the requirements of Subsection H.1.b.iii of this Section; and

iv. install, certify, maintain, and operate a CO monitor in accordance with the requirements of Subsection H.1.b.iv of this Section; or

v. alternatively to Subsection H.2.b.ii-iv of this Section, the owner or operator may install, calibrate, certify, maintain, and operate a PEMS in accordance with the requirements of Subsection H.1.b.v of this Section; or

vi. alternatively to Subsection H.2.b.ii-iv of this Section, the owner or operator may request approval from the department for an alternative monitoring plan that uses a fuel-oxygen operating window, or other system, to demonstrate continuous compliance of NO<sub>x</sub> and CO. The corners of the window shall be established during the initial compliance test required by Subsection G of this Section or similar testing at another time. The details for use of an alternative monitoring plan shall be submitted in the permit

application or in the optional compliance plan described in Subsection F.7 of this Section. The plan shall become part of the facility permit and shall be federally enforceable.

3. The owner or operator of stationary gas turbines that are subject to this Chapter and that have a megawatt rating based on heat input that is equal to or greater than 10 MW shall demonstrate continuous compliance as follows:

a. for stationary gas turbines with a megawatt rating based on heat input less than 30 MW:

i. if the stationary gas turbine uses steam or water injection to comply with the NO<sub>x</sub> emission factors, install, calibrate, maintain, and operate a continuous system to monitor and record the average hourly fuel and steam or water consumption and the water or steam to fuel ratio. To demonstrate continuous compliance with the appropriate emission factor, the stationary gas turbine shall be operated at the required steam-to-fuel or water-to-fuel ratio as determined during the initial compliance test; and

ii. for other stationary gas turbines, install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage. Compliance with the emission factors of Subsection D or E of this Section shall be demonstrated by operating the turbine within the fuel limits established during the initial compliance run in accordance with Subsection G of this Section and by annual testing for NO<sub>x</sub> and CO with an approved portable analyzer; or

iii. alternatively to Subsection H.3.a.i or ii of this Section, an owner or operator may choose to comply with the requirements of Subsection H.3.b.i-iv or v of this Section to demonstrate continuous compliance with the limits of Subsection D or E of this Section; and

b. for stationary gas turbines with a megawatt rating based on heat input of 30 MW or greater:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage;

ii. install, certify, maintain, and operate an oxygen or carbon dioxide diluent monitor in accordance with the requirements of Subsection H.1.b.ii of this Section;

iii. install, certify, maintain, and operate a NO<sub>x</sub> CEMS in accordance with the requirements of Subsection H.1.b.iii of this Section; and

iv. install, certify, maintain, and operate a CO monitor in accordance with the requirements of Subsection H.1.b.iv of this Section; or

v. alternatively to Subsection H.3.b.ii-iv of this Section, the owner or operator may install, calibrate, certify, maintain, and operate a PEMS in accordance with the requirements of Subsection H.1.b.v of this Section; or

vi. alternatively to Subsection H.3.b.ii-iv of this Section, the owner or operator may request approval from the department for an alternative monitoring plan that complies with the provisions of Subsection H.3.a.i of this Section, if the turbine uses steam or water injection for compliance, or Subsection H.3.a.ii of this Section for other turbines. The alternative plan shall also require annual testing for NO<sub>x</sub> and CO with an approved portable analyzer and triennial stack testing for NO<sub>x</sub> and CO in accordance with the methods specified in Subsection G.5 of this Section. The details for use of an alternative monitoring plan shall be submitted in the permit application or in the optional compliance plan described in Subsection F.7 of this Section.

The plan shall become part of the facility permit and shall be federally enforceable.

4. The owner or operator of stationary internal combustion engines that are subject to this Chapter and have a horsepower rating of 300 Hp or greater for rich-burn engines or 1500 Hp or greater for lean-burn engines shall demonstrate continuous compliance as follows:

a. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage and demonstrate continuous compliance by operating the engine within the fuel limits established during the initial compliance run and by annual testing for NO<sub>x</sub> and CO with an approved portable analyzer and by triennial stack testing for NO<sub>x</sub> and CO in accordance with the methods specified in Subsection G.5 of this Section; or

b. alternatively to Subsection H.4.a of this Section, an owner or operator may choose to comply with the requirements of Subsection H.3.b.i-iv or v of this Section to demonstrate continuous compliance with the limits of Subsection D or E of this Section.

5. A CEMS unit may be used to monitor multiple point sources provided that each source is sampled at least once every 15 minutes and the arrangement is approved by the department.

6. Existing instrumentation for any requirement in this Subsection shall be acceptable upon approval of the department.

7. For any affected point source that uses a chemical reagent for reduction of NO<sub>x</sub>, a NO<sub>x</sub> CEMS, in accordance with Subsection H.1.b.iii of this Section, and a CO monitor, in accordance with Subsection H.1.b.iv of this Section, shall be provided.

8. Boilers or process heater/furnaces covered by this Chapter that discharge through a common stack shall meet the appropriate continuous monitoring requirements of Subsection H.1 or 2 of this Section, or an alternative approved by the department.

9. The owner or operator of any affected point source firing gaseous fuel for which a fuel multiplier from Subsection D.7 of this Section is used shall sample, analyze, and record the fuel gas composition on a daily basis or on an alternative schedule approved by the administrative authority. If an owner or operator desires to use an alternative sampling schedule, he shall specify a sampling frequency in his permit application and provide an explanation for the alternative schedule. Fuel gas analysis shall be performed according to the methods listed in Subsection G.5.g of this Section, or other methods that are approved by the department. A gaseous fuel stream containing 99 percent H<sub>2</sub> and/or CO by volume or greater may use the following procedure to be exempted from the sampling and analysis requirements of this Subsection:

a. a fuel gas analysis shall be performed initially using the test methods in Subsection G.5.g of this Section to demonstrate that the gaseous fuel stream is 99 percent H<sub>2</sub> and/or CO by volume or greater; and

b. the owner or operator shall certify that the fuel composition will continuously remain at 99 percent H<sub>2</sub> and/or CO by volume or greater during its use as a fuel to the point source.

10. All affected point sources that rely on periodic stack testing to demonstrate continuous compliance and use

a catalyst to control NO<sub>x</sub> emissions shall be tested after each occurrence of catalyst replacement. Portable analyzers shall be acceptable for this check. Documentation shall be maintained on-site, if practical, of the date, the person doing the test, and the test results. Documentation shall be made available for inspection upon request.

11. The owner or operator of any low ozone season capacity factor boiler or process heater/furnace for which an exemption is granted shall install, calibrate, and maintain a totalizing fuel meter, with instrumentation approved by the department, and keep a record of the fuel input for each affected point source during each ozone season. The owner or operator of any boiler or process heater/furnace covered under this exemption shall notify the administrative authority within seven days if the Btu-per-ozone season limit is exceeded. If the Btu-per-ozone season limit is exceeded, the exemption shall be permanently withdrawn. Within 90 days after receipt of notification from the administrative authority of the loss of the exemption, the owner or operator shall submit a permit modification detailing how to meet the applicable emission factor as soon as possible, but no later than 24 months, after exceeding the Btu-per-ozone season limit. Included with this permit modification, the owner or operator shall submit a schedule of increments of progress for the installation of the required control equipment. This schedule shall be subject to the review and approval of the department.

12. The owner or operator of any affected point source that is granted an exemption for operating less than 400 hours during the ozone season shall install, calibrate, and maintain a nonresettable, elapsed run-time meter to record the operating time in order to demonstrate compliance. The owner or operator shall notify the administrative authority within seven days if the hours-per-ozone season limit is exceeded. If the hour-per-ozone season limit is exceeded, the exemption shall be permanently withdrawn. Within 90 days after receipt of notification from the administrative authority of the loss of the exemption, the owner or operator shall submit a permit modification detailing how to meet the applicable emission factor as soon as possible, but no later than 24 months, after exceeding the limit. Included with this permit modification, the owner or operator shall submit a schedule of increments of progress for the installation and operation of the required control equipment. This schedule shall be subject to the review and approval of the department.

#### I. Notification, Recordkeeping, and Reporting Requirements

1. The owner or operator of an affected point source shall notify the department at least 30 days prior to any compliance testing conducted under Subsection G of this Section and any CEMS or PEMS performance evaluation conducted under Subsection H of this Section in order to give the department an opportunity to conduct a pretest meeting and observe the emission testing. All necessary sampling ports and such other safe and proper sampling and testing facilities as required by LAC 33:III.913, or alternatives approved by the department, shall be provided for the testing. The test report shall be submitted to the department within 60 days after completing the testing.

2. The owner or operator of an affected point source required to demonstrate continuous compliance in

accordance with Subsection H of this Section shall submit a written report within 90 days of the end of each quarter to the administrative authority for any noncompliance of the applicable emission limitations of Subsection D or E of this Section. The required information may be included in reports provided to the administrative authority to meet other requirements, so long as the report meets the deadlines and content requirements of this Paragraph. The report shall include the following information:

- a. description of the noncompliance;
- b. cause of the noncompliance;
- c. anticipated time that the noncompliance is expected to continue or, if corrected, the duration of the period of noncompliance; and
- d. steps taken to prevent recurrence of the noncompliance.

3. The owner or operator of an affected point source shall maintain records of all continuous monitoring, performance test results, hours of operation, and fuel usage rates for each affected point source. Such records shall be kept for a period of at least five years and shall be made available upon request by authorized representatives of the department. The emission monitoring (as applicable) and fuel usage records for each affected point source shall be recorded and maintained:

- a. hourly for affected point sources complying with an emission factor on an hourly basis;
- b. daily for affected point sources complying with an emission factor enforced on a daily average basis or on a 30-day rolling average basis; and
- c. monthly for affected point sources exempt from the emission specifications based on ozone season heat input or hours of operation per ozone season.

4. The owner or operator shall maintain the following records:

- a. records for a facility-wide averaging plan in accordance with Subsection E.1.i of this Section;
- b. records approved for a trading plan in accordance with Subsection E.2 of this Section; and
- c. records in accordance with Subsections H.7, 8, 9, 10, 11, and 12 of this Section.

5. Ammonia emissions resulting from the operation of a NO<sub>x</sub> control equipment system shall be reported annually in accordance with LAC 33:III.5107.A.

#### J. Effective Dates

1. The owner or operator of an affected facility shall modify and/or install and bring into normal operation NO<sub>x</sub> control equipment and/or NO<sub>x</sub> monitoring systems in accordance with this Chapter as expeditiously as possible, but by no later than May 1, 2005.

2. The owner or operator shall complete all initial compliance testing, specified by Subsection G of this Section, for equipment modified with NO<sub>x</sub> reduction controls or a NO<sub>x</sub> monitoring system to meet the provisions of this Chapter within 60 days of achieving normal production rate or after the end of the shake down period, but in no event later than 180 days after initial start-up. Required testing to demonstrate the performance of existing, unmodified equipment shall be completed in a timely manner, but by no later than November 1, 2005.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:290 (February 2002).

J. Dale Givens  
Secretary

0202#063

**RULE**

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

**Emission Reduction Credits Banking  
(LAC 33:III.Chapter 6)(AQ211)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality regulations, LAC 33:III.Chapter 6 (Log #AQ211).

This Rule revises LAC 33:III.Chapter 6, adopted in August 1994 and amended in December 1998 and September 1999. This revision involves four actions. First, language requiring that emission reduction credits (ERC) must be "surplus when used" will be added. This revision is required in order to comply with EPA's interpretation of the Clean Air Act and current policy/guidance regarding Nonattainment New Source Review (NNSR) procedures. Second, all references to the ERC bank being a contingency measure for Louisiana's 15 percent VOC Reasonable Further Progress (RFP) Plan will be removed. Next, stipulations that mandate emissions reductions be banked as ERCs in order to use them to "net out" in a nonattainment area will be eliminated. Finally, the mobile emission reduction credits (MERCs) provisions under LAC 33:III.611 will be deleted, since this program was never implemented. The basis and rationale for this proposed rule are to comply with federal guidelines so that the regulations do not lead to DEQ actions that do not conform with EPA's "surplus when used" policy.

Any permits previously issued in accordance with state and EPA-approved rules in effect at the time of issuance remain valid. Thus, the department has no intention to reopen any permits for cause due to changes in applied policies.

As a result of comments received during the public comment period, the department has made substantive changes to streamline and clarify the Rule.

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

**Title 33  
ENVIRONMENTAL QUALITY  
PART III. Air**

**Chapter 6. Regulations on Control of Emissions  
Through the Use of Emission Reduction  
Credits Banking**

**§601. Purpose**

A. This Chapter establishes the means of enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review (NSR) offsets.

The pollutants to which this Rule applies are nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC).

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:301 (February 2002).

**§603. Applicability**

A. Major stationary sources are subject to the provisions of this Chapter for the purpose of utilizing emission reductions as offsets in accordance with LAC 33:III.504 and 510. Minor stationary sources located in ozone nonattainment areas or Calcasieu Parish may submit ERC applications for purposes of banking. Other sources located in EPA-designated ozone attainment areas may not participate in the emissions banking program. Any stationary point source at an affected facility is eligible to participate.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), amended LR 24:2239 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:301 (February 2002).

**§605. Definitions**

A. The terms used in this Chapter are defined in LAC 33:III.111 with the exception of those terms specifically defined as follows:

*Actual Emissions*—the actual rate of emissions of an air pollutant from a source operation, equipment, or control apparatus. Actual emissions shall be calculated using the actual operating hours, production rates, and types of materials used, processed, stored, or combusted during the baseline period. Acceptable methods for estimating the actual emissions may include, but are not limited to, any one or a combination of the following:

- a. emission factors based on EPA's Compilation of Air Pollutant Emission Factors (AP-42) or other emission factors approved by the department, if better source specific data is not available;
- b. fuel usage records, production records, purchase records, material balances, engineering calculations (approved by the department), source tests, waste disposal records, emission reports such as emission inventory reports, SARA Title III, or MACT compliance certifications.

*Allowable Emissions*—the emissions rate of a stationary point source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits that restrict the operating rate, hours of operations, or both) and the most stringent of the following:

- a. an applicable standard set forth in 40 CFR part 60, 61, or 63;
- b. any applicable state implementation plan (SIP) emissions limitation, including those with a future compliance date;
- c. applicable emission limitations specified as an enforceable permit condition, including best available control technology (BACT) and lowest achievable emission rate (LAER) requirements, including those with a future compliance date; or



d. applicable acid rain SO<sub>2</sub> and NO<sub>x</sub> control requirements as defined under Title IV of the 1990 Clean Air Act Amendments and subsequent regulations.

**Bank** the repository for ERCs, including the ERC banking database.

**Bankable Emission Reductions** reductions of NO<sub>x</sub> or VOC that meet the provisions of this Chapter at the time of review and approval.

\* \* \*  
[See Prior Text]

**Banking Database** the department database that records all ERC deposits, withdrawals, transfers, and transactions.

**Base Case Inventory** the aggregate point-source emissions inventory for either NO<sub>x</sub> or VOC from the nine modeled parishes, as modeled for the 2005 Attainment Plan and Transport Demonstration SIP dated December 2001, which includes 1997 actual emissions from point sources, banked ERC and pending ERC applications where the emission reduction occurred between January 1, 1990 and December 31, 1997, and adjustments for growth. Separate inventories have been established for NO<sub>x</sub> and VOC.

**Base Line Inventory**—the aggregate point-source emissions inventory for either NO<sub>x</sub> or VOC from the nine modeled parishes associated with the 2005 Attainment Plan and Transport Demonstration SIP dated December 2001, which accounts for emission reductions modeled to demonstrate attainment of the 1-hour national ambient air quality standard (NAAQS) for ozone. Separate inventories have been established for NO<sub>x</sub> and VOC.

**Baseline Emissions** the level of emissions during the baseline period, as calculated in accordance with LAC 33:III.607.C.4, that occur prior to an emission reduction, considering all limitations required by applicable federal and state regulations, below which any additional reductions may be credited for use as offsets.

**Baseline Period** the period of time over which the historical emissions of a source are averaged. In general, this period shall be a two-year period that precedes the date the emission change and that is representative of normal major stationary source operation. A different time period shall be allowed upon a determination by the department that it is more representative of normal major stationary source operation.

**Current Total Point-Source Emissions Inventory**—the aggregate point-source emissions inventory for either NO<sub>x</sub> or VOC from the nine modeled parishes compiled from Emission Inventory System (EIS) records and updated annually in accordance with LAC 33:III.919 plus any banked ERC and pending ERC applications originally included in the base case inventory that have not expired.

**Emission Reductions**—the decreases in emissions associated with a physical change or change in the method of operation at a facility.

**Emission Reduction Credit (ERC)** an emission reduction approved by the department in accordance with the requirements of this Chapter that is surplus, enforceable, permanent, and quantifiable.

**Emission Reduction Credit Certificate (ERC Certificate)** a document indicating possession of a defined quantity and type of ERCs and issued by the department to the owner(s) identified on the certificate.

**Enforceable** as applied to emission reductions, means of making emission limits enforceable include source-specific SIP revisions, limitations contained in permits issued in accordance with LAC 33:III.Chapter 5, and EPA-issued or department-issued administrative orders or enforcement instruments such as compliance orders or settlement agreements.

**Modeled Parishes** the parishes of Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Feliciana.

**Offset**—a legally enforceable reduction, approved by the department, in the rate of actual emissions from an existing stationary point source, which is used to compensate for a significant net increase in emissions of NO<sub>x</sub> or VOC from a new or modified stationary source in accordance with the requirements of LAC 33:III.504 or 510. To be valid, an offset must meet the definition of ERC.

**Permanent**—as applied to emission reductions, the method of achieving the reduced level of emissions is fixed or ongoing. For example, installation of permanent control equipment or elimination of emission units.

**Quantifiable**—in reference to emission reductions, the amount, rate, and characteristics of the emission reduction can be estimated through a reliable method. Quantification may be based on emission factors, stack tests, monitored values, operating rates and averaging times, process parameters, production inputs, modeling, or other reasonable measurement practices. The same method of calculating emissions should generally be used to quantify emission levels both before and after the reduction.

**Stationary Point Source** any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the Clean Air Act. For purposes of this Chapter, stationary point sources shall include fugitive emissions.

**Surplus**—emission reductions that are voluntarily created for an emissions unit and have not been required by any state or federal law or regulation and are in excess of reductions used to demonstrate attainment of national ambient air quality standards at the time a permit application that relies upon the reductions as offsets is deemed administratively complete.

**Transfer**—the conveyance of an ERC from one entity to another. All banking transactions shall be recorded in the ERC banking database and shown as debits and credits for the appropriate entity(ies).

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 26:2448 (November 2000), LR 28:301 (February 2002).

### **§607. Determination of Creditable Emission Reductions**

A. Acceptable Methods of Creation. Methods of reducing emissions to receive credit under this Chapter include, but are not limited to, the following:

1. installation of add-on control equipment;
2. change in process(es);
3. change in process inputs, formulations, products or product mix, or raw materials (an actual emission reduction

resulting from more effective operation and maintenance of abatement and process equipment if the applicant accepts a permit provision specifying a lower level of emission);

4. shutdown of emission units or stationary sources;
5. production curtailment(s); and
6. reductions in operating hours.

**B. Criteria for ERC Approval**

1. Emission reductions shall be recognized as ERCs only after the approval of the department has been obtained. The department shall approve emission reductions as ERCs that are determined to be surplus, permanent, quantifiable, and enforceable, as defined in LAC 33.III.605.

2. Emission reductions may be creditable for use as offsets for up to 10 years from the date of the actual emission reduction to the atmosphere. An ERC is considered to be used for this purpose upon issuance of a permit that relies upon the ERC as offsets.

**C. Procedures for Calculating the Surplus Emission Reduction.** The following procedures shall be used in calculating the quantity of surplus air emission reductions. When considering NO<sub>x</sub> reductions, only the NO<sub>x</sub> inventory and ERC and pending ERC applications for NO<sub>x</sub> will be considered. Conversely, when considering VOC reductions, only the VOC inventory and ERC and pending ERC applications for VOC will be considered.

1. If the design value for the nonattainment area is above the 1-hour national ambient air quality standard (NAAQS) for ozone, the department shall compare the current total point-source emissions inventory for the modeled parishes to the base case inventory except that beginning with the 2005 emissions inventory, this comparison shall be made to the base line inventory.

2. Calculate actual emissions during the baseline period.

3. Calculate adjusted allowable emissions during the baseline period. Allowable emissions shall be adjusted to account for all new or revised federal or state regulations adopted that will require, or would have required, all or a portion of the emission reductions that comprise the ERC application or ERC (in the case of a partial use of a previously approved ERC) at the time a permit application that relies upon the reductions as offsets is deemed administratively complete.

4. Quantify baseline emissions as follows:

a. for stationary sources located in ozone nonattainment areas:

i. if the design value for the nonattainment area is above the 1-hour NAAQS for ozone and the current total point-source inventory for the modeled parishes exceeds the base case inventory or base line inventory, as appropriate per Subsection C.1 of this Section, baseline emissions shall be the lower of actual emissions, adjusted allowable emissions determined in accordance with Subsection C.3 of this Section, or emissions attributed to the stationary point source(s) in question in the base case or base line inventory, as appropriate; or

ii. if the design value for the nonattainment area is not above the 1-hour NAAQS for ozone or the current total point-source inventory for the modeled parishes does not exceed the base case inventory or base line inventory, as appropriate per Subsection C.1 of this Section, baseline emissions shall be the lower of actual emissions or adjusted

allowable emissions determined in accordance with Subsection C.3 of this Section; and

b. for stationary sources located in Calcasieu Parish or any parish redesignated as ozone nonattainment by the EPA after December 20, 2001, baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Subsection C.3 of this Section.

5. Calculate allowable emissions after the reductions occurred.

6. Calculate the surplus emission reduction by subtracting the allowable emissions after the reduction occurred from the baseline emissions.

**D. Adjustments for Netting.** Emission reductions used in a netting analysis (i.e., to determine the *net emissions increase* as defined in LAC 33:III.504 or 509, as appropriate) that prevented the increase from being considered "significant" are not eligible for use as offsets. The quantity of emission reductions utilized to "net out" shall not be considered creditable.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002).

**§611. Mobile Sources Emission Reductions C Reserved Repealed.**

**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 20:881 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2448 (November 2000), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:303 February 2002).

**§613. ERC Bank Recordkeeping and Reporting Requirements**

**A. Recordkeeping Requirements.** All records shall be maintained for the life of the ERC and shall be available, upon request, for inspection by the department. Amounts should be specified in tons per year.

1. For each approved ERC certificate or pending ERC application, each ERC owner shall maintain records of the following:

a. a complete description of all projects that generated or required use of ERCs;

b. ERC deposits applied for, but not yet approved (i.e., applications);

c. approved ERC deposits;

d. ERCs used as offsets;

e. ERCs that have expired

f. ERCs transferred to another party;

g. adjustments to the ERC balance to account for new emission reduction requirements and netting in accordance with LAC 33.III 607;

h. the date of each transaction (for applications, the date on which the application was submitted; for deposits, the date the ERC Certificate was issued; for ERC used as offsets, the date on which the permit was issued that relied upon the ERC as offsets; for transfers, the date of sale; for

adjustments, the date on which a regulation was promulgated that required, or would have required, all or a portion of the emission reductions that comprise the ERC or ERC application, or the date on which the permit was issued that relied upon a reduction (that was either banked as ERC or part of an ERC application to "net out"); and

i. the current ERC balance.

2. For each emission reduction that will be part of an ERC bank application or permit application for construction or modification that requires offsets, the ERC owner shall maintain records of the following:

a. the year(s) determined to be the baseline period;

b. actual emissions (TPY) before the start-up of the project as evaluated over the baseline period;

c. allowable emissions for the affected sources;

d. the date of the actual emissions decrease;

e. allowable emissions or proposed allowable emissions, as appropriate, after the project (TPY);

f. the emission change; and

g. any emission reductions that are required or would have been required by all applicable federal and state regulations promulgated before and after the emission reduction.

#### B. Reporting Requirements

1. All emission reduction applications must meet the timing restrictions set forth in LAC 33:III.615.A and B in order to be eligible for banking as ERCs.

2. An annual report summarizing all records required by Subsection A of this Section shall be submitted to the department by March 31 of each year. This submittal shall be certified as specified in Subsection C of this Section and submitted to the Office of Environmental Services, Permits Division, in a format specified by the department.

3. Sources located in EPA-designated ozone attainment areas subject to LAC 33:III.510 shall submit the summary report required by Subsection B.2 of this Section according to the schedule outlined in LAC 33:III.510.C.1.

C. Certification. A certifying statement signed by the responsible official as defined in LAC 33:III.502 shall accompany each ERC annual report to attest that the information contained in the report is true and accurate to the best knowledge of the certifying official. The certification shall include the full name, title, and signature of the certifying official and the date of signature.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 26:486 (March 2000), LR 26:2449 (November 2000), LR 28:303 (February 2002).

#### §615. Schedule for Submitting Applications

A. All applications for banking emission reductions shall be submitted by March 31 following the year in which the reductions occurred. ERC applications can be submitted in the form of an ERC bank application or as part of a permit application for construction or modification that requires offsets. Failure to apply for ERCs by March 31 will invalidate the emission reductions as offsets.

B. If a parish is redesignated as ozone nonattainment by the EPA, applications for banking ERCs in such parish must

be submitted by March 31 of the year following the effective date of the EPA designation.

C. Sources subject to LAC 33:III.510 shall submit applications for banking ERCs according to the schedule outlined in LAC 33:III.510.C.1.

D. Applications for banking emission reductions that are to be made as part of a project that includes an increase in emissions for which the reduction will serve to offset the increase may be submitted as part of the permit application for the proposed increase. Such reductions will be reviewed for applicability as ERCs concurrently with the review of the permit application.

E. The applicant shall speciate VOC according to individual compounds when applying to bank VOC reductions. Speciation of toxic air pollutants regulated in LAC 33:III.Chapter 51 is required.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:878 (August 1994), amended LR 21:681 (July 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1623 (September 1999), LR 26:486 (March 2000), LR 28:304 (February 2002).

#### §617. Procedures for Review and Approval of ERCs

A. The department's review and approval of an application for ERCs generally shall be conducted when a request is submitted to use the reductions as offsets. The review shall be conducted in accordance with LAC 33:III.607.

B. Preliminary Decision to Approve the ERC. Upon making a preliminary decision to approve any ERC, the department shall provide public notice of its decision. The public notice shall include the name and address of the applicant, the proposed quantity and type of emission reductions to be approved, an explanation of the department's initial assessment, the opportunity and time periods to submit written public comments concerning the application, and the name and address of the person to whom public comments and requests for public hearings should be sent. A period of 30 days after the date of publication will be allowed for public comment. The notice of preliminary approval may be incorporated with a notice of preliminary approval of an air permit for which the ERC will be used as offsets. If the notice of preliminary approval is not associated with an air permit, the department's preliminary decision relates only to the banking of the emission reductions and not to the use of the ERCs.

#### C. ERC Certificates

1. Issuance of ERC Certificate. Upon conclusion of the thirty-day comment period provided in Subsection B of this Section, the department shall render a decision as to whether the department approves or disapproves the application. If the department decides to approve the ERC, the department shall issue an ERC certificate to the owner(s). A copy of the ERC certificate shall be retained by the department, and the original shall be delivered to the owner(s). The issued ERC certificate shall be recorded in the banking database.

2. Upon issuance of a permit that relies upon the use of approved ERCs as offsets, the department shall be responsible for recalculating the ERC balance for that entity

and for providing that entity with an adjusted ERC certificate. In the case of a partial use of an ERC from an emission reduction project, the department shall issue a new certificate reflecting the available credits remaining. The remaining ERC(s) shall be reviewed again in accordance with LAC 33:III.607 at the time a request is received to use the remaining portion.

3. Transfer of ERCs. An ERC certificate may be transferred in whole or in part. The role of the department in the transfer of an ERC certificate shall be limited to providing information to the public, documenting ERC transfers, and registering ERC certificates. The department shall be notified by letter within 30 days of any transfer of an ERC to another party. This correspondence should indicate the new owner, the previous owner, the amount of ERC transferred, and the date of transfer. The department shall then issue a certificate indicating the new owner. In the case of a partial transfer, the department shall issue a new certificate to the new owner as well as a revised certificate to the current owner reflecting the available credits to each owner. The banking database shall be adjusted accordingly.

D. Appeals. The owner(s) may appeal the department's decision following provisions specified in R.S. 30:2024.

E. Request for Recalculation of ERCs. Anytime after the original ERC application is submitted, the applicant may request the recalculation of the ERCs for the purpose of using alternative baseline emissions, an alternative baseline period, or availability of more accurate emissions data (i.e., performance test data, etc.). The review and approval of this recalculation request shall follow the same procedure as set forth in 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 20:878 (August 1994), amended by Office of Environmental Assessment, Environmental Planning Division, LR 28:304 (February 2002).

#### **§619. Emission Reduction Credit Bank**

A. The department shall maintain a banking database that shall consist of a record of all information concerning applications, deposits, withdrawals, and transactions, as well as pertinent date(s) concerning such information. The current total point-source emissions inventory for both NO<sub>x</sub> and VOC shall also be included. All data in the banking database shall be available to the public upon request.

B. ERC Certificates. Certificates shall be issued for approved ERCs. A record of each ERC certificate issued shall be retained by the department. Each ERC certificate shall, at minimum:

1. bear the date of issuance;
  2. be signed by the permitting authority;
  3. include the owner(s)' name(s) and address(es);
  4. state the name of the stationary source where the emission reduction occurred;
  5. indicate the method of ERC creation;
  6. show the quantity of the ERC and type of pollutant;
- and
7. show when the emission reduction occurred.

C. Multiple ERC Certificates and Multiple Ownership. Single or multiple ERC certificates may be issued for a particular emission reduction project. At the owner(s)'

request, multiple ERC certificates shall be issued for each owner's proportional share.

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 20:879 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2449 (November 2000), LR 28:305 (February 2002).

#### **§621. Protection of Banked ERCs**

Repealed.

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 20:879 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1623 (September 1999), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:305 February 2002).

#### **§623. Withdrawal, Use and Transfer of Emission Reduction Credits**

Repealed.

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 20:880 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2449 (November 2000), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:305 February 2002).

#### **§625. Application and Processing Fees**

Repealed.

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 20:880 (August 1994), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:305 February 2002).

James H. Brent, Ph.D.  
Assistant Secretary

0202#062

### **RULE**

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

Locking of Sources of Radiation  
(LAC 33:XV.541)(RP028\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Radiation Protection regulations, LAC 33:XV.541 (Log #RP028\*).

This rule is identical to federal regulations found in 62 FR 28948, May 28, 1997, and 10 CFR 34.23, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA

70884-2178. No fiscal or economic impact will result from the rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Section is critical to the safe operation of radiation equipment. It describes procedures for the locking of sources of radiation when not in use to prevent unauthorized or accidental production of radiation or removal or exposure of a sealed source. LAC 33:XV.541 is required for Nuclear Regulatory Commission (NRC)-state compatibility purposes. In final rule RP027\*, published in the August 20, 2001, *Louisiana Register*, this Section was inadvertently removed and replaced with the incorrect federal language. This rule reinstates the correct language. The basis and rationale for this rule are to maintain compatibility with the NRC and to provide procedures for the securing of sealed sources of radiation.

### **Title 33**

## **ENVIRONMENTAL QUALITY**

### **Part XV. Radiation Protection**

#### **Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations**

##### **§541. Locking of Sources of Radiation**

A. Each radiographic exposure device must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The exposure device and/or its container must be kept locked, with the key removed at all times for a keyed-lock, when not under the direct surveillance of a radiographer, a radiographer's assistant, or a trainee except at permanent radiographic installations in accordance with LAC 33:XV.585. In addition, during radiographic operations the sealed source assembly must be secured in the shielded position each time the source is returned to that position.

B. Each sealed source storage container and source changer must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. Storage containers and source changers must be kept locked, with the key removed at all times for a keyed-lock, when containing sealed sources, except when under the direct surveillance of a radiographer, a radiographer's assistant, or trainee.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1232 (August 2001), LR 28:306 (February 2002).

James H. Brent, Ph.D.  
Assistant Secretary

0202#019

## **RULE**

### **Office of the Governor Division of Administration Office of Group Benefits**

#### **State Contribution toward Retirees' Health Premiums**

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801.C and 802.B(2) vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, and pursuant to the authority granted by R.S. 42:851.A.(1)(d)(i)(ee), OGB has adopted the following Rule providing with respect to the state contribution toward premiums for participation in OGB Health Plans upon retirement, in accordance with R.S. 42:851.A(1)(d)(i)(aa) through (dd).

#### **Rule**

A. For any person who is an active employee, as defined by R.S. 42:808 or OGB Rule, and who does not participate in an OGB Health Plan, as defined herein, before January 1, 2002, but subsequently enrolls in an OGB Health Plan, or any person who commences employment with an OGB participant employer on or after January 1, 2002, the state contribution of the premium for participation in an OGB Health Plan upon retirement shall be:

1. nineteen percent for those persons with less than ten years of participation in an OGB health plan before retirement;
2. thirty-eight percent for those persons with 10 years of participation but less than 15 years of participation in an OGB health plan before retirement;
3. fifty-six percent for those persons with 15 years of participation but less than 20 years of participation in an OGB health plan before retirement;
4. seventy-five percent for those persons with 20 or more years of participation in an OGB health plan before retirement.

B. The foregoing schedule will also apply to the state contribution toward premiums for surviving spouse and/or surviving dependent coverage for survivors of employees who retire on or after January 1, 2002 if such spouse and dependents are not enrolled in an OGB health plan before July 1, 2002.

C. This Rule does not affect the contributions paid by the state for:

1. any participant who is a covered retiree before January 1, 2002;
2. any active employee who is enrolled in an OGB Health Plan before January 1, 2002 and maintains continuous coverage through retirement;

3. surviving spouse and/or surviving dependent coverage for survivors of employees who retire on or after January 1, 2002 if such spouse and dependents are enrolled in an OGB health plan before July 1, 2002 and continuous coverage is maintained until the employee's death.

D. The term "OGB Health Plan" as used herein includes all health plans offered as primary health care plans to employees of OGB participating employers, for which the state contributes a share of the premium, including self-insured plans such as the PPO and the EPO, and fully insured HMO plans offered as alternative options.

E. For the purpose of determining the percentage of the state contribution toward premiums in accordance with this Rule, the number of years of participation in OGB Health Plans must be certified by the participating employer from which the employee retires on a form provided by OGB.

1. Such certification must be based upon business records maintained by the participating employer or provided by the employee.

2. Business records upon which certification is based must be available to OGB, the Division of Administration, and to the Legislative Auditor.

3. Not more than 120 days prior an employee's scheduled date of retirement, OGB will provide to the participating employer, upon request, all information in its possession relating to an employee's participation.

4. At the time of application for surviving spouse and/or surviving dependent coverage, OGB will provide, upon request, all information in its possession relating to participation of such surviving spouse and/or surviving dependent.

A. Kip Wall  
Chief Executive Officer

0202#020

**RULE**

**Office of the Governor  
Office of Financial Institutions**

**Loan Brokers (LAC 10:XV.1501 - 1509)**

Under the authority of the Administrative Procedure Act, R.S. 49:950, et seq., and R.S.6:121(B)(1) and 9:3554 (B), the commissioner of the Office of Financial Institutions has adopted LAC 10:XV.1501-1509, which clarifies the provisions of The Louisiana Loan Brokers Act, ("LLBA") R.S.9:3572.1, et seq., and particularly Section 3572.3 which requires that any person operating within the state of Louisiana who solicits a loan for a third party shall be required to obtain licensure under the LLBA.

**Title 10**

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,  
INVESTMENT SECURITIES, AND UCC**

**Part XV. Other Regulated Entities**

**Chapter 15. Licensure**

**§1501. Definitions**

*Licensee*Ca person licensed by the commissioner under the provisions of the:

- 1. Louisiana Check Cashers Act—R.S. 6:1001 et seq.;
- 2. Louisiana Sale of Checks and Money Transmission Act—R.S. 6:1031 et seq.;

3. Louisiana Consumer Credit LawCR.S. 9:3510 et seq.;

4. Louisiana Credit Repair Services Organizations ActCR.S. 9:3573.1 et seq.;

5. Louisiana Collection Agency Regulation ActCR.S. 9:3576.1 et seq.;

6. Louisiana Deferred Presentment and Small Loan ActCR.S. 9:3578.1 et seq.; and

7. Louisiana Pawnshop ActCR.S. 37:1781 et seq.

*Loan*Ca loan means an advance of funds to a Louisiana consumer for personal, family, or household purposes. A loan as defined herein shall not include a loan contracted for under the provisions of the Louisiana Residential Mortgage Lending Act or a mortgage loan which is preempted by federal law.

*Loan Broker*Ca person who, for compensation or the expectation of compensation regardless of its source, obtains or offers to obtain a loan from a third party wherever domiciled, if the broker is operating in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1) and 9:3554(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 28:307 (February 2002).

**§1503. Licensure of Loan Brokers**

A. No person having an office in Louisiana shall broker a loan in Louisiana unless exempt by statute, without first being licensed and complying with the provisions of the Louisiana Loan Brokers Act

B. Any licensee who performs loan brokerage activity or who enters into a loan brokerage agreement in Louisiana without first being licensed and complying with the provisions of the LLBA may be subject to having any other Louisiana license issued by the commissioner which they hold suspended or revoked by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1) and 9:3554(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 28:307 (February 2002).

**§1505. Prohibition**

A. A person licensed or exempt from licensure as a loan broker, is prohibited from brokering a loan to a Louisiana consumer which does not comply with the LCCL or LDPSLA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1) and 9:3554(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 28:307 (February 2002).

**§1507. Civil Money Penalties**

A. Any person or licensee who is found to be in violation of this regulation may be subject to any and all of the administrative and enforcement proceedings provided by R.S. 9:3554.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1) and 9:3554(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 28:307 (February 2002).

**§1509. Administrative Procedure**

A. The Louisiana Administrative Procedure Act, R.S. 49:950 et seq., shall govern all proceedings instituted under the coverage of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1) and 9:3554(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 28:307 (February 2002).

If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation which can be given effect without the invalid provisions, items, or application.

John D. Travis  
Commissioner

0202#065

**RULE**

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

**Inpatient Hospital Services Medicare Part A**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted 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 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, amends the November 20, 2000 Rule to exclude small rural hospitals and skilled nursing units located in small rural hospitals from the provisions limiting the payment of co-insurance and deductibles for inpatient hospital services rendered to dually eligible Medicare/Medicaid recipients to the Medicaid maximum payment.

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

David W. Hood  
Secretary

0202#060

**RULE**

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

**Medicaid Eligibility Definition of Deprivation**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following Rule under 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**

Effective for applications taken on or after March 1, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, repeals the definition of deprivation based on unemployment contained in Section I of the May 1996 Rule and establishes a new definition to be used in the determination of Medicaid eligibility for the Low Income Families with Children and the child related Medically Needy Programs. Deprivation based on unemployment shall be defined as a household having a total gross earned income that is less than 100 percent of the Federal Poverty Income Guidelines for the corresponding household size.

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

David W. Hood  
Secretary

0202#061

**RULE**

**Department of Public Safety and Corrections  
Board of Private Investigator Examiners**

**Public Comments at Board Meetings (LAC 46:LVII.113)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 37:3505B(1), the Department of Public Safety and Corrections, Board of Private Investigator Examiners, has adopted Part LVII of Title 46, by adding Chapter 1, Section 113, to provide that a public comment period shall be held at or near the beginning of each board meeting, as required by R.S. 47:5(D).

This rule and regulation is an amendment to the initial rules and regulations promulgated by the Board of Private Investigator Examiners.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LVII. Private Investigator Examiners**

**Chapter 1. Organizational and General Provisions**

**§113. Public Comments at Board Meetings**

A. A public comment period shall be held at or near the beginning of each board meeting. Persons desiring to present public comments shall notify the board chairman or the executive director no later than the beginning of the meeting. However, to assure that an opportunity is afforded all persons who desire to make public comments, the chairman shall inquire at the beginning of the meeting if there are additional persons who wish to comment. The chairman shall allot the time available for the public comments in an equitable manner among those persons desiring to comment, limiting each person to a maximum of three minutes, with the total comment period not to exceed thirty minutes. Each person making public comments shall identify himself and the group, organization or company he represents, if any.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:5(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 28:308 (February 2002).

Charlene Mora  
Chairman

0202#036

**RULE**

**Department of Health and Hospitals  
Office of Public Health**

**Reportable Diseases**

Under the authority of R.S. 40:5 and in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health has amended Chapter II of the Louisiana Sanitary Code.

The threat of new or re-emerging infectious diseases/conditions, as well as, the potential for bioterrorist events, necessitates the addition of several diseases/conditions to the list of reportable diseases/conditions and changes in the time periods for reporting specific diseases/conditions (Section 2:003). The revised list of reportable diseases provides for the addition of the following diseases/conditions: Anthrax, Aseptic meningitis, Brucellosis, Cryptococcosis, Cyclosporiosis, Dengue, EHEC serogroup non 0157, EHEC + shiga toxin not serogrouped, Giardia, Hantavirus Pulmonary Syndrome, Hansen Disease (leprosy), Listeria, Plague, Psittacosis, Streptococcal pneumoniae (invasive in children <5 years of age), Tularemia, Smallpox and Viral Hemorrhagic fever. This action has become necessary as a result of the recognition of new and re-emerging diseases of public health importance and/or those that may be associated with bioterrorist events. In addition, three diseases were removed from the reportable list for which reports have been rare or sporadic: Amebiasis, Meningitis, other bacterial, fungal and Mycobacteriosis, atypical. The need to categorize the reportable disease/condition list according to time periods for reporting will allow for more timely and efficient public health responses for which active intervention and prevention can be instituted.

Employee Health requirements for tuberculosis control would no longer apply to day care center employees (Section 2:022, 2:023 and 2:024), as no cases of tuberculosis have occurred among them since the requirement was implemented in 1994.

**Sanitary Code  
State of Louisiana**

**Chapter II. The Control of Disease**

**2:003** The following diseases or conditions are hereby declared reportable with reporting requirements by Class:

**A. Class A Diseases or Conditions Which Shall Require Reporting Within 24 Hours**

This class includes diseases of major public health concern because of the severity of disease and potential for epidemic spread. Class A diseases or conditions shall be

reported to the Office of Public Health by telephone immediately upon recognition that a case, a suspected case, or a positive laboratory result is known. In addition, all cases of rare or exotic communicable diseases, unexplained death, unusual cluster of disease and all outbreaks shall also be reported.

The following diseases or conditions shall be classified as Class A for reporting requirements:

- Anthrax
- Botulism
- Brucellosis
- Cholera
- Diphtheria
- Haemophilus influenzae (invasive infection)
- Measles (rubeola)
- Neisseria meningitidis (invasive infection)
- Plague
- Rabies (animal and man)
- Rubella (congenital syndrome)
- Rubella (German measles)
- Smallpox
- Tularemia
- Viral Hemorrhagic Fever

**B. Class B Diseases or Conditions Which Shall Require Reporting Within 1 Business Day**

This class includes diseases of public health concern needing timely response because of potential for epidemic spread. The following Class B diseases shall be reported to the Office of Public Health by the end of the next business day after the existence of a case, a suspected case, or a positive laboratory result is known  
Arthropod-borne encephalitis

- Aseptic meningitis
- Chancroid<sup>1</sup>
- E. Coli 0157:H7
- Hantavirus Pulmonary Syndrome
- Hemolytic-Uremic Syndrome
- Hepatitis A (acute illness)
- Hepatitis B (carriage in pregnancy)
- Herpes (neonatal)
- Legionellosis
- Malaria
- Mumps
- Pertussis
- Salmonellosis
- Shigellosis
- Syphilis<sup>1</sup>
- Tetanus
- Tuberculosis<sup>2</sup>
- Typhoid Fever

**C. Class C Diseases or Conditions Which Shall Require Reporting Within 5 Business Days**

This class shall include the diseases of significant public health concern. The following diseases shall be reported to the Office of Public Health a by the end of the workweek after the existence of a case, suspected case, or a positive laboratory result is known



Acquired Immune Deficiency Syndrome (AIDS)  
 Blastomycosis  
 Campylobacteriosis  
 Chlamydial infection 0  
 Cryptococcosis  
 Cryptosporidiosis  
 Cyclosporiasis  
 Dengue  
 EHEC serogroup non 0157  
 EHEC + shiga toxin not serogrouped  
 Enterococcus -Vancomycin Resistant; (VRE)  
 Giardia  
 Gonorrhea0  
 Hansen Disease (leprosy)  
 Hepatitis B (acute)  
 Hepatitis C (acute)  
 Human Immunodeficiency Virus (HIV)  
 Listeria  
 Lyme Disease  
 Lymphogranuloma venereum0  
 Psittacosis  
 Rocky Mountain Spotted Fever (RMSF)  
 Staphylococcus aureus, Methicillin/Oxacillin or  
 vancomycin resistant (MRSA)  
 Streptococcus pneumoniae [invasive infection;  
 penicillin, resistant (DRSP)]  
 Streptococcus pneumoniae (invasive infection in  
 children <5 years of age)  
 Varicella (chickenpox)  
 Vibrio infections (other than cholera)

**D. Other Reportable Conditions**

Cancer  
 Complications of abortion  
 Congenital hypothyroidism\*  
 Galactosemia\*  
 Hemophilia\*  
 Lead Poisoning\*  
 Phenylketonuria\*  
 Reye's Syndrome  
 Severe traumatic head injury\*\*  
 Severe undernutrition  
 (severe anemia, failure to thrive)  
 Sick cell disease (newborns)\*  
 Spinal cord injury\*\*  
 Sudden infant death syndrome (SIDS)

Case reports not requiring special reporting instructions (see below) can be reported by Confidential Disease Case Report forms (2430), facsimile, phone reports, or electronic transmission.

0Report on STD-43 form. Report cases of syphilis with active lesions by telephone.

5Report on CDC72.5 (f.5.2431) card.

\*Report to the Louisiana Genetic Diseases Program Office by telephone (504) 568-5070 or FAX (504) 568-7722.

\*\*Report on DDP-3 form; preliminary phone report from ER encouraged (504) 568-2509. Information contained in reports required under this section shall remain confidential in accordance with the law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4; R.S. 40:2 and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 18:1386, (December 1992), amended LR 20: 1294 (November 1994); LR 28:309 (February 2002).

**2:022** All persons prior to or at the time of employment at any medical or 24-hour residential facility requiring licensing by the Department of Health and Hospitals or any person prior to or at the time of commencing volunteer work involving direct patient care at any medical or 24-hour residential facility requiring licensing by the Department of Health and Hospitals shall be free of tuberculosis in a communicable state as evidenced by either

(1) a negative purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method;

(2) a normal chest x-ray, if the skin test is positive; or

(3) a statement from a licensed physician certifying that the individual is non-infectious if the x-ray is other than normal. The individual shall not be denied access to work solely on the basis of being infected with tuberculosis, provided the infection is not communicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4; R.S. 40:2 and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 18:1386 (December 1992), amended LR 20:1294 (November 1994), LR 28:310 (February 2002).

**2:023** Any employee or volunteer at any medical or 24-hour residential facility requiring licensing by the Department of Health and Hospitals who has a positive purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, or a chest x-ray other than normal, in order to remain employed or continue work as a volunteer, shall complete an adequate course of chemotherapy for tuberculosis as prescribed by a Louisiana licensed physician, or shall present a signed statement from a Louisiana licensed physician stating that chemotherapy is not indicated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4; R.S. 40:2 and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 18:1386 (December 1992), amended LR 29:1294 (November 1994), LR 28:310 (February 2002).

**2:024** Any employee or volunteer at any medical or 24-hour residential facility requiring licensing by the Department of Health and Hospitals who has a negative purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, in order to remain employed or to continue to work as a volunteer, shall be re-tested annually as long as the purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, remains negative. Any employee or volunteer converting from a negative to a positive purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, shall be referred to a physician and followed as indicated in Section 2:023.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4; R.S. 40:2 and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 18:1386 (December 1992), amended LR 20:1294 (November 1994), LR 28:310 (February 2002).

David W. Hood  
Secretary

0202#079

**RULE**

**Department of Health and Hospitals  
Office of Public Health**

Retail Food Establishments (LAC XXIII.Chapters 1-47)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:5, repeals Chapter XXII, Chapter XXIII, and Chapter XXIII.A and promulgates Part XXIII of the Louisiana State Sanitary Code to be in accordance with current Food and Drug Administration, (FDA), Food Code guidelines and codified in accordance with the Administrative Procedure Act as follows:

**Title 51**

**PUBLIC HEALTHCSANITARY CODE**

**Part XXIII. Retail Food Establishments**

**Chapter 1. Definitions**

**§101. Definitions [formerly paragraph 23:001]**

A. Terms not defined or referenced herein shall have the meanings as defined in LAC 51:L. In any instance where a term defined herein is also defined in one or more Parts of LAC 51:Part I, the definition contained in this Part shall govern this Part.

"a" Cwater activity.

*Additive* Cas defined in Federal Food, Drug and Cosmetic Act 201(s), [21 U.S.C. 321(s)], any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

- a. a pesticide chemical residue in or on a raw agricultural commodity, processed food; or
- b. a pesticide chemical; or
- c. a color additive; or
- d. any substance used in accordance with a sanction or approval granted prior to the enactment of this paragraph pursuant to this Act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.); or

- e. a new animal drug; or
- f. an ingredient described in paragraph (ff) of this Act in, or intended for use in, a dietary supplement;
- g. and defined in 21 CFR 170.3(e)(1)CFood additives include all substances not exempted by section 201(s) of this Act, the intended use of which results or may reasonably be expected to result, directly or indirectly, either in their becoming a component of food or otherwise affecting the characteristics of food. A material used in the production of containers and packages is subject to the definition if it may reasonably be expected to become a component, or to affect the characteristics, directly or indirectly, of food packed in the container. "Affecting the characteristics of food" does not include such physical effects, as protecting contents of packages, preserving shape, and preventing moisture loss. If there is no migration of a packaging component from the package to the food, it does not become a component of the food and thus is not a food additive. A substance that does not become a component of food, but that is used, for example, in preparing an ingredient of the food to give a different flavor, texture, or other characteristic in the food, may be a food additive.

*Adulterated Food* Cas defined in §607 of the State Food, Drug, and Cosmetic Law (R.S. 40:601 et seq.), a food is considered adulterated if it has been found to be such by any department of the United States government, or:

- a. if it contains any poisonous or deleterious substances, added or otherwise, which may render it dangerous to health, or any added poisonous or deleterious substance which is prohibited by R.S. 40:611 or which is in excess of the limits of tolerance prescribed by regulations of the department;
- b. if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;
- c. if it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health;
- d. if it is the product of a diseased animal or of an animal which has died otherwise than by slaughter;
- e. if its container is composed of any poisonous or deleterious substance which may render the contents injurious to health;
- f. if any valuable constituent has been in whole or in part abstracted therefrom;
- g. if any substance has been substituted wholly or in part therefor;
- h. if damage or inferiority has been concealed in any manner;
- i. any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, reduce its quality or strength, or create a deceptive appearance;
- j. if it contains a coal-tar color other than one from a batch that has been certified in accordance with regulations of the department;
- k. if it is confectionery or ice cream and contains any alcohol, resinous glaze, or non-nutritive substance except harmless coloring, harmless flavoring, natural gum, and pectin. However, this Paragraph does not apply to any confectionery or ice cream by reason of its containing less than one-half of one percent by volume of alcohol, derived

solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless non-nutritive masticatory substance.

**Approved Supplier**Ca producer, manufacturer, distributor or food establishment that is acceptable to the enforcement agency based on a determination of conformity with applicable laws, or, in the absence of applicable laws, with current public health principles and practices, and generally recognized industry standards that protect public health.

**Base of Operations/Commissary**Ca catering establishment, restaurant, or any other properly equipped place in which food, containers, or supplies are kept, handled, prepared, packaged or stored.

**Bed and Breakfast Establishment**Ca privately owned house where rooms are let and a breakfast is included in the rent. See Food Establishment.

**Beverage**Ca liquid for drinking, including water.

**Bulk Food**processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn.

**CIP**Cclean in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine.

**Certification Number**Ca unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

**Comminuted**Creduced in size by methods including chopping, flaking, grinding, or mincing and restructured or reformulated.

**Consumer**Ca "person" who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a "food" establishment or "food processing plant" and does not offer the "food" for resale.

**Convenience Store**Ca retail food store which is usually easily accessible and deals mostly with prepackaged food products.

**Corrosion-Resistant Material**Ca material that maintains acceptable surface cleanability characteristics under prolonged influence of the "food" to be contacted, the normal use of cleaning compounds, and "sanitizing" solutions, and other conditions of the environment.

**Critical Control Point**Cas defined in the 1999 Food Code published by FDA, a point or procedure in a specific "food" system where loss of control may result in an unacceptable health risk.

**Critical Item**Ca provision of this code that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental degradation, such as, but not limited to a potentially hazardous food stored at improper temperature, poor personal hygienic practices, not sanitizing equipment and utensils, no water, contaminated water sources, sewage backup, severe insect and rodent infestation, and chemical contamination.

**Deli/Delicatessen**Ca food establishment which generally serves ready to eat food products such as sandwiches, cold cuts, cheeses, prepared salads and some prepared hot foods.

**Drinking Water**Csee potable water.

**Dry Storage Area**Ca room or area designated for the storage of "packaged" or containerized bulk "food" that is not potentially hazardous and dry goods such as "single-service" items.

**Easily Cleanable**Csurfaces that are readily accessible and made of such materials, finish and so fabricated that residue may be effectively removed by normal cleaning methods.

**Employee**Cthe permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

**Equipment**Can article that is used in the operation of a food establishment and retail food store/market such as, but not limited to, a reach-in or walk-in refrigerator or freezer, grinder, ice maker, meat block, mixer, oven, scale, sink, slicer, stove, table, thermometers, vending machine, or warewashing machine.

**Fairs and Festivals**Ca gathering of persons for an event such as a bazaar, carnival, circus, public exhibition or other similar gathering for the purpose of celebration, competition, entertainment, distribution or sale of foods or goods, exhibition, religious activity, or other such purposes, which will operate for only a temporary period in any one location.

**Food**Ca raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

**Foodborne Disease Outbreak**Cthe occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

**Food Contact Surfaces**Ca surface of equipment or a utensil with which food normally comes in contact with, or a surface of equipment or a utensil from which food may drain, drip or splash into a food or onto a surface normally in contact with food.

**Food Establishment**Can operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption. The term includes restaurants, cafeterias, caterers, delicatessens, bars, lounges, or any other facility that prepares food for individual service or for a group of people, whether consumption is on or off the premises and regardless if there is a charge for the food. The term does not include:

a. private homes where food is prepared or served for individual family consumption and a kitchen in a private home if only "food" that is not "potentially hazardous" is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by "law" and if the "consumer" is informed by a clearly visible placard at the sales or service location that the "food" is prepared in a kitchen that is not subject to regulation and inspection by the "regulatory authority;"

b. a kitchen in a private home, such as a bed-and-breakfast operation that prepares and offers food to guests if the home is owner occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a

kitchen that is not regulated and inspected by the Office of Public Health.

**Food Vendor/Food Concessionaire** Any person who handles food or drink during preparation or serving, or who comes in contact with any eating or drinking utensils, or who is employed at any time in a room in which food or drink is prepared or served in a temporary food service.

**Game Animals** Can animal, the products of which are food, that is not classified by law as cattle, sheep, swine, goat, poultry, fish, and game birds or small animals as described in Chapter X of the Louisiana State Sanitary Code.

**Garbage** Cthe putrescible components of refuse which are subject to spoilage, rot, or decomposition. It includes wastes from the preparation and consumption of food, vegetable matter, and animal offal and carcasses.

**HAACPC** Hazard Analysis Critical Control Point.

**HACCP Plan** Ca written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee of Microbiological Criteria for Foods.

**Hermetically Sealed Container** Ca container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

**Highly Susceptible Population** Ca group of "persons" who are more likely than other populations to experience foodborne disease because they are immunocompromised, or for the purposes of this Part, older adults in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center.

**Hot Holding Temperature** Cfood stored for hot holding and service shall be held at a temperature of 140EF (60EC) or higher with the exception of roast beef. If roast beef is cooked in accordance with §1305.A.7 the minimum hot holding temperature shall be 130EF (54EC).

**Individual Food Operator/Responsible Person** Cthe person responsible for operating the individual temporary food service.

**Injected** Cmanipulating a meat through tenderizing with deep penetration or injecting the meat such as with juices which may be referred to as "injecting," "pinning," or "stitch pumping."

**Itinerant Food Establishment** Cany fixed or mobile food establishment which operates on a temporary or seasonal basis.

**Itinerant Retail Food Store/Market** Cany fixed or mobile retail food store/market which operates on a temporary or seasonal basis.

**Kiosk** Ca small structure used as a food and/or beverage booth.

**Kitchenware** Cfood preparation and storage utensils.

**Label** Cthe principal display or displays of written, printed, or graphic matter upon any food or the immediate container thereof, or upon the outside container or wrapper, if any, of the retail package of any food.

**Labeling** Cincludes all labels and other written, printed and graphic matter, in any form whatsoever, accompanying any food.

**Linens** Cfabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

**Market** Ca retail food store or food market which stores, prepares, packages, serves, vends or otherwise provides food products such as beverages, eggs, meat, milk, produce, seafood or other similar products.

**Microorganisms** Cyests, molds, fungi, bacteria, parasites and viruses including, but not limited to, species having public health significance. The term "undesirable microorganisms" includes those microorganisms that are of public health significance, that subject food to decomposition, that indicate that food is contaminated with filth, or that otherwise may cause food to be adulterated within the meaning of the Food, Drug and Cosmetic Laws and Regulations.

**Mobile Food Establishment** Ca vehicle-mounted food establishment designed to be readily movable.

**Mobile Retail Food Store/Market** Ca vehicle-mounted retail food store/market designed to be readily movable.

**Multi-Service Articles** Creusable articles for the service of foods made of smooth, impervious material and approved by the State Health Officer.

**Noncritical Item** Call provisions in this Part that are not classified as critical items.

**Offal** Cwaste parts, especially of a butchered animal, including but not limited to bones, cartilage, fatty tissue and gristle.

**Open Air Market** Ca site that deals in produce that is normally peeled or washed prior to consumption, honey, jellies and syrups.

**Organizer/Promoter/Chairman** Cthat person responsible for managing a festival or fair. In the event of his/her unavailability, the assistant shall be deemed the responsible person.

**pH** Cthe symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 alkalinity. The value for pure distilled water is 7, which is considered neutral.

**PPM** Cparts per million, (mg/l) which is the metric equivalent.

**Packaged** Cbottled, canned, cartoned, securely bagged, or securely wrapped.

**Permit** Cthe document issued by the "Department" that authorizes a "person" to operate a "food establishment" or "retail food store/market."

**Permit Holder** Cthe entity that:

- a. is legally responsible for the operation of the establishment such as the owner, the owner's agent, or other "person;" and
- b. possesses a valid "permit" to operate an establishment.

**Person** Can association, a corporation, individual, partnership, other legal entity, governmental subdivision or agency.

**Person in Charge** Cthe individual present at a food establishment or retail food store/market who is responsible for the operation at the time of inspection.

*Personal Care Items*

a. items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a "person's" health, hygiene, or appearance;

b. includes items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

*Pest* refers to any objectionable animal or insect including, but not limited to, birds, roaches, rodents, flies, and larvae.

*Poisonous or Toxic Materials* substances that are not intended for ingestion including, but not limited to:

a. cleaners and "sanitizers" which include cleaning and "sanitizing" agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

b. pesticides, except "sanitizers," which include substances such as insecticides, rodenticides, herbicides;

c. substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and "personal care items" that may be deleterious to health.

*Potable Water* water having bacteriological, physical, radiological and chemical qualities that make it safe and suitable for use by people for drinking, cooking or washing.

*Potentially Hazardous Food*

a. food that is natural or synthetic and is in a form capable of supporting:

i. the rapid and progressive multiplication of infectious or toxigenic microorganisms;

ii. the multiplication and toxin production of *Clostridium botulinum*; or

iii. in shell eggs, the multiplication of *Salmonella enteritidis*.

b. *potentially hazardous food* includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures.

c. potentially hazardous food does not include:

i. an air-cooled hard-boiled-egg with shell intact;

ii. a food with a water activity ( $a_w$ ) value of 0.85 or less;

iii. a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 75°F (24°C);

iv. a food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

v. a food for which a variance granted by the regulatory authority is based upon laboratory evidence demonstrating that rapid and progressive multiplication of infectious and toxigenic microorganisms or the slower multiplication of *C. botulinum* cannot occur.

*Premises*

a. the physical facility, its contents, and the contiguous land or property under the control of the "permit holder"; or

b. the physical facility, its contents, and the land or property not described under Subparagraph a of this definition if its facilities and contents are under the control of the "permit holder" and may impact establishment personnel, facilities, or operations, and an establishment is only one component of a larger operation such as a health

care facility, hotel, motel, school, recreational camp, or prison.

*Pushcart* a mobile food establishment or retail food store/market propelled by a person.

*Ready-to-Eat-Food* food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form.

*Recognized Louisiana Festival or Fair* those fairs or festivals that are officially acknowledged, in writing, as recognized by a state, parish, or municipal governmental body or by the Louisiana Association of Fairs and Festivals.

*Reconstituted* dehydrated food products recombined with water or other liquids.

*Reduced Oxygen Packaging* the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is 21 percent oxygen. This may include methods referred to as altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen, and vacuum packaging including sous vide.

*Refuse* any garbage, rubbish, sludge from a food establishment, retail food store/market, waste treatment plant, water supply treatment plant, or air pollution control facility. It also includes other discarded material such as solid, liquid, semi-solid, or contained gaseous material resulting from either industrial, commercial, mining, or agricultural operations, or from community activities. It does not include solid or dissolved material in domestic sewage, irrigation return flow, industrial discharges which are point sources, or radioactive wastes.

*Regulatory Authority* the local, state or federal enforcement body or authorized representative having jurisdiction over the food establishment or retail food store/market.

*Retail Food Manufacturer* an establishment in which food is manufactured or packaged for human consumption and is sold only at the site of manufacture, such as but not limited to bakery products and candy.

*Retail Food Store/Market* all types of food markets including convenience, fixed, mobile and temporary food stores. These may also be referred to as groceries. Larger retail food stores may also include bakeries and delicatessens.

*Rubbish* all non-putrescible waste matter, except ashes, from any public or private establishments, institution, or residence. It also includes construction and demolition wastes.

*Safe Material* an article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any "food."

*Sanitization* the application of cumulative heat or chemicals on cleaned "food-contact surfaces" that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999-percent reduction of representative disease microorganisms of public health importance.

**Seafood** includes but is not limited to fish, shellfish, edible crustaceans, marine and freshwater animal food products.

**Sealed** free of cracks or other openings that allow the entry or passage of moisture.

**Seasonal** a recurrent period that is characterized by certain seasons of the year, occupations, festivities, or crops; any period of time that is legally available to the hunter, fisherman, or trapper. These seasons are legally set by government regulatory agencies such as the State Department of Wildlife and Fisheries, State Department of Agriculture or other such agencies.

**Single-Service Articles** tableware, carry-out utensils, and other items such as bags, containers, cups, lids, closures, plates, knives, forks, spoons, paddles, napkins, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use and then discarded.

**Single-Use Articles** utensils and bulk food containers designed and constructed to be used once and discarded. "Single-use articles" includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs, or buckets, bread wrappers, pickle barrels, and number 10 cans.

**Slacking** the process of moderating the temperature of a "food" such as allowing a "food" to gradually increase from a temperature of -23EC (-10EF) to -4EC (25EF) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen "food" such as spinach.

**Smoked Food** food which has been colored or flavored by natural or liquid smoke.

**Substantial Renovation**

a. alterations or repairs made within a 12-month period, costing in excess of 50 percent of the then physical value of the existing building; or

b. alterations or repairs made within a 12-month period, costing in excess of \$15,000; or

c. alterations or repairs made within a 12-month period, involving a change in "occupancy classification" or use of the property;

d. the physical value of the building in Subparagraph a of this Paragraph may be established by an appraisal not more than three years old, provided that said appraisal was performed by a certified appraiser or by the tax assessor in the parish where the building is located;

e. the cost of alterations or repairs in Subparagraphs a or b of this Paragraph may be established by:

i. an estimate signed by a licensed architect or a licensed general contractor, or

ii. by copies of receipts for the actual costs.

**Tableware** eating, drinking, and serving utensils for table use such as flatware including forks, knives and spoons; hollowware including bowls, cups, serving dishes, tumblers; and plates.

**Temperature Measuring Device** a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

**Temporary Food Establishment** a fixed or mobile food establishment that operates for a period of time of not more than 21 consecutive days in conjunction with a single event

in a single location such as, but not limited to a festival or fair.

**Temporary Retail Food Store/Market** a fixed or mobile food store/market which operates for a period of time no more than 21 consecutive days in conjunction with a single event in a single location such as, but not limited to a festival or fair.

**Temporary Food Service** a "temporary food establishment" or "temporary retail food store/market."

**Utensil** a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multi-use, single-service, or single-use; gloves used in contact with food; and food temperature measuring devices.

**Warewashing** the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

**Water Activity** ( $a_w$ ) a measure of the free moisture in a food and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

**Wholesome** food which is in sound condition, clean, free from adulteration or contamination and is otherwise suitable for human consumption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002).

### **Chapter 3. General Requirements**

#### **§301. Effective Date of Title**

A. The provisions of this Title shall have effect from the date of publication hereof as a rule in the *Louisiana Register*. Upgrading of such buildings and facilities shall be required when:

1. the construction of buildings and facilities was not previously approved by the state health officer pursuant to sanitary code requirements then in effect;

2. substantial renovation of, or additions to, such buildings or facilities is undertaken;

3. the real property ownership, or the occupancy classification of the business located therein changes subsequent to the effective date hereof;

4. the business ownership (occupant) changes subsequent to the effective date, except that the upgrading of restroom plumbing fixtures shall not be required where only the business ownership (occupant) changes if the construction of restroom plumbing fixtures was approved by the state health officer pursuant to sanitary code requirements then in effect; or

5. a serious health threat to the public health exists, unless otherwise specifically provided hereinafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:315 (February 2002).

#### **§303. Interpretation [formerly paragraph 23:002]**

A. This Part shall be interpreted and applied to promote its underlying purpose of protecting the public health.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:315 (February 2002).

**§305. Food Safety Certification**  
**[formerly paragraph 23:002-2]**

A. The owner or a designated employee of each food establishment shall hold a "food safety certificate" from the department exclusively on behalf of that food establishment. The certificate shall be required to be renewed every five years.

B. Any food establishments with food sales of less than \$125,000 annually shall not be required to comply with this Section until July 1, 2002. However, any establishment may apply for such certificate prior to such date. Those food establishments permitted after July 1, 2002 shall comply with this Section within 60 days of permit issuance.

C. To obtain a department food safety certificate, the following is required.

1. The individual must complete a course provided by an approved training program. The department shall approve all training programs and shall maintain a list of these training programs. These programs shall include, but are not limited to, the standards set forth in the ServSafe Program established by the Educational Foundation of the National Restaurant Association, or other programs recognized by the food service industry and the department.

a. Instructors/trainers shall meet the criteria established by the Educational Foundation of the National Restaurant Association or other instructor/trainer requirements established by the food service industry and the department.

b. The department shall approve training programs administered or approved by another state, political subdivision, or other jurisdiction with standards that meet or exceed those established in this code.

2. The individual must pass a written exam approved by the department before qualifying for the certificate. This test will meet the standards as described in Paragraph 1 above.

3. The individual must submit a completed application to the department with:

a. satisfactory evidence that he/she has completed an approved training program which includes passing a written examination; and

b. a \$25 fee for each certificate.

4. Upon receipt and approval of the documentation and fee described in Paragraph 3 above, the department shall then issue a food safety certificate to the applicant.

5. The permit holder shall display a current state food safety certificate in a location in the food establishment conspicuous to the public.

D. Certificates from the department shall be required to be renewed every five years for a \$25 fee. A person shall pass another written exam as described in Paragraph 2, Subsection C above before the certificate is renewed.

E. No parish or municipality in Louisiana shall enforce any ordinance or regulation requiring a food establishment or any of its employees to complete a Food Safety training program or test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 and 40:5.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:316 (February 2002).

**§307. Submission of Plans**  
**[formerly paragraph 23:003]**

A. Whenever a food establishment or retail food store/market is constructed, substantially renovated, or a change of real property or business ownership occurs, or the occupancy classification changes, plans and specifications shall be submitted to the state health officer for review and approval. The plans and specifications must be approved before construction and renovation begins and shall indicate the proposed type of operation, anticipated volume and types of food products to be stored, prepared, packaged and/or served along with the proposed layout of the facility, mechanical plans, construction materials and the types and location and specifications of all fixed and mobile equipment to be used in the establishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:316 (February 2002).

**§309. Preoperational Inspection**  
**[formerly paragraph 23:004]**

A. The state health officer may conduct one or more preoperational inspections to verify that the food establishment or retail food store/market is constructed and equipped in accordance with the approved plans and is in compliance with all provisions of this Title.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:316 (February 2002).

**§311. Hazard Analysis Critical Control Point (HACCP) [formerly paragraph 22:02-4]**

A. A food establishment or retail food store/market that packages food using a reduced oxygen packaging method shall have a Hazard Analysis Critical Control Point (HACCP) plan and provide the information required in §4121.

B. A HACCP plan shall contain:

1. a categorization of the types of Potentially Hazardous Foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the department.

2. a flow diagram by specific food or category type identifying Critical Control Points and providing information on the following;

a. ingredients, materials, and equipment used in the preparation of that food; and

b. formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;

3. a supervisory training plan that addresses the food safety issues of concern;

4. a statement of standard operating procedures for the plan under consideration including clearly identifying;

a. each critical control point;

b. the critical limits for each critical control point;

c. the method and frequency for monitoring and controlling each critical control point by the employee designated by the person in charge;

d. the method and frequency for the person in charge to routinely verify that the employee is following standard operating procedures and monitoring critical control points;

e. action to be taken by the person in charge if the critical limits for each critical control point are not met;

f. records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and

5. additional scientific data or other information, as required by the department supporting the determination that food safety is not compromised by the proposal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:316 (February 2002).

## **Chapter 5. Permits**

### **§501. General**

**[formerly paragraph 23:125]**

A. No person shall operate a food establishment or retail food store/market of any type without first having received a valid permit to operate from the state health officer. Permits are not transferable. A valid permit shall be posted in a location of the establishment conspicuous to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:317 (February 2002).

### **§503. To Obtain a Permit from the State Health**

**Officer: [formerly paragraph 23:126-1, 23:126-2, 23:126-3]**

A. The owner, president of the corporation, or other such officer duly delegated by the corporation or partnership shall make written application for a permit to operate and submit plans as described in §307 to the state health officer.

B. After plans and specifications have been reviewed and approved, the owner, president of the corporation, or other such officer shall request a preoperational inspection be made as described in §309 to determine compliance with all provisions of this Title.

C. A permit to operate shall be issued by the state health officer to the applicant if an inspection reveals that the proposed food establishment or retail food store/market and applicant has complied with all the provisions of this Title.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:317 (February 2002).

## **Chapter 7. Employee Health**

### **§701. General**

**[formerly paragraph 23:031]**

A. All employees shall meet the requirements of Part I, §117.A, B of this title, Employee Health and Chapter 2, The Control of Diseases, of the State Sanitary Code. The employee shall report information to the person in charge about their health and activities as they relate to infectious diseases that are transmissible through food. The person in charge shall be responsible for complying with Part I, §117 of this title, and excluding the employee from the food

establishment to prevent the likelihood of foodborne disease transmission.

B. All employees shall report to the person in charge any symptom caused by illness, infection, or other source that is:

1. associated with an acute gastrointestinal illness such as diarrhea, fever, vomiting, jaundice or sore throat with fever; or

2. a lesion containing pus such as a boil or infected wound that is open or draining and is:

a. on the hands or wrist, unless an impermeable cover such as a finger cot, or stall protects the lesion and a single-use glove is worn over the impermeable cover;

b. on exposed portions of the arms, unless the lesion is protected by an impermeable cover; or

c. on other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage.

C. The person in charge shall restrict employees from working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles, in a food establishment or retail food store/market if the employee is suffering a symptom specified in Subsection B of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:317 (February 2002).

## **Chapter 9. Personal Cleanliness and Hygienic Practices**

### **§901. Handwashing**

**[formerly paragraph 23:032]**

A. Employees shall thoroughly wash their hands and exposed portions of their arms with soap and warm water before starting work, before applying gloves, during work as often as necessary to keep them clean, and after smoking, using tobacco, eating, drinking, coughing, sneezing, handling raw food, using the toilet.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:317 (February 2002).

### **§903. Fingernails**

**[formerly paragraph 22:06-2]**

A. Employees shall keep their fingernails clean and trimmed not to exceed the end of the fingertip. An employee shall not wear nail polish or artificial fingernails when working with exposed food.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:317 (February 2002).

### **§905. Jewelry**

**[formerly paragraph 22:06-3]**

A. Employees may not wear jewelry on their arms and hands while preparing food. This does not apply to a plain ring such as a wedding band.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:317 (February 2002).



**§907. Outer Clothing**

**[formerly paragraph 22:06-4]**

A. Employees shall wear clean outer clothing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:318 (February 2002).

**§909. Hand Sanitizers**

A. Employees may apply hand sanitizers only to hands that are cleaned as specified in §901 of this Chapter. Hand sanitizers shall comply with all state and federal regulations and be used in accordance with label directions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:318 (February 2002).

**§911. Eating and Drinking**

**[formerly paragraph 23:034-1]**

A. Employees shall eat and drink only in designated areas where the contamination of exposed food, equipment, utensils or other items needing protection cannot result. An employee may drink while preparing food from a closed beverage container if the container is handled properly to prevent contamination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:318 (February 2002).

**§913. Using Tobacco**

**[formerly paragraph 23:034-2]**

A. Employees shall not use tobacco in any form while preparing or serving food. Employees shall use tobacco only in designated areas such as described in §4105.C of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:318 (February 2002).

**§915. Hair Restraints**

**[formerly paragraph 23:033-2]**

A. Employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food, equipment, utensils and other items needing protection. This does not apply to employees such as counter staff who only serve beverages and wrapped or packaged food items if they present a minimal risk of contaminating exposed food, clean equipment, utensils, and linens, and unwrapped single service and single use articles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:318 (February 2002).

**§917. Food Contamination**

**[formerly paragraph 22:07-4]**

A. Employees experiencing persistent sneezing, coughing or a runny nose may not work with exposed food, equipment, utensils or other items needing protection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:318 (February 2002).

**§919. Handling**

**[formerly paragraph 22:07-5]**

A. Employees shall handle soiled tableware in a manner to prevent the contamination of clean tableware by their hands. Employees may not care for or handle animals allowed under §4101.B of this Part while preparing or serving food, except employees may handle or care for fish in aquariums, or molluscan shellfish, or crustacea in display tanks or storage when they wash their hands as specified under §901 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:318 (February 2002).

**Chapter 11. Food Supplies**

**§1101. General**

**[formerly paragraph 22:08-1]**

A. All food shall be safe, unadulterated and honestly presented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:318 (February 2002).

**§1103. Source**

**[formerly paragraph 22:08-2]**

A. Food shall be obtained from sources that comply with law. Food prepared in a private home may not be used or offered for human consumption in any food establishment or retail food store/market. This section shall not apply to any jellies, preserves, jams, honey and honeycomb products prepared in private homes, when the gross annual sales are less than \$5000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 and 40:4.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:318 (February 2002).

**§1105. Package**

**[formerly paragraph 22:08-3]**

A. Food packages shall be in a good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:318 (February 2002).

**§1107. Labeling**

**[formerly paragraph 22:08-4]**

A. Packaged food shall be labeled as specified by law. All bulk food storage containers shall be properly labeled according to law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:318 (February 2002).

**§1109. Raw Shellfish Consumer Information Message**  
**[formerly paragraph 22:08-5.1]**

A. All establishments that sell or serve raw oysters must display signs, menu notices, table tents, or other clearly visible messages at point of sale with the following wording: THERE MAY BE A RISK ASSOCIATED WITH CONSUMING RAW SHELLFISH AS IS THE CASE WITH OTHER RAW PROTEIN PRODUCTS. IF YOU SUFFER FROM CHRONIC ILLNESS OF THE LIVER, STOMACH OR BLOOD OR HAVE OTHER IMMUNE DISORDERS, YOU SHOULD EAT THESE PRODUCTS FULLY COOKED. In addition, this message must appear on the principal display panel or top of containers of pre-packaged raw oysters. This may be done by printing on the container or by pressure sensitive labels. In addition, the following message must appear on the tag of each sack or other container of unshucked raw oysters: "THERE MAY BE A RISK ASSOCIATED WITH CONSUMING RAW SHELLFISH AS IS THE CASE WITH OTHER RAW PROTEIN PRODUCTS. IF YOU SUFFER FROM CHRONIC ILLNESS OF THE LIVER, STOMACH OR BLOOD OR HAVE OTHER IMMUNE DISORDERS, YOU SHOULD EAT THESE PRODUCTS FULLY COOKED."

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:319 (February 2002).

**§1111. Exemption to Raw Shellfish Consumer Information Message**  
**[formerly paragraph 22:08-5.2]**

A. Food establishments that exclusively serve raw molluscan shellfish that have been subjected to a process recognized by the state health officer as being effective in reducing the bacteria *Vibrio vulnificus* to non-detectable levels may apply for an exemption from the mandatory consumer information notification requirement. Food establishments interested in obtaining an exemption shall certify in writing to the state health officer that it shall use exclusively for raw consumption only molluscan shellfish that have been subjected to the approved process. Upon receipt and verification of that communication, the state health officer may confirm the establishment as being exempt from the requirement of displaying the consumer information message. The food establishment's certification must be sent to the state health officer at the following address:

Louisiana Office of Public Health  
P.O. Box 629  
Baton Rouge, LA 70821-0629

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:319 (February 2002).

**§1113. Hermetically Sealed Containers**  
**[formerly paragraph 22:08-6]**

A. Food in hermetically sealed containers shall be obtained from a licensed and/or regulated food processing plant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:319 (February 2002).

**§1115. Milk**  
**[formerly paragraph 22:08-7]**

A. Fluid, frozen, dry milk and milk products shall be obtained from sources with Grade A Standards as specified in law and Chapter VII and Chapter VIII of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:319 (February 2002).

**§1117. Seafood**  
**[formerly paragraph 22:08-8]**

A. Fish, shellfish, edible crustaceans, marine and fresh water animal food products shall be obtained from sources according to law and Chapter IX of the State Sanitary Code. Shellstock tags shall be retained by the food establishment or retail food store/market for 90 days after service or sale to the consumer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:319 (February 2002).

**§1119. Eggs**  
**[formerly paragraph 22:08-9]**

A. Shell eggs shall be received clean and sound according to law.

B. Liquid, frozen and dry egg products shall be obtained pasteurized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:319 (February 2002).

**§1121. Poultry and Meats**  
**[formerly paragraph 22:08-10]**

A. Poultry and meat products shall be obtained from sources according to law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:319 (February 2002).

**§1123. Game Animals**  
**[formerly paragraph 22:08-11]**

A. Game animals may be received for sale if they are under a routine inspection program conducted by a regulatory authority or raised, slaughtered, and processed under a voluntary inspection program by a regulatory authority.

B. If retail food markets are requested by an individual to process wild deer meat, they must process this meat in accordance with the guidelines established by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:319 (February 2002).

**Chapter 13. Temperature**

**§1301. Temperature Control**

**[formerly paragraph 22:09-1]**

A. Except as specified in §1303 of this Chapter, all refrigerated potentially hazardous foods shall be received at a temperature of 41EF (5EC) or below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:320 (February 2002).

**§1303. Exceptions**

**[formerly paragraph 22:09-2]**

A. Shell eggs, milk and molluscan shellstock may be received at a temperature not to exceed 45EF (7.2EC) as specified by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:320 (February 2002).

**§1305. Cooking/Reheating**

**[formerly paragraph 22:09-3]**

A. Foods shall be cooked to heat all parts of the food to a temperature and for a time that are at least:

1. 165EF (74EC) or above for 15 seconds for wild game, poultry, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites or stuffing containing fish, meat or poultry;
2. 155EF (68EC) or above for 15 seconds for comminuted fish, comminuted meats, injected meats, ratites or raw pooled eggs;

3. 165EF (74EC) or above when foods are cooked or reheated in microwave ovens and the food shall be rotated and stirred throughout to compensate for uneven distribution of heat;

4. 145EF (63EC) or above for 15 seconds for pork and all other foods;

5. 165EF (74EC) or above for 15 seconds in all parts of the food when reheating all potentially hazardous food that is cooked, cooled, and reheated for hot holding or serving;

6. 130EF (54EC) minimum internal temperature for beef roasts or to a temperature and time that will cook all parts of the roast as required by the following;

a. in an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature; and

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 4.5 kg (10 lbs.)	4.5 kg (10 lbs.) or more
Still Dry	350EF (177EC) or more	250EF (121EC) or more
Convection	325EF (163EC) or more	250EF (121EC) or more
High Humidity <sup>1</sup>	250EF (121EC) or less	250EF (121EC) or less

<sup>1</sup>Relative humidity greater than 90 percent for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100 percent humidity.

b. as specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature;

Temperature	Time in Minutes	Temperature	Time in Minutes	Temperature	Time in Minutes
130EF (54EC)	121	136EF (58EC)	32	142EF (61EC)	8
132EF (56EC)	77	138EF (59EC)	19	144EF (62EC)	5
134EF (57EC)	47	140EF (60EC)	12	145EF (63EC)	3

Holding time may include post-oven heat rise.

7. 140EF (60EC) or above for 15 seconds for raw vegetables and fruit.

B. Exceptions:

1. raw or undercooked whole muscle, intact beef steak to be served or offered for sale in a ready to eat form shall be cooked to 145EF (63EC) or above surface temperature on both the top and bottom and until a cooked color change is achieved on all external surfaces; and

2. all food shall be served in accordance with this Section unless otherwise ordered by the consumer for immediate service, such as but not limited to raw, marinated fish, raw molluscan shellfish, steak tartare, or partially or lightly cooked food, if the food establishment serves a population that is not a highly susceptible population.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:320 (February 2002).

**§1307. Hot Holding Temperatures**

**[formerly paragraph 22:09-4]**

A. Food stored for hot holding and service shall be held at a temperature of 140EF (60EC) or higher with the

exception of roast beef. If roast beef is cooked in accordance with §1305.A.6 of this Chapter the minimum hot holding temperature shall be 130EF (54EC).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:320 (February 2002).

**§1309. Cold Holding Temperatures**

**[formerly paragraph 22:09-5]**

A. Food stored for cold holding and service shall be held at a temperature of 41EF (5EC) or below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:320 (February 2002).

**§1311. Cooling**

**[formerly paragraph 22:09-6]**

A. Cooling of food shall be accomplished by using one or more of the following methods:

1. placing the food in shallow pans;
2. separating the food into smaller or thinner portions;
3. using rapid cooling equipment;

4. stirring the food in a container placed in an ice water bath;
5. using containers that facilitate heat transfer;
6. adding ice as an ingredient;
7. other approved effective methods.

B. Cooked potentially hazardous food shall be cooled:

1. to 70EF (21EC) from 140EF (60EC) within two hours of cooking or hot holding; and
2. to 41EF (5EC) from 70 EF (21EC) within four hours or less.

C. Potentially hazardous food, if prepared from ingredients at ambient temperature, shall be cooled to 41EF (5EC) within four hours following preparation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:320 (February 2002).

**§1313. Frozen Food**

**[formerly paragraph 22:09-7]**

A. Stored frozen food should be stored at a temperature of 0EF (-17.8EC) or below and shall be maintained frozen.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:321 (February 2002).

**§1315. Thawing**

**[formerly paragraph 22:09-8]**

A. Potentially hazardous food shall be thawed by one of the following methods:

1. under refrigeration that maintains the food temperature at 41EF (5EC) or below;
2. completely submerged under potable running water at a temperature of 70EF (21EC) or below with sufficient water velocity to agitate and float off loose particles in an overflow;
3. for a period of time that does not allow thawed portions to rise above 41EF (5EC);
4. as part of the conventional cooking process or thawed in a microwave oven and immediately transferred to conventional cooking equipment with no interruption in the cooking process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:321 (February 2002).

**§1317. Time as a Public Health Control**

**[formerly paragraph 22:09-9]**

A. Time only, rather than time in conjunction with temperature, may be used as a public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption if:

1. the food is marked or otherwise identified with the time within which it shall be cooked, served or discarded;
2. the food is served or discarded within four hours from the point in time when the food is removed from temperature control;

3. food in unmarked containers or packages, or for which the time expires, is discarded; and

4. written procedures are maintained in the food establishment or retail food store/market and are available to the department upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:321 (February 2002).

**§1319. Parasite Destruction by Freezing**

A. Except as specified in Subsection B of this Section, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of:

1. -4EF (-20EC) or below for 168 hours (7 days) in a freezer; or
2. -31EF (-35EC) or below for 15 hours in a blast freezer.

B. If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified under Subsection A of this Section.

C. Except as specified in Subsection B of this Section, if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the food establishment or retail food store/market for 90 calendar days beyond the time of service or sale of the fish.

D. If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under §1319 may substitute for the records specified under Subsection C of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:321 (February 2002).

**§1321. Temperature Measuring Devices**

**(Thermometers) [formerly paragraph 22:09-10]**

A. Temperature measuring devices shall be provided and used to measure:

1. food temperatures of potentially hazardous food on a device scaled in Fahrenheit (F) accurate to a plus or minus 2EF or Celsius (C) accurate to a plus or minus 1EC and should be able to measure the internal temperature of food products that are less than 1/2 inch thick,
2. ambient air temperature of all equipment used to hold potentially hazardous food on a device scaled in Fahrenheit accurate to a plus or minus 3EF or Celsius accurate to a plus or minus 1.5EC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:321 (February 2002).

## **Chapter 15. Food Storage**

### **§1501. Protected**

**[formerly paragraph 22:10-1]**

A. Food shall be protected from contamination by storing the food:

1. in a clean, dry location;
2. where it is not exposed to splash, dust, or other contamination;
3. at least six inches (15 cm) above the floor except:
  - i. metal pressurized beverage containers and cased food packages in cans, glass or other waterproof containers need not be elevated when the food container is not exposed to floor moisture.
  - ii. containerized food may be stored on dollies, racks or pallets, provided such equipment is readily movable.
4. so that it is arranged so that cross contamination of raw animal foods of one type with another, or ready to eat foods is prevented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:322 (February 2002).

### **§1503. Storage**

**[formerly paragraph 22:10-2]**

- A. Food may not be stored:
1. in locker rooms;
  2. in toilet rooms;
  3. in dressing rooms;
  4. in garbage rooms;
  5. in mechanical rooms;
  6. under sewer pipes;
  7. under water pipes that are not adequately shielded to intercept potential drips;
  8. under open stairwells;
  9. in vehicles used to transfer or hold any type of waste; or
  10. under other sources of contamination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:322 (February 2002).

### **§1505. Packaged Food**

**[formerly paragraph 22:10-3]**

A. Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water through the packaging, wrapping, or container because of its positioning in the ice or water. Unpackaged food may only be stored in direct contact with drained ice; except

1. whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water;
2. raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service or sale.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:322 (February 2002).

### **§1507. Date Marking**

A. Ready-to-eat, potentially hazardous foods prepared on premise and held under refrigeration for more than 24 hours shall be clearly marked at the time of preparation to indicate the date by which the food shall be consumed, which is, including the day of preparation, seven calendar days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:322 (February 2002).

## **Chapter 17. Food Preparation**

### **§1701. General**

**[formerly paragraph 22:11-1]**

A. During preparation, unpackaged food shall be protected from environmental sources of contamination. Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served or offered for human consumption in ready to eat form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:322 (February 2002).

### **§1703. Hand Contact**

**[formerly paragraph 23:012]**

A. Food shall be prepared with the least possible manual contact, with suitable utensils, and on surfaces that have been cleaned, rinsed, and sanitized prior to use to prevent cross-contamination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:322 (February 2002).

### **§1705. Cross Contamination**

**[formerly paragraph 22:11-3]**

- A. Cross contamination shall be prevented by separating:
1. raw animal foods from ready to eat foods, including but not limited to, placing, storing, or displaying ready to eat food above raw animal food;
  2. raw unprepared vegetables from ready to eat potentially hazardous foods; or
  3. certain raw animal foods from each other because of different cooking temperatures except when combining as ingredients.

B. Cross contamination shall be prevented by properly washing, rinsing and sanitizing cutting boards, food preparation surfaces and other food contact surfaces following contact with raw animal foods or raw vegetables and before contact with ready to eat food.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:322 (February 2002).

### **§1707. Reconstituted Dry Milk and Dry Milk Products**

**[formerly paragraph 23:015]**

A. Reconstituted dry milk and dry milk products meeting the requirement of Chapter VII of the State Sanitary Code may only be used in instant desserts and whipped products, or for cooking and baking purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:322 (February 2002).

**§1709. Molluscan Shellfish**

**[formerly paragraph 22:11-2]**

A. Raw shellfish shall be handled in accordance with Chapter IX of the State Sanitary Code, except a HACCP plan is not required and raw shellfish may not be prepackaged by food establishments and retail food stores/markets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:323 (February 2002).

**Chapter 19. Food Display and Service**

**§1901. General [formerly paragraph 22:12-1]**

A. Food on display shall be protected from contamination by the use of packaging, counter service line or food/sneeze guards, display cases, or other effective means except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption.

B. Proper utensils shall be used for preparation, service and dispensing of food. These utensils shall be stored in accordance with §2519 of this Part.

C. Self service consumers shall not be allowed to use soiled tableware, including single service articles, to obtain additional food from the display and serving equipment. Tableware, including single service articles, shall be made available at the serving display. A sign shall be posted at the serving display prohibiting the reuse of soiled tableware.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:323 (February 2002).

**§1903. Bulk Foods**

**[formerly paragraph 22:12-2]**

A. Bulk foods shall be handled and dispensed in a manner described in §1901 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:323 (February 2002).

**§1905. Condiments**

**[formerly paragraph 22:12-3]**

A. Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:323 (February 2002).

**§1907. Ice**

**[formerly paragraph 22:12-4]**

A. Ice for consumer use shall be dispensed only by employees with scoops, tongs, or other ice-self-dispensing utensils or through automatic service ice-dispensing equipment. Ice-dispensing utensils shall be stored in accordance with §2519 of this Part.

B. Ice used as a medium for cooling food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, shall not be used as food.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:323 (February 2002).

**§1909. Reservice**

**[formerly paragraph 22:12-5]**

A. Once served to a consumer, portions of left-over food shall not be reserved, except:

1. food that is not potentially hazardous, such as crackers and condiments, in an unopened original package and maintained in sound condition may be reserved or resold;

2. food that is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:323 (February 2002).

**§1911. Special Requirements for Highly Susceptible Populations**

A. In a food establishment that serves a highly susceptible population:

1. prepackaged juice or a prepackaged beverage containing juice must be pasteurized;

2. pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs shall be substituted for raw shell eggs in the preparation of:

a. foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, egg nog, ice cream, and egg-fortified beverages, and

b. recipes in which more than one egg is broken and the eggs are combined except:

i. when combined immediately before cooking for one consumer's serving at a single meal, cooked to 145°F for 15 seconds and served immediately, such as an omelet, souffle, or scrambled eggs;

ii. when combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread.

3. Food in an unopened original package may not be re-served.

4. The following foods may not be served or offered for sale in a ready to eat form:

a. raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;

- b. a partially cooked animal food such as lightly cooked fish, rare meat, soft cooked eggs that are made from raw shell eggs, and meringue; and
- c. raw seed sprouts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:323 (February 2002).

**Chapter 21. Equipment and Utensils**

**§2101. General**

**[formerly paragraph 22:13]**

A. All equipment and utensils shall be of construction approved by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:324 (February 2002).

**§2103. Multi-Use**

**[formerly paragraph 22:13-1]**

A. Materials that are used in the construction of utensils and food contact surfaces of equipment shall not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:

- 1. safe;
- 2. durable, corrosion-resistant, and non absorbent;
- 3. sufficient in weight and thickness to withstand repeated warewashing;
- 4. finished to have a smooth, easily cleanable surface; and
- 5. resistant to pitting, chipping, grazing, scratching, scoring, distortion, and decomposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:324 (February 2002).

**§2105. Copper**

**[formerly paragraph 22:13-2]**

A. Copper and copper alloys such as brass shall not be used in contact with a food that has a pH below 6.0, such as vinegar, fruit juice, or wine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:324 (February 2002).

**§2107. Galvanized Metal**

**[formerly paragraph 22:13-3]**

A. Galvanized metal shall not be used for utensils or food-contact surfaces or equipment that are used for acidic food.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:324 (February 2002).

**§2109. Lead**

**[formerly paragraph 22:13-4]:**

A. Lead in Ceramic, China, and Crystal Utensils Use Limitation

- 1. Ceramic, china, crystal utensils, and decorative utensils such as hand painted ceramic or china that are used

in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the following utensil categories:

Utensil Category	Description	Maximum Lead mg/L
Hot Beverage Mugs	Coffee Mugs	0.5
Large Hollowware	Bowls \$ 1.1L (1.16 qt)	1
Small Hollowware	Bowls < 1.1L (1.16 qt)	2.0
Flat Utensils	Plates, Saucers	3.0

B. Lead in Pewter Alloys Use Limitation

- 1. Pewter alloys containing lead in excess of 0.05 percent shall not be used as a "food-contact surface."

C. Lead in Solder and Flux Use Limitation.

- 1. Solder and flux containing lead in excess of 0.2 percent shall not be used as a food-contact surface.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:324 (February 2002).

**§2111. Wood**

**[formerly paragraph 22:13-5]**

A. Wood and wood wicker shall not be used as a food-contact surface except as follows.

- 1. Hard maple or an equivalently hard, close-grained wood may be used for:

- a. cutting boards, cutting blocks, baker's tables; and utensils, such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and

- b. wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 230EF (110EC) or above.

- 2. Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

- 3. If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in untreated wood containers or approved treated wood containers complying with the Code of Federal Regulations (CFR).

- 4. "Cedar-Plank" or "Shingles" may be used as a single-service article if;

- a. the food establishment has certified that the "cedar-plank" has not been chemically treated and is in its natural state;

- b. the side of the "plank" which will come in contact with the fish must be planed and sanded to a smooth finish.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:324 (February 2002).

**§2113. Non-Food Contact Surfaces**

**[formerly paragraph 22:14]**

- A. Surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, non absorbent, and smooth material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:324 (February 2002).

**§2115. Single-Service and Single-Use Articles**  
**[formerly paragraph 22:15]**

A. Single-service and single-use articles shall not be reused.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:325 (February 2002).

**§2117. Gloves, Use Limitations**  
**[formerly paragraph 22:16]**

A. If used, single use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

B. Except as specified in Subsection C of this Section, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified under §1305 of this Part such as frozen food or a primal cut of meat.

C. Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove or a single-use glove.

D. Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required under §1305 of this Part such as frozen food or a primal cut of meat.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:325 (February 2002).

**§2119. Food Temperature Measuring Devices**  
**[formerly paragraph 22:17]**

A. Food temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:325 (February 2002).

**Chapter 23. Requirements for Equipment**

**§2301. General**  
**[formerly paragraph 22:18-1]**

A. Equipment used for cooling, heating and holding cold and hot foods, shall be sufficient in number and capacity to provide food temperatures as specified in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:325 (February 2002).

**§2303. Manual Warewashing, Sink Compartment**  
**Requirements [formerly paragraph 22:18-2]**

A. A sink with at least three compartments shall be provided for manual washing, rinsing and sanitizing equipment and utensils, except:

1. where an approved alternative process is used as specified in Subsection C of this Section; or

2. where there are no utensils or equipment to wash, rinse and sanitize as in a facility with only prepackaged foods.

B. Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils.

C. When equipment or utensils are too large for the warewashing sink or warewashing machine, the following alternative process may include:

1. high-pressure detergent sprayers;
2. low or line-pressure spray detergent foamers;
3. other task specific cleansing equipment, such as CIP;
4. brushes or other implements.

D. Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing. Drainboards for sinks and machines shall be self-draining.

E. A warewashing sink may not be used for handwashing or dumping mop water. Sinks may be used to wash wiping cloths, wash produce and other foods or thaw foods if the sinks are properly washed and sanitized before this use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:325 (February 2002).

**§2305. Warewashing Machines**  
**[formerly paragraph 22:18-3]**

A. When provided, a warewashing machine shall have an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications including the:

1. temperatures required for washing, rinsing and sanitizing;

2. pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse; and

3. conveyor speed for conveyor machines or cycle time for stationary rack machines.

B. Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

C. Warewashing machines shall be equipped with a temperature measuring device that indicates the temperature of the water:



1. in each wash and rinse tank; and
2. as the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.

D. Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine.

E. Warewashing machines shall be operated in accordance with the machine's data plate and other manufacturer's specifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:325 (February 2002).

## **Chapter 25. Cleaning of Equipment and Utensils**

### **§2501. General**

#### **[formerly paragraph 22:19-1]**

A. Equipment food-contact surfaces and utensils shall be clean to sight and touch.

B. The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other accumulations.

C. Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:326 (February 2002).

### **§2503. Frequency of Cleaning**

#### **[formerly paragraph 22:19-2]**

A. Equipment food contact surfaces and utensils shall be cleaned:

1. before each use with a different type of raw animal food such as beef, seafood, lamb, pork, or poultry;
2. each time there is a change from working with raw foods to working with ready to eat foods;
3. between uses with raw fruits or vegetables and with potentially hazardous food;
4. before using or storing a temperature measuring device;
5. at any time during the operation when contamination may have occurred.

B. Equipment food-contact surfaces and utensils used with potentially hazardous food shall be cleaned throughout the day at least every four hours.

C. Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

D. Warewashing equipment, including machines and the compartments of sinks, basins or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards, shall be cleaned:

1. before use;
2. throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and

3. if used, at least every 24 hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:326 (February 2002).

### **§2505. Cleaning Agents**

#### **[formerly paragraph 22:19-3]**

A. The wash compartment of a sink, mechanical warewasher, or other alternative process as specified in §2303.C of this Part, when used for warewashing, shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleanser, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:326 (February 2002).

### **§2507. Temperature of Wash Solution**

#### **[formerly paragraph 22:19-4]**

A. The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than 110°F (43°C) unless a different temperature is specified on the cleaning agent manufacturer's label instruction.

B. The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:

1. for a single tank, stationary rack, single temperature machine, 165°F (74°C);
2. for a single tank, conveyor, dual temperature machine, 160°F (71°C);
3. for a single tank, stationary rack, dual temperature machine, 150°F (66°C);
4. for a multitank, conveyor, multitemperature machine, 150°F (66°C).

C. The temperature of the wash solution in spray type warewashers that use chemicals to sanitize may not be less than 120°F (49°C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:326 (February 2002).

### **§2509. Methods of Cleaning**

#### **[formerly paragraph 22:19-5]**

##### **A. Precleaning**

1. Food debris on equipment and utensils shall be scrapped over a waste disposal unit, scupper, or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

2. If necessary for effective cleaning, utensils and equipment shall be pre-flushed, pre-soaked, or scrubbed with abrasives.

B. Loading. Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

1. exposes the items to the unobstructed spray from all cycles and;
2. allows the items to drain.

##### **C. Wet Cleaning**

1. Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

2. The washing procedures selected shall be based on the type and purpose of equipment or utensil, and on the type of soil to be removed.

3. Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:326 (February 2002).

**§2511. Rinsing Procedures**

**[formerly paragraph 22:19-6]**

A. Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or other solutions. A distinct, separate water rinse after washing and before sanitizing shall be used with:

1. a three compartment sink;
2. an alternative manual warewashing equipment equivalent to a three compartment sink as specified in §2303.C of this Part;
3. a three-step washing, rinsing and sanitizing procedure in a warewashing system for CIP equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:327 (February 2002).

**§2513. Sanitization**

**[formerly paragraph 22:19-7]**

A. After the food-contact surfaces of all equipment and utensils are washed and rinsed, they shall be sanitized before use. Clean food-contact surfaces of all equipment and utensils shall be sanitized in:

1. hot water:
  - a. if immersion in hot water is used in manual operation, the temperature of the water shall be maintained at 171EF (77EC) or above;
  - b. in a mechanical operation, the temperature of the hot water rinse as it enters the manifold may not be more than 194EF (90EC) or less than:
    - i. for a single tank, stationary rack, single temperature machine, 165EF (74EC); or
    - ii. for all other machines, 180EF (82EC). This should achieve a utensil surface temperature of 160EF (71EC) as measured by an irreversible registering temperature indicator;
  - c. in a mechanical operation using a hot water rinse, the flow pressure may not be less than 15 pounds per square inch or more than 25 pounds per square inch as measured in the water line immediately upstream from the fresh hot water sanitizing rinse control valve;
2. chemicals:
  - a. only a chemical sanitizer listed in 21 CFR 178.1010, Sanitizing Solutions, shall be used in a sanitizing solution for manual or mechanical operation at the specified

exposure times. These sanitizing solutions shall be used in accordance with the EPA approved manufacturers label use instructions, and shall be used as follows.

i. A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart:

Minimum Concentration	Minimum Temperature	Minimum Temperature
MG/L or ppm	>pH 8 - pH 10	pH 8 or less
25 ppm	120EF (49EC)	120EF (49EC)
50 ppm	100EF (38EC)	75EF (24EC)
100 p.p.m	55EF (13EC)	55EF (13EC)

ii. An iodine solution shall have a:
 

- (a). minimum temperature of 75EF (24EC);
- (b). pH of 5.0 or less, unless the manufacturer's use directions included in the labeling specify a higher pH limit of effectiveness; and

(c). concentration between 12.5 mg/L and 25 mg/L(ppm).

iii. A quarternary ammonium compound solution shall:

(a). have a minimum temperature of 75EF (24EC);

(b). have a concentration of 200 mg/L (ppm) or as indicated by the manufacturer's use directions included in labeling; and

(c). be used only in water with 500 mg/L (ppm) hardness or less.

iv. Other solutions of the chemicals specified in (i), (ii), and (iii), of this Subparagraph may be used if demonstrated to the department to achieve sanitization and approved by the department; or

v. other chemical sanitizers may be used if they are applied in accordance with the manufacturer's use directions included in the labeling.

b. Chemical, manual or mechanical operations, including the applications of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified in §2513.A.2.a of this section shall be used to provide the following:

i. an exposure time of at least 10 seconds for a chlorine solution;

ii. an exposure time of at least 30 seconds for other chemical sanitizer solutions, or

iii. an exposure time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in this Part.

c. A test kit or other device that accurately measures the concentration in mg/L or parts per million (ppm) of sanitizing solution shall be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:327 (February 2002).

**§2515. Air Drying**

**[formerly paragraph 22:19-8]**

A. Except as specified in Subsection C of this Section, after cleaning and sanitizing, equipment and utensils may not be cloth-dried.

B. Equipment and utensils shall be air-dried or used after adequate draining as specified in paragraph (a) of 21 CFR 178.1010 Sanitizing Solutions, before contact with food.

C. Utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:327 (February 2002).

**§2517. Storage of Clean Equipment and Utensils**  
**[formerly paragraph 22:19-9]**

A. Except as specified in Subsection D of this Section, cleaned equipment, utensils and single-service and single use articles shall be stored:

1. in a clean dry location;
2. where they are not exposed to splash, dust, or contamination; and
3. at least 6 inches (15 cm) above the floor.

B. Clean equipment and utensils shall be stored as specified under Subsection A of this Section and shall be stored:

1. in a self-draining position that permits air drying; and
2. covered or inverted.

C. Single-service and single-use articles shall be stored as specified under Subsection A of this Section and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

D. Items that are kept in closed packages may be stored less than 6 inches (15 cm) above the floor on dollies, pallets, racks, or skids provided that the storage equipment is designed so that it may be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:328 (February 2002).

**§2519. In Use and Between Use Utensil Storage**  
**[formerly paragraph 22:19-10]**

A. During pauses in food preparation or dispensing, food preparation dispensing utensils shall be stored:

1. in the food;
  - a. with their handles above the top of the food and the container;
  - b. with their handles above the top of the food within containers or equipment that can be closed, if such food is not potentially hazardous, such as bins of sugar, flour, or cinnamon;
2. on a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified under §2503 of this Part;
3. in running water of sufficient velocity to flush particulate matter to the drain, if used with moist food such as ice cream or mashed potatoes; or
4. in a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous;

5. in a container of water if the water is maintained at a temperature of at least 140°F (60°C) and the container is cleaned at least once every 24 hours or at a frequency necessary to preclude accumulation of soil residues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:328 (February 2002).

**Chapter 27. Water Supply**

**§2701. General**

**[formerly paragraph 22:20-1]**

A. Sufficient quantities of potable water for the needs of the food establishment or retail food store/market shall be provided in accordance with Chapter XII of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:328 (February 2002).

**§2703. Pressure**

**[formerly paragraph 22:20-2]**

A. Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:328 (February 2002).

**§2705. Hot Water**

**[formerly paragraph 22:20-3]**

A. Hot water shall be provided to all fixtures, equipment and nonfood equipment as required and the generation and distribution system shall be sufficient to meet the peak hot water demands throughout the food establishment or retail food store/market.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:328 (February 2002).

**§2707. Steam**

**[formerly paragraph 22:20-4]**

A. Steam used in contact with food or food contact surfaces shall be free of deleterious materials or additives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:328 (February 2002).

**§2709. Bottled Water**

**[formerly paragraph 22:20-5]**

A. Bottled and packaged potable water shall be obtained from a source that complies with Chapter VI of the State Sanitary Code and the Food, Drug and Cosmetic Law and Regulations. Bottled and packaged potable water, if used, shall be handled and stored in a way that protects it from contamination and shall be dispensed from the original container.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:328 (February 2002).

## **Chapter 29. Sewage**

### **§2901. General**

#### **[formerly paragraph 22:21-1]**

A. All sewage from retail food establishments or retail food stores/markets shall be disposed of through an approved sewerage system/facility in accordance with Chapter XIII of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:329 (February 2002).

## **Chapter 31. Plumbing**

### **§3101. General**

#### **[formerly paragraph 22:22-1]**

A. Plumbing shall be sized, installed, and maintained in accordance with Chapter XIV of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:329 (February 2002).

### **§3103. Cross-Connection**

#### **[formerly paragraph 22:22-2]**

A. There shall be no cross-connection between the potable water supply and any other source of water of lesser quality including any source of pollution from which the potable water supply might become contaminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:329 (February 2002).

### **§3105. Backflow**

#### **[formerly paragraph 22:22-3]**

A. Backflow shall be prevented by:

1. installing an air gap in the water distribution system between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment which is at least twice the diameter of the water supply inlet (or generally, three times the diameter if affected by a nearby wall); or

2. installing an approved backflow or backsiphonage prevention device installed and maintained on a water line in accordance with Chapter XIV of the State Sanitary Code;

3. not having a direct connection between the drainage system and any drain line originating from equipment in which food, portable equipment, or utensils are placed (e.g., any sink where food is cleaned, peeled, cut up, rinsed, battered, defrosted, or otherwise prepared or handled; potato peelers; ice cream dipper wells, refrigerators; freezers; walk-in coolers and freezers; ice boxes; ice making machines; refrigain type drink dispensers; rinse sinks; cooling or refrigerating coils; laundry washers; extractors; steam tables; steam kettles; egg boilers; coffee urns; or similar equipment).

Exception: A commercial dishwashing (warewashing) machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 5 feet (1.5 m) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:329 (February 2002).

### **§3107. Non-Potable Water System**

#### **[formerly paragraph 22:22-4]**

A. A non-potable water system is permitted only for purposes such as air conditioning and fire protection, provided the system is installed in accordance with Chapter XII and Chapter XIV of the State Sanitary Code and:

1. the non potable water does not contact directly or indirectly, food, potable water equipment that contacts food, or utensils; and

2. the piping of any nonpotable water system shall be easily identified so that it is readily distinguishable from piping that carries potable water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:329 (February 2002).

### **§3109. Lavatory Facilities**

#### **[formerly paragraph 22:22-5]**

A. All lavatory fixtures shall be installed in accordance with Chapter XIV of the State Sanitary Code and:

1. at least one handwashing lavatory shall;

a. be located to permit convenient use by all employees in food preparation areas and utensil washing areas including the produce, meat and seafood markets;

b. also be located in or immediately adjacent to toilet rooms;

2. lavatories shall be accessible to employees at all times;

3. lavatories shall be equipped to provide a flow of water at a temperature of at least 85EF (30EC) through a mixing valve or combination faucet;

4. if a self-closing, slow-closing, or metering faucet is used, it shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet;

5. steam mixing valves are prohibited;

6. a supply of hand-cleansing soap or detergents shall be available at each lavatory. A supply of individual disposable towels, a continuous towel system that supplies the user with a clean towel or a heat-air drying device shall be available at each lavatory. The use of common towels is prohibited;

7. lavatories, soap dispensers, hand-drying devices and all related fixtures shall be kept clean and in good repair;

8. a handwashing lavatory may not be used for purposes other than handwashing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:329 (February 2002).

### **§3111. Toilet Facilities**

#### **[formerly paragraph 22:22-6]**

A. All toilet fixtures and facilities shall be installed in accordance with Chapter XIV of the State Sanitary Code and:

1. toilet fixtures and facilities shall be the number required, shall be conveniently located, and accessible to employees at all times;

2. a toilet room located on the premises shall be completely enclosed and provided with a solid tight-fitting and self-closing door except that this requirement does not apply to a toilet room that is located outside a food establishment or retail food store/market and does not open directly into the food establishment or retail food store/market, such as but not limited to shopping malls, airports, or other places of public assembly;

3. toilet rooms shall be mechanically vented to the outside atmosphere;

4. toilet fixtures and facilities shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials with at least one covered waste receptacle in toilet rooms used by women.

B. Toilet rooms shall be provided with a properly installed floor drain. The floor shall slope towards the floor drain.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:329 (February 2002).

### **§3113. Grease Traps**

**[formerly paragraph 22:22-7]**

A. An approved type grease trap shall be installed in accordance with Chapter XIV of the State Sanitary Code and:

1. it shall be installed in the waste line leading from the sinks, drains and other fixtures or equipment where grease may be introduced in the drainage or sewage system in quantities that may affect line stoppage or hinder sewage treatment;

2. a grease trap, if used, shall be located to be easily accessible for cleaning and shall be serviced as often as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:330 (February 2002).

### **§3115. Garbage Grinders**

**[formerly paragraph 22:22-8]**

A. If used, garbage grinders shall be installed and maintained in accordance with Chapter XIV of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:330 (February 2002).

### **§3117. Utility or Service Sink**

**[formerly paragraph 22:22-9]**

A. At least one service sink or one curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste. The sink shall be located in an area to avoid food contamination.

B. The use of lavatories, utensil washing, equipment washing, or food preparation sinks as a utility or service sink is prohibited.

C. In some special applications, because of space restrictions or unique situations, when the risk of

contamination is low in the opinion of the state health officer, a large utility/service sink may be used as a handwashing sink.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:330 (February 2002).

## **Chapter 33. Garbage, Rubbish and Refuse**

### **§3301. General**

**[formerly paragraph 22:23-1]**

A. All garbage, rubbish and refuse shall be handled in accordance with Chapter XXVII of the State Sanitary Code .

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:330 (February 2002).

### **§3303. Receptacles for Garbage, Rubbish and Refuse**

**[formerly paragraph 22:223-2]**

A. Equipment and receptacles for refuse, recyclables, returnables, and for use with materials containing food residue shall be durable, cleanable, insect and rodent resistant, leakproof, and nonabsorbent.

B. Plastic bags and wet strength paper bags may be used to line receptacles for storage of garbage, etc., inside the retail food establishment or retail food store/market, or within closed outside receptacles.

C. Outside receptacles for garbage, etc., shall have tight-fitting lids, doors, or covers and shall be kept closed.

D. There shall be a sufficient number of receptacles to hold all the garbage and refuse that accumulates. They shall be emptied when full. All garbage, rubbish and refuse shall be disposed of in an approved manner pursuant to applicable state laws and regulations.

E. Soiled receptacles shall be cleaned at a frequency to prevent a nuisance or the attraction of insects and rodents.

F. Liquid waste from compacting shall be disposed of as sewage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:330 (February 2002).

### **§3305. Incineration**

**[formerly paragraph 22:23-3]**

A. Where garbage, rubbish or refuse is burned on the premises, it shall be done by incineration in accordance with the rules and regulations of the Louisiana Department of Environmental Quality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:330 (February 2002).

### **§3307. Cleaning and Storage**

**[formerly paragraph 22:23-4]**

A. Indoor garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent washable materials, shall be kept clean, shall be insect and rodent proof and shall be large enough to store the garbage and refuse that accumulates.

B. Outdoor garbage or refuse storage area surfaces shall be constructed of non-absorbent material such as concrete or

asphalt and shall be smooth, durable, and sloped for drainage.

C. Suitable cleaning equipment and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of equipment and receptacles.

D. Liquid waste from the cleaning operation shall be disposed of as sewage. Methods used for this disposal shall prevent rainwater and runoff from entering the sanitary sewerage system. Dumpster pads may be elevated or curbed, enclosed or covered, and the sanitary sewerage drain protected with a proper cover.

E. If approved by the state health officer, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.

F. Outdoor premises used for storage of garbage, rubbish, refuse, recyclables and returnables shall be maintained clean and free of litter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:330 (February 2002).

### **Chapter 35. Insects and Rodent Control**

#### **§3501. General**

**[formerly paragraph 22:24-1]**

A. Insects and rodents shall be controlled in accordance with Chapter V of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:331 (February 2002).

#### **§3503. Insect Control Devices**

**[formerly paragraph 22:24-2]**

A. Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

B. Insect control devices shall be installed so that:

1. the devices are not located over a food preparation area, and
2. dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:331 (February 2002).

#### **§3505. Openings**

**[formerly paragraph 22:24-3]**

A. Openings to a portion of the building that is not part of the food establishment, or retail food store/market, or to the outdoors shall be protected against the entry of insects and rodents by:

1. filling or closing holes and other gaps along floors, walls and ceilings;
2. closed, tight-fitting windows;
3. solid, self-closing, tight-fitting doors; or
4. if windows or doors are kept open for ventilation or other purposes, the openings shall be protected against the entry of insects by:
  - a. 16 mesh to the inch (25.4 mm) screens;

b. properly designed and installed air curtains; or  
c. other effective means approved by the department.

B. Establishment location, weather or other limiting conditions may be considered as part of an overall flying insect and other pest control program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:331 (February 2002).

#### **§3507. Premises**

**[formerly paragraph 22:24-2]**

A. The premises shall be free of:

1. items that are unnecessary to the operation or maintenance of the food establishment, or retail food store/market, such as equipment that is nonfunctional or no longer used; and
2. litter.

B. The premises shall be kept free of pests by:

1. routinely inspecting the premises for evidence of pests; and
2. using methods of control approved by law.

C. Outdoor walking and driving areas shall be surfaced with concrete, asphalt, gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, drain properly and prevent muddy conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:331 (February 2002).

### **Chapter 37. Physical Facilities**

#### **§3701. Floors**

**[formerly paragraph 22:25]**

A. Floors shall be constructed of smooth, durable, nonabsorbant and easily cleanable material.

B. Closely woven and easily cleanable carpet may be used in certain areas of the food establishment or retail food store/market except where food is prepared and processed.

C. Properly installed floor drains shall be provided in toilet rooms, seafood and meat markets and in all areas where water flush cleaning methods are used. The floor shall be sloped to the floor drain.

D. Floors shall be maintained clean and in good repair.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:331 (February 2002).

#### **§3703. Walls and Ceilings**

**[formerly paragraph 22:26]**

A. Walls and ceilings in the food preparation areas and equipment-utensil washing areas shall be constructed of light colored, smooth, durable and easily cleanable materials.

B. Utility service lines, pipes, exposed studs, joists, rafters and decorative items shall not be unnecessarily exposed in food preparation and processing areas. When exposed in other areas of the food establishment or retail food store/market, they shall be installed so they do not obstruct or prevent cleaning of the walls and ceilings.

C. Walls, ceilings, and any attachments shall be maintained clean and in good repair.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:331 (February 2002).

**§3705. Lighting Intensity**  
**[formerly paragraph 22:27-1]**

A. The lighting intensity:

1. in walk-in refrigeration units and dry food storage areas, and in other areas or rooms during periods of cleaning, shall be at least 110 lux (10 foot candles) at a distance of 30 inches (75 cm) above the floor.

2. in areas where there is consumer self service, areas used for handwashing, warewashing, equipment and utensil storage, and in toilet rooms, shall be at least 220 lux (20 foot candles) at a distance of 30 inches (75 cm) above the floor.

3. at a surface where a food employee is working with unpackaged potentially hazardous food or with food, utensils, and equipment such as knives, slicers, grinders, or saws where employees' safety is a factor, shall be at least 540 lux (50 foot candles) at a distance of 30 inches (75 cm) above the floor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:332 (February 2002).

**§3707. Light Shielding**  
**[formerly paragraph 22:27-2]**

A. Light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food, clean equipment, utensils and linens or unwrapped single-service and single-use articles.

B. Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:332 (February 2002).

**§3709. Mechanical Ventilation**  
**[formerly paragraph 22:28-1]**

A. If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes, mechanical ventilation of sufficient capacity shall be provided exhausting to the outside atmosphere.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:332 (February 2002).

**§3711. Hood Ventilation [formerly paragraph 22:28-2]**

A. Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings and should be equipped with filters to prevent grease from escaping into the outside atmosphere.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:332 (February 2002).

**§3713. Heating, Air Conditioning, Ventilating System Vents [formerly paragraph 22:28-3]**

A. These systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food preparation surfaces, equipment and utensils.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:332 (February 2002).

**Chapter 39. Poisonous or Toxic Materials**

**§3901. Labeling**  
**[formerly paragraph 22:29-1]**

A. Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.

B. Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material. This practice is not allowed in a day-care or residential facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:332 (February 2002).

**§3903. Storage and Display**  
**[formerly paragraph 22:29-2]**

A. Poisonous or toxic materials shall be stored for use in food establishments or displayed for retail sale or use in retail food stores/markets so they may not contaminate food, equipment, utensils, linens, single-service and single-use articles by:

1. separating the poisonous or toxic materials by spacing or partitioning; and

2. locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, single-service and single-use articles; and

3. storing those properly labeled medicines and first aid supplies necessary for the health of employees or for retail sale in a location or area that prevents contamination of food, equipment, utensils, linens, single-service and single-use articles; and

4. storing medicines belonging to employees that require refrigeration (and are stored in a food refrigerator) in a package or container kept inside a covered, leakproof container that is identified as a container for the storage of medicines, or as specified for day care centers and residential facilities in Chapter XXI of this Title; and

5. storing employees' personal care items in lockers or other suitable facilities that are located in an area that prevents contamination of food, equipment, utensils, linens, single-service and single-use articles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:332 (February 2002).

**§3905. Use**  
**[formerly paragraph 22:29-3]**

A. Only those poisonous or toxic materials that are required for the operation and maintenance of the food establishment or retail food store/market such as for the

cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in food preparation and processing areas. This does not apply to approved, packaged poisonous or toxic materials that are for retail sale stored in accordance with §3903 of this Part.

B. Poisonous or toxic materials shall be stored in accordance with §3903 of this Part, and used according to:

1. law;
2. manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions including a statement that the use is allowed in a food preparation or processing area; and
3. any additional conditions that may be established by the regulatory authority.

C. Chemical sanitizers and other chemical antimicrobials applied to food contact surfaces shall meet the requirements specified in §2513.A.2 and §2515.B of this Part.

D. Chemicals used to wash or peel raw, whole fruits and vegetables shall be used in accordance with the manufacturer's label instructions and as specified in 21 CFR 173.315.

E. Restricted use pesticides shall be applied and used according to law and in accord with the manufacturer's label instructions.

F. Rodent bait shall be contained in a covered, tamper-resistant bait station.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:332 (February 2002).

## **Chapter 41. Miscellaneous**

### **§4101. Prohibitive Acts**

**[formerly paragraph 22:30]**

A. Except as specified in Subsection B of this Section, live animals may not be allowed on the premises of food establishments or retail food stores/markets.

B. Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result; such as

1. edible fish or decorative fish in aquariums, shellfish and crustacea in display tank systems;
2. patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;
3. service animals that are controlled by a disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal, in areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas;
4. pets in the common dining areas of group residences at times other than during meals if:
  - a. effective partitioning and self-closing doors separate the common dining areas from storage or food preparation areas;
  - b. condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and
  - c. dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service.

C. Body Art. No employee or any other person shall engage in the practice of "Body art" within the premises of any food establishment or retail food store/market as defined in this Part.

D. Persons unnecessary to the food establishment or retail food store/market operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:333 (February 2002).

### **§4103. Distressed Merchandise**

**[formerly paragraph 22:32]**

A. Products that are held by the food establishment or retail food store/market for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:333 (February 2002).

### **§4105. Dressing Areas, Lockers and Employee Break Areas [formerly paragraph 22:33]**

A. Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment.

B. Lockers or other suitable facilities shall be provided and used for the orderly storage of employees' clothing and other possessions.

C. Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination. Areas where employees use tobacco should be well ventilated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:333 (February 2002).

### **§4107. Linen/Laundry, General**

**[formerly paragraph 22:35-1]**

A. Clean linens shall be free from food residues and other soiled matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:333 (February 2002).

### **§4109. Linen/Laundry, Frequency of Cleaning [formerly paragraph 22:35-2]**

A. Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.



B. Cloth gloves shall be laundered before being used with a different type of raw animal food such as beef, lamb, pork, and fish.

C. Wet wiping cloths shall be laundered before being used with a fresh solution of cleanser or sanitizer.

D. Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:333 (February 2002).

#### **§4111. Wiping Cloths**

**[formerly paragraph 22:35-3]**

A. Cloths that are used for wiping food spills shall be used for no other purpose.

B. Moist cloths used for wiping food spills on food contact surfaces of equipment shall be stored in an approved chemical sanitizing solution between uses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:334 (February 2002).

#### **§4113. Storage of Soiled Linens**

**[formerly paragraph 22:35-4]**

A. Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils and single-service and single-use articles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:334 (February 2002).

#### **§4115. Use of Laundry Facilities**

**[formerly paragraph 22:35-5]**

A. Laundry facilities on the premises of a food establishment or retail food store/market shall be used only for the washing and drying of items used in the operation of the establishment and located away from food preparation areas.

B. Linens which are not laundered on the premises may be sent to an off premise commercial laundry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:334 (February 2002).

#### **§4117. Living Areas**

**[formerly paragraph 22:36]**

A. Living or sleeping quarters such as a private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters, shall not be used for conducting food establishment or retail food store/market operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:000 (January 2002).

#### **§4119. Maintenance Equipment**

**[formerly paragraph 22:37]**

A. Maintenance tools such as brooms, mops, vacuum cleaners, and similar equipment shall be:

1. stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and

2. stored in an orderly manner that facilitates cleaning.

B. Mops should be hung and/or stored in a manner to facilitate air drying.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:334 (February 2002).

#### **§4121. Reduced Oxygen Packaging Criteria**

**[formerly paragraph 22:39]**

A. A food establishment or retail food store/market that packages food using a reduced oxygen packaging method shall have a Hazard Analysis Critical Control Point (HACCP) plan as specified in §311 of this Part, which provides the following information:

1. identifies the food to be packaged;

2. limits the food packaged to a food that does not support the growth of *Clostridium botulinum* because it complies with one of the following:

a. has a water activity of ( $a_w$ ) of 0.91 or less;

b. has a pH of 4.6 or less;

c. is a meat product cured at a food processing plant regulated by the USDA or the Louisiana Department of Agriculture using substances specified in 9 CFR 318.7, Approval of Substances for Use in the Preparation of Products, and 9 CFR 381.147, Restrictions on the Use of Substances in Poultry Products, and is received in an intact package; or

d. is a food with a high level of competing organisms such as raw meat or raw poultry;

3. specifies methods for maintaining food at 41EF (5EC) or below;

4. describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

a. maintain the food at 41EF (5EC) or below, and

b. discard the food if within 14 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premise consumption;

5. limits the shelf life to no more than 14 calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first;

6. includes operational procedures that:

a. prohibit contacting food with bare hands;

b. identify a designated area and the method by which:

i. physical barriers or methods of separation of raw foods and ready-to eat foods minimize cross-contamination, and

ii. access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation, and

c. delineate cleaning and sanitization procedures for food-contact surfaces; and

7. describes the training program that ensures that the individual responsible for reduced oxygen packaging (vacuum packaging) operation understands the:

- a. concepts required for a safe operation;
- b. equipment and facilities, and
- c. procedures specified in Paragraph A.6 of this Subsection and the HACCP plan.

B. Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:334 (February 2002).

**§4123. Smoked Meat Preparation, Not Fully Cooked**  
**[formerly paragraph 22:40-1]**

A. Not fully cooked smoked meats, also referred to as "partially cooked meats," shall be heated to a temperature and time sufficient to allow all parts of the meat to reach between 100EF and 140EF. This product shall be labeled on each retail package "FURTHER COOKING REQUIRED" with lettering of not less than one-half inch.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:335 (February 2002).

**§4125. Smoked Meat Preparation, Fully Cooked**  
**[formerly paragraph 22:40-2]**

A. Fully cooked smoked meats shall be heated at a temperature and time sufficient to allow all parts of the meat to reach 155EF except poultry products which shall reach 165EF with no interruption of the cooking process and fish which shall reach 145EF.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:335 (February 2002).

**§4127. Open Air Markets**

A. Markets commonly called "open air markets," "curb markets" or "open front markets" shall store all food products above the floor or ground level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:335 (February 2002).

**§4129 Itinerant Food Establishments, Itinerant Retail Food Stores/Markets Permit**  
**[formerly paragraph 22:34-1]**

A. No itinerant food establishment or itinerant retail food store/market shall operate without first applying for and receiving a permit from the state health officer.

B. Seasonal permits issued to itinerant food establishments or itinerant retail food stores/markets should coincide with the legally set seasons for the products those markets plan to handle or sell and expire the last day of the season.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:335 (February 2002).

**§4131. Itinerant Food Establishments, Itinerant Food Stores/Markets Plans**  
**[formerly paragraph 22:34-2]**

A. Plans and specifications for all proposed itinerant food establishments or itinerant retail food stores/markets shall be submitted to the state health officer for review and approval before applying for and receiving a permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:335 (February 2002).

**Chapter 43. Inspections and Enforcement**

**§4301. Inspections, Frequency**

**[formerly paragraph 22:42-1]**

A. Inspections of food establishments or retail food stores/markets shall be performed by the department as often as necessary for the enforcement of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:335 (February 2002).

**§4303. Inspections, Access**

**[formerly paragraph 22:42-2]**

A. Representatives of the state health officer, after proper identification, shall be permitted to enter any food establishment or retail food store/market at any time for the purpose of making inspections to determine compliance with this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:335 (February 2002).

**§4305. Inspections, Records**

**[formerly paragraph 22:42-3]**

A. The state health officer shall be permitted to examine the records of food establishments or retail food stores/markets to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed. Such records shall be maintained for a period of not less than six months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:335 (February 2002).

**§4307. Inspections, Reports**

**[formerly paragraph 22:42-4]**

A. Whenever an inspection of a food establishment or retail food store/market is made, the findings shall be recorded on an inspection report form. A copy of the completed inspection report shall be furnished to the person in charge of the food establishment or retail food store/market at the conclusion of the inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:335 (February 2002).

**§4309. Enforcement, General**

**[formerly paragraph 22:43-2]**

A. Enforcement procedures shall be conducted in accordance with Part I of this Title.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:336 (February 2002).

**§4311. Enforcement, Critical Violations**

**[formerly paragraph 22:43-2]**

A. Critical items, such as, but not limited to a potentially hazardous food stored at improper temperature, poor personal hygienic practices, not sanitizing equipment and utensils, no water, contaminated water source, chemical contamination, sewage backup or improper sewage disposal, noted at the time of inspection shall be corrected immediately or by a time set by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:336 (February 2002).

**§4313. Enforcement, Noncritical Violations**

**[formerly paragraph 22: 43-3]**

A. Noncritical items noted at the time of inspection shall be corrected as soon as possible or by a time limit set by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:336 (February 2002).

**§4315. Enforcement, Adulterated Food**

**[formerly paragraph 22:43-4]**

A. Any food product that is adulterated, misbranded or unregistered is subject to seizure and condemnation by the state health officer according to law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:336 (February 2002).

**Chapter 45. Mobile Food Establishments, Mobile Retail Food Stores/Markets and Pushcarts**

**[formerly paragraph 22:34-3]**

**§4501. Interior of Vehicles**

A. The interior of vehicles where food products are prepared and stored shall be constructed of a smooth, easily cleanable surface and maintained in good repair.

B. The interior of vehicles where food products are prepared and stored shall be kept clean.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:336 (February 2002).

**§4503. Packaged Food Products**

**[formerly paragraph 22:34-4]**

A. Trucks or vendors selling packaged food products such as ice cream, frozen novelties, meats, etc. shall operate from a base of operation where leftover products may be properly stored and inspected and the vehicle serviced.

Packaged potentially hazardous foods shall be stored in accordance with §1309 and §1313 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:336 (February 2002).

**§4505. Produce**

**[formerly paragraph 22:34-5]**

A. Produce vendors shall comply with §1101, §1103, §1107, §4101 and Chapter 15 of this Part. The produce should be protected by some type of enclosure or cover on the vehicles. Any produce left at the end of the day should be properly stored and protected from insects and rodents overnight.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:336 (February 2002).

**§4507. General**

**[formerly paragraph 23:117-1]**

A. Mobile food establishments, mobile retail food stores/markets or pushcarts shall comply with the requirements of this Part, except as otherwise provided in this section and in §4129 of this Part. The department may impose additional requirements to protect against health hazards related to the conduct of the food establishment or retail food store/market as a mobile operation, may prohibit the sale of some or all potentially hazardous food and when no health hazard will result, may modify requirements of this Part relating to physical facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:336 (February 2002).

**§4509. Plans Submission**

**[formerly paragraph 22:34-2]**

A. Properly prepared plans and specifications for mobile food establishments, mobile retail food stores/markets and pushcarts shall be submitted to the state health officer for review and approval before construction is begun.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:336 (February 2002).

**§4511. Permit**

**[formerly paragraph 23:125]**

A. No person shall operate a mobile food establishment, mobile retail food store/market or pushcart who does not have a valid permit issued to him by the state health officer. Only a person who complies with the requirements of this Part shall be entitled to receive or retain such a permit. Permits are not transferable. A valid permit shall be posted in every mobile food establishment, mobile retail food store/market or pushcart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:336 (February 2002).

**§4513. Issuance of Permits**

**[formerly paragraph 23:126-1]**

A. Any person desiring to operate a mobile food establishment, mobile retail food store/market or pushcart shall make written application for a permit on forms provided by the state health officer. Such application shall include the name and address of each applicant, the location and type of the proposed mobile food establishment, mobile retail food store/market or pushcart, and the signature of each applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:337 (February 2002).

**§4515. Restricted Operations**

**[formerly paragraph 22:34-6]**

A. Boiled peanuts shall be handled in accordance with guidelines set by the state health officer.

B. Hot tamales shall be handled in accordance with guidelines set by the state health officer.

C. Seafood

1. Boiled seafood shall be cooked and handled in accordance with guidelines set by the state health officer.

2. Oysters sold by the sack must be in an enclosed, mechanically refrigerated vehicle and comply with §1101, §1103, §1107, §1109 and §1117 of this Part.

3. Live crabs or crawfish sold by the bushel or sack must be stored either on ice in an enclosed, insulated vehicle or in an enclosed mechanically refrigerated vehicle and comply with §1101, §1103 and §1117 of this Part.

4. Raw shrimp vendors:

a. shall store their shrimp in containers such as ice chests which are smooth, impervious and easily cleanable. The use of styrofoam is prohibited;

b. shall maintain shrimp at a temperature of 41EF (5EC) in accordance with §1309 of this Part;

c. shall provide a minimum one gallon container of sanitizer solution at the proper strength in accordance with §2513.A.2 of this Part to rinse hands, scoops, scales, ice chests, etc., as needed; and

d. shall provide paper hand towels and a waste receptacle.

5. Waste water from any seafood vendor shall be disposed of properly in accordance with §2901 of this Part. Waste water shall be collected in an approved, covered, labeled container for proper disposal. The discharging of waste water onto the ground or into a storm drainage system is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:337 (February 2002).

**§4517. Single-Service Articles**

**[formerly paragraph 23:119]**

A. Mobile food establishments, mobile retail food stores/markets or pushcarts shall provide only single-service articles for use by the consumer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:337 (February 2002).

**§4519. Water System**

**[formerly paragraph 23:120]**

A. A mobile food establishment or a mobile retail food store/market requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and handwashing, in accordance with the requirements of this regulation. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be kept capped unless being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of Chapter XIV of the State Sanitary Code. An approved gauge shall be provided to determine contents level.

B. Potable water shall come from an approved source in accord with the requirements of Chapter XII of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:337 (February 2002).

**§4521. Waste Retention**

**[formerly paragraph 23:121]**

A. If liquid waste results from operation of a mobile food establishment or mobile retail food store/market, the waste shall be stored in a permanently installed retention tank that is of at least 15 percent larger capacity than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food establishment or mobile retail food store/market is in motion. All connections on the vehicle for servicing mobile food establishment or mobile retail food store/market waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food establishment or mobile retail food store/market. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system. An approved gauge shall be provided to determine content levels.

B. Wastewater from mobile food establishments or mobile retail food stores/markets shall be disposed of in accord with §2901 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:337 (February 2002).

**§4523. Base of Operations/Commissary**

**[formerly paragraphs 23:122, 23:123, 23:124]**

A. Mobile food establishments, mobile retail food stores/markets and pushcarts shall operate from a commissary or other fixed food establishment and shall report at least daily to such location for all supplies and for all cleaning and servicing operations.

B. The commissary or other fixed food establishments used as a base of operation for mobile food establishments, mobile retail food stores/markets, or pushcarts shall be constructed and operated in compliance with the requirements of this Part.

C. Servicing Area

1. A servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation. Within this servicing area, there shall be a location provided for the flushing and drainage of liquid wastes separate from the location provided for water servicing and for the loading and unloading of food and related supplies.

2. The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.

3. Potable water servicing equipment shall be installed according to law and shall be stored and handled in a way that protects the water and equipment from contamination.

4. The liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged to a sanitary sewage disposal system in accordance with §2901 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:337 (February 2002).

**Chapter 47. Temporary Food Service**

**§4701. General**

[formerly paragraph 23A:002]

A. The state health officer or his/her duly authorized representative may impose requirements in addition to those set forth below to protect against health hazards related to the operation of the temporary food service, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of the state sanitary code, in accordance with the Administrative Procedure Act. Nothing in this Part shall be construed to abridge the constitutional rights of the people to peaceably assemble.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:338 (February 2002).

**§4703. Permits**

[formerly paragraph 23A:003]

A. A temporary food service permit is not required for those fairs or festivals expressly exempted from regulation by R.S. 40:4.1 thru R.S. 40:4.6 inclusive.

B. When an organizer, promoter, or chairman of an exempted fair or festival makes written request for Office of Public Health inspections and permits and pays applicable fees, he or she shall comply with §4705 of this Part.

C. All fairs or festivals not exempted by Subsection A of this Section, shall not be allowed to operate until applying for, paying applicable fees, and receiving a valid permit to operate from the state health officer or his/her duly authorized representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:338 (February 2002).

**§4705. Written Application**

[formerly 23A:003-1]

A. Written application for permit (LHS-31A), signed agreement, and supplemental application (obtainable from the parish health unit) should be received by the state health officer or his/her duly authorized representative at least thirty days in advance of the proposed gathering.

B. A permit to operate shall be required of the festival, fair or other special event organizer or promoter and must be obtained from the local parish health unit. The application for permit shall include the:

1. name and location of the special event;
2. permanent mailing address and phone number;
3. name of the property owner;
4. opening date and closing date;
5. daily hours of operation;
6. size of site (square feet);
7. anticipated maximum attendance at any one time;
8. name of the event organizer or promoter;
9. home address and phone number of the organizer or promoter;

10. business address and phone number of the organizer or promoter;

11. list of each individual food operator/ responsible person, including their home address, home phone number, business phone, and food items to be sold;

12. outline map showing the location of all proposed and existing:

- a. toilets;
- b. lavatory facilities;
- c. water supply sources (including storage tanks) and distribution system;
- d. food service areas (including diagram and description of the types of booths, tents, etc. to be used for the preparation of or dispensing of any food or beverage products);
- e. garbage and refuse storage and disposal areas;
- f. special event command post; and
- g. location of sewage disposal.

C. The following optional information is recommended to be included with the application for permit (on the outline map):

1. areas of assemblage;
2. camping areas (if any);
3. entrance and exits to public roadways;
4. emergency ingress and egress roads;
5. emergency medical and local enforcement command posts;
6. parking facilities;
7. written plan for dust control; and
8. written plan for emergency situations. (e.g. inclement weather, etc).

D. A permit to operate shall be required of each Individual Food Operator/Responsible Person operating a temporary food service unit/booth and must be obtained from the local parish health unit. Permits are not transferrable and shall be issued for each food and/or

beverage unit/booth. Permits shall be posted in the temporary food service unit/booth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:338 (February 2002).

**§4707. Ice/Wet Storage**

**[formerly paragraph 23A:004]**

A. Ice shall be made and stored as required by §1907 of this Part and Chapter VI of the State Sanitary Code. Ice scoops must be used. The use of dry ice and/or frozen gel packs are recommended for cold storage. Storage of packaged food in contact with water or undrained ice is prohibited. Sandwiches shall not be stored in direct contact with ice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:339 (February 2002).

**§4709. Equipment**

**[formerly paragraph 23A:004-1]**

A. Equipment and food contact surfaces shall comply with Chapter 21 and Chapter 25 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:339 (February 2002).

**§4711. Food Source and Protection**

**[formerly paragraph 23A:005-1]**

A. Food shall be obtained, prepared, stored, handled and transported in accordance with Chapter 11, Chapter 13, Chapter 15, Chapter 17 and Chapter 19 of this Part. The sale of potentially hazardous home prepared food is prohibited.

B. The re-use of containers made of paper, wood, wax, or plastic coated cardboard is prohibited. Containers made of glass, metal, or hard plastic may be re-used only after they are properly washed, rinsed and sanitized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:339 (February 2002).

**§4713. Personal Hygiene**

**[formerly paragraph 23A:007]**

A. Each person working in a food booth shall comply with Chapter 7 and Chapter 9 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:339 (February 2002).

**§4715. Food Stand/Booth Construction**

**[formerly paragraph 23A:008]**

A. [formerly paragraph 23A:008-1] Indoor booths must be constructed with tables, counters, and/or walls on all sides to control patron access. Food service must be from the rear area of the booth or otherwise dispensed to prevent contamination by customers.

B. [formerly paragraph 23A:008-2] Outdoor booths must be constructed to include a roof made of wood, canvas, or other material that protects the interior of the booth from the

weather and be enclosed by counters/walls to control patron access.

1. It is recommended that the booth be enclosed on three sides with the fourth, front side encompassing the service area, so constructed as to minimize the entrance of dust, flies and vermin. The use of screen, mosquito netting, or polyurethane for this purpose is acceptable; counter-service openings shall be minimal.

2. Additional protective covering must be provided to completely enclose outer openings in the event of rain, dust storms or other inclement weather.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:339 (February 2002).

**§4717. Floors**

**[formerly paragraph 23X:008-3]**

A. Floors shall be kept clean, in good repair and level, so as not to allow the pooling of water. It is recommended that floors be constructed of concrete, asphalt, or similar material. Dirt or gravel, when graded to drain, may be used, however, clean removable pallets, duckboard, plywood, or similar material is recommended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:339 (February 2002).

**§4719. Barbecue Places**

**[formerly paragraph 23A:008-4]**

A. Places where barbecue is cooked must be provided with a cover impenetrable by rain or barbecue pits must be provided with covers. All food storage and handling must comply with §4711 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:339 (February 2002).

**§4721. Seafood Boils**

**[formerly paragraph 23A:008-5]**

A. Seafood boiling areas must be provided with a cover impenetrable to rain or a covered boiling apparatus. All food storage and handling must comply with §4711 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:339 (February 2002).

**§4723. Exception**

**[formerly paragraph 23A:008-6]**

A. Pre-packaged, pre-wrapped and properly labeled (according to the provisions of the Louisiana Food, Drug and Cosmetic Law) foods may be offered for sale in open type food stands, providing such food is properly stored and handled as described in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:339 (February 2002).

**§4725. Sanitizing of Utensils and Equipment**  
**[formerly paragraph 23A:009]**

A. All utensils and equipment must be washed, rinsed and sanitized at least daily, or as required in Chapter 25 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:340 (February 2002).

**§4727. Water**

**[formerly paragraph 23A:010]**

A. Enough potable water from an approved source shall be provided for drinking, food preparation, for cleaning and sanitizing utensils and equipment, and for handwashing in accordance with Chapter 27 and Chapter 31 of this Part and Chapter XII of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:340 (February 2002).

**§4729. Sewage (Toilets and Waste)**

**[formerly paragraph 23A:011]**

A. Approved facilities shall be provided and maintained for the disposal of all sewage and liquid waste in accordance with §2901 of this Part and Chapter XIII of the State Sanitary Code.

B. Toilets shall be provided at the rate of one per 200 persons or fractional part thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:340 (February 2002).

**§4731. Hand Washing**

**[formerly paragraph 23A:012]**

A. When water under pressure is available, a hand washing facility shall be provided in accordance with §3109 of this Part.

B. When water under pressure is not available at the serving or food dispensing booth, two buckets of water shall be provided for each food concessionaire. One bucket containing potable water must be provided to remove extraneous materials or excess food particles; a second bucket containing a sanitizing solution (100 ppm chlorine, or 25 ppm iodine, or 200 ppm quaternary ammonia) must be provided as a hand dip well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:340 (February 2002).

**§4733. Refuse (Garbage and Trash)**

**[formerly paragraph 23A:013]**

A. All garbage and refuse shall be handled in accordance with Chapter 33 of this Part and Chapter XXVII of the State Sanitary Code.

B. A 50 gallon refuse container shall be provided at the rate of one for each 100 persons at peak anticipated attendance. In addition, each food vendor must have a covered refuse container for booth use.

C. Grease containers must be provided and all used grease must be deposited in these containers. Grease must not be poured down any drain.

D. The grounds and immediate surrounding properties shall be cleaned of refuse as soon as possible following the assembly, within and not exceeding 24 hours of closure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:340 (February 2002).

**§4735. Miscellaneous**

**[formerly paragraph 23A:014-1 and 23A:014-2]**

A. The grounds of each fair, festival and/or temporary food service site shall be well drained and so arranged to provide sufficient space for people assembled, vehicles, sanitary facilities, and equipment.

B. All tents, cars, trailers, food stands and other appurtenances connected with the fair or festival shall at all times be kept in a clean and sanitary condition; and the grounds on which the fair or festival is located shall be kept in a clean and sanitary condition and, when vacated, left in a clean and sanitary condition.

C. The grounds shall be maintained free from accumulations of refuse, health and safety hazards, and from dust wherever possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:340 (February 2002).

**§4737. Vector Control**

**[formerly paragraph 23A:014-2]**

A. Insects, rodents, and other vermin shall be controlled by proper sanitary practices, extermination, or other safe and effective control methods in accord with applicable sections of Chapter 35 and Chapter 39 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:340 (February 2002).

**§4739. Inspections/Violations/Closure**

**[formerly paragraph 23A:015]**

A. All food operations are subject to at least daily inspections by representatives of the department.

B. Critical violations shall be corrected in accordance with §4311 of this Part.

C. Noncritical violations shall be corrected in accordance with §4313 of this Part.

D. Failure to make the necessary corrections or repeated violations will result in monetary penalties, sanctions, suspension of permit, seizure of food and/or further legal action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:340 (February 2002).

The following Table of Contents and Cross Reference listings (Item A. and Item B. respectively) are included as tools to assist staff and/or the public in locating provisions included in the preceding proposed rule which would repeal and replace Chapter XXII, Chapter XXIII, and Chapter

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§2301	-	22:18-1	§4129	-	22:34-1
§2303	-	22:18-2 and 23:051-1	§4131	-	22:34-2
§2305	-	22:18-3 and 23:052	§4301	-	22:42-1 and 23:127
§2501	-	22:19-1 and 23:052-6	§4303	-	22:42-2 and 23:128
§2503	-	22:19-2 and 23:049	§4305	-	22:42-3 and 23:129
§2505	-	22:19-3 and 23:051-4	§4307	-	22:42-4 and 23:129
§2507	-	22:19-4 and 23:051-4	§4309	-	22:43-1
§2509	-	22:19-5	§4311	-	22:43-2
§2511	-	22:19-6	§4313	-	22:43-3

- §4315 - 22:43-4
- §4501 - 22:34-3
- §4503 - 22:34-4
- §4507 - 23:117-1
- §4509 - 22:34-2
- §4511 - 23:125
- §4513 - 23:126-1
- §4515 - 22:34-6
- §4517 - 23:119
- §4519 - 23:120
- §4521 - 23:121
- §4523 - 23:122
- §4701 - 23A:002
- §4703 - 23A:003
- §4705 - 23A:003-1
- §4707 - 23A:004
- §4709 - 23A:004-1
- §4711 - 23A:005-1
- §4713 - 23A:007
- §4715 - 23A:008
- §4717 - 23A:008-3
- §4719 - 23A:008-4
- §4721 - 23A:008-5
- §4723 - 23A:008-6
- §4725 - 23A:009
- §4727 - 23A:010
- §4729 - 23A:011
- §4731 - 23A:012
- §4733 - 23A:013
- §4735 - 23A:014-1 and 23A:014-2
- §4737 - 23A:014-2
- §4739 - 23A:015

David W. Hood  
Secretary

0202#080

**RULE**

**Department of Public Safety and Corrections  
Gaming Control Board**

**Enforcement Actions of the Board  
(LAC 42:IX.4103)**

Editor's Note: Section 4103 is being repromulgated to correct citation errors. The original rule can be viewed in its entirety in the December 2001 edition on pages 2255 - 2256.

The Louisiana Gaming Control Board has amended VII.2325, IX.4103 and XIII.2325 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 42**

**LOUISIANA GAMING**

**Part IX. Landbased Casino Gaming**

**Chapter 41. Enforcement Actions**

**§4103. Enforcement Actions of the Board**

A. - A.4. ...

B. The division may assess a civil penalty as provided in the penalty schedule. The penalty schedule lists a base fine and proscriptive period for each violation committed by the

Casino Operator or Casino Manager. The proscriptive period is the amount of time, determined by the division, in which a prior violation is still considered active for purposes of consideration in assessment of penalties. A prior violation is a past violation of the same type which falls within the current violation's proscriptive period. The date of a prior violation shall be considered to be when the licensee, permittee or casino operator receives the significant action report or violation/inspection report. If one or more violations exist within the proscriptive period, the base fine shall be multiplied by a factor based on the total number of violations within the proscriptive period. The violation of any rule may result in the assessment of a civil penalty, suspension, revocation, or other administrative action. If the calculated penalty exceeds the statutory maximum of \$1,000,000, the matter shall be forwarded to the board for further administrative action. In such case, the board shall determine the appropriate penalty to be assessed. Assisting in the violation of rules, laws, or procedures as provided in Section 2927 of these Regulations may result in a civil penalty in the same amount as provided in the penalty schedule for the respective violation.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and R.S. 27:24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:1974 (October 1999), amended LR 26:2307 (October 2000), LR 27:2255 (December 2001), repromulgated LR 28:344 (February 2002).

Hillary J. Crain  
Chairman

0202#071

**RULE**

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

**Motor Vehicle Inspection  
(LAC 55:III.Chapter 8)**

Editor's Note: The following Rule is being repromulgated to correct citation errors. The original Rule may be viewed in its entirety on page 2260 of the December 2001 edition of the *Louisiana Register*.

The Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, in accordance with R.S. 49:950 et seq. and R.S. 32:1301 et seq. hereby amends its Rules regulating vehicle inspections by now requiring the performance of an on-board diagnostic systems test as well as providing for immediate suspension of any inspection station which fails to perform such test.

**Title 55**

**PUBLIC SAFETY**

**Part III. Motor Vehicles**

**Chapter 8. Motor Vehicle Inspection**

**Subchapter B. Safety Inspections**

**§805 Requirements, Duties, Responsibilities**

A. - E.1.i. ...

j. on board diagnostic systems test equipment and evaporative system test equipment which includes gas cap

pressure test equipment as per the United States Environmental Protection Agency (US EPA) specifications. Stations must have approved equipment readily accessible and in good working order. This equipment must be in or near the inspection area. The provisions of LAC 55:III.805.E.1.j shall only apply to inspection stations located in the non-attainment area;

E.1.k. - I. ....

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1304 - 1310.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 25:2422 (December 1999), amended LR 27:2260 (December 2001), repromulgated LR 28:344 (February 2002).

**§807. Operation as an Official Motor Vehicle Inspection Station**

A. - I.8. ...

9. Until electronic submittal of data is implemented, the Louisiana Vehicle Inspection/Maintenance Parameter Form must be properly filed out by stations in the five parish non-attainment area for every vehicle which requires an emissions test. Parameter Forms should be mailed directly to the Department of Public Safety, Safety Enforcement, 527 Florida Boulevard, Room 303, Denham Springs, LA 70726. In the non-attainment area there may be separate and additional reports required as mandated by the Department of Environmental Quality. Stations within this area are to properly complete all required reports and they must be postmarked no later than Saturday, 12 noon each week.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1304 - 1310.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 25:2424 (December 1999), amended LR 27:2260 (December 2001), repromulgated LR 28:345 (February 2002).

**Subchapter C. Vehicle Emission Inspection and Maintenance Program**

**§819. Anti-Tampering and Inspection and Maintenance Parameters**

A. - A.5. ...

B. Effective January 1, 2000, and in addition to the anti-tampering parameter checks listed in subsection A of this section, a vehicle inspection and maintenance program consisting of a gas cap pressure test is required on all subject vehicles, 1980 and newer model year, gasoline-fueled passenger cars and gasoline-fueled trucks (10,000 pounds gvwr or less) registered within the five parish non-attainment area. The non-attainment area is comprised of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge parishes.

C. Effective January 1, 2002, and in addition to the requirements outlined in Subsections A and B of this section, the performance of Onboard Diagnostic (OBD II) system checks will be required on all 1996 and newer model year gasoline-fueled passenger cars and gasoline-fueled trucks (10,000 pound gvwr or less) registered in the five parish non-attainment area. These mandatory OBD II checks are to be performed in accordance with the federal AA Amendments to Vehicle Inspection Maintenance Program Requirements Incorporating the Onboard Diagnostic Check, Final Rule at

40 CFR Parts 51 and 85 as published in *Federal Register*, Thursday, April 5, 2001 (Volume 66, pages 18156 - 18179).

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1304 -1310.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 25:2434 (December 1999), amended LR 27:2260 (December 2001), repromulgated LR 28:345 (February 2002).

**Subchapter E. Administrative and Audit Procedures**

**§833. Investigations; Administrative Actions; Sanctions**

A. - B. ...

C. The department may immediately and temporarily suspend the license of a Motor Vehicle Inspection station prior to providing an administrative hearing when it is determined that the station has violated any of the provisions of LAC 55:III.819. In the event of such an immediate and temporary suspension of its license, the station is entitled to an administrative hearing to be held within 14 days of the initial date of suspension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1304 - 1310.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 25:2441 (December 1999), amended LR 27:2260 (December 2001), repromulgated LR 28:345 (February 2002).

Jerry Jones  
Undersecretary

0202#073

**RULE**

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

**Motor Vehicle Inspection CTint Exemption  
(LAC 55:III.813)**

The Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, in accordance with R.S. 49:950 et seq. and R.S. 32:361.3 has amended its rules regulating vehicle inspections by providing the procedure for obtaining an exemption to the window tint requirements.

**Title 55  
PUBLIC SAFETY**

**Part III. Motor Vehicles**

**Chapter 8. Motor Vehicle Inspection**

**Subchapter B. Safety Inspections**

**§813. Required Equipment**

A. - T.7.c. ...

d. The following non-exclusive list of persons, or entities, shall be eligible for a security exemption from the provisions of R.S. 32:361.1:

- i. private investigators;
- ii. bail enforcement agents;
- iii. railroad police officers;
- iv. Louisiana peace officers, P.O.S.T. certified and sworn;
- v. elected or appointed public officials;

vi. businesses, companies, or individuals that, on a regular recurring basis, either sell, or transport high-valued equipment that, by its very nature, has a higher than usual likelihood of being stolen; and

vii. any other individual, business, company, corporation, or agency with the need for added concealment of persons or property from public view.

e. Security Exemption Criteria

i. Vehicle must be:

(a). properly licensed, insured and registered, all in Louisiana; and

(b). owned or leased by an applicant or applying business.

f. Security Exemption Affidavit

i. An individual or business seeking exemption to window tint restrictions can obtain a Security Exemption Affidavit form at Safety Enforcement Headquarters, any Safety Enforcement field office or via the World Wide Web by accessing [www.LSP.org](http://www.LSP.org).

ii. A listing of Safety Enforcement field office addresses can be obtained by accessing [www.doa.state.la.us/services](http://www.doa.state.la.us/services).

iii. The Security Exemption Affidavit must be complete, sworn and subscribed in the presence of a Notary Public. The Security Exemption Affidavit must include:

(a) applicant's name, or company or business name, if applicable;

(b) address, city, state and zip code;

(c) vehicle description (year, make, model);

(d) vehicle identification number (VIN);

(e) vehicle license plate number;

(f) need, reason or explanation for exemption;

and

(g) signature of applicant or company official.

g. Security Exemption Process

i. A completed Security Exemption Affidavit must be mailed to the Safety Enforcement headquarters office, P.O. Box 66614, Mail Slip 48, Baton Rouge, LA 70896-6614. Security Exemption Affidavits will be reviewed and subsequently approved or disapproved by the Safety Enforcement Section Commander, or his designee.

ii. Approved Security Exemption Affidavits will be returned to applicant by U.S. Mail.

iii. An applicant whose Security Exemption Affidavit is disapproved will receive written notification of that decision by U.S. Mail. The correspondence will outline the reason(s) for denial. An applicant may write a letter of rebuttal germane to the reason(s) for denial. Letters of rebuttal will be taken under advisement. Once a final determination of eligibility has been made, an applicant has no further recourse. The Department of Public Safety and Corrections may approve, disapprove, cancel or revoke exemptions for window tint restrictions as deemed appropriate.

U. - EE.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:361.3.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 25:2428 (December 1999); amended LR 28:345 (February 2002).

Jerry Jones  
Undersecretary

0202#028

**RULE**

**Department of Revenue  
Office of Alcohol and Tobacco Control**

**Class A General Requirements  
(LAC 55:VII.315)**

Under the authority of R.S. 26:71.1(1)(h) and 271.2(1)(h) and in accordance with Act 1188 of the 2001 Regular Legislative Session and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, has adopted the current LAC 55:VII.315, as it is obsolete, and enacted this regulation to provide for the requirements related to the number and location of public restrooms to be used in conjunction with the licensed premises of each Class A CGeneral retail permit.

**Title 55**

**PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control**

**Chapter 3. Liquor Credit Regulations**

**§315. Qualifications for Class A CGeneral Permits**

A. A Class A CGeneral retail permit will only be issued to establishments that have public restroom facilities.

1. The restroom facilities must conform to the current regulations as set forth in the Louisiana State Plumbing Code, Chapter XIV of the Louisiana Sanitary Code.

2. A Class A CGeneral permit applicant may not use restrooms located in any other premises, regardless of ownership, to meet the requirement of having their own public restroom facilities pursuant to R.S. 26:71.1(1)(h) and 271.2(1)(h).

3. Failure to meet the requirements of this regulation shall result in the denial, suspension, or revocation of the retail alcohol permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:71.1(1)(h) and 271.2(1)(h).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcoholic Beverage Control, LR 28:346 (February 2002).

Murphy J. Painter  
Commissioner

0202#027

**RULE**

**Department of Revenue  
Policy Services Division**

**Insufficient Funds Checks (LAC 61:I.4908)**

Under the authority of R.S. 47:1511 and 1576 and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has adopted LAC 61:I.4908 pertaining to insufficient funds checks.

Revised Statute 47:1576, entitled "Remittance of tax under protest; suits to recover," provides a mechanism for taxpayers to make tax payments under protest and then file suit within 30 days to recover the payment. This regulation provides that when tax payments made under protest are returned for insufficient funds it will be treated as a failure to remit taxes.

**Title 61**

**REVENUE AND TAXATION**

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

**Chapter 49. Tax Collection**

**§4908. Insufficient Funds Checks**

A. In the event a check used to make a remittance of tax under protest pursuant to R.S. 47:1576 is returned unpaid by the bank on which it is drawn for any reason related to the account on which the check is written, such shall constitute a failure to remit taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1576.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:347 (February 2002).

Cynthia Bridges  
Secretary

0202#029

**RULE**

**Department of Revenue  
Policy Services Division**

**Issuance and Cancellation of a Lien; Fees (LAC 61:I.5302)**

Under the authority of R.S. 47:1511, R.S. 47:1577 and R.S. 47: 1578 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.5302, the rules and regulations governing the issuance of liens and the fees associated with recording and canceling liens.

The Secretary of Revenue is authorized by R.S. 47:1511, R.S. 47:1577 and R.S. 47:1578 to adopt reasonable rules and regulations relating to the issuance and cancellation of tax liens and the fees assessed to taxpayers for its recordation and cancellation. Because a lien may be filed in the parish mortgage records any time after a tax becomes due, whether assessed or not, and regardless of whether or not then payable, LAC 61:I.5302 establishes guidelines for filing and canceling a lien, as well as the amount to assess taxpayers for its recordation and cancellation.

**Title 61**

**REVENUE AND TAXATION**

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

**Chapter 53. Miscellaneous Fees**

**§5302. Issuance and Cancellation of a Lien; Fees**

A. A tax lien shall be filed on liabilities when the tax due involves a jeopardy assessment pursuant to R.S. 47:1566.

B. A tax lien may be filed on liabilities when any of the following conditions exist:

1. when liabilities reach warrant for distraint status;
2. information is received indicating the taxpayer is on the verge of bankruptcy;
3. a corporation is in the process of dissolving or withdrawing from the state;
4. the filing history of the taxpayer indicates an effort to avoid the payment of taxes;
5. information indicates that the taxpayer is in the process of selling movable or immovable property;
6. warrants are determined currently not collectible; or
7. a formal installment agreement has been negotiated with the taxpayer.

C. The secretary may authorize the release of a lien subject to the following terms and conditions:

1. when the tax, penalty, fees, or interest secured by a recorded lien have been paid;
2. when the taxpayer executes a surety bond in favor of the secretary in an amount not less than one and one-half times the amount of the obligation due, including penalties, interest, and other costs incurred. The surety bond must be issued by a surety company qualified to do business in Louisiana;
3. when the lien on the taxpayer's remaining real property is valued at not less than the amount of the remaining tax obligation, including all penalties, interest, and other costs incurred, plus the amount of all prior liens on the released property. This provision is subject to approval by the Board of Tax Appeals;
4. when the amount paid to the secretary in partial satisfaction of the liability is not less than the value of the state of Louisiana's interest in the part of the property released. This provision is subject to approval by the Board of Tax Appeals.

D. The secretary with the approval of two assistant secretaries and the Board of Tax Appeals may compromise any judgments for taxes of five hundred thousand dollars or less exclusive of interest and penalty, including assessments for such amounts that are equivalent to judgments, when any of the following conditions exist:

1. there is serious doubt as to the collectibility of the outstanding judgment.
2. there is serious doubt as to the taxpayer's liability for the outstanding judgment.
3. the administration and collection costs involved would exceed the amount of the outstanding liability.

E. The secretary may, with the approval of the Board of Tax Appeals, upon making a record of his reasons, waive, reduce, or compromise individual income tax, penalties, interest, or other amounts.

F. The department shall assess a fee against the taxpayer for the filing of a tax lien and the cancellation of a lien. The amount of the fee to be assessed against the taxpayer shall be determined according to the amount charged the department by the parish in which the lien is filed. In the event a lien is filed in more than one parish for the same taxes, each lien shall be treated separately and the total charges per parish for the liens shall be assessed against the taxpayer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, R.S. 47:1577, and R.S. 47: 1578.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:347 (February 2002).

Cynthia Bridges  
Secretary

0202#041

**RULE**

**Department of Revenue  
Policy Services Division**

**Sales and Use Tax Definition of Person (LAC 61:I.4301)**

Under the authority of R.S. 47:301 and R.S. 47:1511 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.4301 relative to the definition of person for sales tax purposes.

These amendments provide guidance concerning the exclusion from the definition of person for all or some of the purchases made by the entities listed in R.S. 47:301(8). These entities include governmental agencies, the Society of the Little Sisters of the Poor, independent institutions of higher education, and churches and synagogues. While the first two entities are excluded from the definition of person for all of their purchases, independent institutions of higher education and churches and synagogues have a limited exclusion from the definition of person. Independent institutions of higher education are excluded from the definition for their purchases directly related to the educational mission of the institution while churches and synagogues are excluded from the definition only for their purchases of bibles, songbooks, and religious instruction literature.

In some instances, the entities specified in R.S. 47:301(8) making the types of purchases that qualify them for the exclusion from the definition of person may act through an agent or employee in making the purchase. Two common situations when this occurs are purchases made by government contractors and the renting of hotel rooms to government employees. The amendments to this rule list the circumstances under which purchases by immovable property contractors and the renting of hotel rooms by employees are equivalent to direct acquisitions by the entity excluded from the definition of person.

**Title 61  
REVENUE AND TAXATION**

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

**Chapter 43. Sales and Use Tax**

**§4301. Definitions**

A. - C. ...

\*\*\*

**PersonC**

- a. The term *person* as used in this Chapter includes:
  - i. natural persons; and
  - ii. artificial persons, including, but not limited to, corporations, limited liability companies, estates, trusts, business trusts, syndicates, cities and parishes, parishes,

municipalities, this state, any district or political subdivision, department or division thereof, any board, agency, or other instrumentality thereof, acting unilaterally or as a group or combination, as well as receivers, referees in bankruptcy, agricultural associations, labor unions, firms, copartnerships, partnerships in commendam, registered limited liability partnerships, joint ventures, associations, singularly or in the plural, who have the legal right or duty, whether explicit, implied or assumed, to perform any of the transactions described in this Chapter.

b. A natural or artificial person's classification as exempt under any other tax statute has no effect on that person's status under the sales tax law. For example, a religious, charitable, educational, scientific, civic, social or fraternal organization, including hospitals and similar institutions, may be statutorily exempted from other taxes but remain classified as persons for sales tax purposes.

c. R.S. 47:301(8) provides exclusions from the definition of person for purchases made by certain entities. Although these entities are not responsible for paying sales and use taxes on some or all of their purchases, they must collect and remit sales tax on their taxable sales transactions.

i. The two entities granted exclusions from paying state and local sales and use tax on all of their purchases are:

(a) the state of Louisiana, its parishes, its municipalities, its special districts, its political subdivisions, and any other agencies, boards, commissions, or instrumentalities of the state or its political subdivisions;

(b) the Society of the Little Sisters of the Poor. Before claiming exemptions, the Society must obtain a certificate of authorization from the Sales Tax Division of the Department of Revenue.

ii. The two entities granted exclusions from paying sales and use tax on some of their purchases are:

(a) regionally accredited independent institutions of higher education that are members of the Louisiana Association of Independent Colleges and Universities. Purchases, leases, or rentals of tangible personal property or purchases of taxable services by these institutions that are directly related to the educational missions of eligible institutions are excluded from state sales and use tax. Purchases, leases, and rentals directly related to the educational mission of the eligible institution are interpreted broadly to include those transactions required to construct, maintain, or supply classrooms, libraries, laboratories, dormitories, athletic facilities, and administrative facilities. Examples include purchases of supplies, equipment, utilities, leases or rentals of equipment, and repair services to university property;

(b) churches and synagogues exempt under Internal Revenue Code Section 501(c)(3) are excluded from paying state and local sales and use tax on purchases of bibles, songbooks, or literature used for religious instruction classes. Eligible institutions must obtain certificates of authorization from the Sales Tax Division of the Department of Revenue.

d. The exclusion from the definition of person is granted only for purchases made by these entities on their own behalf. Representatives of these entities making purchases for the entity may also be excluded from the definition of person when their purchases are deemed the

equivalent of an acquisition by the entity itself. The most common examples of representatives purchasing on behalf of these entities are:

i. mandataries (agents) purchasing materials or leasing or renting equipment for immovable property construction contracts; and

ii. employees purchasing lodging services while traveling on official business of the entity.

e. The following elements establish an immovable property contractor's purchases as the legal equivalent of a R.S. 47:301(8) entity's purchases so as to exclude the transactions from sales and use tax. Additionally, due to the federal government's immunity from state taxation under The Supremacy Clause, U.S. Const. Art. VI, §2, federal contractors satisfying the following criteria are also entitled to the exclusion from the definition of person. The following criteria assume that the R.S. 47:301(8) entity is an immovable property contractor with an agency agreement with a government department or agency.

i. The government department or agency must acquire title to the property at the time of purchase. Except as otherwise provided in the contract between the parties, the risk of loss must be with the governmental entity.

ii. There must be a signed agreement authorizing the contractor to act as purchasing agent for the entity. The department's form, Designation of Construction Contractor as Agent of a Governmental Entity, may be used for this purpose, or a custom agreement may be substituted if it includes all terms and conditions listed in the form prepared by the department. The form is available at any department office and through the department's web site at: www.rev.state.la.us. Copies of the signed agreement must be made available to tax authorities and vendors upon request. Purchases by the designated agent will be recognized as those of the government entity if all parties to the contract strictly follow the terms of the agreement.

f. The following elements establish when the renting of a hotel room to an employee of a R.S. 47:301(8) entity is legally equivalent to the entity's purchase of the service. Additionally, due to the federal government's immunity from state taxation under The Supremacy Clause, U.S. Const. Art. VI, §2, federal employees are also entitled to the exclusion from the definition of person when renting hotel rooms in the state. Since most purchases of lodging services for persons excluded by R.S. 47:301(8) are made by government employees, the following criteria are drafted from the perspective of those entities:

i. Renting a hotel room to an employee of the United States government, the state of Louisiana, or a political subdivision of the state of Louisiana who is traveling on official business is considered a sale of a service to the government employer regardless of the form of payment to the hotel, provided the lodging services are obtained by the employee at the direction of the employer and accounted to and reimbursed by the government agency.

ii. The exclusion must be documented in one of the following ways:

(a). with a copy of the employee's written travel orders certifying that the government employer will reimburse the actual lodging expenses incurred. The travel orders must be on government letterhead or forms and signed by an authorized representative of the government

entity other than the employee engaging the hotel services. The orders must state that the employee is authorized to secure a room for a specific time period at a specific hotel or at a hotel within a defined travel area;

(b). if written travel orders are unavailable or if the travel orders are incomplete or insufficient to satisfy all of the requirements in §4301.C.Person.f.ii.(a), an exemption certificate signed by the employee and the authorized agent of the governmental agency other than the employee will certify the transaction's exempt status. The hotel can accept the department's certificate entitled Certificate of Governmental Exemption from the Payment of Hotel Lodging Taxes or one used by federal agencies, provided the form states that the employee's expenses are reimbursed by the employer in the actual amount incurred.

iii. Hotels must retain this documentation to support a sales tax deduction for room rentals to government employees on official business. Failure to do so will cause the deduction to be disallowed unless the hotel can provide competent independent evidence to certify the exemption's validity. The exemption will also be disallowed if it is determined that the documentation was obtained fraudulently or that the hotel knew the documentation was invalid when the employee presented it.

iv. This exclusion is not allowed on hotel room charges incurred by other nations, other states and their political subdivisions, or their employees.

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AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), amended by the Department of Revenue, Policy Services Division, LR 28:348 (February 2002).

Raymond E. Tangney  
Senior Policy Consultant

0202#018

**RULE**

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

Child Care Assistance Program Providers  
(LAC 67:III.5107)

The Department of Social Services, Office of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 12, the Child Care Assistance Program.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office Of Family Support**

**Subpart 12. Child Care Assistance**

**Chapter 51. Child Care Assistance**

**Subchapter B. Child Care Assistance Program**

**§5107. Child Care Providers**

A. - B.1.e. ...

f. use only safe children's products and remove from the premises any products which are declared unsafe



and recalled as required by R.S.46:2701-2711. (CCAP Family Child Day Care Home providers will receive periodic listings of unsafe and recalled children's products from the Consumer Protection section of the Attorney General, Public Protection Division).

A.2. - E. ...

1. A Family Child Day Care Home or an In-Home provider may be immediately and permanently terminated as a CCAP eligible provider if:

a. the agency determines that a condition exists which threatens the physical or emotional health or safety of any child in care;

b. the provider violates the terms of the provider agreement; or

c. the criminal background check shows that the provider has been convicted of, or pled no contest to, a crime listed in R.S. 15:587.1.C.

2. A Family Child Day Care Home provider may be permanently terminated as a CCAP eligible provider if the provider is verified to have more than six children in his/her care.

3. Other situations listed in policy or on the provider agreement may lead to the provider's termination as a CCAP eligible provider. These situations include but are not limited to:

a. a Family Child Day Care Home provider's failure to pass the second inspection by the Fire Marshal;

b. a criminal background check response showing that an adult living at a Family Child Day Care Home provider's residence, or working in the provider's home or on his home property, has been convicted of, or pled no contest to, a crime listed in R.S.15:587.1.C;

c. a provider's failure to timely return all requested forms, fees, etc. at renewal;

d. a Class A Center whose license is not renewed;

e. a school child care provider if the school no longer meets the BESE regulations.

F. - G ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 28:349 (February 2002).

Gwendolyn P. Hamilton  
Secretary

0202#068

**RULE**

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

**State Tax Refund Intercept Increase  
(LAC 67:III.2529)**

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

Act 71 of the 2001 Regular Session Legislature authorized an increase in the fee for income tax refund offsets from \$2.75 to \$4 for each state tax refund offset of \$5 or more

intercepted from the noncustodial parent for delinquent support.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 4. Support Enforcement Services**

**Chapter 25. Support Enforcement**

**Subchapter I. Tax Refund Offset**

**§2529. State Tax Refunds**

A. ...

B. SES will charge a \$4 fee to non-FITAP custodial parents for each successful state tax refund offset of \$5 or more. This fee will reimburse SES for intercept fees paid to the Department of Revenue and Taxation. The fee charged for the state tax offset will be deducted from the child support checks issued by SES. The noncustodial parent will be given credit for the amount of the check before the fee deduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:299.1 et seq., 45 CFR 303.102, P.L. 104-193 and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:916 (November 1984), amended by the Department of Social Services, Office of Family Support, LR 17:388 (April 1991), LR 27:81 (January 2001), LR 28:350 (February 2002).

Gwendolyn P. Hamilton  
Secretary

0202#058

**RULE**

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

**Temporary Assistance for Needy Families  
(TANF) Initiatives (LAC 67:III.5505 - 5547)**

The Department of Social Services, Office of Family Support, has amended LAC 67:III, Subpart 15, by adopting §§5505 through 5547.

Pursuant to Act 12 of the 2001 Regular Session of the Louisiana Legislature, the Office of Family Support will provide funding to various departments of the state of Louisiana and other entities for a variety of programs intended to further the goals and intentions of the federal Temporary Assistance for Needy Families (TANF) Block Grant. Sections 5507, 5511, 5541, and 5547 from the Notice of Intent published November 20, 2001, have been omitted from this final Rule. Because substantive changes were required, a new Notice proposing these four initiatives was published in the January 2002 issue of the *Louisiana Register*.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 15. Temporary Assistance to Needy Families  
(TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5505. Nonpublic School Early Childhood Development Program**

A. OFS shall enter into a Memorandum of Understanding with the Governor's Office, Office of

Community Programs, to provide early childhood education to certain four-year-olds in non-public schools.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families by placing children in learning environments at the pre-school level to foster an interest in learning, increase literacy levels, and increase the likelihood of developing responsible behavior.

C. Eligibility for services is limited to at-risk families in which the child is one year younger than the eligible age for public school kindergarten and is eligible to receive free or reduced school lunch meals pursuant to the Federal Child Nutrition Program as documented by a completed application for such meals, whether or not such meals are sought.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:350 (February 2002).

#### **§5509. Domestic Violence Services**

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Office of Women's Services to provide for services pertaining to domestic violence including rural outreach, services to children in shelters, and training of law enforcement and DSS personnel.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is not limited to needy families. Eligibility for services is limited to children and/or their parents or caretaker relatives who are victims of domestic violence.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:351 (February 2002).

#### **§5513. Project Return**

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Department of Public Safety and Corrections to fund transitional services to former offenders.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families by reducing the rate of recidivism. This goal will be accomplished by providing nonmedical substance abuse treatment and counseling, GED and academic enhancement, training in conflict resolution and communication skills, job training, and job placement assistance.

C. Eligibility for services is limited to parents or caretaker relatives of minor children.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:351 (February 2002).

#### **§5515. Job Skills Program**

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Department of Public Safety and Corrections to fund services to enhance basic academic skills of state adult inmates through the Job Skills and Education Program, a computer-based instructional system.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families by promoting responsible parenthood. This goal will be accomplished by increasing the inmate's wage-earning capacity, improving decision-making skills and ability to cope with change.

C. Eligibility for services is limited to parents of minor children.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:351 (February 2002).

#### **§5517. Project Metamorphosis**

A. OFS shall enter into a Memorandum of Understanding with the Department of Public Safety and Corrections to provide inmates who are within 12 to 18 months of their release date with basic educational/vocational instruction, life skills instruction, and job placement counseling and preparation.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families by increasing post-release employment and wage rates leading to the successful integration of released inmates back into their families and communities.

C. Eligibility for services is limited to parents of minor children.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:351 (February 2002).

#### **§5519. Concordia Correctional Life Skills Pre-Release Program at the Concordia Parish Detention Facility**

A. OFS shall enter into a Memorandum of Understanding with the Department of Public Safety and Corrections to provide Concordia Parish Correctional Facility inmates who are within 12 to 18 months of their release date with basic educational/vocational instruction, life skills instruction, and job placement counseling and preparation.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families by increasing post-release employment and wage rates leading to the successful integration of released inmates back into their families and communities.

C. Eligibility for services is limited to parents of minor children.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:351 (February 2002).

**§5521. Women and Children's Residential Prevention and Treatment Program**

A. OFS shall enter into a Memorandum of Understanding with the Office of Addictive Disorders for a substance abuse prevention and nonmedical treatment program for women with children.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage by providing needy families with nonmedical drug abuse treatment so they may become self-sufficient.

C. Eligibility for services is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI) or Free or Reduced School Lunch.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002).

**§5523. Early Childhood Development Program**

A. OFS shall enter into a Memorandum of Understanding with the Department of Education to provide early childhood education to four-year-olds.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families by giving parents of these children an opportunity earlier in the children's lives to become active partners in their education and increase their own literacy level by participating with their children in school programs and also meet the TANF goal to prevent and reduce the incidence of out-of-wedlock births.

C. Eligibility for services is limited to at-risk families in which the child is one year younger than the eligible age for kindergarten and is eligible to receive free or reduced school lunch meals pursuant to the Federal Child Nutrition Program as documented by a completed application for such meals, whether or not such meals are sought.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002).

**§5525. Pre-GED/Skills Option Program**

A. OFS shall enter into a Memorandum of Understanding with the Department of Education for adult education, pre-GED, skills options, and other dropout prevention programs.

B. These services meet the TANF goal to prevent and reduce the incidence of out-of-wedlock births by providing intervention and improved life prospects for students.

C. Eligibility for services is not limited to needy families.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002).

**§5527. Program Evaluation, Comprehensive Needs Assessment, and Training**

A. OFS shall enter into an Memorandum of Understanding with the Division of Administration to evaluate the TANF initiatives and to conduct a comprehensive needs assessment and training regarding policy and service-delivery deficiencies.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002).

**§5529. Youth in Transition**

A. OFS shall enter into a Memorandum of Understanding with the Office of Community Services to provide services to youth who are ageing out of Foster Care.

B. These services meet the TANF goals to encourage the formation and maintenance of two-parent families and to prevent and reduce out-of-wedlock births.

C. Eligibility for services is not limited to needy families.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002).

**§5531. After-School Tutorial**

A. OFS shall enter into a Memorandum of Understanding with the Department of Education to provide after-school tutorial services.

B. These services meet the TANF goal to prevent and reduce the incidence of out-of-wedlock births by providing intervention and improved life prospects for students.

C. Eligibility for services is not limited to needy families.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002).

**§5533. Transportation Services**

A. The Office of Family Support shall make funding available for transportation of employed participants in TANF initiatives administered through other agencies as well as short-term transportation services for some unemployed participants.

B. These services meet the TANF goal to end the dependence on government benefits by promoting job preparation, work, and marriage.

C. Services may or may not be limited to needy families depending on which program the participant is involved in.

D. Services are considered non-assistance.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002).

**§5535. Fatherhood**

A. Act 639 of the 2001 Regular Session of the Louisiana Legislature created the Fatherhood Council to develop a plan to promote and monitor fatherhood initiatives. Funding and services may be provided in accordance with the plan developed by the Fatherhood Council.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families by providing programs that promote responsible parenting and increase the capacity of fathers to provide emotional and financial support for their children.

C. Eligibility for services is limited to fathers of minor children.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; Acts 12 and 639, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002).

**§5537. Education and Training**

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Department of Education to provide structured after-school programs to help children improve academic performance and to provide literacy and basic education services to adults in need of these services. The Department of Education will implement this program through cooperative endeavor agreements with entities in local communities.

B. These services meet the TANF goals to prevent and reduce the incidence of out-of-wedlock births by providing supervised, safe environments for children thus limiting the opportunities for engaging in risky behaviors, and to encourage the formation and maintenance of two-parent families by providing educational services that enhance a parent's ability to financially and emotionally provide for their children.

C. Eligibility for after-school programs is not limited to needy families. Eligibility for adult education services is limited to parents, legal guardians, and caretaker relatives of minor children.

D. The services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002).

**§5539. Truancy Assessment and Service Centers**

A. OFS shall enter into a Memorandum of Understanding with the Supreme Court Of Louisiana for Truancy Assessment and Service Centers designed to identify, assess, and intervene to ensure that children in kindergarten through sixth grade attend school regularly.

B. These services meet the TANF goal to prevent and reduce the incidence of out-of-wedlock births by providing counseling to children and family members designed to

assure regular school attendance and improved academic and behavioral outcomes.

C. Eligibility for services is not limited to needy families.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002).

**§5543. Drug Courts Program**

A. OFS shall enter into a Memorandum of Understanding with the Supreme Court Of Louisiana to provide services to drug court clients that may include nonmedical treatment, assessment, counseling, education, and training. Eligible services shall not include drug court administrative costs.

B. These services meet the TANF goal to prevent and reduce the incidence of out-of-wedlock births and to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is limited to children and to the parents or caretaker relatives of minor children.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002).

**§5545. Remediation and Tutoring Programs**

A. OFS shall enter into a Memorandum of Understanding with the Department of Education, Office of Student and School Performance, to establish programs designed to increase the likelihood of a student scoring above the "unsatisfactory" achievement level on the Graduate Exit Exam and the LEAP 21 exam and include:

1. Graduate Exit Exam Summer RemediationCdesigned to provide additional remedial instruction to targeted students, that is, students who scored "unsatisfactory" on the English language arts and/or mathematics components of the Graduate Exit Exam;

2. Louisiana Education Assessment Program (LEAP) 21 Summer RemediationCdesigned to provide additional remedial instruction to targeted students, that is, fourth and eighth grade students who did not take the spring LEAP 21 test and fourth and eighth grade students who scored "unsatisfactory" on the English language arts and/or mathematics components of the LEAP 21; and

3. Louisiana Education Assessment Program (LEAP) 21 TutoringCdesigned to provide intense early intervention and remedial instruction to targeted students in an effort to increase the likelihood of them scoring above the "unsatisfactory" level on the LEAP 21. The targeted group includes fourth and eighth grade students who have been retained because of their having scored at the "unsatisfactory" level on the English language arts and/or mathematics components of the LEAP 21 tests, and fourth and eighth grade students whose third and seventh grade IOWA test scores were below the thirtieth percentile and are considered to be at risk of scoring at the "unsatisfactory"

level on the English language arts and/or mathematics components of the LEAP 21 tests.

B. These services meet the TANF goal to prevent and reduce the incidence of out-of-wedlock births by encouraging youths to remain in school, reducing their risk of engaging in negative behavior and increasing opportunities for families to become self-sufficient through education and training.

C. Eligibility for services is limited to families which include a minor child living with a custodial parent, an adult caretaker relative or a legal guardian. A family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch is eligible.

D. Services are considered non-assistance by the agency. AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002).

Gwendolyn P. Hamilton  
Secretary

0202#059

**RULE**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**Pompano Permits (LAC 76:VII.703)**

Editor's Note: The following Rule is being repromulgated to correct a typographical error. The original rule may be viewed on pages 2269-70 of the December 20, 2001 *Louisiana Register*.

The Wildlife and Fisheries Commission has amended LAC 76:VII.703, modifying the application procedures and removing the phrase "excluding islands." Authority for adoption of this Rule is included in R.S. 56:6(25)(a) and R.S. 56:406(A)(3).

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 7. Experimental Fisheries Program**

**§703. Pompano Permits**

**A. Harvest Regulations**

1. - 8. ...

9. Pompano strike nets may be used during the period from August 1 through October 31 of each year in waters in excess of seven feet in depth and beyond 2,500 feet from land within the Chandeleur and Breton Sound area described in R.S. 56:406(A)(2).

10. - 13. ...

**B. Qualification for Permit**

1. All permits shall be applied for and/or granted from January 1 to April 30 of each year from the New Orleans or Baton Rouge offices. All permits expire December 31 following the date of issuance.

2. - 3. ...

4. Proof of ownership of the proposed permitted vessel(s) and proof that all applicable licenses have been applied for shall be provided at the time of application. Proof of bona fide residency, as defined in R.S. 56:8(12), is also required at this time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a) and R.S. 56:406A(3).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 12:119 (February 1986), amended LR 12:846 (December 1986), amended by the Office of Fisheries, LR 16:322 (April 1990), LR 22:859 (September 1996), amended by the Wildlife and Fisheries Commission, LR 26:2332 (October 2000), LR 27:2269 (December 2001), LR 28:354 (February 2002).

James H. Jenkins, Jr.  
Secretary

0202#046

**RULE**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**Recreational Electronic Licensing  
Outdoor Press License (LAC 76:I.327)**

The Wildlife and Fisheries Commission has amended LAC 76:I.327.P, which provides a special outdoor press license for purchase by nonresident members of the outdoor press for a fee of \$20. The license shall be valid for four consecutive days. Authority for adoption of this Rule is included in R.S. 56:647.1.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part I. Wildlife and Fisheries Commission and Agencies  
Thereunder**

**Chapter 3. Special Powers and Duties  
Subchapter H. Electronic Licenses Issuance**

**§327. Recreational Electronic Licensing**

A. - O. ...

P. In lieu of recreational basic fishing and recreational saltwater fishing license the department may issue a special outdoor press license to nonresident members of the outdoor press which will include basic and saltwater fishing.

1. A fee of \$20 will be charged for each outdoor press license issued and the license shall be valid for four consecutive days.

2. All outdoor press licenses will be issued from the Baton Rouge headquarters location.

3. To qualify for certification an applicant must submit to the Department of Culture, Recreation and Tourism one or more of the following:

a. recent tear sheets of published articles;

b. letter of assignment from publication, television or radio company;

c. a written recommendation from one of the Department of Culture, Recreation and Tourism's international offices;

d. a written recommendation from Travel South USA, Louisiana Travel Promotion Association or similar organizations.

4. In no case will the Department of Culture, Recreational and Tourism forward an application from any individual or group not directly involved in producing stories or broadcast materials pertaining to Louisiana fishing and/or outdoor recreation opportunities.

5. Certified applications with all supporting documents and license fees shall be forwarded to the Department of Wildlife and Fisheries for approval. The license fee shall be returned to the applicant for any application not certified by the Department of Culture, Recreation and Tourism or approved by the secretary of the Department of Wildlife and Fisheries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(21) and R.S. 56:641.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Management and Finance, LR 24:505 (March 1998), amended by the Wildlife and Fisheries Commission, LR 26:1078 (May 2000), amended by the Office of Management and Finance, LR 27:1243 (August 2001), amended by the Wildlife and Fisheries Commission, LR 28:354 (February 2002).

James H. Jenkins, Jr.  
Secretary

0202#047

# Notices of Intent

## NOTICE OF INTENT

### Department of Agriculture and Forestry Office of the Commissioner

#### Scrapies (LAC 7:XXI.121)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., The Department of Agriculture and Forestry, Office of the Commissioner, proposes to amend regulations regarding the exportation of sheep and mutton.

In an effort to prevent the introduction and subsequent spread of scrapie, a disease of sheep and goats, this rule change would require owners of sheep and registered goats to put an official ear tag (in lieu of an official tattoo) in each animals ear prior to showing or selling the animal.

These rules comply with and are enabled by R.S. 3:2093, R.S. 3:2221, and R.S. 3:2228.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXI. Diseases of Animals

#### Chapter 1. General Provisions

#### §101. Definitions

\* \* \*

*Flock Plan* Ca written agreement, between the owner of the flock and a veterinarian employed by the LDAF or USDA, APHIS, VS, approved by the State Veterinarian to control scrapie in sheep and goats.

\* \* \*

*Official Identification for Scrapie* Can electronic identification, state or federally approved tamper-resistant ear tag, or a flank or ear tattoo, which has been recorded in a book of record of a sheep or goat registry or association. When an animal is identified by an ear or flank tattoo either a registration certificate or a certificate of veterinary inspection shall accompany the animal. In the case of goats registered with the American Dairy Goat Association, the tattoo may be applied at the tail web.

\* \* \*

*Scrapie Affected Animal* Cany animal that tests positive for scrapie on an APHIS- approved live animal screening test is considered an affected animal.

\* \* \*

*Source Flock* Ca flock in which one animal diagnosed as scrapie positive at the age of 72 months or less was born.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Livestock Sanitary Board, LR 11:230 (March 1985), amended LR 12:289 (May 1986), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 12:498 (August 1986), LR 14:217 (April 1988), LR 15:811 (October 1989), LR 16:391 (May 1990), LR 17:29 (January 1991), LR

18:840 (August 1992), LR 23:949 (August 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:1677 (September 1998), LR 28:

#### §121. Requiring the Reporting of Contagious Diseases

A. In order to improve the protection of the livestock industry from the effects of contagious diseases of livestock, all veterinarians licensed in the State of Louisiana are required to report to the state veterinarian, by telephone or wire, within 24 hours after diagnosis or tentative diagnosis, the occurrence or suspected occurrence of the following contagious diseases: anthrax, Avian Influenza (OIE List A Disease), brucellosis, equine encephalomyelitis, equine infectious anemia, hog cholera, Infectious Encephalomyelitis, Infectious Laryngotracheitis (other than vaccine induced), Newcastle (OIE List A disease), Ornithosis, Paramyxovirus (other than Newcastle Disease), pseudorabies, pullorum/typhoid, scabies, scrapie, transmissible spongiform encephalopathies, tuberculosis, vesicular condition or any other disease condition which may seriously threaten the welfare of the livestock and poultry industry.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, R.S. 3:2094 and R.S. 3:2095.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Livestock Sanitary Board, LR 11:234 (March 1985), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 15:813 (October 1989), LR 16:391 (May 1990), LR 23:197 (February 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner LR 28:

#### Family Impact Statement

The proposed amendments to LAC 7:XXI.Chapter 1 regarding the exportation of sheep and mutton should not have any known or foreseeable impact on any family ad defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

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

Interested persons should submit written comments on the proposed rules to Dr. Maxwell Lea through the close of business on March 25, 2002 at 5825 Florida Blvd., Baton Rouge, LA 70806. No preamble regarding these rules is necessary.

Bob Odum  
Commissioner

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

**RULE TITLE: Scrapies**

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

It is estimated that there will be no implementation costs or savings to state or local governmental units. In an effort to prevent the introduction and subsequent spread of scrapie, a disease of sheep and goats, this rule change would require owners of sheep and registered goats to put an official ear tag (in lieu of an official tattoo) in each animal's ear prior to showing or selling the animal. Untagged animals arriving at Louisiana auction markets would be tagged upon arrival. Owners would also have to keep records of all sales and purchases of animals in order to be able to trace back the source of disease to the flock of origin. This rule change also gives the State Veterinarian authority to quarantine flocks that are found to have scrapie and eliminate the disease from the flock. The cost for the State Veterinarian to quarantine flocks would be minimal and would be covered under funds already generated through the department.

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

It is anticipated that there will be no effect on revenue collections for state or local governmental units.

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

Participants in the Flock Certification Program may earn a minimal increase in the revenue because their animals will be certified free of the scrapie disease.

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

It is estimated that there will be no effect on competition and employment.

Skip Rhorer  
Assistant Commissioner  
0202#051

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Agriculture and Forestry  
Structural Pest Control Commission**

**Contracts for Termite Control Work (LAC 7:XXV.119)**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Structural Pest Control Commission, proposes to amend regulations regarding combination liquid spot and bait and baiting system termite treatments. These regulations were inadvertently deleted from the register.

The Department of Agriculture and Forestry deems the implementation of these rules and regulations necessary to allow a liquid spot and a bait and baiting system treatment to be contracted with one contract and to set the fee for said contract.

These rules comply with and are enabled by R.S. 3:3203.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXV. Structural Pest Control**

**Chapter 1. Structural Pest Control Commission**

**§119. Contracts for Termite Control Work**

A. The licensee must enter into a written agreement for termite work with the property owner employing him, which agreement must:

1. be in a form provided or approved by the commission;
2. guarantee performance for a period of not less than one year after the treatment is made;
3. guarantee treatment of the property in accordance with minimum specifications for termite control work set forth in §141 hereof; and
4. provide for at least one inspection of the property prior to expiration of the agreement;
5. include an inspection diagram;
6. provide for the treatment of all subterranean termites.

B. Each contract for termite control work shall cover only one unit or one individual property, provided that the contract may include a garage appurtenant to the unit or individual property.

C. Contracts for spot termite treatments must guarantee the area treated for a period of one year.

D. Contracts for combination liquid spot and bait and baiting system termite treatments shall follow the requirements under §119.A, B, E and F.

E. The licensee must report to the commission, no later than the tenth day of each month, each contract for termite work which he has entered into and performed during the previous month. If no contracts were entered into or performed during the previous month, the licensee must report this fact to the commission no later than the tenth of each month.

F. The licensee shall pay a \$5 fee for each standard contract and shall pay an \$8 fee for each combination contract for liquid spot and bait and baiting system treatments reported under §119.E above when the required monthly report is filed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:3336 and R.S. 3:3370.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:328 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:957 (November 1989), LR 26:2437 (November 2000), LR 28:

**Family Impact Statement**

The proposed amendments to rules §§119 and 141 regarding combination liquid spot and bait and baiting system termite treatments should not have any known or foreseeable impact on any family as defined by R.S. 49:972 D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;



3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed rule.

Interested persons should submit written comments on the proposed rules to Bobby Simoneaux through March 25, 2002 at 5825 Florida Blvd., Baton Rouge, LA 70806. A public hearing will be held on these rules on March 25, 2002 at 9:30 a.m. at the address listed above. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at the hearing. No preamble regarding these rules is available.

Bob Odom  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Contracts for Termite Control Work**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
No implementation costs or savings to state or local governmental units is anticipated. This rule change reinstates the rules and regulation that allow a liquid spot and a bait and baiting system treatment to be contracted with one contract and sets the fee for said contract. These regulations were inadvertently deleted from the register.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No effect on revenue collections of state and or local governmental units is anticipated.
- 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 non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no estimated effect on competition and employment.

Skip Rhorer Assistant Commissioner 0202#050	Robert E. Hosse General Government Section Director Legislative Fiscal Office
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**NOTICE OF INTENT  
Department of Civil Service  
Civil Services Commission**

**Military Leave Civil Service Changes**

The State Civil Service Commission will hold a public hearing on Wednesday, March 6, 2002 to consider the following rule proposals. The hearing will begin at 9 a.m. and will be held in the Department of Civil Service, Second Floor Hearing Room, DOTD Annex Building, 1201 Capitol Access Road, Baton Rouge, Louisiana.

The following will be considered at the meeting.

**Amend Rule 11.26**

**11.26 Military Leave.** The provisions of this rule shall apply to members of a Reserve Component of the Armed Forces of the United States who are called to active duty for military purposes, and to members of National Guard Units which are called to active duty as a result of a non-local or non-state emergency.

(a) Military Leave with Pay

1. Provided they give advance notice, employees serving on job appointment, provisional, probationary or permanent status, shall be entitled to military leave with pay.

2. No advance notice is required when such notice is either precluded by military necessity, or otherwise impossible or unreasonable.

3. Maximum military leave with pay for military purposes is 15 working days per calendar year.

(b) Use of Annual and Compensatory Leave for Military Purposes.

1. Employees serving on job appointment, provisional, probationary or permanent status, who give advance notice of military obligations and apply for annual or compensatory leave for military purposes, shall be granted such leave.

2. No advance notice is required when such notice is either precluded by military necessity, or otherwise impossible or unreasonable.

(c) Use of Leave Without Pay for Military Purposes. Employees serving on job appointment, provisional, probationary or permanent status, who have either exhausted annual leave and compensatory leave or choose not to use their annual and/or compensatory leave for military purposes, shall be placed on leave without pay. This period of leave without pay for military purposes shall not exceed six years. After six years, he/she shall be separated from the classified service. This rule does not extend the term of temporary appointments which were made for less than six years; if the original term of the appointment was less than six years, the agency may end the appointment as originally scheduled and the employee may be separated.

(d) Rights Upon Return. Provisional, probational and permanent employees and employees serving on job appointments returning to their classified positions under the provisions of this Rule or Rule 8.19, which governs time frame requirements for restoration to state employment, shall return with such seniority, status, pay, and annual and sick leave accrual rates as they would have had if they had not been absent for military training or military active duty; however, both provisional and probational status shall be governed by the provisions of Rule 9.3.

(e) Repeal entire section as it applied only to Persian Gulf Crisis of 1990.

(f) Repeal entire section as it applied only to Persian Gulf Crisis of 1990.

(g) The provisions of this section of the rule apply to employees serving on job appointment, provisional, probationary or permanent status, who are called to active duty, and who are on Leave Without Pay by choice or because all annual and/or compensatory leave has been exhausted. The provisions of this subsection (g) shall apply retroactively to September 11, 2001.

1. When Military Leave with Pay as provided in Rule 11.26(a) has been exhausted, an employee whose military base pay is less than his state base pay shall be paid the difference between his military base pay and his state base pay. Such payment shall be made on the same frequency and manner as the employee's regular state pay, unless other voluntary arrangements are made. Employees receiving the pay differential shall provide to agency officials any documentation appropriate to ensure the payment amount is calculated correctly. Employees who choose to use their annual leave during their period of military absence shall not be eligible for receipt of the pay differential, unless the leave was used between September 11, 2001, and the date of the adoption of this rule, in which case subparagraph (4) shall apply.

2. Employees shall continue to accrue sick and annual leave for the entire period of service, beginning the date of the service. Leave shall be accrued and credited on the same basis as though the employee had not been activated. Leave earned shall be credited to the employee upon his return from active duty.

3. Employees who are on Leave Without Pay shall receive, each calendar year, the full 15-days of Military Leave with Pay provided in Rule 11.26(a)3. The pay differential allowed in 11.26(g)1 shall be suspended until the 15-day Military Leave with Pay period is exhausted and the employee returns to Leave Without Pay status.

4. If paid leave has been used during any portion of service from September 11, 2001, through the date of adoption of this rule, an employee who chooses to use the pay differential option shall have his leave balance reccredited with a leave amount equal to the value of the pay differential the employee would have received had this rule been in effect on September 11, 2001.

(h) A probationary or permanent employee, who was called to active duty for military purposes and who resigned from state service, may, at his request, and within 90 days of his release from active duty, have his resignation rescinded and become eligible for the benefits of subsection (g) of this rule.

**Explanation**

Employees who are called to military duty for an extended tour of duty receive 15 days of military leave with pay each calendar year. Once military leave with pay is exhausted, those employees must either use their own annual/compensatory leave, or be placed on leave without pay once their military leave has been exhausted. This creates an undue hardship for those employees whose military base pay is less than their state base pay.

The proposed change provides for a maximum of 15 days of military pay per calendar year, regardless of the number of "tours" an individual serves during the calendar year. For all employees whose military base pay is less than state base pay, once military leave with pay is exhausted during a calendar year, the employee may be placed on leave without pay and receive a payment equal to the difference between his military base pay and his state base pay. An employee with no annual/compensatory leave will be placed on leave without pay and thus will automatically receive the benefit of this rule; an employee who does have annual and/or compensatory leave may choose to use his leave, or may choose to be placed on leave without pay (thus preserving

his personal leave balances) to receive the benefit of this rule.

In addition to the changes listed above, changes have been made throughout the rule to allow the rule to apply to provisional appointees as well as the others originally listed.

**Amend Rule 8.19**

**8.19** Restoration of Duty Upon Return from Military Service. Any employee, who subsequent to June 24, 1948 has left or leaves a classified position in which he was or is serving with provisional, probationary or permanent status, for active duty in the armed forces of the United States for not more than six years of voluntary service or an indefinite period of involuntary service and who upon separation from the armed forces of the United States by honorable discharge or under honorable conditions makes application for reemployment within ninety days thereof or within ninety days after he is released from hospitalization continuing after discharge for a period of not more than one year shall

(a) If still qualified to perform the duties of such position, be restored by his department to such position or to a position of like seniority, status and pay; or

(b) If not qualified to perform the duties of such position by reason of disability sustained during such service but qualified to perform duties of any other position in the department where he formerly worked be restored to such other position the duties of which he is qualified to perform as will provide him like seniority, status and pay or the nearest approximation thereof consistent with the circumstances in his case.

**Explanation**

Provisional appointments have been added to Rule 11.26; it was necessary to add provisional appointments to this rule also in order to remain consistent.

Persons interested in making comments relative to these proposals may do so at the public hearing or by writing to the Director of State Civil Service at Post Office Box 94111, Baton Rouge, Louisiana 70804-9111.

If any accommodations are needed, please notify us prior to this meeting.

Allen H. Reynolds  
Director

0202#049

**NOTICE OF INTENT**

**Department of Culture, Recreation and Tourism  
Office of the State Library**

State Library Processing Center; Public Library Construction; Health and Correctional Institution Libraries; Auditorium and Conference Room Use by Public; Deposit of Publications; Depository Library System (LAC 25:VII.Chapters 11, 21, 25, 27, 43, and 45)

Editor's Note: LAC 25:VII.2705, Patron's Rights, has been moved to LAC 25:VII.507. The text of this Section has not been changed, but moved to be incorporated into similar subject matter.

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Libraries, Museums, and other Scientific and Cultural Facilities Law (R.S. 25:8 et seq.), the Office of the State Library hereby

gives notice of its intent to repeal and amend Rules of the State Library of Louisiana. These proposed Rules repeal and amend sections of the law that refer to outdated services and programs. The Rules promote the public interest through deletion of rules governed by no longer existent federal entitlements, or through deletion of outdated rules regarding management of no longer existing buildings, or through revision of rules regarding dissemination of state documents, to include electronic information.

#### **Title 25**

### **CULTURAL RESOURCES**

#### **Part VII. State Library**

##### **Subpart 1. Readers' Services**

###### **Chapter 5. Services**

###### **§507. Patrons' Right to Privacy (formerly §2705)**

A. State Library employees shall not divulge information regarding the materials used by any patron nor shall they identify the users of particular library materials without the consent of the individuals concerned. Such privileged client information will only be made available by the State Library on order from a court of competent Jurisdiction.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, repromulgated by Department of Culture, Recreation and Tourism, Office of the State Library LR 28:

##### **Subpart 2. Library Technical Services**

###### **Chapter 11. State Library Processing Center**

###### **§1101. Processing Center Functions**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:451 and R.S. 25:453.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register December 11, 1974, repealed by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 28:

###### **§1103. Conditions for Membership**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:451 and R.S. 25:453.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, repealed by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 28:

###### **§1105. Space and Staff**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:451 and R.S. 25:453.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register December 11, 1974, repealed by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 28:

###### **§1107. Processing Center Agreement with Member Libraries**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:451 and R.S. 25:453.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, repealed by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 28:

###### **§1109. Processing Center Charge to Institutional Libraries**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:451 and R.S. 25:453.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, repealed by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 28:

#### **Part VII. State Library**

##### **Subpart 3. Library Development**

###### **Chapter 21. Public Library Construction**

###### **§2101. Administration**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9, R.S. 25:14 and R.S. 25:15.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, amended by the Department of Culture, Recreation and Tourism, Office of the State Library of Louisiana, LR 18:1356 (December 1992), repealed by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 28:

###### **§2103. Definition**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9, R.S. 25:14 and R.S. 25:15.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, amended by the Department of Culture, Recreation and Tourism, Office of the State Library of Louisiana, LR 18:1356 (December 1992), repealed by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 28:

###### **§2105. Rules Governing Administration of the Act**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:9, R.S. 25:14 and R.S. 25:15.

HISTORICAL NOTE: Adopted by the Louisiana State Library, December 11, 1974, amended by the Department of Culture, Recreation and Tourism, State Library, LR 18:1356 (December 1992), LR 22:12 (January 1996), repealed by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 28:

###### **Chapter 25. Libraries in State's Health and Correctional Institution**

###### **§2501. Services**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9, R.S. 25:14 and R.S. 25:15.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, repealed by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 28:

###### **§2503. State Library Agreement with Individual Institutions**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9, R.S. 25:14 and R.S. 25:15.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974 repealed by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 28:

**§2505. Agreement**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9, R.S. 25:14 and R.S. 25:15.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of State Register, December 11, 1974, repealed by the Department of Culture, Recreation and Tourism Office of the State Library, LR 28:

**Chapter 27. Auditorium and Conference Room Use by Public**

**§2701. Details**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, repealed by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 28:

**§2703. Equipment Use**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, repealed LR 28:

**Chapter 43. Deposit of Publications**

**§4303. Public Documents Required to be Deposited**

A. The public documents required to be deposited are those defined in R.S. 25:121.1. "Public Document" means informational matter, regardless of format, method of reproduction, source, or copyright, originating in or produced with the imprint of, by the authority of, or at the total or partial expense of, any state agency, including material published with federal funds or by sub-state planning districts. This definition incorporates publications released by private bodies such as research and consultant firms under a contract with and/or under the supervision of any state agency. Further, this definition specifically includes journals, laws or bills, statutes, codes, rules, regulations; newsletters, bulletins, state plans, brochures, periodicals or magazines; minutes of meetings of boards and commissions, transcripts of public hearings; reports, directories, statistical compendiums, bibliographies, pamphlets, lists, books; charts, maps, surveys; other printed matter; microfilm, microfiche, audiovisuals; electronic documents. "Electronic Documents" denotes any discrete public document published in a static electronic or digital format, i.e., CD-ROM, web document, floppy disk, etc. Whenever possible, paper is the preferred format for deposit with the recorder of documents. Excluded from the definition of public documents are correspondence, interoffice or intra-office memoranda, records of an archival nature; interactive, non-discrete, constantly changing electronic items such as Web sites, databases, ASP (active server pages), or software programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:122(B).

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 8:187 (April 1982), amended LR 28:

**§4305. Public Documents not Required to be Deposited**

A. ...

B. Complete Web sites are excluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:122.B.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 8:187 (April 1982), amended LR 28:

**§4311. Liaison Officer of Agencies**

A. The head of every state agency shall designate one of its staff members as the liaison officer for the agency and shall notify the recorder of documents on or before the first day of July of the identity of the liaison officer, and shall immediately notify the recorder of documents of any new liaison officer should a change occur. If a liaison officer is not appointed, the head of the agency serves as liaison by default. The liaison officer of each state agency shall have the duty to provide the recorder of documents with required copies of publications in whatever format they were originally published and to submit the URL's of Internet documents. The liaison officer shall compile and forward to the recorder of documents lists of the public documents of the agency, and to provide other related information as may be requested by the recorder of documents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:122.B.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 8:187 (April 1982), amended LR 28:

**§4313. Application of Rules**

A. If the liaison officer is in doubt whether a specific publication is required to be deposited as set forth in the above rules, or if the number of copies to be deposited is burdensome because of cost or numbers published, or if the number of copies to be deposited is uncertain, the liaison officer of the agency shall consult with the recorder of documents for assistance in interpreting the regulations. If the agency is not satisfied with the determination of the recorder of documents, a written request should be submitted to the state librarian, who shall make the final ruling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:122.B.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 8:187 (April 1982), amended LR 28:

**Chapter 45. Depository Library System**

**§4501. Statutory Depositories**

A. Louisiana State Library and Louisiana State University Library at Baton Rouge are legally designated complete depository libraries. They shall be the historical depository libraries, shall receive two copies of all public documents received by the recorder for distribution, and shall retain permanently one copy of each. The State Library of Louisiana is responsible for archiving and providing permanent public access to documents it receives that are issued solely in electronic formats.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:122.B.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 8:187 (April 1982), amended LR 28:

**§4503. Other Depositories**

A. Libraries including those in state agencies and other institutions in Louisiana wishing to receive public documents through the depository system shall submit a written application to the state librarian requesting

designation as a complete depository, or a selective depository. Special depository status is limited to the David R. Poynter Legislative Research Library.

1. Complete depositories shall receive one copy of all public documents received by the recorder of documents for distribution and shall retain one copy for a minimum of six years.

2. Selective depositories shall receive one copy of the core collection and all public documents received by the recorder for distribution in the predetermined categories they select and shall retain one copy for a minimum of six years. Those libraries selecting only the core collection shall retain the latest edition of each document received.

3. The special depository shall follow standard selection procedures and shall comply with the contract made with the state librarian.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:122.B.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 8:187 (April 1982), amended LR 28:

**Family Impact Statement**

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

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by RS25 Rule Changes. Such comments must be received no later than March 1, 2002, at 4:30 p.m., and should be sent to Gary O. Rolstad, State Library of Louisiana, P.O. Box 131, Baton Rouge, LA 70821-0131 or to fax (225) 342-3547. Copies of this proposed regulation can be acquired at the above referenced address.

Any person may submit data, views or positions, orally or in writing, to the State Board of Library Commissioners by writing to Box 14868, Baton Rouge, LA 70898-0131, or by telephoning (225) 342-4923 and facsimile (225) 342-35547.

Interested persons may submit written comments until 4:30 p.m., March 9, 2002, to Gary O. Rolstad, State Library of Louisiana, P.O. Box 131, Baton Rouge, LA 70821-0131.

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**  
**RULE TITLE: State Library Processing Center; Public Library Construction; Health and Correctional Institution Libraries; Auditorium and Conference Room-Use by Public; Deposit of Publications; Depository Library System**

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

There are no implementation costs/savings excepting the costs for publication in the *Louisiana Register*. The publication costs are expected to be \$1,280.

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

Revenue is unaffected by these changes.

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

The changes update certain processes that are outdated and deleted. There are no significant costs or economic benefits directly to an persons or nongovernmental groups.

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

Competition and employment are not affected by these changes.

Gary O. Rolstad  
Associate State Librarian  
0201#013

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 102C Louisiana Physical Education  
Content Standards  
(LAC 28:LIII.Chapters 1 - 11)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement the adoption of Bulletin 102, *Louisiana Physical Education Content Standards*. Bulletin 102 will be printed in codified format as Part LIII of Title 28 of the Louisiana Administrative Code. The *Louisiana Physical Education Content Standards* will be disseminated to local school districts following publication. The standards and benchmarks therein will be used to guide curriculum development for all physical education courses. Implementation of the guidelines set forth in the *Louisiana Physical Education Content Standards* will improve educational practices and coherence in the local physical education programs. The *Louisiana Physical Education Content Standards* will align the curriculum with desired changes to promote a more relevant physical education curriculum for all students.

**Title 28**

**EDUCATION**

**Part LIII. Louisiana Physical Education Content Standards**

**Subpart 1. Teaching and Learning Criteria**

**Chapter 1. General Provisions**

**§101. Introduction**

A. Louisiana State Physical Education Standards are based on the National Physical Education Standards developed by the National Association for Sport and Physical Education. This standards document is not a state curriculum or a predetermined course of study, rather, it speaks of competencies, defining what a student should know and be able to do. Teachers in the state of Louisiana are encouraged and empowered to create their own physical education curriculum that would best help their students meet these standards.

B. Standards-based reform seeks to establish clear, attainable standards at internationally competitive levels for all students. Because the standards are consensus statements about what a student should "know and be able to do," they provide a basis for student assessment, and for evaluating programs, at national, state, and local levels.

C. A significant benefit to physical education offered through the delineation of a comprehensive set of standards and accompanying assessments is that they combat the uninformed idea that physical education is an "academically soft" area of study. The standards ascribe academic standing to physical education. They say there is such a thing as

achievement, that knowledge and skills matter, and that mere willing participation is not the same as education.

D. Educational reform initiatives include aligning assessment to a program with a fully integrated teaching process that provides meaningful information about student learning and achievement. The transformation of assessment programs is moving toward performance-based assessments that focus on high-priority objectives and significant outcomes for students. The primary goal of assessment should be the enhancement of learning, rather than the documentation of learning for the purpose of determining a grade.

E. The Louisiana State Content Standards are presented in grade clusters (K-2, 3-5, 6-8, and 9-12) representing the configuration of most Louisiana school systems and developmentally appropriate physical education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### §103. Louisiana Standards Foundation Skills

A. The Louisiana Content Standards Task Force has developed the following foundation skills which should apply to all disciplines. These foundation skills are listed numerically in parentheses at the end of each benchmark.

1. Communication. Communication is a process by which information is exchanged and a concept of *meaning* is created and shared between individuals through a common system of symbols, signs, or behavior. Students should be able to communicate clearly, fluently, strategically, technologically, critically, and creatively in society and in a variety of workplaces. This process can best be accomplished through use of the following skills:

- a. reading;
- b. writing;
- c. speaking;
- d. listening;
- e. viewing; and
- f. visually representing.

2. Problem Solving. Problem solving involves the identification of an obstacle or challenge and the application of knowledge and thinking process which include reasoning, decision making, and inquiry in order to reach a solution using multiple pathways, even when no routine path is apparent.

3. Resource Access and Utilization. Resource Access and Utilization is the process of identifying, locating, selecting, and using resource tools to help in analyzing, synthesizing, and communicating information. The identification and employment of appropriate tools, techniques, and technologies are essential in all learning processes. These resource tools include:

- a. pen;
- b. pencil and paper;
- c. audio/video material;
- d. word processors;
- e. computers;
- f. interactive devices;
- g. telecommunication; and
- h. other emerging technologies.

4. Linking and Generating Knowledge. Linking and generating knowledge is the effective use of cognitive processes to generate and link knowledge across the

disciplines and in a variety of contexts. In order to engage in the principles of continued improvement, students must be able to transfer and elaborate on these processes. *Transfer* refers to the ability to apply a strategy or content knowledge effectively in a setting or context other than that in which it was originally learned. *Elaboration* refers to monitoring, adjusting, and expanding strategies into other contexts.

5. Citizenship. Citizenship is the application of the understanding of the ideals, rights, and responsibilities of active participation in a democratic republic that includes:

- a. working respectfully and productively together for the benefit of the individual and the community;
- b. being accountable for one's civil, constitutional, and statutory rights; and
- c. mentoring others to be productive citizens and lifelong learners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### §105. Definitions/Descriptions

*Benchmark* Behavior that indicates progress toward a content standard.

*CTAPE* Criterion referenced assessment tool available through the Louisiana Department of Education. This assessment measures basic motor competencies for children ages 6 and up. *CTAPE* will discriminate between children who have average motor skills and children who have significantly below average motor skills. *CTAPE* consists of six testing levels based on chronological age.

*Daily Physical Education* Minimum daily instructional period of at least 30 minutes in elementary education and 50 minutes in middle and high school.

*Developmentally Appropriate* Takes into account those aspects of teaching and learning that change with the age and experience of the learner.

*Event Task* A performance task that can be completed within 50 minutes. The task is loosely structured and written broadly enough to allow for multiple solutions or many possible correct answers. It should be engaging so as to capture the interest of the students and replicate or simulate a real world experience.

*Group Project* Can assessment project completed by several students working cooperatively. As opposed to an event task that can be completed in a single class period, the group project usually takes more than one class period to complete and may include time spent outside of class. *Group projects* may be performance-based (presentation of dance, creation of a new game) or involve class presentation of results, displays, wall charts.

*Health-Enhancing Physical Activity* Regular physical activity that results in maintaining physical fitness and improvement in health and well being across the life span.

*Health Related Fitness* Level of physiological functioning in:

1. cardiovascular endurance;
2. strength;
3. muscular endurance;
4. flexibility; and
5. body composition.

*Interview* One-to-one discussion with a planned sequence of questions designed to obtain information (e.g., cognitive, affective, statistical). They are often regarded as teacher-to-

student interviews for the purposes of obtaining information on student thoughts, feelings and understandings. Student-to-student or student-to-persons in the community interviews, however, may be used for such purposes as analyzing activity patterns or computing frequency of exercise.

**Locomotor Skill/Movements** Cbasic movements performed while moving the body from place to place (e.g., walk, run, hop, jump, skip, gallop, slide).

**Manipulative Skill** Cmovement done to or with objects with hands or involving the feet or other parts of the body.

**Movement Concepts** Cmovements that reinforce concepts such as time, space, effort and relationships.

**Nonlocomotor Skill** Cmovement of the body around an axis or joint (e.g., bend, stretch, twist, reach).

**Observation (Teacher/Student)** Cthe most utilized form of assessment in physical education. Teachers observe students on a regular basis as part of the instructional process. *Teacher observation* can also be used systematically to provide data on student performance, collect information on the instructional process or as a means of evaluation. All students or a sample of students representing different skill levels can be assessed. There are many tools teachers can use to record observational data including anecdotal records, checklists, rating scales, or scoring rubrics. All of these tools can be used whether in live observation or with video analysis by the teacher or by the students in peer assessment or self-assessment. The value of the information recorded in each of these cases is enhanced if teachers have a clear idea of what they are looking for in their observations and attend to issues related to the reliability and validity of the data they collect.

**Observational Record** Cobservational data includes anecdotal records, checklists, rating scales, or scoring rubrics either live or videotaped by teachers or students.

**Parental Support** Crecord of student regularity, progress, process or product of participation that has been verified by the parent(s). The report may include verification by signature of a student's recorded report or by anecdotal comments of the parent or person who has observed the out-of-class performance.

#### **Peer Observation** C

1. the observation of students by other students to assess competence in performance of skill and demonstration of selected critical elements of skill. It is most often used for the observation of critical elements that lead to a mature execution of a particular skill. Informal *peer observation* is used throughout teaching to help students evaluate progress toward the goal (inclusion of all components for a gymnastics routine or creative dance, correct pathway of travel in response to task).

2. *Peer observation feedback* includes:

- a. verbal discussion;
- b. verbal response;
- c. thumbs up or thumbs down; and
- d. written feedback.

3. Videotape is a helpful support technology for *peer observation*.

**Performance Assessment** Cform of assessment in which students are asked to produce or create something demonstrating knowledge.

**Portfolio** Ccollections of a student's work assembled over time (*Feuer and Fulton, 1993*). They include various pieces

of evidence documenting student achievement of a goal. *Portfolios* have been used by artists and models for many years to demonstrate their best work. The focus in student portfolios is on:

1. student thinking;
2. growth over time;
3. views of oneself as a learner; and
4. problem-solving.

**Role Playing** Cstudents are given a scenario and then asked to simulate the characters they portray, or act out the situation that has been set for them. These dialogues can be written or verbalized. Students have the opportunity to portray real world situations. Students are required to use reasoning and problem solving to deal with the reality of the experience as it unfolds.

**Rubric** Crating scale and list of criteria by which student knowledge, skills or performance can be assessed.

#### **Self-Assessment** C

1. the student assesses personal progress as opposed to being assessed by the teacher or by other students. *Self-assessments* include:

- a. rating scales for levels of performance;
- b. participation;
- c. recording performance scores (e.g., distance, accuracy);
- d. summary reports after a series of assessment tasks (e.g., dribbling, throwing for accuracy and distance, jump shooting, physical fitness profiles); and
- e. questionnaires of likes and dislikes in activities.

2. *Self-assessment* is a part of logs, journals and portfolios as students evaluate personal performance or progress toward goals.

**Standard** Cwhat students should know and be able to do.

**Student Journal** Cstudent record of participation, results, responses to, feelings, perception, or reflections about actual happenings or results. Entries, made at regular intervals over time, may serve as indicators of success, failure, benefits, or other intangible products of participation. Entries are not viewed as right or wrong since they are reflections about personal performance including social and psychological perspectives. Students may describe both positive and negative behavior. Journal entries are used to summarize, compare and contrast like and unlike experiences, provide opportunity for self-analysis of personal meaning and quality of participation, record behavior adjustments, compare results of other assessment options including conditions which contribute, enhance, or limit participation, and as a resource of suggestions for change. Journal entries can be reviewed to determine how a student processes both internal and external information about his or her performance.

#### **Student Log** C

1. students record performance of specific behaviors over a period of time that identifies:

- a. products;
- b. time intervals;
- c. decisions/choices; and
- d. reflections.

2. Recorded items should indicate critical factors relative to expected results. Information may show:

- a. performance changes;
- b. sequence of behaviors;
- c. choices;

- d. feelings;
- e. documentation of conditions;
- f. progress;
- g. process, and/or
- h. regularity of participation.

3. *Logs* may be kept by individual students, small groups, or whole classes. Information can be used in combination with other assessment options to justify program changes and to make predictions.

*Student Project*—Students engage in building a scenario, determining goals, planning a program of participation to achieve outcomes, and implementing the plan to the completion of the goals. Student projects provide for a range of strategies and results including the following: the application of the processes of data collection, goal setting, planning, analysis, decision making, problem solving; development and application of skill and knowledge to real-life situations to solve problems or create "new" interventions to reach personal goals. These may include:

- 1. multiple objectives or outcomes;
- 2. combine multiple assessment options (e.g., logs, journals, and reports);
- 3. student autonomy in choosing procedures and reaching conclusions;
- 4. solo or multiple students;
- 5. multiple resources;
- 6. changes in status, behaviors or conditions;
- 7. authenticity;
- 8. performance products;
- 9. flexibility of time (complexity of task determines time); and
- 10. integration of multiple content areas, concepts and applications.

*Wellness*—Individual exercise programs based on health and healthy lifestyle issues including physical, intellectual, emotional, social and spiritual dimensions.

#### *Written Tests*

1. encompass multiple choice, true/false, matching, essay, short answer and fill-in-the-blank test formats traditionally used to examine:

- a. knowledge;
- b. comprehension;
- c. application;
- d. analysis;
- e. synthesis; and
- f. evaluation of the knowledge base in physical education.

2. Broadly speaking, such tests could include other test formats such as oral examinations and examinations that use drawings or pictures to elicit student responses.

3. *Written tests* are commonly used for short quizzes or for longer formal examinations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

#### **§107. Louisiana Physical Education Standards**

A. Demonstrates competency in many movement forms and proficiency in a few movement forms. (1,2,5)

1. The intent of this standard is the development of movement competence and proficiency. Movement

competence implies the development of sufficient ability to enjoy participation in physical activities and establishes a foundation to facilitate continued motor skill acquisition and increased ability to engage in appropriate motor patterns in daily physical activities. The development of proficiency in a few movement forms gives the student the capacity for successful and advanced levels of performance to further increase the likelihood of participation. In the primary years students develop maturity and versatility in the use of fundamental skills (e.g., running, skipping, throwing, striking) that are further refined, combined and varied during the middle school years. These motor patterns, now having evolved into specialized skills (e.g., a specific dance step, chest pass, catching with a glove), are used in increasingly more complex movement environments (more players or participants, rules, and strategies) through the middle school years. On the basis of interest and ability, high school students select a few activities for regular participation within which proficiency will be developed. In preparation for adulthood, students should have acquired the basic skills to participate in a wide variety of leisure and work-related physical activities and advanced skills in at least two or three areas.

B. Applies movement concepts and principles to the learning and development of motor skills. (1,2,4)

1. This standard concerns the ability of the learner to use cognitive information to understand and enhance motor skill acquisition and performance. This includes the application of concepts from disciplines such as:

- a. motor learning and development;
- b. sport psychology and sociology;
- c. biomechanics; and
- d. exercise physiology.

2. Specifically this would include concepts like increasing force production through the summation of forces, effects of anxiety on performance, and the principle of specificity of training. Knowledge of such concepts and practice applying these concepts enhances the likelihood of independent learning and, therefore, more regular and effective participation in physical activity.

a. During the lower elementary years emphasis is placed on establishing a movement vocabulary and the initial application of introductory concepts (e.g., for absorption, principles governing equilibrium, application of force).

b. Through the upper elementary and middle school years an emphasis is placed on learning more and increasingly complex concepts. In addition, emphasis is placed on applying and generalizing these concepts to real life physical activity situations (e.g., managing stress and the effect of growth spurt on movement performance).

c. During the high school years the student should possess sufficient knowledge of concepts to independently and routinely use a wide variety of increasingly complex concepts (e.g., performance trends associated with learning new motor skills, specificity of training).

d. By graduation the student should have developed sufficient knowledge and ability to independently use their knowledge to acquire new skills while continuing to refine existing ones.



C. Exhibits a physically active lifestyle. (1,2,3,4,5)

1. The intent of this standard is to establish patterns of regular participation in meaningful physical activity. This standard should connect what is done in the physical education class with the lives of students outside of physical education. While participation within the physical education class is important, what the student does outside the physical education class is critical to developing an active, healthy lifestyle. Students are more likely to participate if they have had opportunities to develop movement competence and they should be encouraged to participate in vigorous and unstructured play. As students get under the structure of activity tends to increase and the opportunities for participation in different types of activity increase outside of the physical education class. Attainment of this standard should develop an awareness of those opportunities and encourage a broad level of participation. Cognitive understandings develop from an initial awareness of cause and effect relationships between activity, and its immediate and identifiable effects on the body, to an increased understanding of the role of physical activity on the physiological body, social opportunities and relationships, and emotional well being. This yields a comprehensive perspective on maintaining the idea of a healthy lifestyle.

D. Achieves and maintains a health-enhancing level of physical fitness. (2,3,4,5)

1. The intent of this standard is for the student to achieve a health-enhancing level of physical fitness. Students should be encouraged to develop higher levels of basic fitness and physical competence as needed for many work situations and active leisure participation. Health-related fitness components include cardiorespiratory endurance, muscular strength and endurance, flexibility and body composition. Expectations for students' fitness levels should be established on a personal basis, taking into account variation in entry levels rather than setting a single set of standards for all children at a given grade level.

a. For elementary children, the emphasis is on promoting an awareness of fitness components and having fun while participating in health-enhancing activities that promote physical fitness.

b. Middle school students gradually acquire a greater understanding of the fitness components, how each is developed and maintained, and the importance of each in overall fitness.

c. Secondary students are able to design and develop an appropriate personal fitness program that enables them to achieve desired levels of fitness. Thus student should have both the ability and willingness to accept responsibility for personal fitness which fosters an active, healthy lifestyle.

E. Demonstrates responsible personal and social behavior in physical activity settings. (1,2,5)

1. The intent of this standard is the achievement of self-initiated behaviors that promote personal and group success in activity-oriented settings. These include safe practices, adherence to rules and procedure, etiquette, cooperation, teamwork, ethical behavior in sport, and positive social interaction.

2. Achievement of this standard in the lower elementary grades begins with recognition of classroom

rules and procedures, as well as a focus on safety. In the upper elementary levels, students identify the purposes for rules and procedures and become involved in decision-making processes to establish rules and procedures for specific activity situations. High school students initiate responsible behavior, function independently and responsibly, while positively influencing the behavior of others in physical activity settings.

F. Demonstrates understanding and respect for differences among people in physical activity settings. (1,5)

1. The intent of this standard is to develop respect for individual similarities and differences through positive interaction among participants in physical activity. Similarities and differences include characteristics of culture, ethnicity, motor performance, disabilities, physical characteristics (e.g., strength, size, shape), gender, race, and socio-economic status.

a. Elementary school students begin to recognize individual similarities and differences and participate cooperatively in physical activity.

b. By middle school, students participate cooperatively in physical activity with persons with diverse characteristics and backgrounds.

c. High school students are expected to be able to participate with all people, recognize the value of diversity in physical activity, and develop strategies for inclusion of others.

G Understands that physical activity provides opportunities for enjoyment, challenge, self-expression, and social interaction. (1,4)

1. This standard is designed to develop an awareness of the intrinsic values and benefits of participation in physical activity that provides personal meaning. Physical activity can provide opportunity for self-expression and social interaction and can be enjoyable, challenging, and fun. These benefits entice people to continue participation in activity throughout the life span.

a. Elementary school children derive pleasure from movement sensations and experience challenge and joy as they sense a growing competence in movement ability.

b. At the middle school level, participation in physical activity provides important opportunities for challenge, social interaction and group membership, as well as opportunities for continued personal growth in physical skills and their applied settings.

c. Participation at the high school level continues to provide enjoyment and challenge as well as opportunities for self-expression and social interaction. As a result of these intrinsic benefits of participation, students will begin to actively pursue lifelong physical activities that meet their own needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### Subpart 3. Cluster Levels

#### Chapter 3. Content Standards and Benchmarks

##### §301. Coding Key for Benchmarks

A. Standards are broad goals for student achievement in a content area. Each standard is followed by a set of benchmarks.

B. The benchmarks state what a student should know and be able to do in order to reach the standard. The key below will explain the coding used for the benchmarks contained in this document.

1. The first number indicates the standards number.
2. The capitol letter represents the cluster level.
3. The third symbol is a second number, which represent the benchmark number.
4. The letters for each grade cluster level are below:  
**PC** represents the primary cluster level, grades K-2  
**EC** represents the elementary cluster level, grades 3-5  
**MC** represents the middle school cluster level, grades 6-8

**HC** represents the high school cluster level, grade 9

*Example:* 2-E-4 would represent benchmark four for standard two on the Elementary Level (grades 3-5).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4, et seq.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

**Chapter 5. Grades K-2C Primary Cluster Level**

**§501. Standard 1**

A. Standard 1 demonstrates competency in many movement forms and proficiency in a few movement forms.

1. Intent. The intent of this standard is to enable students to demonstrate mature locomotor and nonlocomotor patterns and combine these movements in smooth, rhythmical and sequential patterns in a variety of conditions.

**B. Benchmarks**

1-P-1	Performs locomotor and non-locomotor skills at a basic level progressing to simple sequences utilizing shapes, levels, directions, pathways, and ranges.	(2,4)
1-P-2	Demonstrates ways to manage body weight in a variety of situations alone or within a group (e.g., hanging, climbing, and balancing in symmetrical and asymmetrical shapes).	(1,3,4)
1-P-3	Performs manipulative skills using a variety of equipment in different environmental conditions (e.g., striking with self, partner, or in a game situation).	(1,2,4,5)
1-P-4	Performs basic rhythmic skills alone, with a partner or within a group.	(1,2,5)

**C. Suggested Assessment Methods**

1. Teacher observation
2. Group project
3. Self assessment
4. Peer observation
5. Checklist
6. Video analysis

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4, et seq.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§503. Standard 2**

A. Standard 2 applies movement concepts and principals to the learning and development of motor skills.

1. Intent. The intent of this standard is to enable students to demonstrate elements of fundamental skills and to use them in relation to the concepts of space, effort and relationships.

**B. Benchmarks**

2-P-1	Integrates other content areas through movement.	(1,2,3,4,5)
2-P-2	Demonstrates and uses a variety of relationships with objects (e.g., over/under, behind, alongside, through).	(1,2,4)
2-P-3	Identifies fundamental movement patterns	(1,2,4)
2-P-4	Establishes a beginning movement vocabulary (e.g., personal space, high/low levels, fast/slow speeds, light/heavy weights, balance, twist).	(1,2,4)
2-P-5	Applies appropriate concepts to performance (change direction while running).	(1,2,4)

**C. Suggested Assessment Methods**

1. Teacher observation
2. Group project
3. Self assessment
4. Peer observation
5. Checklist
6. Written test
7. Video analysis

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4, et seq.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§505. Standard 3**

A. Standard 3 exhibits a physically active lifestyle.

1. Intent. The intent of this standard is to enable students to develop positive attitudes toward regular physical activity and its effect on personal well being.

**B. Benchmarks**

3-P-1	Participates regularly in vigorous activities outside of physical education class.	(1,2,3,4,5)
3-P-2	Acknowledges that physical activity is good for personal well being.	(1,2,3,4,5)
3-P-3	Experiences and expresses satisfaction from participation in physical activity.	(1,2,4,5)

**C. Suggested Assessment Methods**

1. Group project
2. Self assessment
3. Peer observation
4. Student journal
5. Interview
6. Portfolio
7. Role playing
8. Criterion-Related Assessment (C-TAPE-

Competency Test for Adapted Physical Education)

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4, et seq.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§507. Standard 4**

A. Standard 4 achieves and maintains a health-enhancing level of physical fitness.

1. Intent. The intent of this standard is to encourage students to participate in activities that promote health-related fitness.

**B. Benchmarks**

4-P-1	Sustains activity from moderate to vigorous intensity levels while participating in physical activity.	(2,4)
4-P-2	Identifies physiological signs of moderate physical activity (e.g., fast heart rate, sweating, increased breathing).	(1,2,4)
4-P-3	Demonstrates activities that increase muscular strength and endurance.	(1,2,4)
4-P-4	Demonstrates moving each joint through a full range of motion.	(1,2,4)

**C. Suggested Assessment Methods**

1. Teacher observation
2. Self assessment
3. Peer observation
4. Group project
5. Parental report
6. Portfolio
7. Student log
8. Written test
9. Checklist - teacher, student, and parent

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§509. Standard 5**

A. Standard 5 demonstrates responsible personal and social behavior in physical activity settings.

1. Intent. The intent of this standard is to enable students to demonstrate safe practices, rules and procedures with little or no reinforcement.

**B. Benchmarks**

5-P-1	Demonstrates established protocols with little reinforcement (e.g., playground, classroom, and gymnasium).	(1,2,4,5)
5-P-2	Acknowledges the importance of being aware of one's surroundings and acting in a safe manner in physical activity settings.	(1,2,4,5)
5-P-3	Works cooperatively (e.g., takes turns, is supportive, assists partner) with another to complete an assigned task.	(1,2,4,5)
5-P-4	Applies the elements of socially acceptable conflict resolution in physical activity settings (e.g., cooperation, sharing, consideration).	(1,2,4,5)

**C. Suggested Assessment Methods**

1. Portfolio
2. Teacher observation
3. Student journal
4. Observational record
5. Parental reporting
6. Checklist – teacher, student, and parent

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§511. Standard 6**

A. Standard 6 demonstrates an understanding and respect for differences among people in physical activity settings.

1. Intent. The intent of this standard is to encourage students to identify and demonstrate concepts of cooperation, sharing and consideration regardless of differences.

**B. Benchmarks**

6-P-1	Recognizes the importance of seeking out, participating with, and showing respect for people of like and different physical abilities.	(1,2,5)
6-P-2	Interacts with others regardless of personal differences (e.g., gender, ethnicity, disability).	(1,2,5)
6-P-3	Demonstrates a willingness to help a fellow student who has difficulty completing a skill	(1,2,5)

**C. Suggested Assessment Methods**

1. Written assessment
2. Oral assessment
3. Checklist
4. Student journal
5. Portfolio
6. Observational record
7. Interview
8. Role playing
9. Teacher observation
10. Group project

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§513. Standard 7**

A. Standard 7 understands that physical activity provides the opportunity for enjoyment, challenge, self-expression, and social interaction.

1. Intent. The intent of this standard is to encourage students to demonstrate cooperation with others in dyads and small groups and to express their feelings through activity.

**B. Benchmarks**

7-P-1	Describes the feelings that result from challenges, successes, and failures in physical activity, alone or in groups.	(1,2,4)
7-P-2	Distinguishes feelings about and during physical activity.	(1,2,4)
7-P-3	Displays a willingness to participate in new activities.	(1,2,4)

**C. Suggested Assessment Methods**

1. Written Assessment
2. Oral assessment
3. Checklist
4. Student journal
5. Student portfolio
6. Role playing
7. Teacher observation
8. Interview
9. Group project

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**Chapter 7. Grades 3-5C Elementary Cluster Level**

**§701. Standard 1**

A. Standard 1 demonstrates competency in many movement forms and proficiency in a few movement forms.

1. Intent. The intent of this standard is to demonstrate refined fundamental movement patterns. Attainment of mature motor patterns and variations of skills and skill combinations are performed. In addition, students should be

able to acquire some specialized skills basic to a movement form and to use those skills with a partner.

**B. Benchmarks**

1-E-1	Demonstrates mature forms in locomotor, non-locomotor, and manipulative skills (e.g., locomotor - run, jump, skip; non-locomotor - bend, stretch, lunge; manipulative - catching, throwing, kicking).	(1,3,5)
1-E-2	Combines a variety of motor skills for specific sports (e.g., catches, dribbles and passes basketball to a moving partner).	(1,3,5)
1-E-3	Exhibits ability to manipulate objects with the skills necessary to participate in games and lead-up activities (e.g., engages in simple games requiring manipulative skills).	(2,3,5)
1-E-4	Demonstrates the ability to create rhythmic movement patterns and dances (e.g., performs rhythmic body movements and communicates ideas and feelings with and without music).	(1,4)

**C. Suggested Assessment Methods**

1. Teacher observation
2. Event task
3. Peer observation
4. Student log
5. Performance assessment
6. Observational record

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4, et seq.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§703. Standard 2**

A. Standard 2 applies movement concepts and principles to the learning and development of motor skills.

1. Intent. The intent of this standard is to enable students to use critical elements to refine personal performance of fundamentals and selected specialized motor skills. They should be able to identify and apply concepts that impact the quality of movement performance in increasingly complex movement situations.

**B. Benchmarks**

2-E-1	Integrates movement concepts with other content areas (e.g., measuring distances and timing races or events).	(2,4)
2-E-2	Applies critical elements to improve personal performance in fundamental and selected specialized motor skills (e.g., describes and demonstrates body positions for each part of an overhand throw).	(1,4)
2-E-3	Recognizes and describes critical elements of more complex movement patterns (e.g., describes the use of the arms, as well as the legs, in performing the running long jump for maximum distance).	(1,4)
2-E-4	Employs the concept of efficient and effective practice to improve skills in appropriate settings (e.g., repeating the skill of basketball lay-ups in a gym or playground setting).	(2,5)

**C. Suggested Assessment Methods**

1. Teacher observation
2. Student log
3. Event task
4. Peer observation
5. Written test
6. Observational record

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4, et seq.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§705. Standard 3**

A. Standard 3 exhibits a physically active lifestyle.

1. Intent. The intent of this standard is to develop an awareness of participation in physical activity as a conscious decision and personal choice for both enjoyment and health-related benefits.

**B. Benchmarks**

3-E-1	Describes the physical, emotional, and psychological benefits of participation in health-related activities	(1,5)
3-E-2	Identifies several moderate to vigorous physical activities that provides personal pleasure (e.g., participates in youth league soccer after school, or joins in a pick-up game of basketball).	(1,4,5)
3-E-3	Selects and participates regularly in physical activities for the purpose of improving skill and health (engages in activities that promote cardiovascular fitness)	(2,4)

**C. Suggested Assessment Methods**

1. Student log
2. Written test
3. Group project
4. Observational record
5. Technology use

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4, et seq.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§707. Standard 4**

A. Standard 4 achieves and maintains a health-enhancing level of physical fitness.

1. Intent. The intent of this standard is to match different types of physical activity with underlying physical fitness components including moderate to vigorous physical activities in a variety of settings.

**B. Benchmarks**

4-E-1	Identifies several activities related to each component of health-related fitness.	(1,4)
4-E-2	Participates in self-assessment for health-related fitness and meets the standards for that particular test for their appropriate age group.	(1,2,4)
4-E-3	Selects an activity program that is designed to improve health-related fitness.	(2)
4-E-4	Adopts personal goals based upon results of fitness assessments.	(1,2,3,4,5)
4-E-5	Achieves reasonable levels in all components of health-related fitness.	(1,2,3,4,5)

**C. Suggested Assessment Methods**

1. Student project
2. Student log
3. Student journal
4. Written test

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:24.4, et seq.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§709. Standard 5**

A. Standard 5 demonstrates responsible personal and social behavior in physical activity settings.

1. Intent. The intent of this standard is to develop activity-specific safe practices, rules, procedures and etiquette.

**B. Benchmarks**

5-E-1	Demonstrates good sportsmanship and fair play in a variety of settings	(1,2,5)
5-E-2	Recognizes and avoids unsafe practices and situations	(2,4,5)
5-E-3	Works cooperatively with teachers and peers to reach a common goal	(1,2,5)
5-E-4	Exhibits independence and ability to succeed in groups	(1,2,5)
5-E-5	Accepts and gives constructive feedback	(1,2,5)

**C. Suggested Assessment Methods**

1. Teacher observation
2. Event task
3. Group project
4. Student journals
5. Observational record

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§711. Standard 6**

A. Standard 6 demonstrates understanding and respect for differences among people in physical activity settings.

1. Intent. The intent of this standard is to build on the foundation laid in early grades that encourages students to develop cultural/ethnic self-awareness.

**B. Benchmarks**

6-E-1	Displays positive attitudes toward self and others through physical activity.	(1,5)
6-E-2	Demonstrates tolerance for individual differences.	(1,5)
6-E-3	Explores the role of culture in physical activities of other countries.	(1,4,5)

**C. Suggested Assessment Methods**

1. Group project
2. Student log
3. Student project
4. Portfolio
5. Teacher Observation

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§713. Standard 7**

A. Standard 7 understands that physical activity provides the opportunity for enjoyment, challenge, self-expression, and social interaction.

1. Intent. The intent of this standard is to identify activities that will challenge, encourage and promote the enjoyment and commitment to engaging in regular physical activities.

**B. Benchmarks**

7-E-1	Exhibits positive feelings about participation in physical activity.	(1,5)
7-E-2	Engages in the challenge of new activities.	(1,3,4)
7-E-3	Participates enthusiastically in independent and interactive physical activities.	(1,2,3,5)
7-E-4	Participates in and designs games, gymnastics and dance to increase skill competence.	(1,2,3,4,5)
7-E-5	Acknowledges the role of games, sports, and dance in getting to know and understand self and others.	(1,4,5)

**C. Suggested Assessment Methods**

1. Group project
2. Portfolio
3. Student log
4. Teacher observation
5. Student project

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**Chapter 9. Grades 6-8C Middle School Cluster Level §901. Standard 1**

A. Standard 1 demonstrates competency in many movement forms and proficiency in a few movement forms.

B. The middle school student is expected to acquire competence in a variety of movement forms. As a result of an increased ability to vary skills, students are able to participate successfully in dance activities, outdoor pursuits, and modified versions of team and individual sports. In order to do this, students should have gained competence in the basic skills and their application to modified versions of these movement forms.

**C. Benchmarks**

1-M-1	Demonstrates the ability to combine locomotor, non-locomotor, and manipulative skills (e.g., combines running, stopping, throwing, shooting and kicking)	(3)
1-M-2	Exhibits basic strategies related to specific lead-up games (e.g., basic offense and defense; strategies related to cooperative activities)	(1,2,4)
1-M-3	Demonstrates basic competency in more complex motor skills and more advanced specialized skills (e.g. hand dribble and foot dribble to prevent an opponent from stealing) related to specific sports activities (e.g., participates in modified versions of team sports such as basketball, volleyball, softball, soccer)	(2,4)
1-M-4	Demonstrates the ability to create rhythmic movement patterns (e.g., performs movements and routines in activities such as square dance, line dance, modern dance, aerobics, kick boxing, Tai Chi, Yoga)	(1,2,4,5)
1-M-5	Demonstrates strategies for net and invasion games (e.g., keeping object going with partner using striking pattern, placing ball away from opponent in a racket sport, hand and foot dribble while preventing an opponent from stealing the ball)	(1,2,4,5)

D. Suggested Assessment Methods

1. Teacher observation
2. Role playing
3. Self assessment
4. Group project
5. Written test
6. Student project

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§903. Standard 2**

A. Standard 2 applies movement concepts and principles to the learning and development of motor skills.

B. Middle school students' increasing competence affords them opportunities to develop more advanced knowledge and understanding. This is exemplified through their growing understanding and application of more advanced movement and game strategies, critical elements of advanced movement skills, and the identification of characteristics representative of highly skilled performance. Concepts of practice in relation to performance can be understood and applied, and are indicative of the increasing complexity of discipline-specific knowledge that can be used (e.g., lengthening the lever increases linear velocity).

C. Benchmarks

2-M-1	Analyzes and applies basic concepts to improve movement, dance, fitness, game and sports skills being practiced (e.g., throws softball different distances using varied trajectories and amounts of force).	(2,4)
2-M-2	Demonstrates how practicing movement skills improves performance (e.g., maintains a log of practice attempts for throwing a softball at a target, compares differences in successful throws from first attempts to last attempts).	(4)
2-M-3	Analyzes and applies advanced movement and game strategies (e.g., guards another player who is dribbling a basketball, attempts to prevent a pass or shot; demonstrates game strategies involved in playing tennis, pickle ball, bounce ball).	(2,4)
2-M-4	Recognizes and applies principles necessary for safe and skilled physical performance (e.g., never shoot an arrow up into the air; always include a warm-up and cool-down component as part of the activity).	(2,4)

D. Suggested Assessment Methods

1. Teacher observation
2. Role playing
3. Self-assessment
4. Student log

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§905. Standard 3**

A. Standard 3 exhibits a physically active lifestyle.

B. The middle school student should participate in at least one physical activity outside of the school setting on a regular basis. It is the intent of this standard to increase

awareness of the opportunities for participation and interest in participating in a superfluous of different kinds of physical activity experiences. Students should be able to independently set physical activity goals and participate in individualized programs of physical activity and exercise based on the results of fitness assessments, personal fitness goals and interest. Greater and more specific understanding of long-term health benefits and understanding the relationship of health maintenance to the quality of lifelong health is expected.

C. Benchmarks

3-M-1	Identifies opportunities in the school and community for regular participation in physical activity (e.g., rollerblading, bicycling, hiking intramural activities and extracurricular activities).	(2,3,4)
3-M-2	Explores a variety of new physical activities for personal interest in and out of physical education class (e.g., participates in games, sports, dance and outdoor pursuits both in and out of school based on individual interests and capabilities; explores new activities on the Internet).	(2,3,4)
3-M-3	Establishes and pursues personal physical activity goals through regular physical activity (e.g., participates in an individualized physical activity program designed with the help of the teacher).	(1,2,3,4)
3-M-4	Describes the elements of a healthy lifestyle (e.g., explains the health-related and skill-related components of a healthy lifestyle; uses heart rate monitors to discuss cardiovascular health).	(1,2,3,4)

D. Suggested Assessment Methods

1. Teacher observation
2. Interview
3. Self-assessment
4. Student project
5. Portfolio
6. Parental Report
7. Student log

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§907. Standard 4**

A. Standard 4 achieves and maintains a health-enhancing level of physical fitness.

B. Students at this level should participate in physical activities that address each component of health-related fitness, including muscular strength and endurance flexibility, body composition, as well as cardiorespiratory endurance. They can assess their personal fitness status for each component. Students are introduced to the various principles of training (e.g., threshold, overload, specificity) and how they can be utilized in improving physical fitness. At this level, students should be able to interpret the results of physical fitness assessments and use this information to assist in the development of individualized physical fitness goals with little assistance from the teacher.

C. Benchmarks

4-M-1	Participates in and sustains moderate to vigorous physical activity in a variety of settings (e.g., activity should elevate heart rate to target heart rate zone).	(4)
4-M-2	Develops individual goals for each of the health-related fitness components (e.g., assess individual fitness levels and set individual goals based on fitness results).	(2,4)
4-M-3	Participates in self-assessment for health-related fitness and meets the standards for that particular test for their appropriate age group.	(3,4)
4-M-4	Analyzes and applies basic principles of training to improve health-related fitness [e.g., addresses development of a workout plan, warm-up, cool-down, and includes such principles as FITT (frequency, intensity time and type), overload, specificity].	(2,4)

D. Suggested Assessment Methods

1. Teacher observation
2. Written test
3. Observational record
4. Student project
5. Peer Observation

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§909. Standard 5**

A. Standard 5 demonstrates responsible personal and social behavior in physical activity settings.

B. Students are beginning to seek greater independence from adults. They make appropriate decisions to resolve conflicts arising from the powerful influence of peers and to follow pertinent practices, rules and procedures necessary for successful performance. They practice appropriate problem-solving techniques to resolve conflicts when necessary in competitive activities. Students reflect on the benefits of the role of rules, procedures, safe practices, ethical behavior, and positive social interaction in physical activity settings.

C. Benchmarks

5-M-1	Participates in cooperative activities in both leadership and follower roles.	(1,2,4,5)
5-M-2	Utilizes time effectively to complete assigned tasks.	(3,4)
5-M-3	Participates in establishing and following rules, procedures and etiquette that are safe and effective for specific activity situations.	(1,2,4)

D. Suggested Assessment Methods

1. Teacher assessment
2. Group project
3. Peer observation
4. Student log
5. Self-assessment
6. Student project
7. Written test
8. Event task

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§911. Standard 6**

A. Standard 6 demonstrates understanding and respect for differences among people in physical activity settings.

B. At the middle school level, the concept of physical activity as a microcosm of modern culture and society is introduced. Students should be able to recognize the role of physical activity in understanding diversity in modern culture. Students continue to include and support each other and respect the limitations and strengths of group members.

C. Benchmarks

6-M-1	Analyzes, describes and participates in simple forms of dances and games of various cultures from around the world (e.g., incorporate the history of individual sports or discuss the history of the Olympics).	(3,4)
6-M-2	Recognizes commonalities and differences in people of different genders, cultures, ethnicity, abilities and skill levels, and seeks to learn more about both.	(2,4,5)
6-M-3	Recognizes the role of sport, games and dance in getting to know and understand others of like and different backgrounds (e.g., write a report on the history and their impact today).	(3,5)

D. Suggested Assessment Methods

1. Teacher Observation
2. Student Log
3. Self-Assessment
4. Interview
5. Portfolio
6. Student Project
7. Role Playing
8. Event Task
9. Group Project

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§913. Standard 7**

A. Standard 7 understands that physical activity provides the opportunity for enjoyment, challenge, self-expression, and social interaction.

B. A primary reason middle school students seek physical activity is for group membership and positive social interaction. Physical activities provide a positive outlet for competition with peers and serve as a means of gaining the respect and recognition of others. Skill expertise is increasingly valued. Physical activity can increase self-confidence and self-esteem as students discover renewed enjoyment of participation. Feelings of independence are beginning to be important as well. Physical activities can provide confidence as students start to take steps toward independence. Challenge is found in both high levels of competition as well as in new or different activities. As students experience a greater awareness of feelings, the avenues of self-expression provided by dance, gymnastics and various sport activities become increasingly more important.

C. Benchmarks

7-M-1	Participation in challenging activities and in activities requiring the utilization of newly acquired skills (e.g., participates in recreational opportunities outside of school according to their abilities).	(2,4)
7-M-2	Identifies the social, emotional and physical benefits of participation in physical activities (e.g., students explain the benefits of physical activity).	(1,4)
7-M-3	Demonstrates enjoyment from participation in physical activities.	(5)

D. Suggested Assessment Methods

1. Teacher observation
2. Student log
3. Self-assessment
4. Student project
5. Portfolio
6. Event task

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**Chapter 11. Grades 9-12C High School Cluster Level**

**§1101. Standard 1**

A. Standard 1 demonstrates competency in many movement forms and proficiency in a few movement forms.

B. Students in grades 9 and above have reached a high level of competency in movement forms and are ready to attempt mastery in some chosen activities. Through observation, analysis and practice, they develop movement skills to the highest level possible for them at this developmental stage. They participate in a variety of individual, dual and team sports as well as in recreational games, dance and challenge activities.

C. Benchmarks

1-H-1	Demonstrates proficiency in applying advanced skills, strategies and rules for specific activities (e.g., plays games such as racquet, field and court sports that require advanced eye/body coordination and high levels of strategy).	(1,2,3,4,5)
1-H-2	Develops outdoor and lifelong leisure pursuits.	(1,3,4,5)

D. Suggested Assessment Methods

1. Teacher observation
2. Portfolio
3. Observational record
4. Written test
5. Performance assessment

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§1103. Standard 2**

A. Standard 2 applies movement and principles to the learning and development of motor skills.

B. Students at this grade level are beginning to specialize in a few movement forms leading toward proficiency. They bring together many disciplines such as physics and anatomy to gain a better understanding of how and why they move as

they do. They predict performance outcomes based on movement principles and plan their goals accordingly.

C. Benchmarks

2-H-1	Synthesizes previously learned skills and incorporates them into dynamic physical activity settings.	(1,2,3,4)
2-H-2	Identifies and applies critical elements to enable the development of movement competence/proficiency (e.g., applies biomechanical concepts and principles to analyze and improve performance of self and others).	(1,2,3,4)

D. Suggested Assessment Methods

1. Teacher observation
2. Student project
3. Observational record
4. Peer observation
5. Group project

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§1105. Standard 3**

A. Standard 3 exhibits a physically active lifestyle.

B. Students participate in a variety of physical activities that can be continued for a lifetime. Students at this level should be able to develop sound strategies for incorporating physical activity into a comprehensive lifetime activity plan.

C. Benchmarks

3-H-1	Utilizes available community resources to promote an active lifestyle (e.g., develop strategies to deal with participation that will occur over their life span).	(1,2,3,4,5)
3-H-2	Participates in lifetime recreational activities specific to fitness components (e.g., rock climbing, backpacking, power walking, rollerblading, orienteering).	(1,2,3,4,5)
3-H-3	Participates regularly in physical activities that contribute to improved physical fitness and wellness.	(3,4,5)

D. Suggested Assessment Methods

1. Teacher observation
2. Student report
3. Observational record
4. Portfolio
5. Student journal
6. Interview
7. Group project

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§1107. Standard 4**

A. Standard 4 achieves and maintains a health-enhancing level of physical fitness.

B. Students should begin to choose and participate on a regular basis in physical activities that enable them to achieve and maintain health-related fitness. Students should be able to interpret information from fitness tests and begin to design, with teacher guidance, a health-related fitness plan.



C. Benchmarks

4-H-1	Participates in a variety of health-enhancing physical activities in both school and non-school settings.	(3,4,5)
4-H-2	Identifies and evaluates personal physiological response to exercise (e.g., monitor body responses before, during and after exercise by checking such factors as heart rate, perceived exertion, recovery time and adequate fluid intake).	(2,3,4)
4-H-3	Designs health-related fitness programs based on accurately assessed fitness profiles.	(1,2,3,4,5)

D. Suggested Assessment Methods

1. Teacher observation
2. Written test
3. Observational record
4. Student project
5. Peer observation

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§1109. Standard 5**

A. Standard 5 demonstrates responsible personal and social behavior in physical activity settings.

B. Students demonstrate responsible personal and social behavior through following safe practices, rules, procedures and etiquette in all physical activity settings. Students do so with an understanding of their responsibility as a positive influence on the behavior of others. They anticipate potential conflicts and strive to prevent them from happening or quickly resolve conflicts that do occur in socially accepted ways.

C. Benchmarks

5-H-1	Demonstrates safe and appropriate use and care of equipment and facilities (e.g., anticipated potentially dangerous situations related to physical activity).	(1,3,4)
5-H-2	Identifies the inherent risks associated with physical activity in extreme environments (e.g., describe safety techniques to use to avoid dehydration, over-exertion, heat exhaustion and hypothermia during physical activity in extreme environments).	(1,2,4,5)
5-H-3	Initiates and models independent and interdependent personal behaviors in physical activity settings.	(1,2,5)

D. Suggested Assessment Methods

1. Teacher observation
2. Student project
3. Observational record
4. Student report
5. Self-assessment
6. Peer observation
7. Written tests

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§1111. Standard 6**

A. Standard 6 demonstrates understanding and respect for differences in physical activity settings.

B. Students recognize the influence of sport on society. They analyze the effects of cultural differences on the various types of sports activities seen in different parts of the world. They explore the history and purposes of international competitions. They compare games and physical activities in different countries and describe how multiculturalism influences these games. Students begin to develop their own feelings about inclusion of people with physical, cultural and emotional differences in the physical activities in which they participate.

C. Benchmarks

6-H-1	Explores how age, gender, ethnicity, culture and economic status affect physical activity selection and participation.	(1,2,3,4,5)
6-H-2	Develops and integrates strategies for inclusion of <i>all</i> in physical activities.	(1,2,3,4,5)

D. Suggested Assessment Methods

1. Teacher observation
2. Student report
3. Observational record
4. Group project
5. Portfolio

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§1113. Standard 7**

A. Standard 7 understands that physical activity provides the opportunity for enjoyment, challenge, self-expression, and social interaction.

B. Students enjoy expressing their feelings through play and other physical activities. Student members of competitive teams or activity groups experience positive feelings associated with individual and group successes and learn how to control feelings of disappointment in losing situations. Students seek out challenging activities without fear. They recognize and discuss the value of participation in physical activities and the social interaction it provides.

C. Benchmarks

7-H-1	Participates for enjoyment in a variety of physical activities in competitive and recreational settings (e.g., identifies participation factors that contribute to enjoyment and achievement of a team).	(1,2,4,5)
7-H-2	Identifies positive aspects of participation in several different physical and social activities with others (e.g., jogging, dancing, walking, recreational activities).	(1,2,4,5)
7-H-3	Illustrates benefits of physical education on social and emotional well-being (e.g., participates in physical activities to relax and relieve stress).	(1,2,5)

D. Suggested Assessment Methods

1. Written report
2. Student journal
3. Student projects
4. Portfolio
5. Event task

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

**Subpart 5. Cluster Level Charts**  
**Chapter 15. Physical Education Standards by Levels**  
**§1501. Standards 1-7**

**A. Standard I**

Physical Education Standards by Levels	
Standard I: Demonstrates competency in many movement forms and proficiency in a few movement forms.	
Level P: Primary (K-2)	Level E: Elementary (Grades 3-6)
1-P-1 Performs locomotor and non-locomotor skills at a basic level progressing to simple sequences utilizing shapes, levels, directions, pathways, and ranges.	1-E-1 Demonstrates mature forms in locomotor, non-locomotor and manipulative skills.
1-P-2 Demonstrates ways to manage body weight in a variety of situations alone or within a group.	1-E-2 Combines a variety of motor skills for specific sports.
1-P-3 Performs manipulative skills using a variety of equipment in different environmental conditions.	1-E-3 Exhibits ability to manipulate objects with the skills necessary to participate in games and lead-up activities.
1-P-4 Performs basic rhythmic skills, alone, with a partner or within a group.	1-E-4 Demonstrates the ability to create rhythmic movement patterns and dances.

Physical Education Standards by Levels	
Standard I: Demonstrate competency in many movement forms and proficiency in a few movement forms.	
Level M: Middle School (Grades 6-8)	Level H: High School (Grades 9-12)
1-M-1 Demonstrates ability to combine skills.	1-H-1 Demonstrates proficiency in applying advanced skills, strategies and rules for specific activities.
1-M-2 Exhibits basic strategies related to specific lead-up games.	1-H-2 Develops outdoor and lifelong leisure pursuits.
1-M-3 Demonstrates basic competency in more complex motor and advanced specialized skills related to specific sports activities.	
1-M-4 Demonstrates the ability to create rhythmic movement patterns.	
1-M-5 Demonstrates strategies for net and invasion games.	

**B. Standard II**

Physical Education Standards by Levels	
Standard II: Applies movement concepts and principals to the learning and development of motor skills.	
Level P: Primary (K-2)	Level E: Elementary (Grades 3-6)
2-P-1 Integrates other content areas through movement.	2-E-1 Integrates movement concepts with other content areas.
2-P-2 Demonstrates and uses a variety of relationships with objects.	2-E-2 Applies critical elements to improve personal performance in fundamental and selected specialized motor skills.
2-P-3 Identifies fundamental movement patterns.	2-E-3 Recognizes and describes critical elements of more complex movement patterns.
2-P-4 Establishes a beginning movement vocabulary.	2-E-4 Employs the concept of efficient and effective practice to improve skills in appropriate settings.
2-P-5 Applies appropriate concepts to performance.	

Physical Education Standards by Levels	
Standard II: Applies movement concepts and principals to the learning and development of motor skills.	
Level M: Middle School (Grades 6-8)	Level H: High School (Grades 9-12)
2-M-1 Analyzes and applies basic concepts to improve movement, dance, fitness, game and sports skills being practiced.	2-H-1 Synthesizes previously learned skills and incorporates them into dynamic physical activity settings.
2-M-2 Demonstrates how practicing movement skills improves performance.	2-H-2 Identifies and applies critical elements to enable the development of movement competence/proficiency.
2-M-3 Analyzes and applies advanced movement and game strategies.	
2-M-4 Recognizes and applies principles necessary for safe and skilled physical performance.	

**C. Standard III**

Physical Education Standards by Levels	
Standard III: Exhibits a physically active lifestyle.	
Level P: Primary (K-2)	Level E: Elementary (Grades 3-6)
3-P-1 Participates regularly in vigorous activities outside of physical education class.	3-E-1 Describes the physical, emotional, and psychological benefits of participation in health-related activities.
3-P-2 Acknowledges that physical activity is good for personal well being.	2-E-2 Identifies several moderate to vigorous physical activities that provide personal pleasure.
3-P-4 Experiences and expressed satisfaction from participation in physical activity.	3-E-3 Selects and participates regularly in physical activities for the purpose of improving skills and health.

Physical Education Standards by Levels	
Standard III: Exhibits a physically active lifestyle.	
Level M: Middle School (Grades 6-8)	Level H: High School (Grades 9-12)
3-M-1 Identifies opportunities in the school and community for regular participation in physical activity.	3-H-1 Utilizes available community resources to promote an active lifestyle.
3-M-2 Explores a variety of new physical activities for personal interest in and out of physical education class.	3-H-2 Participates in lifetime recreational activities specific to fitness components.
3-M-3 Establishes and pursues personal physical activity goals through regular physical activity.	3-H-3 Participates regularly in physical activities that contribute to improved physical fitness and wellness.
3-M-4 Describes the elements of a healthy lifestyle.	

D. Standard IV

Physical Education Standards by Levels	
<b>Standard IV: Achieves and maintains a health-enhancing level of physical fitness.</b>	
Level P: Primary (K-2)	Level E: Elementary (Grades 3-6)
4-P-1 Sustains activity from moderate to vigorous intensity levels while participating in physical activity.	4-E-1 Identifies several activities related to each component of health-related fitness.
4-P-2 Identifies physiological signs of moderate physical activity.	4-E-2 Participates in self-assessment for health-related fitness and meets the standards for that particular test for their appropriate fitness.
4-P-3 Demonstrates activities that increase muscular strength and endurance.	4-E-3 Selects an activity program designed to improve health-related fitness.
4-P-4 Demonstrates moving each joint through a full range of motion.	4-E-4 Adopts personal goals based upon results of fitness assessments.

Physical Education Standards by Levels	
<b>Standard IV: Achieves and maintains a health-enhancing level of physical fitness.</b>	
Level M: Middle School (Grades 6-8)	Level H: High School (Grades 9-12)
4-M-1 Participates in and sustains moderate to vigorous physical activity in a variety of settings.	4-H-1 Participates in a variety of health-enhancing physical activities in both school and non-school settings.
4-M-2 Develops individual goals for each of the health-related fitness components.	4-H-2 Identifies and evaluates personal physiological response to exercise.
4-M-3 Participates in self-assessment for health-related fitness and meets the standards of that age group.	4-H-3 Designs health-related fitness programs based on accurately assessed fitness profiles.
4-M-4 Analyzes and applies basic principles of training to improve health-related fitness.	

E. Standard V

Physical Education Standards by Levels	
<b>Standard V: Demonstrates responsible personal and social behavior in physical activity settings.</b>	
Level P: Primary (K-2)	Level E: Elementary (Grades 3-6)
5-P-1 Demonstrates established protocols with little reinforcement.	5-E-1 Demonstrates good sportsmanship and fair play in a variety of settings.
5-P-2 Acknowledges the importance of being aware of one's surroundings and acting in a safe manner in physical activity settings.	5-E-2 Recognizes and avoids unsafe practices and situations.
5-P-3 Works cooperatively with another to complete an assigned task.	5-E-3 Works cooperatively with teachers and peers to reach a common goal.
5-P-4 Applies the elements of socially acceptable conflict resolution in physical activity settings.	5-E-4 Accepts and gives constructive feedback.

Physical Education Standards by Levels	
<b>Standard V: Demonstrates responsible personal and social behavior in physical activity settings.</b>	
Level M: Middle School (Grades 6-8)	Level H: High School (Grades 9-12)
5-M-1 Participates in cooperative activities in both leadership and follower roles.	5-H-1 Demonstrates safe and appropriate use and care of equipment and facilities.
5-M-2 Utilizes time effectively to complete assigned tasks.	5-H-2 Identifies the inherent risks associated with physical activity in extreme environments.
5-M-3 Participates in establishing and following rules, procedures, and etiquette that are safe and effective for specific activity situations.	

F. Standard VI

Physical Education Standards by Levels	
<b>Standard VI: Demonstrates an understanding for differences among people.</b>	
Level P: Primary (K-2)	Level E: Elementary (Grades 3-6)
6-P-1 Recognizes the importance of seeking out, participating with, and showing respect for people of like and different physical abilities.	6-E-1 Displays positive attitudes toward self and others through physical activity.
6-P-2 Interacts with others regardless of personal differences.	6-E-2 Demonstrates a tolerance for individual differences.
6-P-3 Demonstrates a willingness to help a fellow student who has difficulty completing a skill.	6-E-3 Explores the role of culture in physical activities of other countries.

Physical Education Standards by Levels	
<b>Standard VI: Demonstrates an understanding for differences among people.</b>	
Level M: Middle School (Grades 6-8)	Level H: High School (Grades 9-12)
6-M-1 Analyzes, describes and participates in simple forms of dances and games of various cultures from around the world.	6-H-1 Explores how age, ethnicity, culture and economic status affect physical activity selection and participation.
6-M-2 Recognizes commonalities and differences in people of different genders, cultures, ethnicity, abilities and skill levels and seeks to learn more about them.	6-H-2 Develops and integrates strategies for inclusion of all in physical activities.

G. Standard VII

Physical Education Standards by Levels	
<b>Standard VII: Understands that physical activity provides opportunity for enjoyment, challenges, etc.</b>	
Level P: Primary (K-2)	Level E: Elementary (Grades 3-6)
7-P-1 Describes the feelings that result from challenges, successes and failures in physical activity, alone or in groups.	7-E-1 Exhibits positive feelings about participation in physical activity.
7-P-2 Distinguishes feelings about and during physical activity.	7-E-2 Engages in the challenge of new activities.
7-P-3 Displays a willingness to participate in new activities.	7-E-3 Participates enthusiastically in independent and interactive physical activities.
	7-E-4 Participates in and designs games, gymnastics and dance to increase skill competence.
	7-E-5 Acknowledges the roles of games, sports, and dance in getting to know and understand self and others.

Physical Education Standards by Levels	
Standard VII: Understands that physical activity provides opportunity for enjoyment, challenges, etc.	
Level M: Middle School (Grades 6-8)	Level H: High School (Grades 9-12)
7-M-1 Participates in challenging activities and in activities requiring the utilization of newly acquired skills.	7-H-1 Participates for enjoyment in a variety of physical activities in competitive and recreational settings.
7-M-2 Identifies the social, emotional and physical benefits of participation in physical activities.	7-H-2 Identifies positive aspects of participation in several different physical and social activities with others.
7-M-3 Demonstrates enjoyment from participation in physical activities.	7-H-3 Illustrates benefits of physical education on social and emotional well-being.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

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Interested persons may submit comments until 4:30 p.m., April 11, 2002, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

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

**RULE TITLE: Bulletin 102C Louisiana Physical Education Content Standards**

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

The implementation of the Louisiana Physical Education Content Standards will cost the state Department of Education approximately \$10,400 for preparing and disseminating the new policy. Local school districts offer physical education courses, but the Physical Education Content Standards should improve education practices and coherence in the local physical education programs.

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

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

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

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

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

There are no effects on competition and employment.

Marlyn Langley  
Deputy Superintendent  
0202#054

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 741C Louisiana Handbook for School Administrators (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 741, referenced in LAC 28:I.901.A., promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). Revisions to Bulletin 741, *Louisiana Handbook for School Administrators*, Standards 2.116.13 and 2.116.15, will allow students to receive 1/2 unit of Carnegie credit for GEE 21 Remediation by attending a minimum of 40 hours of summer school and will allow school districts to offer a minimum of 50 hours of instruction in GEE 21 Remediation in summer school for 1/2 unit of credit. These changes will allow students to earn Carnegie credit while getting needed remediation in an effort to increase their scores above the *Unsatisfactory* achievement level on the GEE 21.

**Title 28  
Education**

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

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

A. Bulletin 741

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A(10), (11), and (15); R.S. 17:7(5), (7), and (11); R.S. 17:10, and 11; R.S. 17:22(2), and (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education LR 26:635 (April, 2000); LR 26:1260 (June, 2000), LR 28:

**Proposed Policy**

**2.116.13** In order to be eligible to receive credit, summer school students shall be in attendance a minimum of 70 hours for 1/2 unit of new credit, 47 hours for 1/2 unit of repeat credit, or 40 hours for 1/2 unit of credit for GEE 21 Remediation.

**2.116.15** Summer schools shall offer 90 hours of instruction for 1/2 unit of new credit, 60 hours of instruction for 1/2 unit of repeat credit, and 50 or more hours for 1/2 unit for GEE 21 Remediation.

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Interested persons may submit written comments until 4:30 p.m., April 11, 2002, to Nina A. Ford, 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: Bulletin 741C Louisiana Handbook for  
School Administrators**

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

The proposed revision to Bulletin 741, which allows local school districts to offer at least 50 hours of instruction in GEE Remediation in summer school for a 1/2 unit of Carnegie credit, will have no implementation costs or savings to state or local governmental units. The local school districts are currently offering remediation instruction. The rule merely states the number of hours of instruction a district is required to offer during summer school so students may receive Carnegie credit.

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

There are no effects on costs or economic benefits to directly affected persons or non-governmental groups. The rule change allows students attending 40 hours of GEE 21 Remediation instruction to be eligible to receive a 1/2 unit of Carnegie credit for GEE 21 Remediation.

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

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

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

There are no effects on competition and employment.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
0202#016

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 904C Guidelines for the Submission of a  
Charter School Proposal  
Fiscal Oversight Procedures  
(LAC 28:I.904)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions Bulletin 904C Guidelines for the Submission of a Charter School Proposal referenced in LAC 28:I.904. The proposed revisions will improve the monitoring of fiscal and programmatic compliance issues common to charter schools and improve the delivery of technical assistance to charter schools that receive state and/or federal funding from BESE or LDOE. This action is required by Act 991 (HB 1282) of the 2001 Regular Session, which revised the charter school law by adding two new subsections that deal with the fiscal practices and reporting requirements of charter schools.

**Title 28  
EDUCATION**

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

**§904. Charter Schools**

A. Initial Budgets As Submitted In Charter School Proposals. The current guidelines approved by BESE require Type 2 charter schools to provide detailed budget data in their proposal. This data is reviewed by BESE staff, the proposal review committee, and the LDOE Division of Education Finance. The budget, as well as the entire proposal is incorporated into the charter agreement. The budget must include:

1. summary of revenues for years 1-5 (including all funding sources);
2. summary of expenditures by category, for years 1-5;
3. details of budget expenditures by object code, for years 1-5;
4. explanatory narratives by object code of budget expenditures;
5. spreadsheets comparing revenues and expenditures for years 1-5;
6. assurances that the charterer will adhere to the Local Government Budget Act (R.S. 39:1301-1315). (Each charter school will submit an annual operating budget to BESE no later than July 1 of each year using the standard budget summary forms and budget detail forms developed by BESE and LDOE, and using guidance provided in the LAUGH Handbook [Bulletin 1929].)

B. Financial Reporting

1. Each charter school will submit an Annual Financial Report to LDOE that is required around September 30 of each year.
2. Each charter school will submit quarterly reports to BESE listing revenues and expenditures for that quarter and cumulative for the fiscal year to date. Those reports will be due on October 15, January 15, April 15 and July 15, using forms developed by BESE and LDOE.

C. State And Federal Allocations By Student Membership Count. Each Type 2 charter school must include in its original proposal projections of student enrollment for the first five years.

1. State Allocations

a. Enrollment projections are verified with the school principal or other designated school representative prior to the beginning of each school year.

b. The current guidelines approved by BESE require that initial monthly allocations shall be calculated by the LDOE, Division of Education Finance, using these projected student counts each year, and

c. once the October 1 student counts are submitted, monthly allocations are re-calculated and adjusted to reflect the actual student count.

d. In order to provide for adjustments in allocations made to Type 2 charter schools, an additional pupil membership count will be conducted on or about February 15 to reflect any changes in pupil enrollment that may occur after October 1 of each year. Any allocation adjustment made pursuant to this February 15 count shall not be retroactive and shall be applicable for the period from March 1 through the end of the school year.

e. The data acquired from the pupil membership counts will be used by LDOE for trend analysis to project allocations for the next school year.

## 2. Federal Allocations

a. The Division of Education Finance will provide to BESE staff with a quarterly report of allocations of federal program funds made to charter schools.

b. The responsible Division/Program Directors within LDOE will provide periodic reports to BESE on the status of the federally funded program(s) at each charter school.

c. Charter schools must submit copies of invoices or similar documentation to BESE to substantiate all reimbursement requests for federal grant funds issued from the BESE office. All requests for reimbursements must be signed by the duly authorized representative of the charterer.

D. Audits of State And Federal Funds. The guidelines and the charter agreement include language notifying each charter school that it is subject to audit by BESE, LDOE, the Legislative Auditor, and any other appropriate state official.

1. The charterer must agree to follow state audit and reporting requirements established by the Legislative Auditor and R.S. 24:513-556.

## E. General Fiscal Procedures

1. The charter school guidelines and/or the charter contract signed by each charterer stipulates that:

a. "The parties acknowledge that the Louisiana Department of Education is developing procedures and rules to ensure fiscal and educational accountability for charter schools, the content of which shall be incorporated into this contract upon their adoption as regulations by BESE."

b. "The charterer shall present all documentation requested by BESE or LDOE relative to compliance with law, guidelines or contract within 10 days."

c. "Charterer shall allow representatives from BESE, the Louisiana Department of Education, the Louisiana Legislative Auditor, any other appropriate state officials, and contracted evaluators to visit the school site at any time to insure that the school is being operated pursuant to its charter and applicable laws and regulations."

d. "Charterer shall allow the state officials full access to its financial and educational records, reports, files and documents of any kind."

e. "Charterer further agrees to supply timely all reports, test results and other information which are required under its charter, state law and regulations."

2. Any charter school that receives state or federal money directly from BESE or LDOE. The president or chairman of the non-profit corporation (charterer) that operates the charter school will be the official contact and duly authorized representative for all notices or inquiries issued by BESE, LDOE, or other state or federal agencies.

The board of directors of the non-profit corporation may identify and officially designate by board motion, a member of that board of directors other than the president or chairman who will serve as their duly authorized representative. Copies of all notices or inquiries will also be provided to the school principal.

3. All transactions or requests submitted by the charterer to BESE must be signed by the duly authorized representative of the charterer.

## F. Technical Assistance

1. BESE and LDOE will conduct annual fiscal and programmatic inservice meetings or workshops. It is the responsibility of the charterer to send appropriate staff or representatives of the charter school to these inservice meetings.

2. BESE and LDOE will provide charterer with copies of:

a. LAUGH Guide (Louisiana Accounting and Uniform Government Handbook) (LDOE Bulletin 1929);

b. Best Financial Practices for Louisiana Local Government (Louisiana Legislative Auditor);

c. School Activity Accounts (Accounting, Auditing, and Financial Reporting) (Louisiana Legislative Auditor).

NOTE: However, it is the responsibility of the charterer to institute and implement acceptable programmatic and fiscal procedures.

## G. Remedies and Penalties

1. Per BESE action in December 1999, the Board will withhold funds to charter schools that do not submit requested data by designated deadlines to Board staff, the Department, and the evaluators contracted by BESE until such time as the required information is provided.

2. Any failure by the charterer to provide required fiscal or programmatic information will be reported to BESE at its next scheduled meeting. The duly authorized representative of the charterer must then appear before BESE at that meeting to explain the failure to provide the required information.

3. R.S. 17:3992 provides for revocation of a charter upon determination by the chartering authority that the charter school or its officers or employees did any of the following:

a. committed a material violation of any of the conditions, standards, or procedures provided for in the approved charter;

b. failed to meet or pursue within the agreed timelines any of the academic and other educational results specified in the approved charter;

c. failed to meet generally accepted accounting standards of fiscal management;

d. violated any provision of law applicable to a charter school, its officers, or employees.

## H. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3971-3973, 3981-3983, 3991-3993, 3995-3999, and 4001; and R.S. 39:75.C(1)(b).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 24:1683 (September 1998); amended LR 25:249 (February 1999); LR 26:460 (March 2000), LR 28:

Interested persons may submit written comments until 4:30 p.m., April 11, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 904C Guidelines for the  
Submission of a Charter School  
Proposal C Fiscal Oversight Procedures**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
This action will have no fiscal effect other than \$162 for advertising in the *Louisiana Register*.  
Act 991 (HB 1282) of the 2001 Regular Session revised some fiscal practices and reporting requirements of charter schools. The changes being made to Bulletin 904, "Guidelines for the Submission of a Charter School Proposal," reflect legislative and policy changes which will improve the monitoring of fiscal and programmatic compliance issues common to charter schools and improve the delivery of technical assistance to charter schools.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
This action will have 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)  
This action will have no effect on cost and/or economic benefits to directly affected persons of nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This action will have no effect on competition and employment.

Weegie Peabody  
Executive Director  
0202#014

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 1566C Guidelines for Pupil Progression  
(LAC 28:XXXIX.905 and 1301)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 1566, *Guidelines for Pupil Progression*, referenced in LAC 28:1.907.A. The rule change mandates the number of required hours per subject for the fourth and eighth grade Summer Remediation Program at 50 hours. Prior to this rule change, the minimum number of instructional hours per subject was recommended at 50 to 60, but actually ranged from 27 to 145 hours. The action is necessary to ensure statewide uniformity in the Summer Remediation Program.

**Title 28  
EDUCATION**

**Part XXXIX. Bulletin 1566C Guidelines for Pupil  
Progression**

**§905. Definition and Purpose**

A. - B.3. ...

4. Beginning in the summer of 2000, remediation in the form of summer school shall be provided to students who score at the *unsatisfactory* level on LEAP 21st Century (LEAP 21) English language arts or mathematics tests. Summer remediation shall consist of a minimum of 50 hours of instruction per subject.

5. - 7. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2073 (November 1999), amended LR 28:

**Chapter 13. Appendix B**

**§1301. LEAP for the 21st Century, High Stakes Testing  
Policy**

A.1. - 2. ...

3. LEAs shall offer a minimum of 50 hours per subject of summer remediation and retest opportunities in English language arts and mathematics at no cost to students who did not take the spring LEAP 21 tests or who score at the *unsatisfactory* level on the spring tests.

B.1. - 2. ...

3. LEAs shall offer a minimum of 50 hours per subject of summer remediation and retest opportunities in English language arts and mathematics at no cost to students who did not take the spring LEAP 21 tests or who score at the *unsatisfactory* level on the spring tests.

4. - 9. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, IR 27:1008 (July 2001), amended LR 28:

Interested persons may submit comments until 4:30 p.m., April 11, 2002, to Nina A. Ford, 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: Bulletin 1566C Guidelines for Pupil  
Progression**

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

The local school districts are required to offer summer remediation to students who score at the "Unsatisfactory" level on the LEAP 21 tests at the fourth and eighth grade levels. The proposed rule requires each district to provide a minimum of 50 hours of instruction per subject of summer remediation. There may be an increase in cost to local school districts that are required to increase the number of instructional hours. It is not possible to determine the cost at this time.

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

There is no effect on revenue collection of state or local governmental units. Summer remediation is offered free of charge to eligible students.

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

School Systems personnel, students and the general public will be affected by the policies in *Bulletin 1566* because of better accountability and a more informed public. The rule change ensures uniformity in instructional time for all students in Summer Remediation Programs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition and employment.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
0202#017

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Teacher Certification Appeals Council  
(LAC 28:I.107)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to the Louisiana Administrative Code, Title 28:I.107.A. The proposed revisions change the composition and terms of office of the Teacher Certification Appeals Council.

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education  
Chapter 1. Organization**

**§107. Board Appeals Councils**

A. Teacher Certification Appeals Council

1. Authority: Title 28:I.105, Chapter 1, *Louisiana Administrative Code*.

2. Membership: nine members representing the following categories/organizations:

a. three from universities  
Recommendations made by the Dean's Council:

i. at least one must represent a nonpublic university; and

ii. at least one must represent a university participating in a Practitioner Teacher Program;

b. three classroom teachers from the following teacher organizations:

i. Associated Professional Educators of Louisiana (APEL);

ii. Louisiana Association of Educators (LAE); and

iii. Louisiana Federation of Teachers (LFT);

c. three from administrator organizations (one from each of the following):

i. Louisiana Association of Principals (LAP);

ii. Louisiana Association of School Personnel Administrators (LASPA); and

iii. Louisiana School Supervisors Association (LSSA).

3. Referrals/Responsibilities

a. Evaluate the appeals of persons seeking Louisiana certification under the standards in Bulletin 746, Louisiana Standards for State Certification of School Personnel, whose appeals cannot be processed according to the guidelines in §315.D.

b. Submit a written record of its findings and recommendations to the appropriate Standing or Special Committee, composed of Board members, for its review and recommendation to the full Board.

c. Evaluate the appeals documents, including the transcripts of appellants, for consideration of Bulletin 746 (minimum requirements) waiver.

d. Make recommendations to the appeals committee on waivers of minimum certification standards.

e. The Appeals Council, in the absence of mitigating circumstances, shall not be required to consider appeals of persons who are non-degreed and/or lack the required NTE/PRACTIS Scores.

f. All matters referred by the Board.

4. Terms of Office

a. Representatives must be active members of the category and organization being represented. Once a member retires and/or becomes employed in a different capacity, the member would become ineligible to continue to serve and would be replaced by the organization.

b. Members shall serve three-year terms, renewable once.

c. Terms of the three categories of membership shall be staggered to provide continuity to the appeals process.

5. Expenses

a. Travel expenses shall be paid by the Board in accordance with state travel regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 4:359 (October 1978), LR 5:346 (November 1979), LR 15:962 (November 1989), LR 16:297 (April 1990), LR 22:1124 (November 1996), LR 24:283 (February 1998), LR 24:1093 (June 1998), LR 28:

Interested persons may submit written comments until 4:30 p.m., April 11, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

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

**RULE TITLE: Teacher Certification Appeals Council**

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

This action will have no fiscal effect other than \$81.00 for advertising in the State Register. BESE is revising the composition and terms of office for the Teacher Certification Appeals Council.

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

This action will have no effect on revenue collections of state or local governmental units.



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

This action will have no effect on cost and/or economic benefits to directly affected persons of nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action will have no effect on competition and employment.

Weegie Peabody  
Executive Director  
0202#015

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Board of Architectural Examiners**

**Election of Nominees to Fill Vacancy  
(LAC 46:I.Chapter 4)**

Under the authority of R.S. 37:144.C and in accordance with the provisions of R.S. 49:951 et seq., the Board of Architectural Examiners ("Board") gives notice that rule-making procedures have been initiated for the adoption of LAC 46:I.Chapter 4 pertaining to the election of the nominees for the architectural members of the board to be appointed by the governor pursuant to R.S. 37:142.B. Act 231 of 2001 provided that these architectural members shall be appointed by the governor from a list of three nominees elected from each of the five districts established therein. The proposed rule sets forth a procedure for the election of these three nominees.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part I. Architects**

**Chapter 4. Election of Nominees to Fill Vacancy**

**§401. Vacancy**

A. This Chapter concerns the election of the three nominees to be submitted to the governor for the filling of a vacancy on the board of one or more of the five architectural members to be appointed by the governor pursuant to R.S. 37:142.B. This Rule shall be applicable whether the vacancy occurs as a result of withdrawal, disability, death, completion of the term of appointment, or any other reason. This Rule shall not be applicable to the board members selected by the governor pursuant to R.S. 37:142.C or D.

B. If a vacancy occurs, or is about to occur, the executive director shall publish notice thereof in the official journal of the state for a period of not less than 10 calendar days. The published notice need not appear more than 3 times during the 10-day period. The published notice shall identify the district where the vacancy has occurred and state that any licensed architect domiciled in that district desiring to fill that vacancy shall send a letter by certified mail to the director of the board indicating his or her intent to be a candidate, which letter shall be accompanied by a curriculum vitae and shall certify that, if elected, the architect will serve. The deadline for receipt of the certified letter shall be at least 20 calendar days subsequent to the

publication of the last notice appearing in the official journal of the state. Confirmation of receipt shall be the sole responsibility of the candidate.

C. The board shall also provide notice of any vacancy to anyone who has requested same by certified mail within 90 days of the occurrence thereof. However, any failure to provide such notice shall not effect the results any election conducted to fill the vacancy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144-45.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 28:

**§403. Waiver of Election**

A. If three or fewer eligible architects from any district seek nomination, no election shall be held in that district, and the names of those three or fewer candidates shall be submitted to the governor without any further board action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144-45.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 28:

**§405. Ballots**

A. If an election is necessary, an official ballot and an official return envelope shall be mailed to each licensed architect residing in Louisiana. The ballot shall contain the names of the candidates printed in alphabetical order for each district, the date for the return of the ballots, and any other information or instructions the board believes may be helpful in the election process. Biographical information may be attached to the ballot.

B. If the ballot mailed by board is lost, misplaced or not received, an architect desiring to vote may request from the board a substitute or replacement ballot. This substitute or replacement ballot may be used in the election, provided the requirements of §407.C are satisfied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144-45.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 28:

**§407. Voting**

A. Only licensed architects residing in Louisiana shall have the right to vote. A licensed architect may vote in one or more but less than all district elections, and no ballot shall be voided for that reason. However, any ballot containing more than three votes or fewer than three votes for candidates in any one district will be voided in its entirety. No write-in candidates will be allowed, and any ballot containing a vote for a write-in candidate will be voided in its entirety.

B. Ballots shall be returned in the official return envelopes provided by the board to the board office in Baton Rouge. The voting architect shall sign and provide his or her license number in the upper left-hand corner of the return envelope.

C. The ballot shall not be valid unless:

1. the signature and license number appear on the return envelope; and

2. the return envelope is received by the board office on or before the deadline.

D. Ballots returned in an envelope other than the official return envelope provided by the board shall not be voided for that reason, provided:

1. the signature and license number of the voting architect appear on the return envelope; and

2. the return envelope is received by the board office on or before the deadline.

E. The deadline for returning the ballots will be fixed by the president and will be at least 14 calendar days after the ballots are mailed to all licensed architects. Ballots received after the deadline shall not be counted.

F. Upon receipt, each return envelope shall be stamped by the board office showing the date received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144-45.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 28:

#### **§409. Tabulation**

A. Within 14 calendar days of the deadline for receipt of ballots, tellers appointed by the president, including at least one board member, shall meet at the board office for the purpose of tabulating the ballots. Following a determination that each return envelope contains the required signature and license number, and was timely received, the tellers shall open and count all ballots properly prepared. The executive director will notify the governor and the candidates of the results.

B. Alternatively, when in the discretion of the president the manual tabulating of the ballots by tellers in accordance with the preceding paragraph would be burdensome, or for some other reason should be performed by an outside person, the president may refer the entire tabulating of the ballots, or any part thereof, to an accounting firm, data processing company, or other such qualified person in addition to one board member. The outside person may use such clerical or other assistance, including whatever assistance from the board staff, as he or she deems necessary. The outside person shall:

1. determine that each return envelope contains the required signature and license number, and was timely received;

2. count all ballots properly prepared; and

3. certify the number of votes received by each candidate to the board president and the executive director, who shall notify the governor and the candidates of the results.

C. The three candidates receiving the highest number of votes in each district shall have their name submitted to the governor as nominees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144-45.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 28:

#### **§411. Tie**

A. In the event the three candidates receiving the highest number of votes cannot be determined because of a tie, a run-off election will be held. The only candidates in the run-off election will be those candidates who received the same number of votes so that the outcome of the election cannot be fully determined.

B. If a run-off election is necessary, an official ballot and an official return envelope will be mailed to each licensed architect residing in Louisiana approximately two weeks after it has been determined that such an election is necessary.

C. The official ballot shall contain the information set forth in §405, except only the names of and the information for those candidates in the run-off election shall be included.

D. The rules for voting, for determining the person or persons elected as nominees, and for tabulating votes set forth elsewhere in this rule shall be applicable.

E. In the event the run-off election does not decide the three candidates receiving the highest number of votes, the procedure set forth herein shall be repeated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144-45.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 28:

#### **§413. Vacancies**

A. If a vacancy occurs with respect to a person elected as a nominee, that vacancy shall be filled in the following manner. The executive director shall give notice of the vacancy to all of the other candidates in that district and to anyone who has requested notice of any such vacancy in writing by certified mail within 90 days of the election; however, any failure to provide such notice shall not effect any election conducted subsequently held to fill the vacancy. The executive director shall also publish notice of the vacancy in the official journal of the state for a period of not less than 10 calendar days. The published notice need not appear more than 3 times during the 10-day period. The published notice shall identify the district where the vacancy has occurred and state that any licensed architect domiciled in that district desiring to fill that vacancy shall advise the board in writing before the deadline determined by the president, and may contain other information. The board may then either call another election to fill that vacancy or submit to the governor all of the architects who request nomination in accordance with this section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144-45.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 28:

#### **§415. Election Contest**

A. The executive director will notify the candidates of the results of the election by U.S. Mail. The 10 calendar days for contesting an election shall commence three work days (excluding Saturdays, Sundays, and legal holidays) after the results of the election are deposited in the mail by the executive director.

B. Any candidate desiring to contest an election shall, within the time period mentioned in the preceding paragraph, file a written petition addressed to the board stating the basis of the complaint. Upon receipt of such petition, the president shall call a special meeting of the board to hear the complaint, which meeting shall be held within 10 calendar days from the date the petition is received and at a time and place to be designated by the president. At the hearing the board shall consider any evidence offered in support of the complaint. The decision of the board shall be announced within 72 hours after the close of the hearing.

C. All ballots shall be preserved until the expiration of the time allowed for the filing and hearing of a contest. After such period has elapsed, if the election be not contested, the executive director shall destroy the ballots. If the election is contested, the executive director shall maintain the ballots until the contest is concluded, after which the executive director shall destroy the ballots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144-45.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 28:

Interested persons may submit written comments on this proposed rule to Mary "Teeny" Simmons, Executive Director, Board of Architectural Examiners, 8017 Jefferson Highway, Suite B2, Baton Rouge, LA 70809.

Mary "Teeny" Simmons  
Executive Director

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

**RULE TITLE: Election of Nominees to Fill Vacancy**

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

An election to fill a vacancy on the LSB AE of one or more of the architectural members to be appointed by the governor pursuant to R.S. 37:142.B is now required by Act 231 of 2001, and it is estimated that the proposed rule (which sets forth the procedures to be followed in this election) will result in implementation costs to the LSB AE of approximately \$1,625 per year. This estimate is based upon a projection of one election per year.

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

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

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

There will be no cost or economic benefits to directly affected persons or nongovernmental groups. The proposed rule merely establishes the procedures for the election of the nominees to fill the vacancies of the architectural members of the LSB AE to be appointed by the governor pursuant to R.S. 37:142.B.

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

There is no estimated effect on competition or employment associated with this proposed rule. The proposed rule merely establishes the procedures for the election of the nominees to fill the vacancies of the architectural members of the board to be appointed by the governor pursuant to R.S. 37:142.B.

Mary "Teeny" Simmons      Robert E. Hosse  
Executive Director          General Government Section Director  
0202#077                      Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Board of Certified Public Accountants**

**Uniform CPA Exam Maximum Fees  
(LAC 46:XIX.319 and 709)**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and of R.S. 37:74, the Board of Certified Public Accountants of Louisiana hereby gives notice of intent to revise LAC 46:XIX. The objective of this action is to amend rules to

implement certain provisions of Act 108 of 2000. The action is necessary because of anticipated future increases in the costs and fees for the Uniform CPA Examination. No preamble has been prepared with respect to the revised rules, which appear below.

Implementation of the proposed rules will have no known effect upon family stability, functioning, earnings, budgeting; the responsibility and behavior of children; or, upon parental rights and authority, as set forth in R.S. 49:972.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XIX. Certified Public Accountants**

**Chapter 3. State Board of Certified Public  
Accountants of Louisiana**

**§319. Assessment of Application, Annual and Other  
Fees**

A. Examination, certification, firm permit application, renewal, and other fees shall be assessed by the board in amounts not to exceed the following:

Application fees:	
CPA examination feeC written	\$ 280
CPA examination feeC computerized	\$ 600
Service charge for refund of examination feeC written exam	\$ 50
* * *	

B. - C. ...  
AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

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), and LR 15:619 (August 1989), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1070 (November 1991), LR 23:1124 (September 1997), LR 26:1968 (September 2000); LR 28:

**Chapter 7. Qualifications; Application for CPA  
Examination**

**§709. Fees**

Each application for examination, certification, or firm permit shall be accompanied by a fee set by the board. In no event may the examination fee timely filed exceed the lesser of cost or the maximum amounts provided for in §319. Should such application be rejected, the fee less any service charge shall be refunded. If a Louisiana candidate requests that he be allowed to sit in a state that requires a proctoring fee, he shall be required to pay the proctoring fee. Additional information on fees is included in Chapter 3.

AUTHORITY NOTE: Promulgated in accordance with RS. 37:71 et seq.

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 26:1972 (September 2000), LR 28:

Interested persons may submit written comments regarding the contents of the proposed rule by mail or in person to the State Board of Certified Public Accountants of

Louisiana, Attn: Executive Director, 601 Poydras Street, Suite 1770, New Orleans, LA 70130. All comments must be received by March 20, 2002 at 4:30 p.m.

Michael A. Henderson  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Uniform CPA Exam Maximum Fees**

- 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 other than one-time costs for printing, publication, and dissemination. The revised rules will not cause a change in Board staffing requirements. There are no other expected significant expenditures for fees, materials, equipment, or other charges.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No material effect on revenue to state or local governmental units is anticipated as a result of implementation of the revised rules.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
No immediate material effect on costs or economic benefits to CPA examination candidates, i.e., those who are directly affected by the proposed rules, is anticipated as a result of implementation of the revised rules. But, candidate costs of taking the CPA examination will increase modestly through 2003. When the CPA examination becomes computer-based possibly in late 2003, the fees are subject to a further increase. However, the four part examination will be available more frequently, by candidate appointment, and at more locations. The candidate will be able to schedule the four sections of the exam on different dates, rather than having to take all unpassed sections on the same or on consecutive days, as is the case now. No other significant effects are anticipated on workload or on additional paperwork.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no significant effect on competition and employment that will directly result from the implementation of the revised rules.

Michael A. Henderson, CPA Executive Director 0202#072	Robert E. Hosse General Government Section Director Legislative Fiscal Office
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**NOTICE OF INTENT  
Office of the Governor  
Indigent Defense Assistance Board**

Indigent Defense Assistance and Representation  
of Defendants Sentenced to Death  
(LAC 22:XV.Chapters 1 - 5)

The Louisiana Indigent Defense Assistance Board proposes to adopt rules and guidelines for direct and indirect assistance of judicial district indigent defender boards within the regulations established by R.S. 15:151 et seq. The Louisiana Indigent Defense Assistance Board proposes to adopt rules and guidelines relative to the appointment and

certification of qualified counsel to represent indigent defendants sentenced to death within the regulations established by R.S. 15:149.1 and 15:151 et seq.

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., and in order to implement R.S. 15:149.1, 15:150, and 15:151, et seq., the Louisiana Indigent Defense Assistance Board hereby gives notice of its intent to adopt rules and regulations relative to direct and indirect assistance of judicial district indigent defender boards and to adopt rules and regulations relative to appointment and certification of qualified counsel to represent indigent defendants sentenced to death.

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

**Part XV. Indigent Defense Assistance Board  
Chapter 1. Purpose and Definitions**

**§101. Purpose**

A.. The purpose of these guidelines is to effectuate an equitable distribution of state funds to the 41 judicial district indigent defender boards based on articulated, quantifiable, and verifiable criteria and improve the delivery of defense services to the poor within the authority of the Constitution of the United States and the Constitution and laws of the State of Louisiana. The Louisiana Indigent Defense Assistance Board has adopted these rules pursuant to R.S. 15:151.2 (F).

1. The purpose of these guidelines is to effectuate a program of legal representation to indigent individuals sentenced to death within the authority of the Constitution of the United States and the Constitution and laws of the State of Louisiana.

2. These rules and guidelines are designed to provide for prompt representation on appeal and curb the acute problems of unnecessary delay in the filing of an application for post-conviction relief in capital cases; to instill public confidence in the process of appellate and post-conviction review; to construct a financially sound and publicly accountable programmatic approach for the delivery of defense services to indigent individuals sentenced to death; and, to efficiently and effectively provide for judicial review and finality of capital appellate and post-conviction proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151 through 15:151.4.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:

**§103. Definitions**

A. For the purposes of this rule, the following definitions shall apply.

*Appellate Case*Ca criminal proceeding in which a review as of right is exercised by or on behalf of an individual seeking judicial redress of a final judgment in accordance with Const. Art. I, Sec. 19 (1974), C.Cr.P. Arts. 911-913, and Ch.C. Arts. 330 and 710(B).

*Arrest*Cthe taking of one person into custody by another. To constitute an arrest, there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him or her.

*Capital Case*Ca criminal proceeding involving the arrest or indictment of an individual whereby the accused, if found guilty, may be sentenced to death.

**Case**Ca statistical construct used to report the number of defendants to be represented by a judicial district indigent defender board for a period of time exceeding one hour in a single proceeding of the number of bills of information, indictments, charges, or petitions brought against an individual in a single proceeding.

**Caseload**Cthe total number of cases handled by a district indigent defender board or individual attorney. Caseloads are reported to the LIDAB in the caseload categories established by the LIDAB. These categories include, but are not limited to: Capital Trial Cases; Capital Appellate Cases; Capital Post-Conviction Cases; Non-Capital Felony Trial Cases; Non-Capital Felony Appeal Cases; Non-Capital Felony Post-Conviction Cases; Misdemeanor Trial Cases; Traffic Trial Cases; Juvenile Delinquency Cases; Child In Need of Care Cases; Families In Need of Services Cases; Juvenile Appellate Cases; Mental Health Cases; Probation Revocation Cases; and Other Cases.

**Certification Program**Cthe combination of all procedures, regulations, guidelines and rules of the LIDAB mandated by La. S.Ct. Rule XXXI. Unless otherwise indicated, this term applies to both the Capital and Appellate Certification Programs.

**Certified Counsel**Can attorney that has been authorized through the appropriate certification program to serve as lead or associate counsel in capital trial cases and/or felony appellate cases on behalf of an indigent client.

**Confinement**Cthe placement of an individual into physical custody by authority of law pursuant to Titles 14, 15, 32, and 40 of the Louisiana Revised Statutes, the Louisiana Code of Criminal Procedure, the Louisiana Children's Code, and all other laws providing criminal penalties for violation of their provisions. Confinement shall include physical custody arising from an arrest, a conviction, a finding of delinquency, an order of commitment to a juvenile shelter or detention facility, or an order of commitment to a public or private mental institution or institution for the mentally retarded.

**Criminal Proceeding**Any litigation involving the investigation or commission of any offense punishable by imprisonment, confinement, or custody.

**Custody**Cthe detention or confinement of an individual as a result of, or incidental to, an instituted or anticipated criminal, mental health, or juvenile proceeding.

**Defense Services**Cinclude all reasonable and necessary steps involved in representing an individual in accordance with constitutional and statutory law, rules of the Louisiana Supreme Court, and the Louisiana State Bar Association Rules of Professional Conduct.

**Direct Assistance**Cfinancial aid provided to a judicial indigent defender board by the Louisiana Indigent Defense Assistance Board, including grant-in-aid programs, technical assistance grants, and reimbursement of expenses for defense experts and specialized scientific tests.

**Expert Witness**Can individual recognized as an authority on a subject based on the person's knowledge, skill, experience, training, or education. To be considered an expert witness under this rule, it is not necessary that the individual be called to testify at a criminal, mental health, or juvenile proceeding.

**Grant Application**Cthe formal process whereby a judicial district indigent defender board requests assistance

from the LIDAB for financial or technical assistance for a specific need or purpose.

**Grant-in-Aid Program**Cformal procedures, rules, and regulations established by the LIDAB to provide direct financial assistance to a judicial district indigent defender board based on the LIDAB's funding levels, the judicial district indigent defender board's demonstrated need, and compliance with the LIDAB's guidelines.

**Imprisonment**Cconfinement of a person in a jail or state correctional facility.

**Independent Financial Audit**Ca formal review of all financial records of a judicial district indigent defender board by an independent certified public accountant in accordance with government approved accounting practices.

**Indigency Standards**Cthose procedures provided in R.S. 15:147-149.

**Indirect Assistance**Cnon-financial support provided by the LIDAB to a judicial district indigent defender board. Such support includes, but is not limited to, assistance in the development and improvement of administrative and management practices, the sharing of technical information, and the provision of specialized continuing legal education programs.

**Judicial District Indigent Defender Board**Ca public entity established pursuant to R.S. 15:144-146.

**Juvenile Proceedings**Cthose proceedings instituted pursuant to provisions of the Louisiana Children's Code wherein the services of a judicial district indigent defender board are specifically required.

**Local Counsel**Ccounsel that is certified by the Louisiana Indigent Defense Assistance Board as qualified to represent indigents in capital cases within a judicial district wherein he or she resides or regularly practices law.

**Louisiana Indigent Defense Assistance Board**Ca nine-member board established within the office of the governor pursuant to R.S. 15:151, et seq. for the purpose of providing supplemental assistance to judicial district indigent defender boards to the extent required by the Constitution and laws of Louisiana or the Constitution of the United States of America.

**May**Cpermissive.

**Regional Defense Service Centers**Cregional service centers established pursuant to R.S. 15:151.

**Shall** Cmandatory.

**Specialized Continuing Legal Education**Cincludes courses and seminars primarily focused on criminal defense-oriented issues and skills and approved by the Mandatory Continuing Legal Education Committee for continuing legal education credit.

**Specialized Scientific Testing**Cincludes any specialized testing outside the ken of lay persons that is carried out on behalf of an indigent person and authorized by a court of competent jurisdiction as necessary to the defense.

**Supplemental Assistance**Cincludes direct and indirect financial support and non-financial support of defender programs, including, but not limited to, improvement of administrative procedures, exchange of information, budgetary management and continuing legal education.

**AUTHORITY NOTE:** Promulgated by the Louisiana Indigent Defense Assistance Board in accordance with R.S. 15:151.2 (D)-(F)]

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:

### **Chapter 3. Guidelines and Eligibility Criteria**

#### **§301. Eligibility Criteria for Direct and Indirect Supplemental Assistance**

A. A district indigent defender board shall not be eligible to receive supplemental assistance from the Indigent Defense Assistance Board unless the following criteria are met.

1. All courts within the judicial district are assessing at least \$25 in court costs in accordance with R.S. 15:146, provided the amount of court costs being assessed shall not bar supplemental assistance to cover the costs of defense services in capital cases.

2. The judicial district indigent defender board has instituted and is complying with a system to assure that defense services are limited only to those who meet indigency standards after reasonable inquiry, including compliance with R.S. 15:147. In all proceedings where defense services are provided by a judicial district indigent defender board, the board shall file, in the record of the proceedings, a written certification attesting to the individual's indigency, signed by the client or a representative of the judicial district indigent defender board.

3. A judicial district indigent defender board is providing legal services and related expenses only to the extent required by the Constitution of Louisiana or the Constitution of the United States of America or specific statutory provisions affording the right of counsel to indigents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:

#### **§303. Guidelines for Direct and Indirect Supplemental Assistance**

A. The Louisiana Indigent Defender Assistance Board provides direct and indirect supplemental assistance to the state's 41 judicial district indigent defender boards in accordance with R.S. 15:151 et seq. and the following guidelines.

1. Supplemental assistance to be provided shall take into account the provision of defense services by the judicial district indigent defender board for indigent persons arrested or detained in connection with the investigation or commission of any offense or charged with an offense punishable by imprisonment, custody, or confinement.

2. Supplemental assistance to be provided shall take into account the employment by the judicial district indigent defender board of other than trial counsel or counsel from within the judicial district to provide services for appeals. A district indigent defender board shall institute and comply with a policy for providing certified counsel in appellate cases in accordance with S.Ct. Rule XXXI.

3. Supplemental assistance to be provided shall take into account the failure of the judicial district indigent defender board to provide local counsel in capital cases. A judicial district indigent defender board shall institute and comply with a policy for providing certified counsel in capital cases in accordance with S.Ct. Rule XXXI.

4. Supplemental assistance to be provided shall consider the cost to a judicial district indigent defender board of specialized scientific testing and expert witnesses.

5. Supplemental assistance to be provided shall consider the administrative expenses and management practices and efficiencies of the judicial district indigent defender board, including its level of cooperation with the Louisiana Indigent Defense Assistance Board.

6. Supplemental assistance to be provided shall consider compensation rates set by the judicial district indigent defender board to remunerate an attorney retained to handle a specific case or class of cases.

7. Supplemental assistance to be provided shall consider the provision by the judicial district indigent defender board of financial, caseload, staffing, and other information reasonably necessary to carry out the enumerated powers of the Louisiana Indigent Defense Assistance Board.

8. Supplemental assistance to be provided shall consider the number of capital and appellate cases, the use of expert witnesses and specialized testing, and other clearly demonstrated needs of a judicial district indigent defender board. The provision of these defense services by a judicial district indigent defender board shall be handled in accordance with the certification programs mandated by S.Ct. Rule XXXI.

9. Supplemental assistance to be provided shall consider the participation of a judicial indigent defender board in regional defense service centers as provided in R.S. 15:150.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (D), (F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:

#### **§305. General Certification Guidelines for Capital Appellate and Post-Conviction Counsel**

A. The following standards shall be applied to contract attorney certification under any part of this Rule.

1. The attorney shall be familiar with the practice and procedure of the criminal courts of Louisiana and shall be a member in good standing of Louisiana State Bar Association or admitted to practice pro hac vice.

2. The attorney shall be familiar with the use of expert witnesses and evidence, including but not limited to, psychiatric and forensic evidence.

3. Within one year of an initial application for certification by the Louisiana Indigent Defense Assistance Board, the attorney shall complete a minimum of 12 hours of Board-approved training primarily involving advocacy in the field of capital appellate or post-conviction defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:

#### **§307. Certification Guidelines for Capital Appellate Counsel**

A. To be certified to serve as counsel in the appeal of a capital case, an attorney shall satisfy the following minimum standards.

1. Be familiar with the practice and procedure of the Louisiana Supreme Court in the appeal of capital cases and the practice and procedure of the United States Supreme Court in the application for writs of certiorari in capital cases;

2. Be an experienced and active trial or appellate practitioner with at least five years experience in the field of criminal defense;

3. Have prior experience within the last five years as counsel of record in the appeal of no fewer than three felony convictions in federal or state court; and

4. Have prior experience within the last five years as counsel of record in the appeal or post-conviction application, in federal or state court, of at least one case where a sentence of death was imposed.

5. In cases in which applicants lack the requirements of A, B, C or D above, the Chair of the Board of the Louisiana Indigent Defense Assistance Board may grant permission for that applicant to be certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:

**§309. Certification Guidelines for Capital Post-Conviction Counsel**

A. To be certified to serve as counsel for purposes of state post-conviction, an attorney shall satisfy the following minimum standards.

1. Be familiar with the substantive law and the practice and procedure of the courts of Louisiana in the review of capital post-conviction applications.

2. Be familiar with federal habeas corpus statutory law, practice and procedure, particularly including federal review of state capital post-conviction procedures.

3. Be an experienced and active trial, appellate, or post-conviction practitioner with at least three years experience in the field of criminal defense; and,

4. Have prior experience within the last three years as counsel of record in a capital post-conviction application, in state or federal court, or at least one case where a sentence of death was imposed, demonstrating clear competence and diligence in the representation provided.

5. In cases in which applicants lack the requirements of A, B, C or D above, the Chair of the Board of the Louisiana Indigent Defense Assistance Board or Director of the Capital Post-Conviction Project of Louisiana may grant permission for that applicant to be certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:

**Chapter 5. Procedure for Supplemental Assistance and Appointment of Counsel for Indigent Defendants Sentenced to Death**

**§501. Grant-in-Aid Programs**

A. The Louisiana Indigent Defense Assistance Board may provide direct assistance to judicial district indigent defender boards based on the LIDAB's funding levels, a judicial district indigent defender board's demonstrated need, and compliance with the following guidelines. Grant-in-aid programs established by the LIDAB are intended to provide supplemental assistance to qualifying district indigent defender boards for all criminal and juvenile proceedings where the right to the assistance of counsel provided by the state has been established. All judicial district indigent defender boards willing to comply with the standards, guidelines, and policies of the Louisiana Indigent Defense

Assistance Board are eligible to apply for supplemental assistance.

1. Supplemental assistance is available to a judicial district indigent defender board to assist it in improving the quality of indigent defense on a continuing basis. The major goals of these programs are the following:

a. to lower public defender workloads to levels consistent with recognized standards of professionalism and national caseload standards;

b. to increase the availability of trained and qualified attorneys certified to handle capital and appellate matters on behalf of indigent clients;

c. to provide more effective attorney unit support in the form of investigators, paralegals, secretaries, technology, and other forms of office support;

d. to improve criminal defense knowledge and skill through training, specialized continuing legal education, and improved supervision;

e. to defray the costs of expert witnesses and specialized scientific testing; and

f. to improve the process by which an individual is determined to be in need of state-provided defense services.

2. Supplemental assistance provided to a judicial district indigent defender board under these programs may be used for any or all of the following purposes:

a. hiring or retaining attorneys for the provision of defense services;

b. adjusting attorney salaries in accordance with the guidelines established by the Louisiana Indigent Defense Assistance Board;

c. defraying the costs of attorney unit support in accordance with the guidelines established by the Louisiana Indigent Defense Assistance Board;

d. defraying the costs of expert witnesses and specialized scientific testing in accordance with the guidelines established by the Louisiana Indigent Defense Assistance Board; and

e. defraying the costs of defense-oriented continuing legal education and specialized training programs.

3. Supplemental assistance provided to a judicial district indigent defender board under these programs may not be used for any of the following purposes:

a. the acquisition of land and/or buildings;

b. the construction or renovation of buildings;

c. the purchasing of furnishings and/or decorations;

d. the payment of non-defense-oriented continuing legal education or specialized training programs;

e. the provision of defense services to an individual not eligible to receive state-provided services;

f. the payment for out-of-state travel, food, and/or lodging not relating to the defense of a client in a particular case;

g. the payment for automobile rental, purchase, maintenance, or repair;

h. the payment for lobbying efforts in the legislature or any other governmental body for funding or changes in the law; and

i. the payment for any item or service not specifically approved by the Louisiana Indigent Defense Assistance Board in a judicial district indigent defender board's grant application.

4. A judicial district indigent defender board applying for supplemental assistance shall certify the following to the Louisiana Indigent Defense Assistance Board:

a. that a minimum of \$25 in court costs is assessed and being collected within the district in accordance with R.S. 15:146;

b. that the district board is willing to comply with the guidelines, policies, and procedures of the Louisiana Indigent Defense Assistance Board relative to the management and administrative practices of district indigent defender boards;

c. that the district indigent defender board is maintaining monthly, verifiable caseload statistics and will provide them to the Louisiana Indigent Defense Assistance Board on a calendar-year quarterly basis;

d. that the district indigent defender board is maintaining monthly financial statements, providing total revenues by type, total expenditures by type, fund balances by type, and the amount of compensation paid to staff, contract, and/or appointed counsel and will provide this information to the Louisiana Indigent Defense Assistance Board on a calendar-year quarterly basis;

e. that the district indigent defender board has prepared an independent financial audit on an annual basis and will provide this audit report to the Louisiana Indigent Defense Assistance Board in a timely manner; and

f. That the district indigent defender board has submitted complete and accurate information in its application for supplemental assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (D)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:

**§503. Appointment of Appellate and Post-Conviction Counsel in Death Penalty Cases**

A. The Louisiana Indigent Defense Assistance Board, through its director, shall, within 30 days of formal notice from a court having jurisdiction over the appeal of the capital case of an indigent, cause to have counsel enrolled to represent the defendant on direct appeal.

B. The Louisiana Indigent Defense Assistance Board, through its director, shall, within 30 days of finality of an indigent capital defendant's appeal, cause to have counsel enrolled to represent the defendant for purposes of state post-conviction proceedings.

C. To the extent funding is available, the Louisiana Indigent Defense Assistance Board may create, manage, and/or contract with a separate entity, with such staff and support personnel as are necessary, to provide counsel to represent capital defendants on direct appeal to the Supreme Court of Louisiana and/or to seek post-conviction relief, if appropriate, in state and federal court, subject to Paragraph E below.

D. In the event staff counsel of said separate entity is not available for appointment on an appeal or in post-conviction proceedings, the Louisiana Indigent Defense Assistance Board shall cause to have counsel enrolled certified by it in accordance with the applicable provisions of §§107-110 below, provided that in no event shall contract counsel be remunerated at a rate in excess of salary levels of any staff attorneys of said entity as determined by the Louisiana Indigent Defense Assistance Board.

E. Counsel appointed by the Louisiana Indigent Defense Assistance Board may accept appointments from a federal court to represent capital defendants, provided funding for these defense services is provided by the appointing federal court and provided no state-appropriated funds are expended for the representation of capital defendants in federal court.

F. Any attorney who desires to be certified under the guidelines of this Rule shall do so in accordance with the policies and procedures established by the Louisiana Indigent Defense Assistance Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:

**§505. Monitoring and Removal of Certification of Capital Appellate and Post-Conviction Counsel**

A. Attorneys certified by the Louisiana Indigent Defense Assistance Board within the guidelines of this Rule shall be monitored to ensure eligibility.

1. An attorney who fails to maintain his or her status and educational requirements as defined in §107 above shall not be considered certified for purposes of appointment in capital cases, provided an attorney may seek re-certification once the criteria of that section are satisfied.

2. Where there is compelling evidence that an attorney has inexcusably ignored basic responsibilities of an effective lawyer, resulting in prejudice to an indigent client's case, the attorney shall not be considered certified for purposes of appointment in capital cases. In this instance, an attorney shall be given an opportunity to respond in writing to specific charges of ineffectiveness.

3. Representation of a capital client establishes an inviolable attorney-client relationship. Thus, an attorney's eligibility to represent an indigent client may not be reviewed, except by a court of proper jurisdiction, on the basis of conduct involving a case in which the attorney is presently actively representing the client.

4. An attorney decertified under this Rule shall not be re-certified unless the decertification is shown to have been erroneous or it is established to the satisfaction of a majority of the Board that the cause of the failure to meet basic responsibilities has been identified and corrected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:

**§507. Workload**

A. The following standards shall serve as guides to attorneys eligible for appointment as capital appellate or post-conviction counsel.

1. Attorneys accepting appointments pursuant to this Rule should provide each indigent client with quality representation in accordance with constitutional and professional standards. Capital counsel should not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.

2. To determine maximum workload, an attorney should consider, among other factors, quality of representation, speed of turnover of cases, percentage of cases being litigated, extent of support services available, court procedures, and involvement in complex litigation.



AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board, LR 28:

**§509. Support Services in Capital Appellate and Post-Conviction Cases**

A. Counsel appointed in accordance with this Rule shall secure all proper and necessary support services, including, but not limited to, investigative, expert, mitigation, and any other support services necessary to prepare and present an adequate defense. An attorney should use all available support services and facilities needed for an effective performance at every stage of the proceedings. Counsel should seek financial and technical assistance from all possible sources, provided expenses are within the guidelines established by the Louisiana Indigent Defense Assistance Board.

B. Funds to pay for reasonably necessary services, to the extent funds are available, shall be provided only upon a written showing to the director or supervisor of any entity responsible for capital appellate or capital post-conviction representation pursuant to §106, specifically identifying the nature of the services, the cost of such services, and the need for such services.

C. A written application for support services which requests funding in excess of the Louisiana Indigent Defense Assistance Board's established guidelines must be submitted to the Louisiana Indigent Defense Assistance Board, through its Director, for review and must be accompanied by specific justification for additional funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:149.1 and 15:151.2(E)-(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Indigent Defense Assistance Board. LR 28:

**Family Impact Statement**

1. How will this rule affect the stability of the family? These rules will have no effect on stability of the family.

2. How will this rule affect the authority and rights of parents regarding the education and supervision of their children? These rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. How will this rule affect the functioning of the family? These rules will have no effect on the functioning of the family.

4. How will this rule affect family earnings and family budget? These rules will have no effect on family earnings and family budget.

5. How will this rule affect the behavior and personal responsibility of children? These rules will have no effect on the behavior and personal responsibility of children.

6. How will this rule affect the ability of the family or a local government to perform the function as contained in this proposed rule? These rules will have no effect on the ability of the family or a local government to perform the function as contained in these proposed rules.

Interested persons may submit written opinions, data, and/or comments on this proposed rule no later than March 22, 2001, at 5 p.m. to Marsha Austun Oliver, Staff Attorney,

Louisiana Indigent Defense Assistance Board, 1010 Common Street, Suite 2710, New Orleans, LA 70112.

Edward R. Greenlee  
Director

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

**RULE TITLE: Indigent Defense Assistance and Representation of Defendants Sentenced to Death**

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

There is no cost or savings to the state as a result of the implementation of the proposed rules. The proposed rules are merely a codification of the Louisiana Indigent Defense Assistance Board's current practices for the distribution of assistance to judicial district indigent defender boards and for appointment of counsel to represent defendants sentenced to death in accordance with R.S. 15:151 et seq.

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

There should be no impact on state or local revenue collections. The requirement of these rules that judicial district indigent defender boards assess a minimum of \$25 in court costs in accordance with R.S. 15:146 to be eligible for supplemental assistance is already being met by all districts.

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

The distribution of supplemental assistance from the Louisiana Indigent Defense Assistance Board to judicial district indigent defender boards will not result in an economic benefit to individuals receiving defense services beyond the cost of the services mandated by law.

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

There is no effect on competition or employment in the public or private sector as a result of these proposed rules.

Edward R. Greenlee  
Director  
0202#069

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Incorporation of Older Americans Act 2000 Amendments  
(LAC 4:VII.Chapter 11)

In accordance with Revised Statute 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to amend the GOEA Policy Manual effective May 20, 2002. The legislative authority and provisions of this amendment became effective upon the signing of the Older Americans Act Amendments of 2000 by President Clinton on November 13, 2000. The purpose of the rule change is to update current policies to reflect requirements of the Older Americans Act 2000 amendments.

**Title 4  
ADMINISTRATION**

**Part VII. Governor's Office**

**Chapter 11. Elderly Affairs**

**Subchapter A. State Agency on Aging**

**§1101. Office of Elderly Affairs**

A. - C.2. ...

3. Service Systems Development Functions

a. - g. ...

h. to develop Elder Rights Protection Systems focused on protecting the rights of vulnerable older individuals who reside in the community and in institutional settings. It includes the provision of Long Term Care Ombudsman services; Legal Assistance Development; Elder Abuse, Neglect and Exploitation prevention.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:931 to R.S. 46:935, R.S. 14:403.2, OAA Sections 203, 305, 307, 701 and 731, and 45 CFR 1321.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 25:2199 (November 1999), LR 28:

**§1105. State Plan on Aging**

A. ...

B. Content of the State Plan

1. - 6. ...

7. The projected costs of providing services for older individuals residing in rural areas (including the cost of providing access to such services) for each fiscal year to which the plan applies.

8. The methods used to meet the needs for services for older individuals residing in rural areas in the fiscal year preceding the first year to which such plan applies.

9. A grievance procedure for older individuals who are dissatisfied with or denied services under Title III of the Older Americans Act.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:931, R.S. 49:432, OAA Section 203(b), OAA Section 306, 307, OAA Section 731, and 45 CFR 1321.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 25:2205 (November 1999), LR 28:

**Subchapter B. Area Agency on Aging**

**§1121. Definitions**

\* \* \*

*Native American* Any person who is a member of an Indian tribe or any individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with OAA Section 102 (20), 305(a)(2)(A).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 26:70 (January 2000), LR 28:

**§1125. Area Agency on Aging Standards**

A. - B. ...

C. Pooling/Coordination

1. - 3. ...

4. Each area agency on aging shall coordinate services described in OAA Sec. 321(a) of the Older Americans Act with other community agencies and voluntary organizations providing the same services. In coordinating the services, the area agency on aging shall make efforts to coordinate the services with agencies and organizations carrying out intergenerational programs or projects.

5. Where possible, the AAA shall enter into arrangements with organizations providing day care services for children or assistance to older individuals caring for relatives who are children, and respite for families, so as to provide opportunities for older individuals to aid or assist on a voluntary basis in the delivery of such services to children, adults, and families.

6. The AAA shall facilitate the coordination of community-based, long-term care services designed to enable older individuals to remain in their homes, by means including:

a. development of case management services as a component of the long-term care services, consistent with the requirements of Sec. 306(a)(8) of the Older Americans Act;

b. involvement of long-term care providers in the coordination of such services; and

c. increasing community awareness of and involvement in addressing the needs of residents of long-term care facilities.

7. The AAA shall establish procedures for coordination of services with entities conducting other Federal or federally assisted programs for older individuals at the local level, with particular emphasis on entities conducting programs described in section 203(b) within the planning and service area.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 306(a)(1), 306(a)(6)(C)(i), 306(a)(7), 306(a)(12), 321(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 26:71 (January 2000), LR 28:

**§1133. Area Plan**

A. - B. ...

C. Content of the Area Plan

1. - 2. ...

3. Each area plan shall designate, where feasible, a focal point for comprehensive service delivery in each community, giving special consideration to designating multipurpose senior centers (including multipurpose senior centers operated by organizations providing day care services for children or assistance to older individuals caring for relatives who are children, and respite for families, so as to provide opportunities for older individuals to aid or assist on a voluntary basis in the delivery of such services to children, adults, and families as such focal point).

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with OAA Section 306, and Section 307.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 17:57 (January 1991), LR 18: 1376 (December 1992), LR 26:75 (January 2000), LR 28:

**§1141. Priority Services**

**A. General Rules**

- 1. - 1.a. ...
- b. in-home services, including supportive services for families of elderly victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction: 15 percent; and

c. ...

2. The area agency on aging shall report annually to the state agency in detail the amount of funds expended for each such category during the fiscal year most recently concluded.

3. GOEA shall waive the requirement in §1141.A.1 of this manual for any category of services described in such Paragraph if the AAA demonstrates to GOEA that services being furnished for such category in the area are sufficient to meet the need for such services in such area and had conducted a timely public hearing upon request.

4. If a waiver is issued by the Governor's Office of Elderly Affairs for any category of priority service, the area agency must assure that an adequate proportion of its supportive services funds are allocated to the remaining priority services categories.

**B. ...**

AUTHORITY NOTE: Promulgated in accordance with OAA Section 306(a)(2), Section 306(b), and Section 307(a)(12).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 18:610 (June 1992), LR 26:77 (January 2000), LR 28:

**§1143. Service Procurement**

**A. - B. ...**

B.1. Area agencies may directly deliver Information and Assistance, and Outreach.

2. - 3. ...

**C. - F. ...**

AUTHORITY NOTE: Promulgated in accordance with OAA Section OAA Sec. 307(a)(8)(C), 307(a)(10), OMB Circular A-110.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:621 (June 1885), LR 11:1078 (November 1985), LR 16:503 (June 1990), amended LR 18:610 (June 1992), LR 26:77 (January 2000), LR 28:

**Subchapter E. Uniform Service Requirements**

**§1229. Office of the State Long Term Care Ombudsman**

**A. - B. ...**

C. Functions of the Office of the State Long Term Care Ombudsman

1. - 8. ...

9. to coordinate services with state and local law enforcement agencies and courts of competent jurisdiction.

**D. - L. ...**

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:2010.4 and OAA Section 712.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:35 (January 1985), LR 11:1078 (November 1985), LR 13:742 (December 1987), LR 15:379 (May 1989), LR 17:600 (June 1991), LR 18:267 (March 1992), LR 24:1928 (October 1998), LR 28:

**§1231. Senior Community Service Employment Program**

A. Purpose. The purpose of the Senior Community Service Employment Program is to foster and promote useful part-time opportunities in community service activities for unemployed low-income persons who are 55 years or older and who have poor employment prospects, and in order to foster individual economic self-sufficiency and to increase the number of persons who may enjoy the benefits of unsubsidized employment in both the public and private sectors.

**B. - H. ...**

AUTHORITY NOTE: Promulgated in accordance with OAA Section 502, 20 CFR Part 674 and Part 89.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 24:1766 (September 1998).

**Family Impact Statement**

This rule change will have no known impact on family formation, stability, and autonomy as set forth in R.S. 39:321.

A public hearing on this proposed rule will be held on Thursday, March 28, at 412 North Fourth Street, First Floor Conference Room, Baton Rouge, LA 70802 at 10 a.m. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Written comments may be addressed to Mary Tonore, Governor's Office of Elderly Affairs, Box 80374, Baton Rouge, LA 70898-0374. Written comments will be accepted until 5 p.m., March 28, 2002.

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

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

**RULE TITLE: Incorporation of Older Americans Act 2000 Amendments**

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

Subchapter A, "Office of Elderly Affairs;" Subchapter B, "Area Agency on Aging;" and Subchapter E, "Uniform Service Requirements" of the GOEA Policy Manual are being revised to reflect changes in the Older Americans Act of 1965, as Amended. The legislative authority and provisions became effective upon the signing of the Older Americans Act Amendments of 2000 by President Clinton on November 13, 2000. The proposed rule will not result in costs or savings to any 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 any state or local governmental units.

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

The proposed rule expands and clarifies specifications for area plans (grant applications) developed and administered by area agencies on aging in order to receive and expend Older Americans Act funds. This rule change will not affect receipts or income of the area agencies on aging.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The effect of the proposed rule change upon competition and employment in the public and private sectors is not known at this time, but is not anticipated to be significant.

P.F. "Pete" Arceneaux, Jr. Robert E. Hosse  
Executive Director General Government Section Director  
0202#042 Legislative Fiscal Office

**NOTICE OF INTENT**  
**Office of the Governor**  
**Office of Elderly Affairs**

Eligibility Requirements and Definition of Legal Assistance (LAC 4:VII.1215, 1223, and 1225)

In accordance with Revised Statutes 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to amend Subchapter E, "Uniform Service Requirements" of the GOEA Policy Manual effective May 20, 2002. The purpose of the rule change is to update current policies to correct irregularities identified during the monitoring process.

**Title 4**  
**ADMINISTRATION**  
**Part VII. Governor's Office**

**Chapter 11. Elderly Affairs**  
**Subchapter E. Uniform Service Requirements**  
**§1215. Service Recipient Priorities and Eligibility Requirements**

A.1. Persons who are 60 years of age or older may receive services provided using Older Americans Act and state senior center funds.

2. No one is entitled to services by virtue of age alone. GOEA's uniform intake and assessment instrument shall be used to determine the order in which older individuals will be served.

3. Persons age 60 and over who are frail, homebound by reason of illness or incapacitating disability, or otherwise isolated, shall be given priority in the delivery of services.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with OAA Section 102(29), Section 102(30), Section 305(a)(2)(E), Section 306(a)(1), Section 307(a)(24), and 45 CFR 1321.65 and 1321.69.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:868 (May 1999), LR 28:

**§1223. Title III-C Nutrition Services**

A. A.4. ...

B. Participant Eligibility

1. - I.d....

2. Home-Delivered Nutrition Services

a. Eligible participants include:

i. ...

ii. the spouse residing with the recipient, regardless of age or condition, may receive a home-delivered meal if, according to criteria determined by the AAA, receipt of the meal is in the best interest of the homebound older person.

B.2.b. - R. ...

AUTHORITY NOTE: Promulgated in accordance with OAA Section 307(a)(13), Section 313, and Section 336 and 45 CFR 1321.69(b).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 15:384 (May 1989), LR 16:505 (June 1990), LR 24:1930 (October 1998), LR 28:

**§1225. Legal Assistance Program**

A. - A.1. ...

B. Definition

*Legal Assistance* Cprovision of legal advice, counseling and representation by an attorney or other person acting under the supervision of an attorney.

C. - G ...

AUTHORITY NOTE: Promulgated in accordance with OAA Section 307(a)(15), and Section 307(a)(18).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 25:869 (May 1999), LR 28:

**Family Impact Statement**

This rule change will have no known impact on family formation, stability, and autonomy as set forth in R.S. 39:321.

A public hearing on this proposed rule will be held on Thursday, March 28, at 412 North Fourth Street, First Floor Conference Room, Baton Rouge, LA 70802 at 10 a.m. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Written comments may be addressed to Mary Tonore, Governor's Office of Elderly Affairs, Box 80374, Baton Rouge, LA 70898-0374. Written comments will be accepted until 5 p.m., March 28, 2002.

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

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

**RULE TITLE: Eligibility Requirements and Definition of Legal Assistance**

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

The proposed rule will not result in costs or savings to any state or local governmental units. The State receives a formula grant for services for the elderly under the Older Americans Act of 1965, as amended (OAA). All Federal and state funds allocated for the program will continue to be expended to serve eligible participants.

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

The proposed rule will not affect revenue collections of any state or local governmental units.

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

Persons with disabilities under the age of 60 residing with eligible recipients are not eligible to receive OAA funded home-delivered nutrition services unless they are married to the recipient. This will not reduce the number of individuals receiving OAA services. Vacated slots have been filled from waiting lists of eligible participants.

Area agencies on aging are required to expend a minimum of 5 percent of the OAA Title III-B allotment for Legal Assistance. The Administration on Aging (AOA) has defined

Legal assistance as "legal advice, counseling and direct representation by an attorney or other person acting under the supervision of an attorney." This change will not affect the dollar amount of contracts for Legal Assistance awarded by area agencies on aging. It may affect the number of units of Legal Assistance provided to eligible OAA Title III participants. Legal education provided in group settings can be paid for using other Title III-B funds under public education or counseling.

Persons receiving OAA Title III-B Legal Assistance services may also receive legal education in group settings under public education or counseling.

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

The effect of the proposed rule change upon competition and employment in the public and private sectors is not known at this time, but is not anticipated to be significant.

P.F. "Pete" Arceneaux, Jr.    Robert E. Hosse  
Executive Director            General Government Section Director  
0201#078                        Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health and Hospitals Board of Examiners for Speech-Language Pathology and Audiology

Supervision Requirements for Audiology Aides  
(LAC 46:LXXV.103, 107, 301)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et. seq., notice is hereby given that the Louisiana Board of Examiners for Speech-Language Pathology and Audiology proposes to amend rules, regulations and procedures to establish supervision requirements for Audiology Aides pursuant to its authority under R.S. 37:2656.C., and based on changes to the laws for Identification of Hearing Impairment in Infants, R.S.46:2261 et seq.

The proposed rules establish minimum supervision requirements and outline the duties that aides can perform for audiologists who use aides in their practice. The rules are consistent with the existing rules for speech-language pathology aides.

#### Title 46

#### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXXV. Speech Pathology and Audiology

#### Chapter 1. General Rules

#### §103. Definitions

\* \* \*

AidesCindividuals not licensed by the Louisiana Board of Examiners for Speech-Language Pathology and Audiology, who after appropriate training, perform tasks that are prescribed, directed, and supervised by speech-language pathologists or audiologists licensed in accordance with LSA R.S. 37:2659(A). Licensed speech-language pathologists and licensed audiologists are legally, ethically, and morally responsible for the services provided by aides working under their direction.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Louisiana Board of Examiners for Speech-Language Pathology and Audiology, LR 14:705 (October 1988), amended LR 22:346 (May 1996), LR 27:197 (February 2001), LR 28:

#### §107. Qualifications for Licensure

A. - I.2.b. ...

c. work with a communication or related disorder unless s/he has had sufficient coursework with appropriate supervised practicum in that area obtained through a regionally accredited educational institution or its cooperating program,

I.2.d. - J.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Louisiana Board of Examiners for Speech-Language Pathology and Audiology, LR 14:706 (October 1988), amended LR 22:346 (May 1996), LR 27:197 (February 2001), LR 28:

#### Chapter 3. Aides

#### §301. Qualifications and Duties

A. - B.2.e. ...

f. administration of hearing screening tests

C. Supervision

1. The licensed speech-language pathologist or audiologist shall provide periodic direct observation for each aide at least once per month during the initial year of the aide's employment. Speech-language pathology aides are required to undergo direct supervision by a licensed speech-language pathologist, licensed in the area in accordance with R.S. 37:2659.A. Audiology aides are required to undergo direct supervision by a licensed audiologist, licensed in the area in accordance with R.S. 37:2659.A. Speech-language pathology aides and audiology aides may not be supervised by a provisional licensee, restricted licensee, or assistant licensee.

2. The direct observation in subsequent years shall be established by the supervising speech-language pathologist or audiologist on an individual basis but shall be no less than once every three months.

C.3. - 5. ...

D. The speech-language pathology aide may engage in activities limited to those that are planned and directed by the supervising speech-language pathologist. Providing that the preparation, training, and supervision are appropriate, the following tasks may be assigned to speech-language pathology aides:

D.1. - 2. ...

3. preparing materials (such as making copies, typing forms) for use by the speech-language pathologist;

D.4. - 8. ...

E. The audiology aide may engage in activities limited to those that are planned and directed by the supervising audiologist. Providing that the preparation, training, and supervision are appropriate, the following tasks may be assigned to audiology aides:

1. setting up room and equipment;

2. clearing room and storing equipment;

3. preparing materials (such as making copies, typing forms) for use by the audiologist;

4. checking equipment to determine if the equipment is performing adequately;

5. transporting patients/clients to and from sessions;
6. assisting with field trips;
7. performing hearing screening tests and pure-tone air conduction threshold tests without interpretation;
8. recording, charting, graphing, or otherwise displaying objective data relative to the patient/client's performance.

F. Only the speech-language pathologist or audiologist shall exercise independent judgment in the provision of professional services. Specifically, the speech-language pathologist or audiologist may not delegate any of the following to the aide:

1. speech-language screening;
2. evaluation, diagnosis, or therapy with individuals with speech, language or hearing disorders;
3. interpretation of test results or discussion of confidential information despite the fact that this information may have been requested by the patient/client, parent or referring agency;
4. performance of any procedure for which the aide has not been trained.

G. Exemption. Aides employed on or before April 1996 may continue to operate under the provisions of Chapter 3, §§301-305 of the Louisiana Register 16:409 (May 1990) of the Louisiana Board of Examiners for Speech Pathology and Audiology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Louisiana Board of Examiners for Speech-Language Pathology and Audiology, LR 16:409 (May 1990), amended LR 22:355 (May 1996), LR 27:201 (February 2001), LR 27:1690 (October 2001), LR 28:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Interested persons may direct their comments to Suzanne L. Pevey, Administrator, Louisiana Board of Examiners for Speech-Language Pathology and Audiology, 18550 Highland Road, Suite B, Baton Rouge, Louisiana 70809, telephone 225-756-3480. She is responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Thursday, March 28, 2002 at 9 a.m. in the board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for receipt of all written comments is 4 p.m. on Thursday, March 28, 2002.

Glenn M. Waguespack, L-AUD  
Chairperson

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

### **RULE TITLE: Supervision Requirements for Audiology Aides**

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

The Louisiana State Board of Examiners for Speech-Language Pathology and Audiology estimates that it will cost approximately \$3,900.00 to implement the proposed amendments to the Board's Rules, Regulations and Procedures.

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

The proposed amendments to the Louisiana Board of Examiners for Speech-Language Pathology and Audiology's Rules, Regulations and Procedures 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)**

The costs to directly affected persons will be minimal since audiologists who use audiology technicians in their practice, currently provide direct supervision and training according to recent surveys.

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

There will be no effect on competition and employment related to the proposed rules.

Suzanne L. Pevey  
Administrator  
0202#055

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health and Hospitals Board of Medical Examiners**

Supervision of Occupational Therapy Assistants  
by Occupational Therapists  
(LAC 46:XLV.4903 - 4925)

Notice is hereby given in accordance with R.S. 49:953 that the Louisiana State Board of Medical Examiners (Board), pursuant to the authority vested in the Board by the Louisiana Medical Practice Act, R.S. 37:1261-1292, and particularly R.S. 37:1270.B, as well as the Louisiana Occupational Therapy Practice Act, R.S. 37:3001-3014, intends to amend its administrative rules governing supervision of certified occupational therapy assistants by occupational therapists, LAC 46:XLV, Subpart 3, Chapter 49, Subchapters A and B, §§4903-4925. Such amendments will provide greater clarity and direction to occupational therapists and certified occupational therapy assistants concerning the supervision requirements prescribed by law in any health care setting, further insure the capability of certified occupational therapy assistants to perform all occupational therapy services required, provide for ongoing

dialogue between occupational therapists and certified occupational therapy assistants respecting individuals receiving occupational therapy services, and allow for more timely access to clients' occupational therapy records by certified occupational therapy assistants. The proposed rule amendments have no known impact on family, formation, stability or autonomy as described in R.S. 49:972.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XLV. Medical Professions**

#### **Chapter 49. Occupational Therapists and Occupational Therapy Assistants**

##### **Subchapter A. General Provisions**

##### **' 4903. Definitions**

A. As used in this chapter, the following terms shall have the meanings specified:

\*\*\*

*Client*Ca person, group, program, organization or community for whom the occupational therapy practitioner is providing service (American Occupational Therapy Association, adopted 1995).

*Client Care Conference*Ca meeting between the supervising occupational therapist and an occupational therapy assistant to discuss client progress or lack thereof, client issues, revision of goals, initiation, modification or termination of an individual program plan, assessment of utilization of additional resources, discharge and any other information which may affect a client's plan of care. Except when specifically required in this Chapter to be conducted by face to face conference, such meeting may be undertaken by telephone or other means of telecommunication but in no instance shall be undertaken by written documentation.

*Close Client Care Supervision*Cface to face observation of an occupational therapy assistant administering occupational therapy to a client, accompanied or followed in a timely fashion by verbal discussion of client goals, the individual program plan and other matters which may affect the client's plan of care.

\*\*\*

*Evaluate/Evaluation*Cthe process of collecting and interpreting data through direct observation, interview, record review, or testing of a client.

\*\*\*

*Face to Face*Cdirect communication between the occupational therapist supervising client care and an occupational therapy assistant, which is conducted in the physical presence of one another.

\*\*\*

*Practice-Experience*C1600 hours of documented work as an occupational therapy practitioner is equivalent of one year of practice experience.

\*\*\*

*Re-Evaluate/Re-Evaluation*Cthe process of periodically and systematically reviewing and interpreting the effectiveness and efficiency of client goals, the treatment plan, intervention and any other aspect of an individual's occupational therapy program.

\*\*\*

*Service Competency*Cwith respect to an occupational therapy assistant, means one who is appropriately trained

and qualified to perform occupational therapy in accordance with the current standards of practice, as identified by the American Occupational Therapy Association.

\*\*\*

*Supervising Occupational Therapist*Can occupational therapist responsible to the client for occupational therapy who observes, directs, consults with and retains responsibility for the service competence and performance of an occupational therapy assistant in the administration of occupational therapy to such client.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270.B(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:767 (November 1986); amended LR 28:

##### **Subchapter B. Standards of Practice**

##### **§4915. Individual Program Implementation**

A. ...

B. Occupational therapists shall implement the program according to the program plan. Occupational therapy assistants may assist in program implementation under the supervision of and in consultation with a supervising occupational therapist, as prescribed by §4919 and §4925.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270.B(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:767 (November 1986); amended LR:28:

##### **' 4919. Quality Assurance**

A. - B. ...

C. Following acceptance of responsibility to supervise an occupational therapy assistant, but prior to utilization of such assistant in the implementation of any client program plan or other administration of occupational therapy to a client, the supervising occupational therapist shall initially evaluate and document the occupational therapy assistant's service competency to administer all occupational therapy services which are to be performed under his or her supervision and direction. Following such an initial evaluation the supervising occupational therapist shall thereafter annually conduct and document a service competency evaluation to assess the occupational therapy assistant's performance during the preceding year. Such documentation shall include the date the evaluation was performed, a description of the tasks evaluated, and the name, signature and Louisiana license number of the supervising occupational therapist conducting the evaluation. A supervising occupational therapist shall cause such documentation to be maintained by each clinic, facility or home health agency at or for which an occupational therapy assistant practices under his or her supervision.

D. A supervising occupational therapist is responsible for and must be capable of demonstrating compliance with the requirements of this Chapter respecting supervision of occupational therapy assistants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270.B(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:767 (November 1986); amended LR 28:

**§4925. Supervision of Occupational Therapy Assistants**

A. The rules of this Section, together with those specified in §4915 and §4919, govern supervision of an occupational therapy assistant by a supervising occupational therapist in any clinical setting.

B. An occupational therapy assistant may assist in implementation of a client program plan in consultation with and under the supervision of an occupational therapist. Such supervision shall not be construed in every case to require the continuous physical presence of the supervising occupational therapist provided, however, that the supervising occupational therapist and the occupational therapy assistant must have the capability to be in contact with each other by telephone or other telecommunications device. Supervision shall exist when the occupational therapist responsible for the client gives informed concurrence of the actions of the occupational therapy assistant and strictly adheres to all requirements set forth in this Chapter.

C. Prior to Implementation of Program Plan. Prior to the administration of occupational therapy by an occupational therapy assistant, the supervising occupational therapist shall:

1. perform an evaluation, as prescribed by §4911;
2. identify and establish occupational therapy needs, goals and an individual program plan, pursuant to §4913;
3. ensure that the documents created pursuant to §4925.C.1 and §4925.C.2 are made part of the client's record and accessible to the occupational therapy assistant prior to his or her the first treatment session with the client; and
4. be available for a client care conference.

D. Throughout the Duration of Program Plan. Following implementation and throughout the duration of the program plan:

1. a supervising occupational therapist shall periodically and systematically re-evaluate the appropriateness of all services delivered in conformity with §§4911-4919. Such information shall be documented in the client's record, which shall be made available to the occupational therapy assistant. The supervising occupational therapist preparing such revisions shall communicate any critical aspect or significant change in the program plan to the occupational therapy assistant by means of a client care conference prior to the occupational therapy assistant's next treatment session with the client.

2. At all times during which an occupational therapy assistant assists in program plan implementation, the supervising occupational therapist shall be immediately accessible for a face-to-face client care conference.

3. An occupational therapy assistant shall not administer occupational therapy to any client whose physical, cognitive, functional or mental status differs substantially from that identified by the supervising occupational therapist's individual program plan in the absence of re-evaluation by, or an immediate prior client care conference with, the supervising occupational therapist.

E. In addition to the terms and conditions specified in §4919 and §4925.A.-D, the following additional requirements are applicable to an occupational therapy assistant's administration of occupational therapy under the supervision of an occupational therapist:

1. In any clinical setting, other than specified by §4925.E.3:

a. an occupational therapy assistant with less than one year of practice experience shall receive close client care supervision in each clinical setting for not less than one of every four, or 25+ percent, of those clients to whom he or she has administered occupational therapy during an average weekly case load. In addition, a client care conference shall be held with respect to each client to whom the occupational therapy assistant administers occupational therapy; or

b. an occupational therapy assistant with more than one but less than two years of practice experience shall receive close client care supervision in each clinical setting for not less than one of every ten, or 10 percent, of those clients seen during an average weekly case load. In addition a client care conference shall be held with respect to each client to whom the occupational therapy assistant administers occupational therapy; or

c. an occupational therapy assistant with more than two years of practice experience shall receive a client care conference with respect to each client to whom the occupational therapy assistant administers occupational therapy.

2. School System, Long-Term Psychiatric and Non-Skilled Nursing Home Facility Settings. In addition to the requirements prescribed in §4925.E.1, clients in school system, long-term psychiatric or non-skilled nursing home facility settings shall be re-evaluated or treated by the supervising occupational therapist not less frequently than the earlier of once a month or every sixth treatment session.

3. Home Health Setting. The terms and conditions prescribed by §4925.E.1 shall not be applicable to a home health setting. An occupational therapy assistant may assist in implementation of a client program plan in a home health setting under the supervision of an occupational therapist provided all the following terms, conditions and restrictions of this Chapter, except §4925.E.1, are strictly observed:

a. an occupational therapy assistant shall have had not less than two years practice experience in providing occupational therapy prior to administering occupational therapy in a home health environment;

b. each client in a home health setting to whom an occupational therapy assistant administers occupational therapy shall be re-evaluated or treated by the supervising occupational therapist not less frequently than the earlier of once every two weeks or every sixth treatment session; and

c. a face-to-face client care conference shall occur not less frequently than once every two weeks to discuss all clients to whom the occupational therapy assistant has administered occupational therapy in a home health setting. Such conference shall be documented by the supervising occupational therapist in a supervisory log and maintained by or at the home health entity.

F. Mutual Obligations and Responsibilities. A supervising occupational therapist and occupational therapy assistant shall bear equal reciprocal obligations to insure strict compliance with the obligations, responsibilities and provisions set forth in this Chapter.

G. The administration of occupational therapy other than in accordance with the provisions of this section and §4919 shall be deemed a violation of these rules, subjecting the



occupational therapist and/or an occupational therapy assistant to suspension or revocation of licensure pursuant to §4921.A.18.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270.B.(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:340 (March 1993), amended LR 28:

Interested persons may submit written data, views, arguments, information or comments on the proposed rule amendments until 4 p.m., March 21, 2002, to John B. Bobear, M.D., Executive Director, Louisiana State Board of Medical Examiners, at P.O. Box 30250, New Orleans, LA 70190-0250 (630 Camp Street, New Orleans, LA 70130).

John B. Bobear, M.D.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Supervision of Occupational Therapy  
Assistants by Occupational Therapists**

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

Other than the rule publication costs, which are estimated to be \$580.00 in FY 2002, it is not anticipated that implementation of the proposed rule amendments will result in any costs to the Board of any other state or local governmental unit. The Board does not anticipate that adoption of the proposed amendments will result in either an increase or reduction in workload or any additional paperwork.

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

As the proposed rule amendments will not affect Board revenues, no increase or decrease in revenues will result from the proposed rule amendments.

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

Certified occupational therapy assistants are authorized to administer occupational therapy under the supervision of a Louisiana licensed occupational therapist. The proposed amendments clarify the supervision and other obligations imposed upon both occupational therapists and the occupational therapy assistants they may supervise, provide for greater dialogue and exchange of information between and among these licensees concerning persons receiving occupational therapy services, provide a mechanism to further insure the ability of certified occupational therapy assistants to perform all services required, and provide for more timely access to clients' occupational therapy records. It is not anticipated, however, that the proposed amendments will have any material economic effect on costs of such groups attributable to changes in workload or additional paperwork.

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

It is not anticipated that the proposed rule amendments will have any impact on competition and employment in either the public or private sector.

John B. Bobear, M.D.  
Executive Director  
0202#048

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Nursing**

**School Annual Report Fees (LAC 46:XLVII.3505)**

Notice is hereby given, in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., that the Board of Nursing pursuant to the authority vested in the Board by R.S. 37:918 and R.S. 37:919 intends to adopt rules amending the Professional and Occupational Standards pertaining to schools' annual report fees. The proposed amendments of the rules are set forth below.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 35 Nursing Education Programs**

**§3505. Approval**

A. ...

B. Notwithstanding any other provisions of this Chapter, the Board shall collect in advance fees for education services as follows:

1. - 2. ...

3. School Annual Report Fee \$50.00

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:185 (April 1977), amended LR 10:1024 (December 1984), repromulgated LR 24:1293 (July 1998), amended LR 26:83 (January 2000), LR 28:

**Family Impact Statement**

The Louisiana State Board of Nursing hereby issues this Family Impact Statement: The proposed rule related to the Board's appointing authority will have no known impact on family formation, stability, and autonomy, as set forth in R.S.49:972.

Interested persons may submit written comments on the proposed rules to Barbara L. Morvant, Executive Director, Louisiana State Board of Nursing, 3510 N. Causeway Blvd, Suite 501, Metairie, LA, 70002. The deadline for receipt of all written comments is 4:30 p.m. on March 11, 2002.

Barbara L. Morvant  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: School Annual Report Fees**

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

The fee will assist in offsetting the extensive time spent by professional staff in analyzing reports and preparing data tables and summaries for the public on the statutes of Registered Nurse education in Louisiana. Only implementation cost is the cost to publish the rule in the Louisiana Register at \$45.

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

The Board is proposing a \$50 annual fee for the processing of the Nursing Schools Annual reports. There are 22 programs reporting at \$50 per program for a total income of \$1,100. The fee is already specifically cited in R.S.37:927.B.2.

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

The cost to the 22 individual schools of nursing will be \$50 annually.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Barbara L. Morvant  
Executive Director  
0202#070

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Continuing Education Requirements  
(LAC 46:LXXXV.403)**

The Louisiana Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.403 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1511 et. seq. The proposed rule amendments have no known impact on family formation, stability, and autonomy as described in R.S. 49:972. The proposed amendments to the rule are set forth below.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 4. Continuing Veterinary Education**

**§403. Continuing Veterinary Education Requirements**

A.1. - 2. ...

3. A maximum of four hours of practice management courses or alternative medicine/therapy topic sessions may be taken.

B. Proof of attendance, which shall include the name of the course/program, name of sponsor, date(s) of attendance, hours attended, and specific subjects attended, shall be attached to the annual re-registration form.

C. All hours shall be obtained in the twelve months preceding the renewal period of the license. Hours taken prior to the twelve-month continuing education period will not be accepted. Hours taken after the beginning of the renewal period will require payment of the late fee, and may require the payment of a fine of up to \$50, as set forth in §413.D. Hours submitted as the late continuing education, if accepted by the Board in accordance with §413.D, cannot be applied to other renewal periods.

D. Employment at an accredited school or college of veterinary medicine will not be accepted in lieu of performance of the required hours of continuing education.

E. Presenters of approved continuing education programs may not submit hours for their presentation of, or preparation for, the program as continuing education.

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 23:1147 (September 1997), LR 28:

Interested parties may submit written comments to Kimberly B. Barbier, Administrative Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801. Comments will be accepted through the close of business on March 21, 2002. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on March 28, 2002, at 10 am at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, Louisiana.

Kimberly B. Barbier  
Administrative Director

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

**RULE TITLE: Continuing Education Requirements**

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

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendment (estimated at \$100 in FY 2002). Licensees will be informed of this rule change via the board's regular newsletter or other direct mailings, which result in minimal costs to 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 as no increase in fees will result from the amendment.

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

There are no anticipated costs and/or economic benefits to directly affected persons or non-governmental groups. All licensees are presently required to obtain continuing education to renew licensure annually.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed rule change.

Kimberly B. Barbier  
Administrative Director  
0202#034

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Preceptorship Program  
(LAC 46:LXXXV.1103 and 1115)**

The Louisiana Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.1103 and 1115 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1511 et. seq. The proposed rule amendments have no known impact on family formation, stability, and autonomy as described in R.S. 49:972. The proposed amendments to the rules are set forth below.

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

**Part LXXXV. Veterinarians**

**Chapter 11. Preceptorship Program**

**§1103. Definitions**

\* \* \*

*Intern Program* Repealed

\* \* \*

*Preceptorship Program* A preceptorship program approved by the Louisiana Board of Veterinary Medicine.

1. - 2. ...
3. Repealed
4. Repealed
5. Repealed

\* \* \*

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 16:232 (March 1990); amended LR 19:208 (February 1993), LR 23:968 (August 1997), LR 24:1293 (July, 1998), LR 27:543 (April 2001), LR 28:

**§1115. Preceptorship Practice Requirements**

A. - C.2. ...

3. All practices must be equipped or have the availability to provide a full radiographic service without hazardous exposure and must comply with all state and federal radiological standards.

4. Clinical pathology diagnostic services must be utilized.

5. The case load must be of such nature as to provide good exposure for the preceptee while allowing time for preceptor -preceptee interaction.

6. The preceptor must be willing to provide supervised, hands-on experience.

D. ...

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 16:232 (March 1990); amended LR 27:544 (April 2001), LR 28:

Interested parties may submit written comments to Kimberly B. Barbier, Administrative Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, Louisiana 70801. Comments will be accepted through the close of business on March 21, 2002. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on March 28, 2002, at 10 a.m. at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, Louisiana.

Kimberly B. Barbier  
Administrative Director

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

**RULE TITLE: Preceptorship Program**

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

There will be no costs or savings to state or local governmental units, except for those associated with publishing

the amendment (estimated at \$140 in FY 2002). Licensees will be informed of this rule change via the board's regular newsletter or other direct mailings, which result in minimal costs to 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 as no increase in fees will result from the amendment.

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

There are no anticipated costs and/or economic benefits to directly affected persons or non-governmental groups. All applicants for veterinary licensure are currently required to perform a preceptorship program at a Board-approved facility as a pre-requisite to licensure.

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

No impact on competition and employment is anticipated as a result of the proposed rule change.

Kimberly B. Barbier  
Administrative Director  
0202#035

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of River Port Pilot Commissioners and Examiners**  
**Calcasieu River Waterway**

Calcasieu River Waterway River Port Pilots  
(LAC 46:LXXVI.Chapter 6)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Calcasieu River Waterway Board of River Port Pilot Commissioners and Examiners hereby gives Notice of Intent to promulgate rules as to definitions, appointments of commissioners and examiners, records of meetings, examination of apprentice pilots, ability of pilots to form an association, minimum applicant requirements, examination, appointments, performance, and enforcement procedures relative to the commission of pilots and maintaining those commissions.

In accordance with state law and in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any possible imminent peril to public health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services, the Board of Commissioners and Examiners proposes to adopt the following actions pertaining to the rules and regulations of the board.

This action would establish rules, which are formulated using existing Louisiana statutes as a foundation for effecting the system for oversight of the pilotage under the board's jurisdiction.

In general, the rules would clarify the method and guidelines for making recommendations to the Governor for the commissioning of pilots, define the board's authority and funding, establish the criteria for rulemaking and application, record keeping, notices and meetings and provide for standards and qualifications for pilot apprentice applicants and associations. The rules would clearly define the board's legal authority and duties relating to oversight

processes for investigative, enforcement and other specified board functions.

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

**Part LXXVI. Pilots**

**Chapter 6. Calcasieu River Waterway River Port Pilots**

**§601. Definitions**

*Agent* Can authorized representative of the vessel owner.

*Apprentice Pilot Review Committee* Ca committee selected by the general membership of the Associated Branch Pilots of the Port of Lake Charles to receive and review applications, interview pilot candidates, and monitor training progress. Membership on this committee is determined by vote of the association.

*Associated Branch Pilots of the Port of Lake Charles Fee Commission* Cthe fee commission established under R.S. 34:1121 et seq. composed of eight members and eight alternates to represent the respective interests of the association and the steamship industry.

*Association* Cpilot members of the Associated Branch Pilots of the Port of Lake Charles who have incorporated the association permitted by R.S. 34:1175 as "Lake Charles Pilots, Inc."

*Board of Commissioners and Examiners* C(hereinafter used interchangeably as Board of Examiners, Board, Commission, Examiners or Board of Examiners) the Board of River Port Pilot Commissioners and Examiners for the pilotage area defined in R.S. 34:1072.

*Examiners* Cthose individuals appointed pursuant to R.S. 34:1072.

*Harbormaster* Cthe Lake Charles Harbor and Terminal District agent who acts as authorized by R.S. 34:215(2), to operate the navigable Calcasieu River Waterway system, coordinate and implement necessary navigation operating controls and, through liaison, cooperation and mediation, establish priorities for safe, secure and efficient waterway system operation.

*Louisiana Public Service Commission* Cthe body, which constitutes the fee commission (see R.S. 34:1121.C) for the purpose of making fee decisions in the event of unresolved disputes within the Associated Branch Pilots of the Port of Lake Charles Fee Commission.

*Marine Casualty* Cany occurrence involving a vessel which results in damage by or to the vessel, its apparel, gear, or cargo, or injury or loss of life of any person; and includes among other things, collisions, allisions, strandings, groundings, foundering, heavy weather damage, fires, explosions, failure of gear and equipment and any other damage which might affect or impair the seaworthiness of a vessel. Momentarily touching soft bottom while maintaining headway is considered a "near-miss" grounding within the dredged channel project reaches of the pilotage area.

*Master License* Cthe license issued by the U.S. Coast Guard.

*Nepotism* Cfavoritism shown to a relative as designated in R.S. 42:1119 of the Code of Governmental Ethics.

*Pilot* Ca river port pilot as designated in R.S. 34:1073.

*Pilotage Area* Cnavigable streams, channels and boundary waters, including the Intracoastal Canal, Calcasieu River and the Calcasieu Ship Channel, within the Parishes of Calcasieu

and Cameron, and across bars and passes, and on the adjacent waters of the Gulf of Mexico, the latter being out to a distance beyond the state's geographic boundary to any point in the Gulf of Mexico at which pilot assistance may be required by the master of a vessel.

*Port* Cwaterways and facilities under the jurisdiction of the Lake Charles Harbor and Terminal District.

*Service Time* Cthe applicant's service time on the designated pilotage area, inland waters of the United States, or the oceans of the world.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

**§603. Board of River Port Pilot Commissioners and Examiners**

A. Commissioners and examiners shall be selected as members of the board in accordance with R.S. 34:1072.

B. The officers of the board shall be chairman, vice-chairman, and secretary.

C. The chairman shall preside at all meetings of the board. Except as otherwise authorized by resolution of the Board of Commissioners of the Board of River Port Pilot Commissioners and Examiners, the chairman shall sign all contracts, deeds and other instruments made by the Board of River Port Pilot Commissioners and Examiners. At each meeting, the chairman shall submit such recommendations and information as he or she may consider proper concerning the business, affairs and policies of the board.

D. The vice-chairman shall perform the duties of the chairman in the absence or incapacity of the chairman; and in case of the resignation or death of the chairman, the vice-chairman shall perform such duties as are imposed on the chairman until such time as the Board of Commissioners of the River Port Pilot Commissioners and Examiners shall select a new chairman.

E. The secretary shall have general supervision over the administration of board business and affairs, subject to the direction of the board. The secretary shall keep the records of the board, record all votes, and shall keep a record of board proceedings in a journal of proceedings and shall perform all duties incident to the office. All meetings shall be transcribed for placement in the journal. The secretary shall have the care and custody of all funds of the board and shall deposit the same in the name of the Board of River Port Pilot Commissioners and Examiners in such bank or banks as the board may select. The secretary shall sign all orders and checks for the payment of money and shall disburse such monies under the direction of the board. All checks for the payment of money in excess of \$750 shall be co-signed by the chairman. The secretary shall keep regular books of accounts showing receipts and expenditures and such books of accounts shall be open to inspection by any commissioners at any time upon request.

F. The officers of the board shall perform such other duties and functions as may from time to time be required by the board of commissioners or the by-laws or rules and regulations of the board or as may be designated by the chairman.

G. The officers of the board shall be elected by affirmative vote of a majority of the board annually at the first regular meeting in January of each year and such

election shall automatically be placed upon the agenda of such meeting. Such officers shall serve a term of one year. There shall be no prohibition on the same individual being elected to the same office in successive years. Should an officer resign or otherwise vacate office by death, resignation or removal from the board or otherwise, then an election to replace such officer, subsequent to the governor's appointment as necessary, shall be held at the next regularly scheduled meeting of the board or, at a specially called meeting, whichever occurs first. If a vacancy in an office occurs and a replacement is elected as provided herein, then that person who is elected to the vacated office shall serve only the unexpired term of the office.

H. In the case of the absence of any officer of the board, or for any other reason that the board may deem sufficient as to any officer, the board may delegate, for the time being, the powers or duties, or any of them, of such officer to any other officer, or to any member of the board, provided a majority of the entire board concurs therein.

I. The board shall conduct business as is necessary to fulfill legislative mandates or as may be required by the rules herein.

J. All officers shall serve without compensation.

K. The board members, in the performance of their statutory duties, have the exclusive and complete authority to determine their work schedule. Further, board members shall not suffer any loss of benefits or compensation while they are performing their duties.

L. Reasonable ordinary and necessary operating and administrative costs and expenses, incurred by the board while performing its duties, shall be paid or reimbursed by the system described herein. Expenses shall be approved monthly by the board and submitted to the association. The association shall pay or reimburse expenses of the board with 15 days of receipt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

### **§605. Rules, Records, Meetings, Associations**

A. The board issues these rules and regulations to administer, implement, and enforce R.S. 34:1072. The procedure for proposing, amending, repealing, and promulgating a rule or regulation shall be in accordance with the Administration Procedure Act, R.S. 49:950 et seq.

B. These rules and regulations include, but are not limited to:

1. establishing procedures for conducting investigations; and hearings by the board;

2. requiring procedures governing applications and examination for apprentice pilots' appointments and pilots' commissions;

3. establishing required education, experience, and training of applicants;

4. requiring a mandatory drug and alcohol testing program, to comply with 46 CFR 16 and 49 CFR 40, Procedures for Transportation Workplace Drug Testing Programs, including random tests, post-incident tests, and tests based upon reasonable cause;

5. requiring a mandatory periodic physical examination and, for reasonable cause, a physical and/or

mental examination to determine the fitness of pilots to perform duties;

6. ensuring required integrity, professional competence, and physical standards for apprentices and pilots;

7. clarifying the duties owed by a pilot to the owner(s) of the vessel, agent(s), and the owner(s) of the cargo; and

8. addressing any other matter which the board may deem necessary or appropriate for the administration, implementation, and enforcement of R.S. 34:1072.

C. All rules must be adopted by a majority of the Board of Commissioners. Further, rules must receive legal review before final approval and adoption. The board shall maintain records in accordance with the Public Records Law, R.S. 44:1 et seq., and other applicable state laws. The board shall file an annual report of investigations, findings, actions, and accident data in accordance with applicable state laws. The board shall conduct its meetings in accordance with the Open Meetings Law R.S. 42:4 et seq. and any other state laws.

D. The board shall hold a regular monthly meeting, which shall be held on the second Monday of each month at 10 a.m. at the board meeting room of the Lake Charles Harbor and Terminal District, 150 Marine Street, Lake Charles, LA. The president alone or two members of the board may cancel any regular meeting if the board has no business to conduct. The president alone or two members of the board has/have the prerogative of calling additional meetings as needed to conduct business on giving notice as required by law.

E. These rules shall apply to all pilots commissioned as pilots by the governor upon recommendation of the board and who are engaged in the performance of the duties of a pilot within the pilotage area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

### **§607. Minimum Requirements, Applicants, Examination, Appointments**

A. The pilot apprentice applicant shall be a graduate from either the U.S. Merchant Marine Academy (deck curriculum), the U.S. Coast Guard Academy and qualified as officer-in-charge of a navigational watch, the U.S. Naval Academy and qualified as officer-in-charge of a navigational watch, the Great Lakes Maritime Academy (deck curriculum) or any other maritime academy approved by and conducted under rules prescribed by the Federal Maritime Administrator and listed at Title 46, Code of Federal Regulations, Part 310. Five years of experience as master or commanding officer of naval vessels or merchant ships including USNS or MSC ships, ocean tugs, harbor tugs, integrated tug/barge units, or dredge ships may be substituted for the requisite educational requirement with approval of the board.

B. Candidates seeking to participate in a pilot apprentice training program shall hold a U.S. Coast Guard issued license authorizing service as master, steam or motor vessels of at least 1,600 gross tons upon oceans or near coastal and be reasonably expected to be able to eventually comply with federal regulatory requirements specified at 46 CFR Subpart

G, Professional Requirements for Pilot Licenses, which are considered by the board to be minimum requirements for commissioning pilots under the board's jurisdiction. These requirements include:

1. time-in-service;
2. route familiarization;
3. examination;
4. physical requirements;
5. tonnage service requirements; and
6. capability to acquire and maintain knowledge of waters to be navigated.

C. Application Process

1. Prospective candidates of good character who meet the aforementioned requirements may submit applications evidencing these requirements to the Apprentice Pilot Review Committee, 710 West Prien Lake Road, Suite 201, Lake Charles, LA 70601. A copy of the application shall also be submitted to the Board of Commissioners and Examiners, c/o Port of Lake Charles, P.O. Box 3753, Lake Charles, LA 70602.

2. Applications should be accompanied by:
  - a. a personal resume;
  - b. photograph;
  - c. birth certificate;
  - d. three letters of recommendation,
  - e. health profile conducted by a recognized health

professional evidencing probable ability to comply with 46 CFR 10.205(d); and

- f. a U.S. Coast Guard Information Release Form signed and notarized, in any format, to authorize personnel involved in the selection process to investigate and/or obtain applicant's records from the U.S. Coast Guard or from any other person or entity deemed appropriate, including but not limited to licenses, casualty involvement, or any disciplinary information.

3. Applications will be kept on file until an opening for an apprentice pilot is anticipated, or a maximum of two years, unless updated. When the association anticipates openings for apprentice pilots, the Apprentice Pilot Review Committee will review all current applications and contact best-qualified selected applicants to appear for interviews.

4. The Apprentice Pilot Review Committee, subsequent to reviewing applications and interviewing applicants, will present their findings and recommendations to association members for their vote on apprentice candidate acceptance.

5. The board shall provide oversight and final approval over the pilot candidate application and selection process and shall approve and make recommendations to the Governor for subsequently awarding pilot commissions.

D. Prior to being recommended for a State commission, applicants must have completed, and maintain current, Ship Handling Simulator courses and Bridge Resource Management courses and any other industry related courses that the association and Examiners may deem relevant and necessary.

E. Qualified applicants desiring to become pilots shall not have reached their forty-fifth birthday before being accepted into the apprenticeship program and an applicant shall not be under the age of 30 when accepted as an apprentice.

F. A person applying for an appointment under this section shall not have been convicted of a felony offense involving either drugs or the personal consumption of alcohol in the 60 months prior to the date of application.

G Applicants must submit to and pass a drug screen test prior to being accepted into the apprenticeship program and agree to participate in mandatory drug and alcohol-testing programs, required by 46 CFR 16 and conducted in compliance with 49 CFR 40.

H. Any signed obligation to abide by the charter, by-laws, rules and regulations of the association or of the Lake Charles Pilots, Inc., shall not be contrary to established rules and regulations of the board.

I. Applicants must serve an orientation period over the route, as an apprentice pilot, for not less than 12 months, which may be extended up to one additional year as may be determined by the board, if recommended by currently commissioned pilots who actively train any apprentice. If, after the one year extension apprenticeship period, the applicant fails to meet the criteria and standards of the examiners, the said applicant shall be released from the apprenticeship program. The criteria and standards of the board include but are not limited to:

1. applicant's competency and display of good judgment;
2. regard for federal, state, and local laws and regulations;
3. fitness for the position and duties of a river pilot;
4. moral integrity, veracity, capability, and satisfactorily addressing any other such issues or questions brought by any responsible party to the attention of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

**§609. Examination**

A. Pilot candidates must successfully complete an oral or written examination or both to be conducted by the Examiners.

B. Pilot candidates who have complied with all of the provisions herein shall be examined as to knowledge of pilotage and shall demonstrate proficiency and capability to serve as a commissioned pilot. This examination shall be given in such a manner and shall take such form, as the board, in its sole discretion, from time to time, shall determine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

**§611. Pilotage Certification**

A. Commissioned pilots shall comply with all requirements to maintain current their Louisiana State commission and such other certifications as determined necessary by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

### **§613. Association of Pilots**

A. River port pilots may form themselves into an association or associations, not in conflict with the rules and regulations of the board.

B. The formation of any association, incorporated or non-incorporated, which is for the purpose of providing pilotage service under the law, including but not limited to R.S. 34:1075, must be submitted to the board for approval. Such applications must meet all legal requirements, provide for a stable, reliable, efficient, and safe pilotage system, protect the life and property of the region and serve the best interest of the majority of pilots.

C. The board hereby recognizes the fact that the Lake Charles pilots have formed themselves into a legal registered corporation known as the Lake Charles Pilots, Inc., intending to operate in compliance with all state laws and which shall comply with the regulations and directives of the board.

D. No pilot association may impose any custom, rule, by-law or charter provision on the board or its authority. Further, any attempt to exercise any authority over or affecting the board's authority shall be deemed a violation of Chapter 6 of Title 34 of the Louisiana Revised Statutes governing pilotage.

E. Pilots shall not discontinue duties without permission. Except for reasons of health, satisfactory evidence of which shall be furnished to the board when requested, no commissioned pilot or apprentice shall discontinue to act as such nor remove himself/herself, at any time, from a duty status, without first obtaining the permission of the group of pilots with which associated or of some duly authorized official of that group, and no such permitted discontinuance or absence for a period of more than three months shall be valid without additionally obtaining, in advance, the written authorization of the board. Any pilot or apprentice neglecting or refusing to comply with such requirement as to presence and performance of duties may be subject to association-imposed sanction and have, respectively, his/her commission, appointment or apprenticeship, as the case may be, either suspended or revoked by board recommendation, depending on the board's judgment and evaluation of the circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S.34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

### **§615. Enforcement**

A. In any case, where a vessel under pilotage shall go aground or collide with another vessel or allide with any object or meet with any marine casualty, or be injured or damaged in any way or in the event of a near-miss of any of the above, the board shall cause to be conducted a preliminary investigation into the casualty or the near-miss to determine if there are any violations of the law or board's rules.

B. When probable cause relating to any event set forth in §615.A involving a pilot is preliminarily determined, the board may conduct or order an investigation.

C. All board investigations shall be conducted in accordance with R.S. 49:950 et seq.

D. In any case, where a vessel under pilotage is involved in any event set forth in §615.A, any pilot providing piloting

services relating to such vessel shall report such event as follows:

1. report the casualty to the board by whatever means available to the pilot as soon as practical but not later than 24 hours after the occurrence of such event;

2. be available within 24 hours of such event for interview by the board and furnish complete details of the casualty;

3. make a written report regarding such event to the board as soon as practical but not later than forty-eight hours after such event.

E. Any pilot who shall neglect, or refuse to make any required report to the board as required by these rules, shall be subject to the board-imposed sanctions provided in §615.J.

F. Any pilot requested or summoned to testify before the board shall appear in accordance with said request or summons and shall make answers under oath to any questions put to him/her related to or in any way connected with the pilot's service.

G. In any case, where the board finds or suspects a violation of the law or applicable regulation, or a violation of its rules, the board may charge the pilot appropriately. If the charge is proven, the board may take action as authorized by R.S. 34:1077. However, this rule shall not abrogate any pilot rights pursuant to all applicable laws. Specific enforcement parameters are included in §615.J-N herein.

H. When an investigation or any other information source reveals dangerous and/or unsafe conditions and/or conditions that may jeopardize the interests, safety, health, or welfare of the pilots, vessels, cargo, property or individuals, the board may make recommendations to vessel owners, operators, agents or any other involved persons/entities including the Lake Charles Harbor and Terminal District and the U. S. Coast Guard regarding corrective measures.

I. Marine casualties, accident, and required reports are defined in Title 46 Code of Federal Regulations, Part 4 (46 CFR 4). Required reports shall be made to the U.S. Coast Guard by the owners, operators, masters or agents of vessels so involved. This federally-imposed requirement affects all U.S. commercial vessels sailing worldwide and every foreign flag vessel operating on or present within U.S. waters within the pilotage area, as relating to these rules. Hazardous conditions are defined in 33 CFR 160.203 and must be reported to the U.S. Coast Guard. Navigation safety regulations prescribed in 33 CFR 165 shall be followed. Every pilot must immediately report all marine casualties, near-miss incidents, hazardous conditions, and violations of navigation safety regulations to the U.S. Coast Guard and to the board. Action on near-miss reports, absent a showing of violation of navigation rules or negligence, is without attribution toward preventing similar future incidents.

J. After notice and a hearing, the board may, as authorized by R.S. 34:1077, and at their discretion, remove, suspend or reprimand a commissioned pilot, impose civil penalties and/or recommend, to the governor, revocation of the pilot's commission. Suspensions shall not last more than one year, and must be followed by a period of reorientation of not less than 14 days and not to exceed 60 days.

K. The board may take such enforcement action specified in §615.J, upon a finding that one or more of the following grounds exists:

1. neglecting or refusing to perform any pilot duty;
2. failing to board a vessel at a designated point and time without good cause;
3. threatening to fail to perform or actually failing to perform any duty of a pilot in a manner consistent with established marine customs and practices;
4. performing any duty as a pilot while under the influence of alcohol or drugs;
5. engaging in conduct prejudicial to the safety of the vessel, and/or its officers or crew, and/or its cargo;
6. engaging in conduct prejudicial to a local port, vessel owner or agent, or private shipper or consignee;
7. having a physical or other disability, which inhibits the pilot's ability to board a vessel or perform the duties of a pilot while aboard a vessel;
8. exhibiting incompetency as a pilot;
9. engaging in fraud, perjury, or deceit to obtain or renew a certification or in any other proceeding before the board;
10. engaging in dishonesty, fraud, or negligence in the performance of pilot services;
11. having his or her license cancelled, revoked, or suspended or being denied a license or the renewal of a license for disciplinary reasons by another state or by the U.S. Coast Guard for any cause, including other restrictions imposed by such other licensing authority;
12. revocation or suspension of, or a voluntary consent decree revoking or suspending, a license, which concerns pilotage duties before any other state or a federal agency;
13. engaging in efforts to deceive or defraud the owner of a vessel or the owner of the cargo or their agents;
14. attempting to usurp, or actually usurping, the authority of the master of a vessel;
15. failing to maintain a current U.S. Coast Guard license;
16. entering a plea of guilty or nolo contendere or being convicted of a felony or of any other crime, an element of which is dishonesty or fraud, under the laws of the United States, this state, or any other state;
17. failing to notify the board in writing immediately, after the occurrence of any issuance, denial, revocation, or suspension of a pilot's commission, license, or other similar grant of authority by another state or the U.S. Coast Guard;
18. violating applicable traffic separation schemes and vessel traffic service regulations and any other applicable regulation published by the U.S. Coast Guard or any other federal, state or local agency;
19. violating any of the Navigational Rules; International-Inland;
20. failing to take cognizance of local notice to mariners and marine information disseminated by the U.S. Coast Guard;
21. violating any provision of this regulation or any other adopted by the board.

L. In lieu of an adverse action pursuant to this section, the pilot may tender his/her commission. The board may, for stated reasons, impose such terms and conditions as it deems appropriate as part of its acceptance of the commission tender.

M. The board may suspend a pilot without notice or hearing when it clearly appears from an affidavit of an interested party that further piloting by a commissioned

individual poses a threat of immediate injury, loss, or damage before notice and a hearing can be arranged. Notice shall be given to the pilot and the association with all deliberate speed and in the most expeditious manner available. A hearing with notice shall be arranged at the earliest possible date, allowing a reasonable amount of time for the pilot to prepare a defense.

N. The board shall establish policies and procedures to address violations in a formal and consistent manner.

O. Rules of the board may be enforced, in accordance with R.S. 1072, by any court of competent jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

#### **§617. Pilot Charges and Fees**

A. Pilotage charges and rates shall be fixed, without board involvement, in accordance with established procedures of the appointed Associated Branch Pilots of the Port of Lake Charles Fee Commission and the Louisiana Public Service Commission, pursuant to R.S. 34:1121, et seq., as may be necessary following disputes.

B. The association shall be due payment, at rates in effect at the time of pilot service, for pilotage charges and fees within 45 days of invoice receipt, except when the association elects to extend credit to such vessel owner, vessel operator, principal agent or local agent. When credit is not extended, payment is due upon vessel departure or upon receipt of invoice, whichever is earlier.

C. Any agent or other non-vessel owner who makes arrangements for credit for pilotage shall be held responsible by the pilots for the amount credited if that amount is not paid within the 45-day period.

D. Pilotage charges are based upon the services of one pilot unit. No additional charges may be imposed for other pilots or apprentices taken aboard a vessel for the purpose of training or route familiarization. However, nothing shall prohibit additional pilotage charges whenever additional pilots are proved to the board's satisfaction to be required to assure the safe maneuvering of the vessel. In such cases, one additional pilot unit may be charged for every additional pilot so embarked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

#### **§619. Vessel Scheduling System (VSS)**

A. The association will act upon all requests for pilot services without delay; provided, they have been notified a minimum of four hours prior to any vessel's expressed intended need of pilot(s).

B. Pilots shall consult and cooperate with the Lake Charles Harbor and Terminal District to assist best operation of the navigable waterway system under the District's jurisdiction.

C. Individuals other than vessel crewmembers may be aboard transiting vessels only at the discretion and approval of the U.S. Customs Service and vessel owners/agents and shall not interfere with pilots' duties and responsibilities.

D. Responses to inquiries voiced to the association or its members from current or prospective Calcasieu River



Waterway customers regarding marine services coordination and channel-use priorities shall be coordinated with the Lake Charles Harbor and Terminal District toward developing appropriate responses.

E. Calcasieu River Waterway systemic navigation controls are reserved for federal, state and local authorities. Vessel draft and beam width restrictions deemed necessary by pilots may be imposed only after consulting with, and upon approval of, the Lake Charles Harbor and Terminal District. The U.S. Army Corps of Engineers' (USACE) most current channel surveys and recommendations are generally relied upon in determining if limiting vessel drafts to less than 40 feet may be warranted.

F. The U.S. Coast Guard recognizes and supports State of Louisiana authorized efforts of the Lake Charles Harbor and Terminal District, with local Harbor Safety Committee (HSC) coordination, to safely and efficiently operate the Calcasieu River navigable waterway system. Codification of additional specific Lake Charles Harbor and Terminal District Calcasieu River navigable waterway operating controls at 33 CFR 165.807 may be appropriate if controls go beyond routine navigation priority determinations.

G. Positive control of Calcasieu River navigation is exercised through vessel traffic scheduling procedures accessible at <http://www.lakecharlespilots.com/vtssafety/> or by calling (337) 436-0372 when pilotage is required and otherwise through liaison with the Lake Charles Harbor and Terminal District (Harbormaster) by calling (337) 493-3620 to request priority transit or to address extraordinary navigation evolutions which might be expected to adversely affect other navigation.

H. The board recognizes and supports the appropriateness of these aforementioned navigation controls and scheduling procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

#### **§621. Traffic Guidelines**

A. Efficient and safe pilotage area traffic movement is dependent upon pilots exercising good professional skill and judgment with respect to visibility, vessel draft, vessel speed, state of tide, wind speed and direction, channel depth, direction and speed of currents, individual vessel maneuvering characteristics, presence of other vessels, and width of channel. Systemic controls may be established and published only after consultation with the Lake Charles Harbor and Terminal District.

B. Meeting and passing situations involving two vessels with combined beams exceeding 50 percent of the available channel width shall be restricted, unless both involved pilots agree, with Lake Charles Harbor and Terminal District concurrence, that conditions are such that meeting or passing can be accomplished safely.

C. In fog, or any condition that restricts visibility, vessels will not normally be moved until conditions improve to a point where one-mile visibility is available, throughout the route to be transited.

D. All vessels transiting the channel must be ballasted to a condition that keeps the propeller and rudder submerged to a sufficient degree to maintain control of the vessel.

E. Liquefied Natural Gas (LNG) vessels transiting within the pilotage area shall be piloted in accordance with the current U. S. Coast Guard Liquefied Natural Gas (LNG) Vessel Management and Emergency Plan promulgated by the cognizant USCG Captain of the Port. Safety Zones and/or Regulated Navigation Area (RNA) requirements may, from time to time, be established and published at 33 CFR 165.

G. The board recognizes and supports the aforementioned traffic guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

#### **§623. U.S. Coast Guard Investigations/Proceedings**

A. The association shall provide to the board of Commissioners copies of all U.S. Coast Guard investigations, notices, and actions pertaining to pilotage area accidents, marine casualties, complaints, and disciplinary actions including federal suspension and revocation proceedings and civil penalty actions.

B. Pilots are required to keep their respective licenses current and to notify the board of any changes or proceedings concerning all appointments, certifications and licenses, which the respective pilots may hold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

#### **§625. Appeals**

A. Any person or organization that has any complaint or other grievance with the actions of the board, or of local pilots, shall submit a written complaint to the board which then shall take any action required by statute and/or these rules.

B. Appeals to board-initiated pilot enforcement proceedings action may be submitted to the board for reconsideration.

C. The owners or operators of any vessel adversely affected by a pilot's decision regarding its movement may request the board to review that decision for ensuring compliance with these rules and sound piloting principles and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

#### **§627. Nepotism/Equal Opportunity Policy**

A. The Association and board shall not discriminate in applicant selection or examination in favor of individuals related to pilots or to governing authorities by blood or marriage, or based on race, color, religion, sex, national origin, age, disability, political affiliation or belief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

**§629. Ethics**

A. All pilots and board members shall comply with the Louisiana Code of Governmental Ethics Chapter 15 of Title 42 of the Louisiana Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

**§631. Severability**

A. It is understood that any provision and/or requirement herein that is deemed invalid and unenforceable for any reason whatsoever, that it may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:

**Family Impact Statement**

These proposed rules should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

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

Interested parties may submit written comments to James L. Robinson, P.O. Box 3753, Lake Charles, LA 70602. Comments will be accepted through the close of business on March 12, 2002.

Captain James L. Robinson, USCG  
Board Designee

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

**RULE TITLE: Calcasieu River Waterway River Port Pilots**

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

There is no incremental cost increase associated with implementing these state-mandated rules.

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

The proposed rule changes 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)**

The proposed rule establishes rules regarding local pilotage. No additional costs to the general public are related to this rulemaking. Qualification requirements and governance are comparable to standards of other similar pilot associations.

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

This proposed rule change would have no appreciable effect on competition and employment other than to establish clear guidelines and requirements for the Calcasieu River Waterway pilotage area.

Capt. James L. Robinson  
Board Designee  
0202#074

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Board of Pardons**

Discretionary Powers of the Board  
(LAC 22:V.105)

The Louisiana Board of Pardons, in accordance with R.S. 49:950 et seq., hereby gives notice of its intent to amend LAC 22:V.105, Discretionary Powers of the Board. This text is being amended to facilitate the handling of favorable recommendations from the Louisiana Risk Review Panel.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**

**Part V. Board of Pardons**

**Chapter 1. Applications**

**§105. Discretionary Powers of the Board**

A. - D. ...

E. When the Louisiana Board of Pardons receives a favorable recommendation from any of the three existing Louisiana Risk Review Panels (South, Central and/or North Louisiana Risk Review Panel), said recommendation shall be accepted and, with a completed application, may be processed in the same manner as a favorable decision by the Board of Pardons on any application considered under the provisions of this section without the necessity for further consideration. A Risk Review Panel recommendation and application may be set for a hearing at a time and date designated by the chairman, at his sole discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 24:1133 (June 1998), LR 28:

**Family Impact Statement**

In accordance with the Administrative Procedure Act, R.S. 49:953.A.(1)(a)(viii) and R.S. 49:972, the Louisiana Board of Pardons hereby provides the Family Impact Statement.

Adoption of this amendment to the rules of the Louisiana Board of Pardons regarding the handling of applications via the Louisiana Risk Review Panel process will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Interested persons may submit written comments to Robert B. Barbor, Counsel to the Board of Pardons, c/o Department of Public Safety and Corrections, 504 Mayflower Street, Baton Rouge, LA 70802, or by facsimile to (225) 342-3094. All comments must be submitted by 4:30 p.m., March 20, 2002.

Irvin L. Magri, Jr.  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Discretionary Powers of the Board**

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

There are no estimated implementation costs or savings. These applications will be handled in the normal manner, the rule merely clarifies the authority of the board to set these for hearing without delay.

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

There are no estimated effects on revenue collections for the above stated reasons.

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

The rule does not impose any additional costs on an applicant for clemency. The only costs are for advertising of a hearing. Applications are submitted voluntarily and the applicant must comply with current rules.

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

There is no estimated effect on competition and employment.

Robert B. Barbor  
Executive Counsel  
0202#075

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Home Incarceration/Electronic Monitoring Pilot Program  
(LAC 22:I.401)**

The Department of Public Safety and Corrections, Corrections Services, in accordance with R.S. 15:571.35 as amended by Act 1139, 2001 Regular Session, and with the Administrative Procedure Act, R.S. 49:950 et seq., hereby publishes its Notice of Intent to promulgate a new rule, to be published as LAC 22:I.401, Home Incarceration/Electronic

Monitoring Pilot Program, to be administered under the Division of Probation and Parole.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections**

**Chapter 4. Home Incarceration/Electronic  
Monitoring Pilot Program**

**§401. Home Incarceration/Electronic Monitoring Pilot  
Program**

A. Authority. Director of Probation and Parole as per R.S. 15:571.35, as amended by Act 1139 of the 2001 Regular Session of the Legislature.

B. Purpose

1. To establish guidelines and procedures for implementation of a pilot program of home incarceration and electronic monitoring for selected, eligible, first time offenders as an alternative to traditional imprisonment as required by Act 1139.

2.a. To establish and implement a program evaluation process in regard to the below listed factors:

- i. security;
- ii. beneficial and detrimental effects on the inmate;
- iii. projected probable effects on deterrence;
- iv. cost;
- v. labor intensiveness; and
- vi. other related measures of effectiveness.

b. This evaluation shall provide the required information on the pilot program, as well as a comparison with traditional imprisonment and be presented to the Joint Legislative Committee on the Budget, the Senate Committee on the Judiciary, Section C, and the House Committee on the Administration of Criminal Justice no later than 30 days prior to the first day of the 2003 Regular Session of the Legislature.

C. Applicability. All personnel of the Division of Probation and Parole involved in this pilot program.

D. Definitions. Definitions of key terms are as follows.

*Sex Crimes* for the purpose of this policy, *sex crimes* are defined as those crimes listed in R.S. 15:542.E, including attempts to commit the crime.

*Crimes of Violence* for the purpose of this policy, *violent crimes* are defined as those crimes listed in R.S. 14:2(13), including attempts to commit the crime.

*Entry Points* offender selection can occur at two entry points in the judicial process: initial sentencing or during the violation process.

*Eligibility* defendants convicted of a non-violent, first offense are eligible for program participation with two exceptions:

- a. sex crimes;
- b. producing, manufacturing, distributing or dispensing a controlled dangerous substance or possession with the intent to produce, manufacture, distribute or dispense a controlled dangerous substance under the provisions of the Uniform Controlled Dangerous Substance Law, R.S. 40:961 et seq.

*Home Incarceration* Can alternative to traditional imprisonment in which the offender is supervised in the community under the conditions of probation as set forth in

CCrP Article 895 and may include any other condition reasonably related to implementing or monitoring a sentence of home incarceration including electronic monitoring, curfews, and limitations of the offender's activities outside the home.

*Electronic Monitoring*—the use of electronic monitoring technologies as a tool to enhance supervision and control of participating offenders in the community, compatible with our mission of public safety.

*Traditional Imprisonment*—term of incarceration an offender is sentenced to by the court at the time of their initial sentencing or as a result of the probation violation process.

#### E. Policy

1. It is the policy of this division to develop and implement a pilot program of home incarceration and electronic monitoring as an alternative to traditional imprisonment for eligible offenders.

2. This program will commence on November 1, 2001, and continue until appropriated funding is exhausted or further legislative action is taken.

3. Rules and regulations for the development, implementation and administration of this pilot program will be developed, adopted and promulgated in compliance with the provisions of the Administrative Procedure Act. These rules and regulations are set forth in the "procedures" section of this policy.

4. This program will be evaluated as required by Act 1139 and the results of this evaluation will be reported to the legislative committees as required.

#### F. Procedures

##### 1. Participation

a. The selection of districts to participate in the pilot program will require that a sufficient number of offenders meeting the eligibility requirements are available and have concurrence of the court and district attorney to participate in the program.

b. Once the participating districts have been chosen, they will develop an offender identification and selection process involving the participation of the court and district attorney. Since the screening process will involve the court and district attorney, it is left to each district to develop a process acceptable to all parties.

2. Identification and Screening of Potential Participants. Eligible and suitable offenders will be identified and screened for participation in the program prior to initial sentencing and during the violation process prior to the revocation hearing.

a. Identification at Initial Screening. The most difficult aspect of the selection process will be in identifying which eligible offenders due for sentencing are likely to receive a sentence of traditional incarceration. When the court orders a pre-sentence investigation, it will be used to screen for and recommend eligible and suitable candidates for this pilot program. The pre-sentence investigation format summary and recommendation section has been revised to facilitate this process. However, most offenders are sentenced without the benefit of a pre-sentence investigation. Participating districts will develop an offender identification and selection process involving the participation of the court and district attorney that is acceptable to all parties. Most courts normally place

offenders who are eligible for this program on probation since they are non-violent, first offenders. Some examples of appropriate candidates from this group would be those who are uncooperative while on bond, those who are re-arrested for minor offenses while awaiting sentencing or who are otherwise non-compliant and present an enhanced risk which can be addressed through this program with electronic monitoring.

b. Identification at Violation Process. The court may be more willing to place an offender in this program pursuant to the violation process. Screening would be required for all eligible offenders in the violation process prior to the revocation hearing with our focus on offenders who are likely to receive a sentence of incarceration. We should recommend violators who may be safely maintained in the community with this enhanced form of supervision and electronic monitoring.

##### 3. Selection Process

a. Once an offender has been identified as a potential, suitable participant in the program, the concurrence of the court and district attorney that the offender is likely to respond affirmatively to this program must be obtained.

b. The offender must have a willingness and ability to participate in this program. Participation in home incarceration and electronic monitoring programs have a number of unique requirements, such as a suitable residence. Since the offender will be required to remain in the residence during specified periods which will likely be longer than normal, the environment in the residence must be conducive to the offender's successful participation in this program. For example, the other residents must be agreeable to and supportive of the offender's participation in the program. They cannot be involved in criminal activity, such as drug use. The residents must also comply with the needs of the electronic monitoring system, such as a telephone and other restrictions. The offender must understand and agree to comply to all requirements of the program prior to placement.

##### 4. Processing

a. The processing of an offender into the pilot program will consist of two basic steps:

i. the offender must be explained the specific requirements and restrictions of the home incarceration and electronic monitoring program and given this information in writing with a signed copy for our file, the same as the general conditions of probation;

ii. secondly, the offender must be entered into the electronic monitoring program, that is having the home base unit installed in the offender's home and the electronic bracelet connected.

b. The processing of an offender for the program should be performed with the same urgency and thoroughness as with Specialized Sex Offenders. The first step of the processing should be completed on the date of sentencing, if possible. If not, then it should be completed as soon as possible afterward. The second step of actually "hooking" the offender to the electronic monitoring system may not be completed that same day, due to geographic or other considerations. However, it is our policy to enter the offender in the electronic monitoring phase of the program as quickly as possible.

5. Supervision

a. The supervision policy for the Home Incarceration/Electronic Monitoring Pilot Program is set forth in the Probation & Parole Officer's Manual in Chapter 3C Alternative Community Based Programs; #4C Home Incarceration/Electronic Monitoring Pilot Program Act 1139. This policy details all aspects of the Home Incarceration and Electronic Monitoring Program, including the use of electronic monitoring as a supervision and monitoring tool, curfews, home visits by the supervising officer, limitations of offender activities outside the home and various requirements which may be imposed, such as maintaining employment, attending substance and/or mental health treatment, vocational and/or educational programs, etc.

b. Initially, curfews and other restrictions will be structured to seriously limit the offender's time and activities outside the home. These restrictions will be adjusted according to the offender's performance and adjustment in the program. It is the goal of the program to ease these restrictions consistent with the offender's positive adjustment to supervision until the offender can be transitioned into traditional supervision.

6. Violations

a. Minor Violations. Minor violations will be handled by the supervising officer. Sanctions for minor violations can be an extension of existing restrictions and the addition of new restrictions.

b. Major Violations or Continued Minor Violations. All major violations of this program or any other condition of probation will result in the offender being placed in the violation process and the matter being referred back to the court.

c. Continued minor violations that undermine the effectiveness and purpose of this program will also be handled through the formal violation process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Adult Services, LR 19:657 (May 1993), amended LR 28:

**Family Impact Statement**

In accordance with the Administrative Procedure Act, R.S. 49:953.A.(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Adoption of this rule by the Department of Public Safety and Corrections, Corrections Services, regarding the establishment of rules and procedures for a pilot program of home incarceration and/or electronic monitoring in lieu of traditional imprisonment for qualified, first time offenders will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the functions as contained in the proposed rule amendment.

Interested persons may submit written comments to Richard L. Stalder, Secretary, Department of Public Safety and Corrections, Corrections Services, 504 Mayflower Street, Baton Rouge, LA 70802, or by facsimile to (225)

342-3095. All comments must be submitted by 4:30 p.m., March 20, 2002.

Richard L. Stalder  
Secretary

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

**RULE TITLE: Home Incarceration/Electronic  
Monitoring Pilot Program**

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

The estimated savings to the state with the implementation of this Rule are indeterminable at this time. The Rule will allow non-violent offenders to be electronically monitored at home in lieu of incarceration. This savings cannot be determined due to the uncertainty of utilization by the courts.

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

Revenue in the form of supervision fees payable to the department will be increased by the number of offenders participating in the program. At 300 offenders and fees of \$50 a month, the annual revenue is \$180,000. The department estimates that collections will not exceed 50 percent for a net annual revenue of \$90,000.

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

Some participants may be required to pay supervision fees under this program because they are on probation rather than incarcerated in a prison. This cost is \$50/month. When fully implemented it is estimated that 300 offenders will participate for a total cost annually to offenders at \$180,000. It is estimated that approximately 50 percent will not pay the required fees.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No estimated effect on competition and employment.

Bernard E. "Trey" Boudreaux, III  
Undersecretary  
0202#076

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Concealed Handgun Permit  
(LAC 55:I.1305, 1307, 1311, and 1313)

The Department of Public Safety and Corrections, Office of State Police, Concealed Handgun Permit Section, in accordance with R.S. 40:1379.3, 40:1379.3.1, 40:1381, 40:1382, and the Administrative Procedure Act R.S. 49:950 et seq., hereby gives notice of its intent to amend LAC 55, Part I Chapter 13, Issuance of Concealed Handgun Permits. This text is being amended in response to legislative amendments and to address administrative needs. The changes will provide for two year permits, redefines residency, reduces fee for applicants 65 or older, and will reflect statutory changes in eligibility requirements.

**Title 55  
PUBLIC SAFETY**

**Part I. State Police**

**Chapter 13. Issuance of Concealed Handgun Permits**

**§1305. Definitions**

\* \* \*

*Permit* Cthe authorization issued by the deputy secretary of the Department of Public Safety and Corrections pursuant to R.S. 40:1379.3 and these rules, which shall be valid for either two or four years from the date of issuance unless revoked, suspended, or otherwise invalidated, and shall contain a permit number, date of expiration, and the name, address, date of birth, physical description, and photograph of the permittee.

\* \* \*

*Pistol* Ca handgun that has a short barrel and can be held, aimed, and fired with one hand and is capable of only firing a single round each time the trigger is pulled, which includes semi-automatic handguns.

*Resident* Ca person who maintains a dwelling in this state and is physically present in this state at least 51 percent of each calendar year. However, a person who maintains a dwelling in this state but is not physically present in this state at least 51 percent of each calendar year is still considered to be a resident for purposes of this Section if he is on U.S. military duty in another state or is attending school in another state.

*Revolver* Ca pistol that has a rotating cylinder containing a number of firing chambers. The action of the trigger or hammer will line up a chamber with the barrel and firing pin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:846 (September 1996), amended by the Department of Public Safety and Corrections, Office of State Police, LR 28:

**§1307. Applications and Permits**

A. - B.4. ...

5.a. For purpose of proof that the applicant has resided within the state of Louisiana for at least six months prior to his application for a permit, the applicant shall submit with his application a photocopy of his valid Louisiana driver's license or Louisiana identification card.

i. An applicant must have a Louisiana driver's license or identification card.

ii. In the event the applicant's Louisiana driver's license or Louisiana identification card has been issued within six months of application, proof of residency must be established by any one of the following:

(a). United States passport;

(b). Louisiana voter registration card;

(c). any other documentation, which may adequately satisfy proof of compliance with the qualifications for residency.

b. For purposes of proof of residency, a business address or post office box shall not suffice.

c. Applicants that are on U.S. military duty in another state shall submit a copy of their orders detailing them to such duty station, along with a copy of their military identification card.

d. An applicant that is attending school in another state shall submit a copy of his school registration form and

fee bill for each semester during the permit period that is applicable.

6. - 14. ...

15. All applicants shall submit with the application a non-refundable fee in the form of a certified check or money order. The applicable fees are as follows:

a. for a four-year concealed handgun permit the fee shall be \$100;

b. for a two-year concealed handgun permit the fee shall be \$50;

c. the above fees shall be reduced by one-half if the applicant is 65 years of age or older on the date the application is received by the department;

d. Any applicant that has not continuously resided within the state of Louisiana for the 15 years preceding the submission of the initial application shall enclose an additional non-refundable \$50 fee. This additional fee shall not be reduced for applicants 65 years of age or older.

C. - C.2. ...

3. not suffer from a mental or physical infirmity due to disease, illness, or retardation which, prevents the safe handling of a handgun and shall submit a medical clearance form completed by the treating physician;

4. - 13. ...

14. not have a history of engaging in violent behavior. There shall be a rebuttable presumption that an applicant has a history of engaging in violent behavior upon proof that, within a 10-year period immediately preceding the date of the application, the applicant has been arrested or charged on three or more occasions for any crime of violence as defined in R.S. 14:2(13), or has been arrested or charged on two or more occasions for any crime of violence that may be punished by death;

15. not be ineligible to possess a firearm under 18 U.S.C. 922(g).

D. Renewal of Permits

1. A permittee wishing to renew his concealed handgun permit shall file a renewal application no more than 120 days prior to the expiration of the permit and no later than the sixtieth day after expiration. Renewal applications submitted after the sixtieth day from expiration will not be accepted and the permittee shall complete a new original application with all documentation required for an original application. All renewal applications shall include a new photograph of the applicant as specified in LAC 55:I.1307.B.3.

2.a. A renewal application shall be considered filed with the department when the department receives the application and the fees are processed. The applicable renewal fees are as follows:

i. for a four-year concealed handgun permit the fee shall be \$100;

ii. for a two-year concealed handgun permit the fee shall be \$50;

iii. the above fees shall be reduced by one-half if the applicant is 65 years of age or older on the date the application is received by the department.

b. In the event an applicant that has resided outside of Louisiana during the permit period less than 51 percent of the calendar year he will be required to submit proof of a criminal history check conducted by the sheriff of the county in which he resided and the local police department. In the

case of military personnel the Provost Marshall's Office, Naval Criminal Investigative Service, Air Force Office of Special Investigations, or other similar section and the Sheriff of the county in which he resided should conduct the check.

c. If necessary to show proof of eligibility, an applicant that has not resided in Louisiana for the last 15 years may be required to submit a fingerprint card and pay an additional \$50 non-refundable fee to defray the cost of the background check.

3. An incomplete renewal application may be denied by the department for failure to provide requested documents or appropriate fees. Proof of residency shall conform to LAC 55:I.1307.B.5.a.

4. - 4.f.iii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:846 (September 1996), amended by the Department of Public Safety and Corrections, Office of State Police, LR 28:

**§1311. Handgun Training Requirements**

A. - B.2. ...

C. Any teaching or training required under this Part must be conducted by a current NRA-certified or POST-certified instructor who has registered his name and certification with the department. In order to become registered and maintain that registration with the department an instructor shall:

1. submit a course syllabus that includes the curriculum described in LAC 55:I.1311.A and LAC 55:I.1307.D;

2. keep up to date his name, address, phone number, an e-mail address, and instructor certificates (on a yearly basis);

3. submit a contact number that may be released to applicants to schedule courses. The listing of an e-mail address will be optional. In the event that the instructor's contact information is not valid, or certification expires, the instructor will be removed from the department's approved instructor list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:849 (September 1996), amended by the Department of Public Safety and Corrections, Office of State Police, LR 28:

**§1313. Code of Conduct of Permittees**

A. - B.5. ...

6. When a permittee ceases to reside within this state, the permit automatically becomes invalid and the permittee shall return the concealed handgun permit to the department within five business days from the date he ceases to reside within this state. Upon receipt of the permit, the permit will enter a canceled status. A new application must be completed if the permittee resumes his resident status.

7. ...

8. A permittee shall immediately inform the department in writing of any handgun related accident, discharge, incident, injury, or death involving any permittee. Failure to do so may be grounds for suspension or revocation of an existing permit or denial of a renewal application.

9. ...

10. Any permittee or applicant who is subject to any preliminary or permanent injunction in any family or domestic dispute, or any other protective order issued pursuant to law, shall notify the department of the caption of the suit including the suit or proceeding number, the date of the issuance of the injunction or court order, and provide a signed copy of the court's order within three days of the issuance of any such order. Upon the issuance of the injunction or court order, the permit shall be automatically suspended and the department may revoke or deny the permit in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:850 (September 1996), amended by the Department of Public Safety and Corrections, Office of State Police, LR 28:

**Family Impact Statement**

1. The effect of these rules on the stability of the family. These rules should have a positive effect on the stability of the family as said rules will reduce the fees for those persons age sixty-five or older by one half.

2. The effect of these rules on the authority and rights of parents regarding the education and supervision of their children. These rules should have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect of these rules on the functioning of the family. These rules should have a positive effect on the functioning of the family as the passage of these rules will reduce the fees for those persons age 65 or older by one half.

4. The effect of these rules on family earnings and family budget. These rules will have a positive effect on family earnings and family budget as the rules will reduce the fees for those persons age 65 or older by one half.

5. The effect of these rules on the behavior and personal responsibility of children. These rules should have no effect on the behavior and personal responsibility of children.

6. The effect of these rules on the ability of the family or local government to perform the function as contained in the proposed rules. The rules should have no effect on the ability of the family or local government to perform the function as contained in the proposed rules as neither families or local governments perform this function.

Interested persons may submit written comments to Sergeant Paul Edmonson, Box 66375, Baton Rouge, LA 70896. Comments will be accepted through the close of business on March 10, 2002.

Jerry Jones  
Undersecretary

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

**RULE TITLE: Concealed Handgun Permit**

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

There should be no implementation costs or savings to the department. The proposed new rules are necessary as a result of passage of legislation. The rule change concerning the reduction in fees is as a result of Legislation passed in 1999.

There will be no new fiscal impact. Additionally, the proposed new and amended rules are necessary to address operational issues, which would result in an increased ability to serve the public.

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

There may be a minimal effect on revenue collection for the department. The proposed new rules will reflect the decrease in permit fees for those applicants sixty-five years of age or older by one-half. The new rule simply updates the current rules as a result of Legislation passed in 1999. There will be no new fiscal impact. There will be no effect on revenue collections of local governments as the programs for which these rules are being adopted and/or amended are not utilized by local governments. The revenue impact is estimated to be less than \$100,000 as per the Fiscal Note that accompanied House Bill 1119 of the 1999 Regular Legislative Session.

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

There will be economic benefits to those applicants 65 years of age or older in that the fees shall be reduced by one half. Legislation requiring the reduced fees was passed in 1999. The new rule simply updates the current rules. There will be no new fiscal impact. As noted on the Fiscal Note, prepared by the Legislative Fiscal Office, the fiscal impact if any is less than \$100,000.

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

There should be no effect on competition or employment.

Jerry Jones  
Undersecretary  
0202#053

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Policy Services Division**

**Definition of Sale for Sales Tax Purposes  
(LAC 61:I.4301)**

Under the authority of R.S. 47:301 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4301 relative to the definition of the term "sale" for sales tax purposes.

These proposed amendments to LAC 61:I.4301 provide guidance concerning the definition of a "sale" under R.S. 47:301(12). They also explain the appropriate sales tax treatment of tips and gratuities that restaurants, hotels, catering facilities, taverns, and other sellers of prepared food and drink include in the charges to their customers.

**Title 61**

**REVENUE AND TAXATION**

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

**Chapter 43. Sales and Use Tax**

**§4301. Definitions**

A. - C. ...

\*\*\*

*Sale*—

a. R.S. 47:301(12) defines a *sale* as receiving or giving consideration in return for:

i. transferring title or ownership of tangible personal property;

ii. transferring possession of tangible personal property when the seller retains legal title to the property as security to ensure full payment of the selling price;

iii. fabricating materials into tangible personal property when the materials are supplied by the customer; and

iv. furnishing, preparing or serving tangible personal property that is consumed on the premises of the seller.

b. Fabricating or fabrication, for sales tax purposes, means to make, build, create, produce, or assemble components of tangible personal property, or to make tangible personal property work in a new or different manner.

c. A *sale* includes, but is not limited to, transactions where:

i. tangible personal property is transferred on a conditional basis (i.e., the customer has the option of returning the property and obtaining a refund of the sales price); and

ii. payment is made in a form other than money, as in a barter agreement, an exchange of property, or a promissory note.

d. When tangible personal property, like food, is served on the vendor's premises, the vendor is required to charge sales tax for:

i. the total price of preparing and serving the food even if these charges are billed separately; and

ii. tips and gratuities, if the vendor fails to separately list these charges on the bill, or if any portion of these amounts (except reimbursement for credit card processing fees) is retained by the vendor. Sales tax is not charged on tips and gratuities if they are separately stated and the total amounts collected are distributed to the employees that prepare and serve the food.

e. When tangible personal property, like food, is served at the customer's premises, sales tax is not charged for preparing and serving the food, provided these charges are separately stated from the sale of the food.

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**AUTHORITY NOTE:** Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511.

**HISTORICAL NOTE:** Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), amended by the Department of Revenue, Policy Services Division, LR 28:

**Family Impact Statement**

1. The effect on the stability of the family. Implementation of this proposed rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed rule will have no effect on the functioning of the family.



**NOTICE OF INTENT**

**Department of Revenue  
Policy Services Division**

Electronic Systems for Withholding Exemption Certificates  
(LAC 61:I.1505)

Under the authority of R.S. 47:112.G.(6), R.S. 47:112.N.(6), R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1505 relative to electronic systems for withholding exemption certificates.

Louisiana Revised Statute 47:112.G.(6) states that "Withholding certificates shall be in such form and contain such information as the collector may prescribe by regulation." The adoption of LAC 61:I.1505 will provide a process, consistent with federal withholding regulations, by which an employer may establish a system for its employees to file withholding exemption certificates electronically.

**Title 61**

**REVENUE AND TAXATION**

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

**Chapter 15. Income: Withholding Tax**

**§1505. Electronic Systems for Withholding Exemption  
Certificates**

A. Electronic Form L-4 or L-4E in general. An employer may establish a system for its employees to file withholding exemption certificates electronically.

B. Requirements for Electronic Form L-4 or L-4E

1. In General. The electronic system must ensure that the information received is the information sent, and must document all occasions of employee access that result in the filing of a Form L-4 or L-4E. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and filing the Form L-4 or L-4E is the employee identified in the form.

2. Same Information as Paper Form L-4 or L-4E. The electronic filing must provide the employer with exactly the same information as the paper Form L-4 or L-4E.

3. Perjury Statement and Signature Requirements. The electronic filing must be signed by the employee under penalties of perjury.

a. Perjury Statement. The perjury statement must contain the language that appears on the paper Form L-4 or L-4E. The electronic program must inform the employee that he or she must make the declaration contained in the perjury statement and that the declaration is made by signing the Form L-4 or L-4E. The instructions and the language of the perjury statement must immediately follow the employee's income tax withholding selections and immediately precede the employee's electronic signature.

4. The effect on family earnings and family budget. Implementation of this proposed rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule. Implementation of this proposed rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 15409, Baton Rouge, LA 70895-5409 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, March 26, 2002. A public hearing will be held on Thursday, March 28, 2002, at 10 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, Louisiana.

Raymond E. Tangney  
Senior Policy Consultant

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Definition of Sale for Sales Tax Purposes**

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

Implementation of this proposed rule will have no impact on state or local governmental units' cost. This proposal would furnish greater detail about the definition of "sale" for sales tax purposes. This is being done to assist taxpayers by clarifying the Department's current policy.

**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 regulation.

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

This proposed regulation would have no costs or economic benefits to businesses that sell tangible personal property, fabricate tangible personal property, or serve tangible personal property on their own premises or on premises provided by the customer.

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

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0202#011

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

b. Electronic Signature. For purposes of this provision, the electronic signature must identify the employee filing the electronic Form L-4 or L-4E and authenticate and verify the filing. For purposes of this provision, the terms "authenticate" and "verify" have the same meanings as they do under federal provisions concerning Form W-4. An electronic signature may be in any form that satisfies the foregoing requirements. The electronic signature must be the final entry in the employee's Form L-4 or L-4E submission.

4. Copies of Electronic Form L-4 or L-4E. Whenever a Form L-4 or L-4E is requested by the Department of Revenue, or required to be submitted to the Department of Revenue, the employer must supply a hardcopy of the electronic Form L-4 or L-4E and a statement that, to the best of the employer's knowledge, the electronic Form L-4 or L-4E was filed by the named employee. The hardcopy of the electronic Form L-4 or L-4E must provide exactly the same information as, but need not be a facsimile of, the paper Form L-4 or L-4E.

C. Electronic Filing by All Employees. An employer is permitted to adopt a system under which all employees file Forms L-4 and L-4E electronically, however, it is expected that an employer will make a paper option reasonably available upon request to any employee who has a serious objection to using the electronic system or whose access to, or ability to use, the system may be limited (for example, as a result of a disability). The paper option would be satisfied, for example, if the employer informs employees how they can obtain a paper Form L-4 or L-4E and where they should submit the completed paper Form L-4 or L-4E. The Louisiana Department of Revenue also expects that employers will comply with all applicable law governing the terms and conditions of employment, such as the Americans with Disabilities Act (42 U.S.C. §12112(a)).

D. Record Retention. Electronic systems for collecting and maintaining Form L-4 and L-4E data have the same status as paper Forms L-4 and L-4E. Therefore, guidance that applies to retention of paper Forms L-4 and L-4E also applies to electronic Forms L-4 and L-4E.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:112.G.(6), R.S. 47:112.N.(6), and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division LR 28:

**Family Impact Statement**

The proposed adoption of LAC 61:I.1505, regarding electronic systems for withholding exemption certificates should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. The implementation of this proposed rule will have no known or foreseeable effect on:

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

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy

Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be submitted no later than 4:30 p.m., March 28, 2002. A public hearing will be held on March 29, 2002, at 2:30 p.m. in the River Room located on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana 70802.

Cynthia Bridges  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Electronic Systems for Withholding  
Exemption Certificates**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
Implementation of this proposed rule will have no impact on state or local governmental unit's cost. This proposal would provide a process, consistent with federal withholding regulations, by which an employer may establish a system for its employees to file withholding exemption certificates electronically. This action is required in order to make Louisiana's electronic systems for withholding exemption certificates consistent with federal withholding regulations.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There should be no effect on revenue collection of state or local governmental units as a result of this proposed regulation.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There should be no costs or economic benefits that directly affect persons or non-governmental groups as a result of this proposed regulation.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This proposed regulation should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0202#052

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**FITAP and Food Stamp Program C Vehicle Exclusion  
(LAC 67:III.1235 and 1949)**

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 2, the Family Independence Temporary Assistance Program (FITAP), and Subpart 3, Food Stamps.

FITAP and Food Stamp program regulations were amended in July 2001 pursuant to Public Law 106-387 and the Temporary Assistance to Needy Families (TANF) Block Grant to Louisiana. The Public Law provided an option which allowed states to apply a more liberal method for valuing vehicles based on its TANF-funded cash assistance program. The agency chose to exclude the value of vehicles,

other than recreational vehicles, from consideration as a resource.

Upon further consideration, the agency now chooses to exclude the value of all vehicles from the FITAP and Food Stamp Program resource limits for eligibility. In doing so, the agency will further decrease barriers to FITAP and food stamp eligibility as well as simplify policy for clients and staff, thereby decreasing the risk of errors that could lead to federal sanctions.

**Title 67  
SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 2. Family Independence Temporary Assistance Program (FITAP)**

**Chapter 12. Application, Eligibility, and Furnishing Assistance**

**Subchapter B. Conditions of Eligibility**

**§1235. Resources**

A. Assets are possessions which a household can convert to cash to meet needs. The maximum resource allowable for an assistance unit is \$2,000. All resources are considered except:

- 1. - 19. ...
- 20. vehicles;
- 21. - B. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B., R.S. 46:231.2, P.L. 106-387.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2451 (December 1999), amended LR 27:736 (May 2001), LR 27:866 (June 2001), LR 28:

**Subpart 3. Food Stamps**

**Chapter 19. Certification of Eligible Households**

**Subchapter H. Resource Eligibility Standards**

**§1949. Exclusions from Resources**

- A.1. - 3. ...
- 4. the value of all vehicles.
- B. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:26937 et seq., 7 CFR 273.8 and 273.9C(v), P.L. 103-66, P.L. 106-387.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security in LR 13:656 (November 1987), amended in LR 13:249 (August 1987), LR 17:953 (October 1991), amended by the Department of Social Services, Office of Family Support in LR 18:142 (February 1992), LR 18:686 (July 1992), LR 18:1267 (November 1992), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:186 (February 1995), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 28:

**Family Impact Statement**

This Rule will have no impact on the authority and rights of parents. It may contribute to the stability of the family unit for those families that may not have previously been eligible for cash assistance or food stamp benefits due to ownership of a recreational-type vehicle.

Interested persons may submit written comments on the proposed rule by April 2, 2002, to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed rule will be held on April 2, 2002, at the Department of Social Services, A.Z.

Young Building, 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 (225) 342-4120 (Voice and TDD).

Gwendolyn P. Hamilton  
Secretary

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

**RULE TITLE: FITAP and Food Stamp  
ProgramC Vehicle Exclusion**

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

The proposed action will increase state costs by making more FITAP and Food Stamp applicants eligible. However, FITAP funds are available from the TANF Block Grant to Louisiana and food stamps are 100 per cent federally funded. The number of households that could become eligible is small: only 26 food stamp cases and one FITAP case were closed or rejected because of vehicle resources during the period 9/01 through 11/01. Although each household's benefit varies depending on several eligibility factors; it is estimated that federal food stamp benefits could increase by \$257,088 per fiscal year and that an additional \$9,600 could be spent in federal TANF dollars as a result of this change. Relative to administrative costs, the exclusion of all vehicles will simplify policy and some savings to state government should be realized by eliminating both client and worker error in this area of eligibility. The minimal cost of publishing the rule and printing policy changes and forms revisions are routinely included in the agency's annual budget. There will be no costs to local governmental units.

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

There will be no impact on revenue collections for state or local governmental units.

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

There are no costs to any persons or non-governmental groups. A small number of applicants will become eligible for FITAP and Food Stamp Program benefits as a result of the vehicle exclusion. Only 27 cases were rejected or closed because of excess resources involving vehicles over a three-month period in late 2001. The previous resource policy was implemented effective July 1, 2001. The systems do not capture information with the required specificity to identify vehicle rejections/closures so a special computer run was completed for the months of September, October, and November 2001 and this was the only accurate data available.

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

The proposed rule will have no impact on competition and employment.

Ann S. Williamson  
Assistant Secretary  
0202#057

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Treasury Teachers' Retirement System

#### Deferred Retirement Option Plan (DROP) Accounts (LAC 58:III.509 - 519)

In accordance with R.S. 49:950 et seq., the Administrative Procedures Act, notice is hereby given that the Board of Trustees of Teachers' Retirement System of Louisiana approved an amendment to policies governing the withdrawal of funds from Deferred Retirement Option Plan (DROP) accounts.

#### Title 58 RETIREMENT

#### Part III. Teachers' Retirement System of Louisiana Chapter 5. Deferred Retirement Option Plan (DROP)

#### §509. Withdrawal of Funds from a Drop Account

A.1. - 5. ...

6. One-Time Partial Account Balance Withdrawal at the Beginning of, or During the Term of, Monthly or Annual Withdrawals Selected in Accordance with §509.A.2, 3, 4, or 5. If the one-time partial account balance withdrawal is made before any other withdrawals, the balance of the account will be paid as determined by the withdrawal method selected in accordance with §509.A.2, 3, 4, or 5. If withdrawals have already begun, the duration of the remaining monthly and or annual withdrawals will be redetermined and the appropriate federal tax laws will be applied. If the one-time partial account balance withdrawal is to be made after the monthly or annual withdrawals have begun, the retiree must meet one of the following conditions:

a. one must have been at least age 55 on the date of his retirement; or

b. one must be at least 59 1/2 at the time he chooses the one-time single lump sum withdrawal.

In all cases the monthly or annual withdrawals may not be decreased once they have begun, although they maybe increased in accordance with §511.A.

7. Total DROP account balance withdrawal at any time after monthly or annual withdrawals have begun.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:786-791.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 18:621 (June 1992), amended LR 18:1419 (December 1992), LR 19:1601 (December 1993), LR 20:1020 (September 1994), LR 21:1267 (November 1995), LR 23:85 (January 1997), repromulgated LR 24:499 (March 1998), LR 28:

#### §511. Change of DROP Withdrawal Method

A. The participant will have one opportunity per 12-month period to change the chosen withdrawal method if the original method selected was either §509.A.2, 3, 4, 5, or 6. Any change in the withdrawal method must be made in accordance with the life expectancy of the participant, and at no time may the disbursement from the account be less than the amount of the originally selected periodic payment.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:739 and R.S. 11:786-791.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 18:621 (June 1992), amended LR 18:1419 (December 1992), LR 19:1601 (December 1993), LR 20:1020

(September 1994), LR 21:1267 (November 1995), LR 23:85 (January 1997), repromulgated LR 24:499 (March 1998), amended LR 24:961 May 1998), LR 28:

#### §513. Termination of DROP Participation

A. ...

B. In the event of the death of the DROP participant/retiree, a spousal beneficiary shall select a withdrawal method from the options listed in §509.A, and may make changes in accordance with §511. If the disbursements from the account began prior to the participant's death, the spousal beneficiary may make changes in accordance with §511.

C. In the event of the death of the participant during DROP participation, or after the end of the period of participation, but before total distribution of the DROP account balance, a beneficiary(ies) other than the participant's surviving spouse shall immediately receive a lump sum equal to the participant's balance in the DROP account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:786-791.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 18:621 (June 1992), amended LR 18:1419 (December 1992), LR 19:1601 (December 1993), LR 20:1020 (September 1994), LR 21:1267 (November 1995), LR 23:85 (January 1997), repromulgated LR 24:499 (March 1998), LR 28:

#### §519. Application for DROP

A. A member shall not begin his DROP participation until TRSL has received a fully completed, signed, and witnessed Application for DROP, Form 11F. TRSL must receive both sides of the Form 11F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:786-791.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 18:621 (June 1992), amended LR 18:1419 (December 1992), LR 19:1601 (December 1993), LR 20:1020 (September 1994), LR 21:1267 (November 1995), LR 23:85 (January 1997), repromulgated LR 24:499 (March 1998), amended LR 24:962 (May 1998), LR 28:

Interested persons may comment on the proposed rule in writing until 4:30 p.m., April 19, 2002, to Bonita B. Brown, Assistant Director, Teachers' Retirement System of Louisiana, P. O. Box 94123, Baton Rouge, LA 70804-9123.

James P. Hadley, Jr.  
Director

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

#### RULE TITLE: Deferred Retirement Option Plan (DROP) Accounts

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

There are no implementation costs to state or local government units. This amended rule allows Deferred Retirement Option Plan (DROP) retirees to withdraw part of their DROP account and take the balance of the DROP account out in a series of monthly or annual payments. It also allows the submission of fax copies of DROP applications, requires lump sum distributions to nonspousal DROP beneficiaries, and makes withdrawal methods for spousal beneficiaries more flexible.

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

There is no effect on revenue collection of state or local government units. No revenue is currently being collected.

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

No change is being made to the method by which DROP account balances and interest payments are being calculated. The withdrawal schedule is being made more flexible.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment because no changes are being made in the compensation or fringe benefits being paid to DROP participants/retirees.

James P. Hadley, Jr.  
Director  
0202#012

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

# Potpourri

## POTPOURRI

### Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences Boll Weevil Eradication Commission

Boll Weevil Eradication  
Adjudicatory Hearing Establishment of 2002 Assessment

The Boll Weevil Eradication Commission will hold an adjudicatory hearing beginning at 10 a.m., March 7, 2002, at the Louisiana Department of Agriculture and Forestry, First Floor Auditorium, located at 5825 Florida Boulevard, Baton Rouge, LA, relative to the setting of the assessments levied upon cotton producers for each acre of cotton planted for the 2002 crop year, pursuant to R.S. 3:1613 and LAC 7:XV.321. Said assessment shall not exceed \$35 per acre of cotton planted for 2002 in the Red River Eradication Zone and \$15 per acre of cotton planted for 2002 in the Louisiana Eradication Zone. Calculations made to date indicate that the assessments should not, in actuality, exceed \$10 per acre for the Red River Eradication Zone and \$15 per acre for the Louisiana Eradication Zone.

All interested persons are invited to attend and will be afforded an opportunity to participate in the adjudicatory hearing. Written comments will be accepted if received prior to March 7, 2002, P.O. Box 3596, Baton Rouge, LA 70821-3596.

Dan P. Logan, Jr.  
Chairman

0202#030

## POTPOURRI

### Department of Agriculture and Forestry Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given June 10-12, 2002, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, Louisiana. The deadline for sending the application and fee is as follows:

New Candidates: February 22, 2002  
Re-Take Candidates: March 8, 2002  
Reciprocity Candidates: May 3, 2002

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to September 7, 2001. Questions may be directed to (225) 952-8100.

Bob Odom  
Commissioner

0202#032

## POTPOURRI

### Department of Agriculture and Forestry Horticulture Commission

Retail Floristry Examination

The next retail floristry examinations will be given April 29-May 3, 2002, 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 March 15, 2002. No applications will be accepted after March 15, 2002.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to March 15, 2002. Questions may be directed to (225) 952-8100.

Bob Odom  
Commissioner

0202#031

## POTPOURRI

### Department of Insurance Office of the Commissioner

Advisory Letter Number 01-01  
December 28, 2001

To: All Property And Casualty Commercial Insurers Admitted or Approved to issue Policies Insuring Risks in Louisiana

Re: Use of Pollution Exclusions in Commercial Lines Policy Forms

Statute And Regulation References: Title 22 of the Louisiana Revised Statutes §§2, 620, 621, 1211 et seq., and 1262.1

Please be advised that ISO has submitted a new Pollution Exclusion.<sup>1</sup> The new exclusion has been approved for use in Louisiana. The language in this exclusion is the same

language that has been filed by ISO on a nationwide basis. Thus, approval of the language places Louisiana on par with other states. Use of the new exclusion will expedite the form review and approval process.

The LDI is hereby advising insurers that it will approve policies that utilize the new exclusion. Further, the agency will approve pollution exclusions that are substantially similar to the new ISO exclusion, or to the ISO exclusions referenced in Advisory Letter 97-01.<sup>2</sup> The LDI will continue to approve policies that use the suggested language that it has made available to insurers since 1998. [To acquire copies of the ISO Pollution Exclusion Endorsements referenced in the advisory letter, please contact ISO Customer Service at (800) 888-4476 or by e-mail to [www.iso.com](http://www.iso.com).]

The LDI is hereby advising all admitted insurers that it will no longer approve policies that include in the text of the policy any version of the ISO Total Pollution Exclusion or substantially similar non-ISO total pollution exclusions.<sup>3</sup> The LDI has approved the use of CG 21 65 09 99 as an endorsement to insurance policies. This endorsement, or one substantially similar to it, if approved for use in Louisiana, may be attached to policies issued to classes of insureds or individual insureds that are required to provide proof of financial responsibility for clean-up costs and related expenses for environmental damage to a federal, state, or local environmental regulatory agency. Additionally, insurers may use such an exclusion in situations other than as previously described when there is underwriting justification for its use.

Admitted insurers can elect to:

1. file notice of adoption of the ISO exclusion; or
2. file revised forms with the Commissioner of Insurance on or before March 30, 2002.<sup>4</sup>

After June 30, 2002, insurers that issue new or renewal policies that contain pollution exclusions that are inconsistent with this advisory letter will be issued an order withdrawing the approval previously granted, as authorized by LSA-R.S. 22:620.C.

Further, the LDI is hereby advising surplus lines insurers that use of a total pollution exclusion in the text of an insurance policy or the excessive use of such an exclusion as an endorsement to insurance policies, in the absence of underwriting justification, could result in removal from the white list.

<sup>1</sup>ISO form number CG 26 75 01 02 for use with general liability forms and CG 31 40 01 02 for Owners and Contractors Protective Liability forms. The new exclusion adds language that resolves key areas of concern on the part of the LDI, particularly in regards to indoor occurrences.

<sup>2</sup>Those exclusions are CG 04 28 07 98, CG 04 29 07 98 and CG 04 30 07 98. Advisory Letter 97-01 can be viewed at [www.ldi.state.la.us](http://www.ldi.state.la.us), currently listed under the icon LDI Office Index. Then click on Legal Department. For personal lines please see Directive 137 at the same website.

<sup>3</sup>CG 21 49 11 88.

<sup>4</sup>This provision is not applicable to insurers that have already obtained approval and are using a pollution exclusion that has an exception for pollution incidents that are accidental, occur suddenly and last for a short term, if they implement use of such an exclusion across all lines of business.

Any questions regarding this Advisory Letter may be directed to Kathlee Hennigan, Director of the Property and Casualty Division, at [khennigan@ldi.state.la.us](mailto:khennigan@ldi.state.la.us) or by telephone at (225) 342-0073 or to C. Noël Wertz, Chief Attorney, Property and Casualty Section at [nwertz@ldi.state.la.us](mailto:nwertz@ldi.state.la.us) or by telephone at (225) 342-4632.

J. Robert Wooley  
Acting Commissioner

0202#037

## POTPOURRI

### Department of Insurance Office of the Commissioner

Advisory Letter Number 01-02  
December 28, 2001

To: All Property and Casualty Insurers Admitted or Approved to Issue Policies Insuring Risks in Louisiana

Re: Use of Mold Exclusions in Insurance Policy Forms  
Statute and Regulation References: Title 22 of the Louisiana Revised Statutes §§2, 620, 621, 1211 et seq., and 1262.1.

Please be advised that after due consideration, the LDI has determined that it will allow the use of insurance policies and/or endorsements that exclude coverage for mold if the exclusion is directed at precluding coverage for:

1. remedial costs, such as the costs of testing the insured premises for mold, or the cost of containment or fumigation of the insured premises, whether the mold is the result of a covered cause of loss or otherwise; or
2. mold that is not the result of a covered cause of loss.

Insurers doing business in Louisiana should take note that standard homeowner's policies do not provide coverage for "seepage" or for damage arising from wear and tear or the failure to do proper maintenance. More importantly, unlike most states there is very limited punitive damages exposure in Louisiana.

Insurers should make every effort to develop exclusions that are narrowly drafted. Further, such exclusions should not be used to deny coverage for the costs of repair and restoration of the insured premises for damages arising from a covered cause of loss, even if some mold is present.

Any questions regarding this Advisory Letter may be directed to Kathlee Hennigan, Director of the Property and Casualty Division, at [khennigan@ldi.state.la.us](mailto:khennigan@ldi.state.la.us) or by telephone at (225) 342-0073 or to C. Noël Wertz, Chief Attorney, Property and Casualty Section at [nwertz@ldi.state.la.us](mailto:nwertz@ldi.state.la.us) or by telephone at (225) 342-4632.

J. Robert Wooley  
Acting Commissioner

0202#038

**POTPOURRI**

**Department of Insurance  
Office of the Commissioner**

Insurers' Use of Terrorism Exclusions  
December 21, 2001

The terrorism events of September 11, 2001 had a catastrophic effect on the insurance industry. In the aftermath of this catastrophe, reinsurers have determined that the industry does not have the capacity to withstand the potentially catastrophic risks associated with terrorism, and have excluded terrorism coverage for commercial risks. Congress is considering possible federal terrorism reinsurance proposals, similar to the National Flood Insurance Program. In the mean time, without reinsurance, primary insurers are unable to provide terrorism insurance coverage for many major commercial risks.

The Louisiana Department of Insurance (LDI) has carefully considered whether it is in the best interests of policyholders to approve insurer terrorism exclusions. Ultimately, LDI determined that without terrorism exclusions, insurance would not be available for many commercial policyholders.

Therefore, effective immediately, LDI will grant conditional approval of reasonable terrorism exclusions for commercial property and liability insurance policies, until such time that Congress enacts legislation to provide assistance to the terrorism reinsurance market, or other market conditions warrant a change in the LDI position on terrorism exclusions. Louisiana Workers' Compensation laws do not permit exclusion of terrorism from Workers' Compensation insurance.

LDI will require that terrorism exclusions clearly define excluded terrorist acts in such a manner that they do not exclude coverage for other potentially violent acts such as vandalism, malicious mischief, riot, etc. which do not constitute the scope or scale of a terrorist act. As a guideline, the National Association of Insurance Commissioners (NAIC) and the Insurance Services Office (ISO) have developed appropriate terrorism definitions which insurers may use during this conditional approval period.

LDI will re-examine this conditional approval of terrorism exclusions once Congress has addressed terrorism reinsurance, or the industry has developed a more refined approach to terrorism exclusions.

J. Robert Wooley  
Acting Commissioner

0202#039

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Carnes W. Weaver	Port Barre	M	Haas & Hirsch	001	070800
Arkansas Nat. Gas Co.	Wildcat	S	Lymus J. White	001	000449
Monroe Well Service	Pendleton -Many	M	Lucius Heirs	001	203598

Felix J. Bourdreaux  
Commissioner

0202#040

**POTPOURRI**

**Department of Revenue  
Policy Services Division**

Federal Income Tax Deduction  
Hearing Date for Proposed Rule

The Notice of Intent for LAC 61:I.1307, Federal Income Tax Deduction, published in the January 20, 2002, *Louisiana Register*, incorrectly stated the date for the public hearing for the proposed rule. The Notice of Intent should have stated "Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs, by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be submitted no later than 4:30 p.m., February 28, 2002. A public hearing will be held on March 1, 2002, at 2:30 p.m. in the River Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana 70802."

Cynthia Bridges  
Secretary

0202#033

**POTPOURRI**

**Department of Social Services  
Office of Community Services**

Notice of Anticipated Funds Availability  
2002 Louisiana Emergency Shelter Grants Program

The Louisiana Department of Social Services (DSS) anticipates the availability of \$1,552,158 in grant funds for distribution to applicant units of local government under the 2002 State Emergency Shelter Grants Program (ESGP). Program funds are allocated to the state by the U.S. Department of Housing and Urban Development (HUD) through authorization by the Stewart B. McKinney Homeless Assistance Act, as amended. Funding available under the Emergency Shelter Grants Program is dedicated for the rehabilitation, renovation or conversion of buildings for use as emergency shelters for the homeless, and for payment of certain operating costs and social services expenses in connection with emergency shelter for the homeless. The program also allows use of funding in



homeless prevention activities as an adjunct to other eligible activities. As specified under current state ESGP policies, eligible applicants are limited to units of general local government for all parish jurisdictions and those municipal or city governmental units for jurisdictions with a minimum population of 10,000 according to recent census figures. Recipient units of local government may make all or part of grant amounts available to private nonprofit organizations for use in eligible activities.

Application packages for the State ESG Program shall be issued by mail to the chief elected official of each qualifying unit of general local government. The application package can be viewed on the Internet at the following website: <http://www.dss.state.la.us/html/rfps.html>. In order to be considered for funding, applications must be received by DSS/Office of Community Services by 4 p.m., Friday, April 5, 2002.

Nonprofit organizations in qualifying jurisdictions which are interested in developing a project proposal for inclusion in an ESGP funding application should contact their respective unit of local government to advise of their interest. To be eligible for funding participation, a private nonprofit organization as defined by ESGP regulations must be one which is exempt from taxation under Subtitle A of the Internal Revenue Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance.

The state DSS will continue use of a geographic allocation formula in the distribution of the state's ESG funding to ensure that each region of the state is allotted a specified minimum of state ESG grant assistance for eligible ESGP projects. Regional allocations for the state's 2002 ESG Program have been formulated based on factors for low income populations in the parishes of each region according to U.S. Census Bureau data. Within each region, grant distribution shall be conducted through a competitive grant award process.

The following table lists the allocation factors and amounts for each region.

Region	Factor	Allocation
Region I New Orleans	.1572303	244,046
Region II Baton Rouge	.1120504	173,920
Region III Thibodaux	.0698830	108,469
Region IV Lafayette	.1522065	236,249
Region V Lake Charles	.0531705	82,529
Region VI Alexandria	.0764176	118,612
Region VII Shreveport	.1248105	193,726
Region VIII Monroe	.0985996	153,042
Region IX Northshore	.0746534	115,874
Region X Jefferson	.0809781	125,691

Regional funding amounts for which applications are not received shall be subject to statewide competitive award to applicants from other regions and/or shall be reallocated among other regions in accordance with formulations consistent with the above factors.

Grant awards shall be for a minimum of \$10,000. Applicable grant maximums are as follows:

1. Individual grant awards to applicant jurisdictions of less than 49,000 population shall not exceed \$50,000.
2. For a jurisdiction of over 49,000 population, the maximum grant award shall not exceed the ESGP allocation for that jurisdiction's respective region.

Grant specifications, minimum and maximum awards may be revised at DSS's discretion in consideration of individual applicant's needs, total program funding requests, and available funding. DSS reserves the right to negotiate the final grant amounts, component projects, and local match with all applicants to ensure judicious use of program funds.

Program applications must meet state ESGP requirements and must demonstrate the means to assure compliance if the proposal is selected for funding. If, in the determination of DSS, an application fails to meet program purposes and standards, even if such application is the only eligible proposal submitted from a region or subregion, such application may be rejected in toto, or the proposed project(s) may be subject to alterations as deemed necessary by DSS to meet appropriate program standards.

Proposals accepted for review will be rated on a comparative basis based on information provided in grant applications. Award of grant amounts between competing applicants and/or proposed projects will be based upon the following selection criteria.

1. Nature and extent of unmet need for emergency shelter, transitional housing and supportive services in the applicant's jurisdiction .....40 points
2. The extent to which proposed activities will address needs for shelter and assistance and/or complete the development of a comprehensive system of services which will provide a continuum of care to assist homeless persons to achieve independent living .....30 points
3. The ability of the applicant to carry out the proposed activities promptly .....15 points
4. Coordination of the proposed project(s) with available community resources, so as to be able to match the needs of homeless persons with appropriate supportive services and assistance .....15 points

ESGP recipients are required to provide matching funds (including in-kind contributions) in an amount at least equal to its ESG Program funding unless a jurisdiction has been granted an exemption in accordance with program provisions. The value of donated materials and buildings, voluntary activities and other in-kind contributions may be included with "hard cash" amounts in the calculation of matching funds. A local government grantee may comply with this requirement by providing the matching funds itself, or through provision by nonprofit recipients.

A recipient local government may at its option elect to use up to 2.439 percent of grant funding for costs directly related to administering grant assistance, or may allocate all grant amounts for eligible Program activities. Program rules do not allow the use of ESGP funds for administrative costs of nonprofit subgrantees.

Availability of ESGP funding is subject to HUD's approval of the state's FY 2002 Consolidated Annual Action

Plan for Housing and Community Development Programs. No expenditure authority or funding obligations shall be implied based on the information in this notice of funds availability.

Inquiries and comments regarding the 2002 Louisiana Emergency Shelter Grants Program may be submitted in writing to Office of Community Services, Division of

Financial Management, Box 3318, Baton Rouge, Louisiana, 70821, or telephone (225) 342-4583.

Gwendolyn P. Hamilton  
Secretary

0202#066

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